

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

MATTHEW CARONE, as Trustee for the Carone  
Marital Trust #2 UTD 1/26/00, et al,  
Conservators,

CASE NO. 12-24051 (07)  
COMPLEX LITIGATION UNIT

v.

MICHAEL D. SULLIVAN, individually,  
Defendant.

\_\_\_\_\_ /

**DEFENDANT, MICHAEL D. SULLIVAN'S OBJECTION TO  
CONSERVATOR'S LITIGATION STATUS REPORT AND  
LITIGATION RECOMMENDATIONS**

1. My name is Michael Sullivan. I am a defendant named in the above entitled action as well as a partner in S&P Partnership and P&S Partnership.

2. I file this objection in opposition to the Conservator's Litigation Status Report (the "Report") filed with the Court and the recommendations contained therein, particularly the continuation of certain spurious lawsuits including the matters styled as *Margaret Smith, et al, v. Michael D. Sullivan, et al*, (the "Insider Matter"), and *Margaret Smith, et al, v. Janet A. Hooker Charitable Trust, et al*, ( the "Net Winner Matter") as well as the retention of Berger Singerman, LLP as Special Litigation Counsel on behalf of the Plaintiffs in both these cases.

3. The matter originates from the initial filing of the above entitled complaint against me by a number of minority partners and the subsequent entry of an order appointing a Conservator on behalf of S&P Partnership and P&S Partnership (the "Partnerships").

4. The Report makes recommendations to continue the Insider and Net Winner Matters, without providing the court with any tangible evidence that there was ever any wrongdoing in the Insider Matter and without providing any analysis which would tend to show that the pursuit of the Net Winners Matter would in any way inure to the benefit of the Partnerships.

5. To exacerbate matters, the Report suggests that Berger Singerman should be employed as Special Counsel to pursue these two matters on a contingency fee basis with, of course, a \$50,000.00 allowance for costs. The foregoing smells like a “bonus”.

6. What the Conservator conveniently fails to mention is that the Insider and the Net Winner matters were commenced illegally by Margaret Smith and Berger Singerman without appropriate authorization by a majority of the Partners consistent with the language contained in ¶ 8.06 of the Partnership Agreements. Exhibit A is attached herewith and made part of this objection.

7. The Conservator is now asking the Court to ratify these illegal actions without first seeking to conduct a plenary hearing to determine whether the actions taken by Margaret Smith were authorized, and more importantly, without first vetting whether the claims have any merit.

8. Paragraph 8.05 of the Partnership Agreements provides in pertinent part:

*“Any action required by statute or by this Agreement to be taken at a meeting of the Partners or any action that may be taken at a meeting of the Partners maybe taken without a meeting if a consent, in writing, setting forth the action taken or to be taken, shall be **signed by all** the Partners entitled to vote with the subject matter of the consent. . . . ”.*

9. The election of a General Managing Partner for a Partnership is a matter that is typically taken up at a Partners’ meeting, as is the commencement of major litigation, particularly when it involves the liquidation of partnership assets and winding up of its affairs.

10. At the very least, the Conservator should conduct an independent forensic financial analysis as to whether any actions taken by the General Managing Partner were inappropriate (the Insider Matter) and further, whether there exists a reasonable likelihood of any financial recovery in the (the Net Winners Matter).

11. The Conservator, Philip J. Von Kahle, was appointed pursuant to this Court's January

17, 2013 *Order Appointing Conservator* ("Conservator Order").

12. Prior to the entry of the Order appointing the Conservator, Margaret Smith, illegally commenced two separate lawsuits. The foregoing was accomplished through Berger Singerman who conducted illegal elections in contravention of ¶ 8.06 of the Partnership Agreement. The Partnership Agreement provides in pertinent part in upper case:

*"A MANAGING GENERAL PARTNER SHALL BE APPOINTED BY THE AFFIRMATIVE VOTE OF FIFTY ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS OF THE PARTNERS. . ."*

13. In order to further their nefarious scheme to disenfranchise the Net Winner Partners, Glass Ratner, Margaret Smith and Berger Singerman made false statements of fact that ten million dollars were missing.

14. Both Glass Ratner and the Conservator have stated that they have confirmed that no money is missing. However they both have refused to make this publicly known to all partners. It is unconscionable that Glass Ratner, i.e. Margaret Smith and Carole Fox would make a ten million error and not correct it and notify all partners of the grievous error made.

15. Berger Singerman, Glass Ratner, Margaret Smith and the above captioned minority Partners have disseminated false and misleading statements that ten million dollars has been dissipated to the Partners resulting in mass confusion and, which to date, has cost the Partnerships hundreds of thousands of dollars.

16. It is unconscionable that none of the participants to the fraud perpetrated upon the Court have corrected the statement that \$10,000,000 is missing. In particular, the Conservator, who is supposed to be objective and independent and work for the benefit of all Partners.

17. It is painfully clear that the Conservator and his counsel are so smitten with Berger Singerman that they now even suggest that Berger Singerman be charged with task of pursuing

frivolous lawsuits, which effectively guarantee Berger Singerman \$50,000 plus part of the action.

18. The Conservator's Report and recommendation contained therein, do not point to any forensic examination, bank statements which show unauthorized withdrawals by me or anything of the sort. In fact, the Conservator is unable to point to one fact that would tend to support any of the claims in the Insider Matter to wrongdoing on my part or that would suggest that the Partnerships would benefit as a whole by proceeding with the Net Winners Matter.

19. Likewise, the allegations that the books and records of the Partnership were not turned over are the by-product of magical thinking on the part of the Conservator.

20. At all times relevant hereto, all partners had full access to the books and records, from the date of their investment. Moreover, in early 2008 the Festus and Helen Stacy Foundation ("FHSF") reviewed all the books and records of the Partnership.

21. The foregoing review resulted in no changes to their investment as they were completely satisfied. In fact, FHSF's financial Advisor, Patrick Kelly, who reviewed records along with the Foundation's CPA, wanted to make an investment himself in the Partnerships.

22. The Conservator and his attorney have refused to discuss the allegations with me. If they would have, they would have all the facts and would not be pursuing these law suits and witch hunts.

23. The Conservator also incomprehensibly refers to shell companies, and that they were set up by me, to divert away or redirect money from the Partnerships. Notwithstanding the foregoing, the Conservator does not provide one bank statement or even a journal entry which would tend to establish that I received any fees in excess of those that I was entitled to under the Partnership Agreements.

24. On the return date of the Motions for Contempt, as well as the Motions to appoint

Berger Singerman as Special Counsel, the Court directed the Conservator to provide some basis for either going forward or abandoning the lawsuits.

25. Nowhere in the Conservator's Report does he address the cost-benefit of moving forward with the Insider or the Net Winner Matters. Nor does he address the alternative: whether it would be in the best interest of the Partnerships overall to have any disgruntled partner institute his or her own action against the Partnerships or against any Partner.

26. In addition, the Conservator does not address who will represent the Partnerships with respect to Counterclaims against Margaret Smith as well as potential third party actions, against the Plaintiffs in the above captioned matters in the event the Insider and Net Winner Matters are allowed to proceed.

27. Once again there is absolutely no money missing from the Partnerships, a fact that has already been confirmed by the Conservator. In addition, The Partnerships' CPA firm of Ahem Jasco and Mike Kuzy, CPA, have been available to consult with and address any issues any Partner may have had at any time. To date the Conservator has never met with the Firm or even contacted them.

28. The Conservator was charged with, among other things, investigating the claims and causes of action of the Partnerships, including the Lawsuits, and reporting to this Court whether such claims ought to be pursued for the benefit of the Partnerships.

29. The Conservator alleges that I have failed to turn over documents, despite the fact that they have had all of the books and records since their appointment. I would submit to the Court that they had the books and records earlier as a result of their clandestine meetings with Berger Singerman prior to the entry of the Order appointing the Conservator. In fact, all records were turned over as requested.

30. In November 2011 the FHSF requested the books and records under the pretext that they had engaged Ali Ansari to conduct a forensic audit. I cooperated with the Foundation and turned the books and records over to them as requested.

31. The books and records sat in Ali Ansari office for six months with no review being conducted. In addition, FHSF represented to me that they had been contacted by Helen Chaitman's office to do a forensic audit.

32. When Ms. Chaitman was contacted she said she never spoke to them regarding any forensic audit nor did she think one was necessary because the books and records matched Madoff's and the Trustee's records, further evidencing that no money was missing.

33. The FHSF had full control and custody of all the original records of the Partnerships from November 2011 until they gave them to Margret Smith yet FHSF continued to state that I refused to turn over the records when in fact they had all the original records.

34. The Conservator appears to be more interested in generating fees and using more partnership money than paying out the funds to the Partners. The Conservator is looking to personally enrich himself as a result of this litigation. Had the Conservator and his Counsel been interested in the best interest of the Partners they would have conducted independent due diligence which would have included speaking to the Partnerships' CPA firm as well as vetting the report from Glass Ratner, which is inherently biased since it was generated by the above named plaintiffs and not on behalf of the Partnerships. It also would have included speaking to the Madoff Trustee and the SEC.

35. The Conservator's primary charge from the Court was to determine who was to be paid and immediately start funding the true victims of the Madoff fraud. To date, the only ones benefiting and who will continue to benefit from the remaining Partnership funds are the

Conservator, his Counsel, Berger Singerman, Glass Ratner and minority Partners who created this mess.

36. The Conservator states in his Report: *“each of the Lawsuits claim damages in the millions of dollars. The Lawsuits may provide the Partnerships (and by extension their general partners) significant additional recoveries.”*

37. What the Conservator does not address are the merits of the Claims. Moreover, he does not provide any explanation as to how the Partnership will fund the defense of counter claims, third party claims and additional lawsuits which surely will follow.

38. In addition, the Conservator has concluded without any tangible proof that there are millions of dollars legally available to collect from the Net Winners. His conclusions are based on pure fantasy, since he has conducted no due diligence on the Partners to determine whether there is a potential for collection.

39. Nor has the Conservator or his Counsel bothered to read ¶ 4.04 of the Partnership Agreements which provides: “No partner shall have any priority over any other Partner as to allocation of profits, losses, dividends, distributions or return of capital contributions . . . .” The pursuit of the Net Winners matter is precisely what ¶ 4.04 is designed to prevent.

40. The Conservator through his collaboration with Berger Singerman believes engaging counsel on a contingency fee basis with a \$50,000 cap on reimbursable costs for each matter is in the best interests of the Partnerships, reduces their exposure and maximizes their potential recoveries. In light of the forthcoming counterclaims, third party complaints and additional lawsuits which will be filed, the Conservator’s judgment is highly suspect.

41. It is clear to even the most casual observer what is going on here. The minority Partners, who spearheaded this witch hunt, are looking to have the Partnerships indirectly

underwrite their litigation fees.

42. Nowhere in the Conservator's report does he state how moving forward with the Insider and Net Winners matters will preserve the only asset the Partnerships has, namely, 5.7 million currently sitting in the Conservator's account.

43. The Conservator concludes: "*After a diligent review of the available Partnerships records, the Conservator has determined that approximately 124 'Net Winners' exist and that claims against the 'Net Winners' exceed \$8,473.00.00.*" But nowhere in his Report does he explain what information he has relied upon as a basis for this statement, whether he relied upon Glass Ratner's calculations, which the Conservator knows are incorrect or whether any of the 124 so called "Net Winners" are parties against whom any recovery could ever be had.

44. The Insider Suit makes reference to alleged improprieties, including breaches of fiduciary duties and negligence, committed by, among others, the Former General Managing Partners, former employees of the Partnerships and others who improperly received funds and/or assisted others in breaching their duties (the "Defendants"). The foregoing allegations will invariably subject the Partnership to Counterclaims, as well as, additional Lawsuits. The Conservator does not tell the Court how he intends to deal with these issues or how he intends to fund defense costs.

45. The Conservator is merely parroting the bogus allegations made by the above named Plaintiffs through their counsel, Berger Singerman. In particular, the Conservator sites unauthorized payments in excess of \$700,000 to Kelco Foundation, which the Conservator claims were disguised as charitable contributions, but were in the Conservator's *make believe world*, commissions for referral of investors to the Partnerships.

46. The foregoing imbecilic statement fails to take into account that the \$700,000

payment benefitted all partners of P&S and was in fact paid out of the 20% earned by me.

47. In the case of the FHSF who is never mentioned by the Conservator or Berger Singerman (they are a client of Berger Singerman) wanted their 50% directed back to their account. Thus, in looking at form over substance both charities received the same 50%. SHSF just chose to have it put back into their account rather than taking a check.

48. The Conservator conveniently omits certain other pertinent facts regarding the alleged missing money including:

(a) After I found out about the Madoff Ponzi Scheme, I engaged Chad Pogatch and Helen Chaitman (Becker Polliakoff) to look into matters to recover as much money as possible;

(b) I opted not to hire a Receiver to save the Partnership money in the hopes of more funds for the Partners;

(c) It has always been my goal to return any recovered funds to the Partners as soon as possible without any additional and unnecessary costs;

(d) In four years since the uncovering of the Madoff Ponzi scheme, I tried to do all Partnership work myself to save the Partners a huge cost of hiring any third parties for the resolution of these matters;

(e) The matter of missing money was previously addressed by the Trustee in the Madoff Bankruptcy. The Trustee determined there was no wrongdoing and released the funds to the Partnership;

(f) Helen Chaitman was the appointed person for distributions and immediate release of the funds. Her approximate fees for this were to be \$20-30,000 dollars;

(g) It was decided Putgach, Chaitman and I were to petition the court to decide which parties were to receive the funds, "Net" winners or "Net" losers. Had this taken place and the plan

implemented the Partners would have received their distributions thereby saving the Partnerships thousands in unnecessary fees;

(h) Berger Singerman has attempted to bill the Partnerships for well over \$200,000 and the Conservator and his attorney have not spent any time trying to come up with a plan of distribution;

(i) During the time of the Madoff Ponzi scheme both the Security Exchange Commission and Trustee, received copies of all the books and records of the Partnerships. I was also interviewed at that time by attorneys for the Trustee. The conclusion drawn by both the SEC as well as the Bankruptcy Trustee was that there was no missing money and that our records agreed with Madoff's and the Partnerships. They further concluded that I was not operating a Ponzi scheme;

(j) The Trustee to date has spent over 700 million dollars investigating all parties and entities in these matters and no allegation has been made against S&P or P&S Partnerships, me or any other Partner or person associated with the Partnerships;

(k) Prior to the appointment of the Conservator, Berger Singerman dispatched three attorneys on December 28, 2012 to meet with the Conservator for several hours to discuss the facts of this case, thereby poisoning the Conservator's ability to be independent;

(l) In addition more than a dozen people represented by Berger Singerman also met with the Conservator. All of these meetings took place prior to the Conservator meeting with myself or Steve Jacob and prior to the entry of the Order appointing the Conservator;

(m) The court order appointing the Conservator stated that he was to meet with Maggie Smith, Steve Jacob and Mike Sullivan. By the time he meet with myself and Mr. Jacob he simply informed us that we had problems and needed an attorney and did not want to discuss the case in any detail;

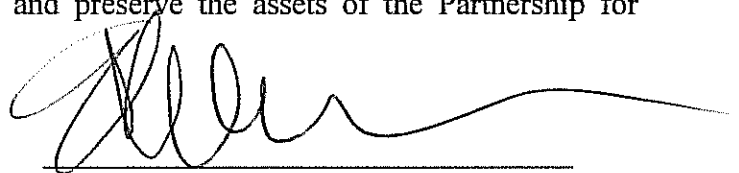
(n) So poisoned was Van Kale in speaking with me by telephone by phone the first time he said "I am the Conservator and I am going to be your new dentist;"

(o) Nowhere in the any moving papers filed to date or any report filed with this is Court there any reference or mention of any discussion had with either the Madoff Trustee or anyone from the SEC, nor has the Trustee contacted our former attorneys who were charged with distributing the funds to the Partners;

(p) Nor is there any mention of any document from the Trustee's office or the Office of the SEC which would point to any wrongdoing on my part. If there was any wrongdoing on my part, the Trustee would not have released the \$5.7M to the partnerships and I would have been the subject of an adversary proceeding in the Bankruptcy Court;

50. Based upon the foregoing, the Court should not permit the Insider and Net Winner Matters to proceed. Instead, these cases should be dismissed and the individual partners should be permitted to pursue whatever legal action they deem appropriate; and

51. This would level the playing field and preserve the assets of the Partnership for distribution.



HARRY WINDERMAN, ESQ.

**VERIFICATION**

STATE OF FLORIDA                    )  
                                                  )  
COUNTY OF PALM BEACH        )       ss.

I am a Defendant in the above-entitled action. I have read the foregoing, know the contents thereof and I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

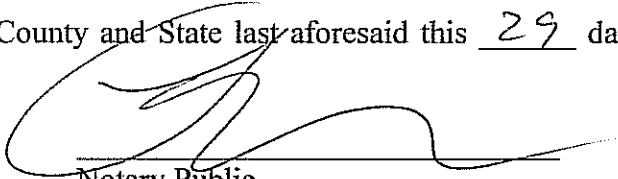
I certify (or declare), under penalty of perjury, under the laws of the State of Florida, that the foregoing is true and correct.

Executed on May 29, 2013

  
\_\_\_\_\_  
MICHAEL SULLIVAN

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared MICHAEL SULLIVAN who is well known to me and that he acknowledged executing same freely and voluntarily and he did (did not) take an oath.


WITNESS my hand and official seal in the County and State last aforesaid this 29 day of May 2013.

  
\_\_\_\_\_  
Notary Public  
State of Florida

My commission expires:

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above, Defendant Michael D. Sullivan's Objection to Conservator's Litigation Status Report and Litigation Recommendations was sent by e-mail to: Thomas M. Messana at [TMessana@Messana-Law.com](mailto:TMessana@Messana-Law.com), [NBarrus@Messana-Law.com](mailto:NBarrus@Messana-Law.com), [BLieberman@Messana-Law.com](mailto:BLieberman@Messana-Law.com) and [THurley@Messana-Law.com](mailto:THurley@Messana-Law.com) and service to the Conservator at [PhilVonKahle@Moecker.com](mailto:PhilVonKahle@Moecker.com), [PhilV@Moecker.com](mailto:PhilV@Moecker.com), and [NJoseph@Moecker.com](mailto:NJoseph@Moecker.com) this May 29, 2013.

  
\_\_\_\_\_  
HARRY WINDERMAN, ESQ.  
One Boca Place, Suite 218A  
2255 Glades Road Boca Raton, FL 33431  
(561) 241-0332 Telephone  
(561) 241-5266 Facsimile  
FBN 0209562

**P&S ASSOCIATES, G/P AMENDED AND RESTATED  
PARTNERSHIP AGREEMENT**

This AMENDED & RESTATED Partnership Agreement (the "Agreement") is MADE AND ENTERED INTO THIS 21ST DAY OF DECEMBER, 1994 by and among the party or parties whose names and signatures appear personally or by power of attorney at the end of this Agreement and whose addresses are listed on Exhibit "A" annexed hereto (information regarding other Partners will be furnished to a Partner upon written request) (COLLECTIVELY, THE "PARTNERS"). THE TERM "PARTNER" SHALL ALSO APPLY TO ANY INDIVIDUAL WHO, SUBSEQUENT TO THE DATE OF THIS AGREEMENT, JOINS IN THIS AGREEMENT OR ANY ADDENDUM TO THIS AGREEMENT.

WHEREAS, THE PARTNERS, ENTERED A PARTNERSHIP AGREEMENT DATED DECEMBER 11, 1992, ("PARTNERSHIP AGREEMENT"); AND

WHEREAS, PURSUANT TO ARTICLE THIRTEEN OF THE PARTNERSHIP AGREEMENT, THE PARTNERS RESERVED THE RIGHT TO AMEND OR MODIFY IN WRITING AT ANY TIME THE PARTNERSHIP AGREEMENT; AND

WHEREAS, THE PARTNERS BELIEVE IT TO BE IN THEIR BEST INTEREST AND ALSO THE BEST INTEREST OF THE PARTNERSHIP TO AMEND, REVISE AND RESTATE THE TERMS AND CONDITIONS OF THE PARTNERSHIP AGREEMENT.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES MADE HEREIN AND IN CONSIDERATION OF THE BENEFIT TO BE RECEIVED FROM THE MUTUAL OBSERVANCE OF THE COVENANTS MADE HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTNERS AGREE AS FOLLOWS:

**Background**

The Partners desire to form a general partnership for the purpose of engaging in the business of investing. For and in consideration of the mutual covenants contained herein, the Partners hereby form, create and agree to associate themselves in a general partnership in accordance with the Florida Uniform Partnership Law, on the terms and subject to the conditions set forth below:

**ARTICLE ONE**

**ORGANIZATION**

**Name**

1.01 The activities and business of the partnership shall be conducted under the name P & S Associates, General Partnership (the "Partnership") in Florida, and under any variations of this name that may be necessary to comply with the laws of other states within which the Partnership may do business or make investments.

**Organization**

1.02 The Partnership shall be organized as a general partnership under the Uniform Partnership Law of the state of Florida. Following the execution of this Agreement, the partners shall execute or cause to be executed and filed any documents or instruments with such authorities that may be necessary or appropriate from time to time to comply with all requirements for the qualification of the Partnership as a general partnership in any jurisdiction.

**Place of Business and Mailing Address**

1.03 The principle place of business and mailing address of the Partnership shall be located at 6550 North Federal Highway, Suite 210, Ft. Lauderdale, FL 33308, or any such place or places of business that may be designated by the Managing General Partners.

EXHIBIT "A"

370

## ARTICLE TWO

### PURPOSE OF THE PARTNERSHIP

#### By Consent of Partners

2.01 The Partnership shall not engage in any business except as provided in this Agreement without prior written consent of all Partners.

2.02 The general purpose of the Partnership is to invest, in cash or on margin, in all types of marketplace securities, including, without limitation, the purchase and sale of and dealing in stocks, bonds, notes and evidences in indebtedness of any person, firm, enterprise, corporation or association, whether domestic or foreign; bills of exchange and commercial paper; any and all other securities of any kind, nature of description; and gold, silver, grain, cotton or other commodities and provisions usually dealt in on exchanges, on the over-the-counter market or otherwise. In general, without limitation of the above securities, to conduct any commodities, future contracts, precious metal, options and other investment vehicles of whatever nature. The Partnership shall have the right to allow OR TERMINATE a specific broker, or brokers, as selected by fifty-one (51) Percent in interest, not in numbers, of the Partners, and allow such broker, or brokers, AS SELECTED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS, to have discretionary investment powers with the investment funds of the Partnership.

## ARTICLE THREE

### DURATION

#### Date of Organization

3.01 The Partnership shall begin on January 1, 1993 and shall continue until dissolved as specifically provided in this Agreement or by applicable law.

## ARTICLE FOUR

### CAPITAL CONTRIBUTIONS

#### Initial Contributions

4.01 The Partners acknowledge that each Partner shall be obligated to contribute and will, on demand, contribute to the Partnership the amount of cash set out opposite the name of each Partner on Exhibit A as an initial capital contribution.

#### Additional Contributions

4.02 No Partner shall be required to contribute any capital or lend any funds to the Partnership except as provided in Section 4.01 or as may otherwise be agreed on by all of the Partners.

#### Contributions Secured

4.03 Each Partner grants to the Managing General Partners a lien on his or her interest in the Partnership to secure payment of all contributions and the performance of all obligations required or permitted under this agreement.

#### No Priority

4.04 No Partner shall have any priority over any other Partner as to allocations of profits, losses, dividends, distributions or returns of capital contributions, and no Partner shall be entitled to withdraw any part of their capital contribution without at least THIRTY (30) DAYS written notice.

#### **Capital Accounts**

4.05 An individual capital account shall be maintained for each Partner. The capital account shall consist of that Partner's initial capital contribution:

- a. increased by his or her additional contributions to capital and by his or her share of Partnership profits transferred to capital; and
- b. decreased by his or her share of partnership losses and by distributions to him or her in reduction of his or her capital.

#### **No Interest on Capital**

No Partner shall be entitled to interest on his or her contribution to capital of the Partnership.

### **ARTICLE FIVE**

#### **ALLOCATIONS AND DISTRIBUTIONS**

##### **Allocation of Profits and Losses**

5.01 The capital gains, capital losses, dividends, interest, margin interest expense, and all other profits and losses attributable to the Partnership shall be allocated among the Partners IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

#### **DISTRIBUTIONS**

5.02 Distributions of PROFITS shall be made at least once per year, and may be made at such other time as the Managing General Partners shall in their sole discretion determine, and upon the Partnership's termination. Partners shall also have the election to receive such distributions within ten (10) days after the end of each calendar quarter, or to have such distributions remain in the Partnership, thus increasing the Partner's capital contribution. CASH FLOW SHALL BE DISTRIBUTED AMONG ALL THE PARTNERS, IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP, FOR ANY FISCAL YEAR AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

### **ARTICLE SIX**

#### **OWNERSHIP OF PARTNERSHIP PROPERTY**

##### **Title to Partnership Property**

6.01 All property acquired by the Partnership shall be owned by and in the name of the Partnership, that ownership being subject to the other terms and conditions of this Agreement. Each Partner expressly waives the right to require partition of any Partnership property or any part of it. The Partners shall execute any documents that may be necessary to reflect the Partnership's ownership of its assets and shall record the same in the public offices that may be necessary or desirable in the discretion of the Managing General Partner.

### **ARTICLE SEVEN**

#### **FISCAL MATTERS**

##### **Title to Partnership Property Accounting**

7.01 A complete and accurate inventory OF THE PARTNERSHIP shall be taken BY THE MANAGING GENERAL PARTNERS, and a complete and accurate statement of the condition of the Partnership shall be made and an accounting among the Partners shall be MADE ANNUALLY per fiscal year BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTING FIRM. NOT LATER THAN NINETY (90) DAYS AFTER THE END OF THE PARTNERSHIP'S FISCAL YEAR THE PARTNERSHIP'S INDEPENDENT PUBLIC ACCOUNTING FIRM SHALL TRANSMIT TO THE PARTNERS A COPY OF THE CURRENT PARTNERSHIP TAX RETURN TOGETHER WITH FORM K-1. The profits and losses of the preceding year, to the extent such shall exist and shall not have been divided and paid or distributed previously, shall then be divided and paid or distributed, or otherwise retained by the agreement of the Partners. Distributions SHALL BE made at such time(s) as the General Managing Partners shall in their discretion deem necessary and appropriate.

#### Fiscal Year

7.02 The fiscal year of the Partnership for both accounting and Federal income tax purposes shall begin on January 1 of each year.

#### Books and Records

7.03 PROPER AND COMPLETE BOOKS OF ACCOUNT OF THE BUSINESS OF the Partnership shall be KEPT BY THE MANAGING GENERAL PARTNERS AND maintained at the offices of the Partnership. Proper books and records shall be kept with reference to all Partnership transactions. Each Partner or his or her authorized representative shall have access to AND THE RIGHT TO AUDIT AND /OR REVIEW the Partnership books and records at all reasonable times during business hours.

#### Method of Accounting

7.04 The books of account of the Partnership shall be kept on a cash basis.

#### Expenses

7.05 All rents, payments for office supplies, premiums for insurance, professional fees and disbursements, and other expenses incidental to the Partnership business shall be paid out of the Partnership profits or capital and shall, for the purpose of this Agreement, be considered ordinary and necessary expenses of the Partnership deductible before determination of net profits.

### ARTICLE EIGHT MANAGEMENT AND AUTHORITY

#### Management and Control

8.01 Except as expressly provided in the Agreement, the management and control of the day-to-day operations of the Partnership and the maintenance of the Partnership property shall rest exclusively with the Managing General Partners, Michael D. Sullivan and Greg Feswall. Except as provided in Article FIVE Section 5.01, the Managing General Partners shall receive no salary or other compensation for their services as such. The Managing General Partners shall devote as much time as they deem necessary or advisable to the conduct and supervision of the Partnership's business. The Managing General Partners may engage in any activity for personal profit or advantage without the consent of the Partners.

Susan

#### Powers of Managing General Partners

8.02 The Managing General Partners are authorized and empowered to carry out and implement any and all purposes of the Partnership. In that connection, the powers of the General Managing Partners shall include but shall not be limited to the following:

- a. to engage, fire or terminate personnel, attorneys, accountants or other persons that may be deemed necessary or advisable
- b. to open, maintain and close bank or investment accounts and draw checks, drafts or other orders for the payment of money
- c. to borrow money; to make, issue, accept, endorse and execute promissory notes, drafts, loan agreements and other instruments and evidences of indebtedness on behalf of the Partnership; and to secure the payment of indebtedness by mortgage, hypothecation, pledge or other assignment or arrangement of security interests in all or any part of the property then owned or subsequently acquired by the Partnership.
- d. to take any actions and to incur any expense on behalf of the Partnership that may be necessary or advisable in connection with the conduct of the Partnership's affairs.
- e. to enter into, make and perform any contracts, agreements and other undertakings that may be deemed necessary or advisable for the conducting of the Partnership's affairs
- f. to make such elections under the tax laws of the United States and Florida regarding the treatment of items of Partnership income, gain, loss, deduction or credit and all other matters as they deem appropriate or necessary.
- g. TO ADMIT PARTNERS INTO THE PARTNERSHIP NOT EXCEEDING ONE HUNDRED AND FIFTY (150) PARTNERS UNLESS THE PARTNERS HAVE APPROVED PURSUANT TO SECTION 14.04 THE ADMISSION INTO THE PARTNERSHIP OF MORE THAN ONE HUNDRED AND FIFTY (150) PARTNERS.

#### **Restrictions on Partners**

8.03 Without the prior consent of the Managing General Partners or all of the other partners, no other Partner may act on behalf of the Partnership to: (i) borrow or lend money; (ii) make, deliver or accept any commercial paper; (iii) execute any mortgage, security agreement, bond or lease; or (iv) purchase or sell any property for or of the Partnership.

#### **Meetings of the Partners**

8.04 The Partners shall hold regular quarterly meetings on the 3rd Tuesday during the months of January, April, July, and October at 1:00 p.m. at the principal office of the Partnership. In the event such Tuesday falls on a declared Holiday, such meeting will take place the next following business day. In addition fifty-one percent (51%) in interest, not in numbers, of the Partners may call a special meeting to be held at any time after the giving of twenty (20) days' notice to all of the Partners. Any Partner may waive notice of or attendance at any meeting of the Partners, may attend by telephone or any other electronic communication device, or may execute a signed written consent to representation by another Partner or representative. At the meeting, Partners WILL REVIEW THE ENGAGEMENT WITH THE PARTNERSHIP OF ANY BROKER OR BROKERS AND shall transact any business that may properly be brought before the meeting. The Partners shall designate someone to keep regular minutes of all the proceedings. The minutes shall be placed in the minute book of the Partnership.

#### **Action without Meeting**

8.05 Any action required by statute or by this Agreement to be taken at a meeting of the Partners or any action that may be taken at a meeting of the Partners may be taken without a meeting if a consent in writing, setting forth the action taken or to be taken, shall be signed by all of the Partners entitled to vote with respect to the subject matter of the consent. That consent shall have the same force and effect as a unanimous vote of the Partners. Any signed consent, or a signed copy thereof, shall be placed in the minute book of the Partnership.

#### **Death, Removal or Appointment of Managing General Partner**

8.06 ANY MANAGING GENERAL PARTNER MAY BE REMOVED WITH OR WITHOUT CAUSE AS DETERMINED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) in interest, not in numbers, of Partners. In the event of any such removal, the removed Managing General Partner shall not be relieved of his obligations OR LIABILITIES to the Partnership and to the other Partners resulting from the events, actions, or transactions occurring during the period in which such removed Managing General Partner served as a Managing General Partner. From and after the effective date of such removal, however, the removed Managing General Partner may be deemed to be a Partner, shall forfeit all rights and obligations of a Managing General Partner, and thereafter shall have the same rights and obligations as a Partner. A MANAGING GENERAL PARTNER SHALL BE APPOINTED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS. THE PARTNERSHIP SHALL HAVE AS MANY MANAGING GENERAL PARTNERS AS THE PARTNERS BY THE AFFIRMATIVE VOTE OF FIFTY-ONE (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS SHALL DETERMINE TO BE IN THE BEST INTEREST OF THE PARTNERSHIP. ON THE DEATH OR INCOMPETENCY OF A MANAGING GENERAL PARTNER, ANY CO-MANAGING GENERAL PARTNER SHALL CONTINUE AS THE MANAGING GENERAL PARTNER OR, IF THERE SHALL BE NO CO-MANAGING GENERAL PARTNER, THEN THE PARTNERS SHALL, WITHIN TEN (10) DAYS OF SUCH DEATH OR DECLARATION OF INCOMPETENCY, APPOINT A NEW MANAGING GENERAL PARTNER IN ACCORDANCE WITH THE TERMS PROVIDED IN THIS AGREEMENT.

#### ARTICLE NINE

##### TRANSFERS AND ASSIGNMENTS

###### No Transfer of Assignment Without Consent

9.01 No Partner's interest may be transferred or assigned without the express written consent of fifty-one percent (51%) in interest, not in number, of the Partners provided, however, that a Partner's interest may be transferred or assigned to a party who at the time of the transfer or assignment is a Partner. Any transferee or assignee to whom an interest in the Partnership has been transferred or assigned and who is not at the time of the transfer or assignment to a party to this Agreement shall be entitled to receive, in accordance with the terms of the transfer or assignment, the net profits to which the assigning Partner would otherwise be entitled. Except as provided in the preceding sentence, the transferee or assignee shall not be a Partner and shall not have any of the rights of the Partner, unless and until the transferee or assignee shall have (i) received the approval of the Partners as provided IN THIS AGREEMENT, and (ii) accepted and assumed, in writing, the terms and conditions of this Agreement.

###### Death or Incompetency of Partner

9.02 Neither the death or incompetency of a Partner shall cause the dissolution of the Partnership. On the death or incompetency of any Partner, the Partnership business shall be continued and the surviving Partners shall have the option to allow the assets of the deceased or incompetent Partner to continue in the deceased or incompetent Partner's HEIR'S OR SUCCESSOR'S place, or to terminate the deceased or incompetent partner's interest and return to the estate his or her interest in the partnership.

B. If the surviving Partners elect to allow the estate of a deceased Partner to continue in the deceased Partner's place, the estate shall be bound by the terms and provisions of this Agreement. However, in the event that the interest of a deceased Partners does not pass in trust or passes to more than one heir or devise or, on termination of a trust, is distributed to more than one beneficiary, then the Partnership shall have the right to terminate immediately the deceased Partner's interest in the Partnership. In that event, the Partnership shall return to the deceased Partner's heirs, devisees or beneficiaries, in cash, the value of the Partnership interest as calculated in ARTICLE ELEVEN as of the date of termination.

###### Withdrawals of Partners

9.03 Any Partner may withdraw from the Partnership at any given time; provided, however, that the withdrawing Partner shall give at least thirty (30) days written notice. THE PARTNERSHIP SHALL, WITHIN THIRTY (30) DAYS OF RECEIVING NOTICE OF THE PARTNER'S WITHDRAWAL,

PAY the withdrawing Partner, in cash, the value of his or her Partnership interest as calculated in ARTICLE ELEVEN as of the date of withdrawal. the withdrawing Partner or his or her legal representative shall execute such documents and take further actions as shall reasonable be required to effectuate the termination of the withdrawing Partner's interest in the Partnership.

## ARTICLE TEN

### TERMINATION OF PARTNERS

#### Events of Default

10.01 The following events shall be deemed to be defaults by a Partner:

- a. the failure to make when due any contribution or advance required to be made under the terms of this agreement and continuing that failure for a period of ten (10) days after written notice of the failure from the Managing general Partners.
- b. the violation of any of the other provisions of this Agreement and failure to remedy or cure that violation within (10) days after written notice of the failure from the Managing General Partners.
- c. THE INSTITUTION OF PROCEEDINGS UNDER ANY LAW OF THE UNITED STATES OR OF ANY STATE FOR THE RELIEF OF DEBTORS, FILING A VOLUNTARY PETITION IN BANKRUPTCY OR FOR AN ARRANGEMENT OR REORGANIZATION OR ADJUDICATION TO BE INSOLVENT OR A BANKRUPT, MAKING AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS.
- d. SUFFERING TO BE SEIZED BY A RECEIVER, TRUSTEE, OR OTHER OFFER APPOINTED BY ANY COURT OR ANY SHERIFF, CONSTABLE, MARSHALL OR OTHER SIMILAR GOVERNMENT OFFICER, UNDER LEGAL AUTHORITY, ANY SUBSTANTIAL PORTION OF ITS ASSETS OR ALL OR ANY PART OF ANY INTEREST THE PARTNER MAY HAVE IN THIS PARTNERSHIP AND SUCH IS HELD IN SUCH OFFICER'S POSSESSION FOR A PERIOD OF THIRTY (30) DAYS OR LONGER.
- e. the appointment of a receiver for all or substantially all of the Partner's assets and the failure to have the receiver discharged within ninety (90) days after the appointment.
- f. the bringing of any legal action against the Partner by his or her creditor(s), resulting in litigation that, in the opinion if the General Managing Partners or fifty-one (51) percent in interest, not in numbers, of the other Partners, creates a real and substantial risk of involvement of the Partnership property.
- g. THE COMMITTING OR PARTICIPATION IN AN INJURIOUS ACT OF FRAUD, GROSS NEGLIGENCE, MISREPRESENTATION, EMBEZZLEMENT OR DISHONESTY AGAINST THE PARTNERSHIP, OR COMMITTING OR PARTICIPATING IN ANY OTHER INJURIOUS ACT OR OMISSION WANTONLY, WILLFULLY, RECKLESSLY, OR IN A MANNER WHICH WAS GROSSLY NEGLIGENT AGAINST THE PARTNERSHIP, MONETARILY OR OTHERWISE, OR BEING CONVICTED OF ANY ACT OR ACTS CONSTITUTING A FELONY OR MISDEMEANOR, OTHER THAN TRAFFIC VIOLATIONS, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF.

10.02 On the occurrence of an event of a default by a Partner, fifty-one (51) percent in interest, not in numbers, or more of the other Partners shall have the right to elect to terminate the interest of the defaulting Partner without affecting a termination of the Partnership. This election may be made at any time within one (1) year from the date of default, on giving the defaulting Partner five (5) days written notice of the election, provided the default is continuing on the date the notice is given. The defaulting Partner's interest shall be returned to him or her in accordance with the provisions of ARTICLE ELEVEN OF THIS AGREEMENT.

The defaulting Partner's Partnership interest shall be reduced by the aggregate amount of any outstanding debts of the defaulting Partner to the Partnership and also by all damages caused to the Partnership by the default of the defaulting Partner.

On return to the defaulting Partner of his or her interest in the Partnership, the defaulting Partner shall have no further interest in the Partnership or its business or assets and the defaulting Partner shall execute and deliver as required any assignments or other instruments that may be necessary to evidence and fully AND effectively transfer the interest of the defaulting Partner to the non-defaulting Partners. If the appropriate instruments are not delivered, after notice by the Managing General Partner that the interest is available to the defaulting Partner, the Managing General Partner may tender delivery of the interest to the defaulting Partner and execute, as the defaulting Partner's POWER OF ATTORNEY, any instruments AS ABOVE REFERENCED. All parties agree that the General Managing Partners shall not have any individual liability for any actions taken in connection HERETO.

No assignment, transfer OR TERMINATION of a defaulting Partner's INTEREST as provided in this Agreement shall relieve the defaulting Partner from any personal liability for outstanding indebtedness, liabilities, liens or obligations relating to the Partnership that may exist on the date of the assignment, transfer OR TERMINATION. The default of any Partner under this Agreement shall not relieve any other Partner from his, her or its interest in the Partnership.

#### **Foreclosure for Default**

10.03 If a Partner is in default under the terms of this Agreement, the lien provided for in Article four, Section 4.03 may be foreclosed by the Managing General Partner at the option of fifty-one (51) percent IN INTEREST, NOT IN NUMBERS, of the non-defaulting Partners.

#### **Transfer by Attorney-in-Fact**

10.04 Each Partner makes, constitutes, and appoints the Managing General Partners as the Partner's attorney-in-fact in the event that the Partner becomes a defaulting Partner whose interest in the Partnership has been foreclosed in the manner prescribed in this Article Ten. On foreclosure, the Managing General Partners are authorized and allowed to execute and deliver a full assignment or other transfer of the defaulting partner's interest in the Partnership and at the Managing General Partners shall have no liability to any person for making the assignment or transfer.

#### **Additional Effects of Default**

10.05 Pursuit of any of the remedies permitted by this Article Ten shall not preclude pursuit of any other remedies allowed by law, nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any amount due to the PARTNERSHIP OR remaining partners or of any damages accruing to IT OR them by reason of the violation of any of the terms, provisions and covenants contained in this Agreement.

### **ARTICLE ELEVEN VALUATION OF PARTNERSHIP INTERESTS Purchase Price of Partnership Interests**

11.01 The full purchase price of the Partnership interest of a deceased, incompetent, withdrawn or terminated Partner shall be an amount equal to the Partner's capital and income accounts as they appear on the Partnership books on the date of death, incompetence, withdrawal or termination and adjusted to include the Partner's distributive share of any Partnership net profits or losses not previously credited to or charged against the income and capital accounts. In determining the amount payable under this Section, no value shall be attributed to the goodwill of the Partnership, and adequate provision shall be made for any existing contingent liabilities of the Partnership.

### **ARTICLE TWELVE**

#### **TERMINATION OF THE PARTNERSHIP**

##### **Termination Events**

12.01 The Partnership SHALL be terminated AND DISSOLVED UPON THE FIRST TO OCCUR OF THE FOLLOWING:

a. UPON THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE PARTNERSHIP, UNLESS SUCH ASSETS ARE REPLACED BY SIMILAR ASSETS WITHIN A REASONABLE TIME FOR THE PURPOSE OF CONTINUING THE PARTNERSHIP BUSINESS;

b. at any time on the WRITTEN affirmative vote of AT LEAST fifty-one (51) percent in interest, not in numbers, of the Partners; AND

c. except as otherwise provided in this Agreement, on the occurrence of any other event that under the Uniform Partnership Law would require the dissolution of general Partnership.

#### Distribution of Assets

12.02 On termination, the Partnership's business shall be wound up as timely as in practical under the circumstances; the Partnership's assets shall be applied as follows: (i) first to payment of the outstanding Partnership liabilities; (ii) then to a return of the Partner's capital in accordance with their Partnership interests. Any remainder shall be distributed according to the terms of Article Five; provided, however, that the Managing General Partners may retain a reserve in the amount they determine advisable for any contingent liability until such time as that liability is satisfied or discharged. If the Partner's capital has been returned, then the balance of the reserve shall be distributed in accordance with Article Five, otherwise, capital shall be returned in accordance with their Partnership interests, and then any remaining sums shall be distributed in accordance with Article Five.

### ARTICLE THIRTEEN

#### AMENDMENTS

##### In Writing

13.01 Subject to the provisions of Article 8.01 and 8.02, this Agreement, except with respect to vested rights of any Partner, may be amended or modified in writing at any time by the agreement of Partners owning collectively at least fifty-one (51) percent in interest, not in numbers, in the Partnership.

### ARTICLE FOURTEEN

#### MISCELLANEOUS

##### Partners

14.01 THE PARTNERSHIP MAY ADMIT AS A PARTNER ANY CORPORATION, INCLUDING AN ELECTING SMALL BUSINESS CORPORATION ("S CORPORATION") AS THAT TERM IS DEFINED IN THE INTERNAL REVENUE CODE OF 1986, AS AMENDED ("IRC"), CERTAIN EMPLOYEE BENEFIT PLANS INCLUDING PENSION PLANS, AND CERTAIN TAX EXEMPT ORGANIZATIONS, INCLUDING INDIVIDUAL RETIREMENT ACCOUNTS ("IRA"), AS DEFINED IN THE IRC. IT WILL BE THE OBLIGATION OF ANY CORPORATE, BENEFIT PLAN, OR TAX EXEMPT ENTITY PARTNER TO COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES AND REGULATIONS GOVERNING ITS EXISTENCE AS IT RELATES TO BECOMING A PARTNER IN THE PARTNERSHIP. WHETHER OR NOT AN ENTITY CAN BECOME A PARTNER OF THE PARTNERSHIP, WILL DEPEND UPON ITS CHARACTER AND LOCAL LAW. EACH PARTNER, IF NOT AN INDIVIDUAL, SHOULD CONSULT WITH THEIR OWN ATTORNEY AS TO ANY LIMITATIONS OR QUALIFICATIONS OF BEING A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE RIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE RIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP.

FURTHERMORE, A PARTNER, IF OTHER THAN AN INDIVIDUAL, WILL BE REQUIRED TO DESIGNATE TO THE MANAGING GENERAL PARTNER PRIOR TO ADMITTANCE IN THE PARTNERSHIP, A PERSON UPON WHOM ALL NOTICES RELATING TO THE PARTNERSHIP AND SHALL BE THE ONLY PERSON ON BEHALF OF THE PARTNER THE PARTNERSHIP WILL BE REQUIRED TO BE BOUND BY AND COMMUNICATE WITH WHEN NECESSARY. FURTHERMORE, AND IN THIS REGARD, ALL DISTRIBUTIONS TO BE MADE TO THE PARTNER PURSUANT TO THIS SECTION AND THIS AGREEMENT SHALL BE MADE ONLY TO THE PARTNER'S REPRESENTATIVE, IF NOT AN INDIVIDUAL, AND THE PARTNERSHIP SHALL NOT BE OBLIGATED TO MAKE DISTRIBUTIONS TO ANY OTHER PERSON WHO HAS AN INTEREST IN A PARTNER. PAYMENT TO SUCH PARTNER'S REPRESENTATIVE SHALL EXTINGUISH ALL LIABILITIES THE PARTNERSHIP MAY HAVE TO SUCH PARTNER.

#### IRA ACCOUNTS

14.02 NOTICE IS HEREBY GIVEN TO ANY PARTNER CONSISTING OF AN IRA ACCOUNT THAT THE PARTNERSHIP IS NOT ACTION AS A FIDUCIARY ON BEHALF OF THE IRA ACCOUNT.

#### LIMITATIONS ON LIABILITY -

14.03 THE PARTNERS SHALL HAVE NO LIABILITY TO THE PARTNERSHIP OR TO ANY OTHER PARTNER FOR ANY MISTAKES OR ERRORS IN JUDGMENT, NOR FOR ANY ACT OR OMISSIONS BELIEVED IN GOOD FAITH TO BE WITHIN THE SCOPE OF AUTHORITY CONFERRED BY THIS AGREEMENT. THE PARTNERS SHALL BE LIABLE ONLY FOR ACTS AND/OR OMISSIONS INVOLVING INTENTIONAL WRONGDOING, FRAUD, AND BREACHES OF FIDUCIARY DUTIES OF CARE AND LOYALTY. ACTIONS OR OMISSIONS TAKEN IN RELIANCE UPON THE ADVICE OF LEGAL COUNSEL APPROVED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS AS BEING WITHIN THE SCOPE CONFERRED BY THIS AGREEMENT SHALL BE CONCLUSIVE EVIDENCE OF GOOD FAITH; HOWEVER, THE PARTNERS SHALL NOT BE REQUIRED TO PROCURE SUCH ADVICE TO BE ENTITLED TO THE BENEFIT OF THIS SECTION. THE PARTNERS HAVE THE RESPONSIBILITY TO DISCHARGE THEIR FIDUCIARY DUTIES OF CARE AND LOYALTY AND THOSE ENUMERATED IN THIS AGREEMENT CONSISTENTLY WITH THE OBLIGATION OF GOOD FAITH AND FAIR DEALING.

#### Additional Partners

14.04 THE PARTNERSHIP MAY ADMIT UP TO ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP IN ACCORDANCE WITH SECTION 8.02. THE PARTNERSHIP SHALL HAVE THE RIGHT TO ADMIT MORE THAN ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP ONLY BY THE EXPRESS WRITTEN CONSENT OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBER, OF THE PARTNERS. ANY NEW OR ADDITIONAL PARTNER SHALL ACCEPT AND ASSUME IN WRITING THE TERMS AND CONDITIONS OF THIS AGREEMENT.

#### SUITABILITY

14.05 EACH PARTNER REPRESENTS TO THE PARTNERSHIP THAT IF THE PARTNER IS NOT AN ACCREDITED INVESTOR, AS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") (AS DEFINED BELOW), THAT THEY WILL NOTIFY THE MANAGING GENERAL PARTNERS IN WRITING WITHIN TEN (10) DAYS FROM THE DATE OF THAT PARTNER'S ADMISSION INTO THE PARTNERSHIP. AN ACCREDITED INVESTOR AS DEFINED IN THE ACT IS: A NATURAL PERSON WHO HAD INDIVIDUAL INCOME OF MORE THAN \$200,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS OR JOINT INCOME WITH THEIR SPOUSE IN EXCESS OF \$300,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS AND REASONABLY EXPECTS TO REACH THAT SAME INCOME LEVEL FOR THE CURRENT YEAR; A NATURAL PERSON WHOSE INDIVIDUAL NET WORTH (I.E., TOTAL ASSETS IN EXCESS OF TOTAL LIABILITIES), OR JOINT NET WORTH WITH THEIR SPOUSE, AT THE TIME OF ADMISSION INTO THE PARTNERSHIP IS IN EXCESS OF \$1,000,000.00; A TRUST, WHICH TRUST HAS TOTAL ASSETS IN EXCESS OF \$5,000,000.00, WHICH IS

NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN AND WHOSE INVESTMENT IS DIRECTED BY A SOPHISTICATED PERSON WHO HAS SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT HE IS CAPABLE OF EVALUATING THE MERITS AND RISKS INVOLVED IN BECOMING A PARTNER; ANY ORGANIZATION DESCRIBED IN SECTION 501(c)(3) OF THE IRC, CORPORATION, MASSACHUSETTS OR SIMILAR BUSINESS TRUST, OR PARTNERSHIP, NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN, WITH TOTAL ASSETS IN EXCESS OF \$5,000,000.00; ANY PRIVATE BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 3(a)(2) OF THE ACT OR ANY SAVINGS AND LOAN ASSOCIATION OR OTHER INSTITUTION AS DEFINED IN SECTION 3(a)(5) (A) OF THE ACT, WHETHER ACTING IN ITS INDIVIDUAL OR FIDUCIARY CAPACITY; ANY BROKER-DEALER REGISTERED PURSUANT TO SECTION 15 OR SECTION 2(13) OF THE ACT; ANY INVESTMENT COMPANY REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 OR A BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 2(a)(48) OF THE ACT; ANY SMALL BUSINESS INVESTMENT COMPANY LICENSED BY THE U.S. SMALL BUSINESS ADMINISTRATION UNDER SECTION 301(c) OR (d) OF THE SMALL BUSINESS INVESTMENT ACT OF 1958; ANY PLAN ESTABLISHED AND MAINTAINED BY A STATE, ITS POLITICAL SUBDIVISION, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR ITS POLITICAL SUBDIVISIONS, FOR THE BENEFIT OF ITS EMPLOYEES, IF SUCH PLAN HAS TOTAL ASSETS IN EXCESS OF \$5,000,000; ANY EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF THE EMPLOYEE RETIREMENT INCOME SECURITIES ACT OF 1974, IF THE INVESTMENT DECISION IS MADE BY A PLAN FIDUCIARY, AS DEFINED IN SECTION 3(21) OF SUCH ACT, WHICH IS EITHER A BANK, SAVINGS AND LOAN ASSOCIATION, INSURANCE COMPANY, OR REGISTERED INVESTMENT ADVISOR, OR IF THE EMPLOYEE BENEFIT PLAN HAS TOTAL ASSETS IN EXCESS OF \$5,000,000.00, OR, IF A SELF-DIRECTED PLAN, WITH INVESTMENT DECISIONS MADE SOLELY BY PERSONS THAT ARE ACCREDITED INVESTORS; AND, ANY ENTITY WHICH ALL OF THE EQUITY OWNERS ARE ACCREDITED INVESTORS AS DEFINED ABOVE.

#### Notices

14.06 Unless otherwise provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopies, telexed or sent by United States mail and shall be deemed to have been given when delivered in person, or upon receipt of telecopy or telex or three (3) business days after depositing it in the United States mail, registered or certified, when postage prepaid and properly addressed. For purposes thereof, the addresses of the parties hereto are as set forth in Exhibit "A" and may be changed if specified in writing and delivered in accordance with the terms of this Agreement.

#### FLORIDA LAW TO APPLY

14.07 THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS.

11

#### Disputes

14.08 The Partners shall make a good faith effort to settle any dispute or claim arising under this Agreement. If, however, the Partners shall fail to resolve a dispute or claim, the Partners shall submit it to arbitration before the Florida office of the American Arbitration Association. In any arbitration, the Federal rules of Civil Procedure and the Federal rules of Evidence, as then existing, shall apply. Judgment on any arbitration awards may be entered by any court of competent jurisdiction.

#### Headings

14.09 Section headings used in this Agreement are included herein for convenience or reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

#### **Parties Bound**

14.10 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

#### **Severability**

14.11 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, that invalid, illegal or unenforceable provisions shall not affect any other provision contained IN THIS AGREEMENT.

#### **Counterparts**

14.12 This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute by one and the same instrument.

#### **Gender and Number**

14.13 Whenever the context shall require, all words in this Agreement in the male gender shall be deemed to include the female or neuter gender AND VICE VERSA, AND all singular words shall include the plural, and all plural words shall include the singular.

#### **Prior Agreements Superseded**

14.14 This Agreement supersedes any prior understandings or written or oral agreements among the parties respecting the subject matter contained herein.

Complete #1, #2, #3 and Exhibit A and mail this page only with  
check made payable to "P&S Associates, G/P" to:

P & S ASSOCIATES, General Partnership  
c/o SULLIVAN & POWELL  
6550 N. Federal Hwy., Suite 210  
Ft. Lauderdale, FL 33308-1404

- 1) The Parties hereto have executed this Agreement by the signature and date set forth below. Each party signing below hereby represents and warrants that such party is sophisticated and experienced in financial and business matters and, as a result, is in a position to evaluate and participate in the business and administration of the Partnership.

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

- 2) Please check one of the following distribution options:

\_\_\_\_ I elect to receive distributions on a quarterly basis in the amount of \$\_\_\_\_\_.

\_\_\_\_ I elect to have my quarterly distribution reinvested in the Partnership.

- 3) Please check one of the following accredited investor choices:

\_\_\_\_ I am an accredited investor as defined below.

\_\_\_\_ I am not an accredited investor.

The following would qualify as an "accredited investor."

(i) A person with an individual net worth, or together with his or her spouse a combined net worth, in excess of \$1,000,000. Net worth means the excess of total assets at fair market value, including home, home furnishings and automobiles, over total liabilities.

(ii) A person with an individual income (exclusive of any income attributable to his or her spouse) in excess of \$200,000 in each of the past two years, and that he or she reasonably expects to have an individual income in excess of \$200,000 during this year. Individual income means adjusted gross income, as reported for federal income tax purposes, less any income attributable to a spouse or to property owned by a spouse, increased by the following amounts (but not including any amounts attributable to a spouse or to property owned by a spouse): (i) the amount of any tax-exempt interest income received under Section 103 of the United States Internal Revenue Code of 1986, as amended (the "Code"); (ii) the amount of losses claimed as a limited partner in a limited partnership as reported on Schedule E of form 1040; (iii) any deduction claimed for depletion under Section 611 et seq. of the Code and (iv) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Code.

(iii) A person that together with his or her spouse, had a combined income in excess of \$300,000 in each of the past two years, and reasonably expects to have a combined income in excess of \$300,000 during this year.

**EXHIBIT A** (How you would like your account titled)

**IMPORTANT** - Please indicate your beneficiary.  
Please include address & phone #.

Name, Address  
Telephone No. and Fax No.

Social Security No. or  
Federal ID No.

Capital Contribution

_____	_____	_____
_____		
_____		
_____		
_____		
_____	_____	_____
_____		
_____		
_____		

**IMPORTANT** - Please indicate your beneficiary.  
Please include address & phone #.

**AMENDED AND RESTATED  
PARTNERSHIP AGREEMENT**

This AMENDED & RESTATED Partnership Agreement (the "Agreement") is MADE AND ENTERED INTO THIS 21ST DAY OF DECEMBER, 1994 by and among the party or parties whose names and signatures appear personally or by power of attorney at the end of this Agreement and whose addresses are listed on Exhibit "A" annexed hereto (information regarding other Partners will be furnished to a Partner upon written request) (COLLECTIVELY, THE "PARTNERS"). THE TERM "PARTNER" SHALL ALSO APPLY TO ANY INDIVIDUAL WHO, SUBSEQUENT TO THE DATE OF THIS AGREEMENT, JOINS IN THIS AGREEMENT OR ANY ADDENDUM TO THIS AGREEMENT.

WHEREAS, THE PARTNERS, ENTERED A PARTNERSHIP AGREEMENT DATED DECEMBER 11, 1992, ("PARTNERSHIP AGREEMENT"); AND

WHEREAS, PURSUANT TO ARTICLE THIRTEEN OF THE PARTNERSHIP AGREEMENT, THE PARTNERS RESERVED THE RIGHT TO AMEND OR MODIFY IN WRITING AT ANY TIME THE PARTNERSHIP AGREEMENT; AND

WHEREAS, THE PARTNERS BELIEVE IT TO BE IN THEIR BEST INTEREST AND ALSO THE BEST INTEREST OF THE PARTNERSHIP TO AMEND, REVISE AND RESTATE THE TERMS AND CONDITIONS OF THE PARTNERSHIP AGREEMENT.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES MADE HEREIN AND IN CONSIDERATION OF THE BENEFIT TO BE RECEIVED FROM THE MUTUAL OBSERVANCE OF THE COVENANTS MADE HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTNERS AGREE AS FOLLOWS:

**Background**

The Partners desire to form a general partnership for the purpose of engaging in the business of investing. For and in consideration of the mutual covenants contained herein, the Partners hereby form, create and agree to associate themselves in a general partnership in accordance with the Florida Uniform Partnership Law, on the terms and subject to the conditions set forth below:

**ARTICLE ONE**

**ORGANIZATION**

**Name**

1.01 The activities and business of the partnership shall be conducted under the name S & P Associates, General Partnership (the "Partnership") in Florida, and under any variations of this name that may be necessary to comply with the laws of other states within which the Partnership may do business or make investments.

**Organization**

1.02 The Partnership shall be organized as a general partnership under the Uniform Partnership Law of the state of Florida. Following the execution of this Agreement, the partners shall execute or cause to be executed and filed any documents or instruments with such authorities that may be necessary or appropriate from time to time to comply with all requirements for the qualification of the Partnership as a general partnership in any jurisdiction.

**Place of Business and Mailing Address**

1.03 The principle place of business and mailing address of the Partnership shall be located at 6550 North Federal Highway, Suite 210, Ft. Lauderdale, FL 33308, or any such place or places of business that may be designated by the Managing General Partners.

1  
**Partnership**      **S&P Associates, General**

## ARTICLE TWO

### PURPOSE OF THE PARTNERSHIP

#### By Consent of Partners

2.01 The Partnership shall not engage in any business except as provided in this Agreement without prior written consent of all Partners.

2.02 The general purpose of the Partnership is to invest in cash or on margin, in all types of marketplace securities, including, without limitation, the purchase and sale of and dealing in stocks, bonds, notes and evidences in indebtedness of any person, firm, enterprise, corporation or association, whether domestic or foreign; bills of exchange and commercial paper; any and all other securities of any kind, nature of description; and gold, silver, grain, cotton or other commodities and provisions usually dealt in on exchanges, on the over-the-counter market or otherwise. In general, without limitation of the above securities, to conduct any commodities, future contracts, precious metal, options and other investment vehicles of whatever nature. The Partnership shall have the right to allow OR TERMINATE a specific broker, or brokers, as selected by fifty-one (51) Percent in interest, not in numbers, of the Partners, and allow such broker, or brokers, AS SELECTED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS, to have discretionary investment powers with the investment funds of the Partnership.

## ARTICLE THREE

### DURATION

#### Date of Organization

3.01 The Partnership shall begin on January 1, 1993 and shall continue until dissolved as specifically provided in this Agreement or by applicable law.

## ARTICLE FOUR

### CAPITAL CONTRIBUTIONS

#### Initial Contributions

4.01 The Partners acknowledge that each Partner shall be obligated to contribute and will, on demand, contribute to the Partnership the amount of cash set out opposite the name of each Partner on Exhibit A as an initial capital contribution.

#### Additional Contributions

4.02 No Partner shall be required to contribute any capital or lend any funds to the Partnership except as provided in Section 4.01 or as may otherwise be agreed on by all of the Partners.

#### Contributions Secured

4.03 Each Partner grants to the Managing General Partners a lien on his or her interest in the Partnership to secure payment of all contributions and the performance of all obligations required or permitted under this agreement.

#### No Priority

4.04 No Partner shall have any priority over any other Partner as to allocations of profits, losses, dividends, distributions or returns of capital contributions, and no Partner shall be entitled to withdraw any part of their capital contribution without at least THIRTY (30) DAYS written notice.

#### Capital Accounts

4.05 An individual capital account shall be maintained for each Partner. The capital account shall consist of that Partner's initial capital contribution:

- a. increased by his or her additional contributions to capital and by his or her share of Partnership profits transferred to capital; and
- b. decreased by his or her share of partnership losses and by distributions to him or her in reduction of his or her capital.

#### No Interest on Capital

No Partner shall be entitled to interest on his or her contribution to capital of the Partnership.

### ARTICLE FIVE

#### ALLOCATIONS AND DISTRIBUTIONS

##### Allocation of Profits and Losses

5.01 The capital gains, capital losses, dividends, interest, margin interest expense, and all other profits and losses attributable to the Partnership shall be allocated among the Partners IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

#### DISTRIBUTIONS

5.02 Distributions of PROFITS shall be made at least once per year, and may be made at such other time as the Managing General Partners shall in their sole discretion determine, and upon the Partnership's termination. Partners shall also have the election to receive such distributions within ten (10) days after the end of each calendar quarter, or to have such distributions remain in the Partnership, thus increasing the Partner's capital contribution. CASH FLOW SHALL BE DISTRIBUTED AMONG ALL THE PARTNERS, IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP, FOR ANY FISCAL YEAR AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

### ARTICLE SIX

#### OWNERSHIP OF PARTNERSHIP PROPERTY

##### Title to Partnership Property

6.01 All property acquired by the Partnership shall be owned by and in the name of the Partnership, that ownership being subject to the other terms and conditions of this Agreement. Each Partner expressly waives the right to require partition of any Partnership property or any part of it. The Partners shall execute any documents that may be necessary to reflect the Partnership's ownership of its assets and shall record the same in the public offices that may be necessary or desirable in the discretion of the Managing General Partner.

### ARTICLE SEVEN

#### FISCAL MATTERS

##### Title to Partnership Property Accounting

7.01 A complete and accurate inventory OF THE PARTNERSHIP shall be taken BY THE MANAGING GENERAL PARTNERS, and a complete and accurate statement of the condition of the Partnership shall be made and an accounting among the Partners shall be MADE ANNUALLY per fiscal year BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTING FIRM. NOT LATER THAN NINETY (90) DAYS AFTER THE END OF THE PARTNERSHIP'S FISCAL YEAR THE PARTNERSHIP'S INDEPENDENT PUBLIC ACCOUNTING FIRM SHALL TRANSMIT TO THE PARTNERS A COPY OF THE CURRENT PARTNERSHIP TAX RETURN TOGETHER WITH FORM K-1. The profits and losses of the preceding year, to the extent such shall exist and shall not have been divided and paid or distributed previously, shall then be divided and paid or distributed, or otherwise retained by the agreement of the Partners. Distributions SHALL BE made at such time(s) as the General Managing Partners shall in their discretion deem necessary and appropriate.

#### **Fiscal Year**

7.02 The fiscal year of the Partnership for both accounting and Federal income tax purposes shall begin on January 1 of each year.

#### **Books and Records**

7.03 PROPER AND COMPLETE BOOKS OF ACCOUNT OF THE BUSINESS OF the Partnership shall be KEPT BY THE MANAGING GENERAL PARTNERS AND maintained at the offices of the Partnership. Proper books and records shall be kept with reference to all Partnership transactions. Each Partner or his or her authorized representative shall have access to AND THE RIGHT TO AUDIT AND /OR REVIEW the Partnership books and records at all reasonable times during business hours.

#### **Method of Accounting**

7.04 The books of account of the Partnership shall be kept on a cash basis.

#### **Expenses**

7.05 All rents, payments for office supplies, premiums for insurance, professional fees and disbursements, and other expenses incidental to the Partnership business shall be paid out of the Partnership profits or capital and shall, for the purpose of this Agreement, be considered ordinary and necessary expenses of the Partnership deductible before determination of net profits.

### **ARTICLE EIGHT MANAGEMENT AND AUTHORITY**

#### **Management and Control**

8.01 Except as expressly provided in the Agreement, the management and control of the day-to-day operations of the Partnership and the maintenance of the Partnership property shall rest exclusively with the Managing General Partners, Michael D. Sullivan and Greg Powell. Except as provided in Article FIVE Section 5.01, the Managing General Partners shall receive no salary or other compensation for their services as such. The Managing General Partners shall devote as much time as they deem necessary or advisable to the conduct and supervision of the Partnership's business. The Managing General Partners may engage in any activity for personal profit or advantage without the consent of the Partners.

#### **Powers of Managing General Partners**

8.02 The Managing General Partners are authorized and empowered to carry out and implement any and all purposes of the Partnership. In that connection, the powers of the General Managing Partners shall include but shall not be limited to the following:

- a. to engage, fire or terminate personnel, attorneys, accountants or other persons that may be deemed necessary or advisable
- b. to open, maintain and close bank or investment accounts and draw checks, drafts or other orders for the payment of money
- c. to borrow money; to make, issue, accept, endorse and execute promissory notes, drafts, loan agreements and other instruments and evidences of indebtedness on behalf of the Partnership; and to secure the payment of indebtedness by mortgage, hypothecation, pledge or other assignment or arrangement of security interests in all or any part of the property then owned or subsequently acquired by the Partnership.
- d. to take any actions and to incur any expense on behalf of the Partnership that may be necessary or advisable in connection with the conduct of the Partnership's affairs.
- e. to enter into, make and perform any contracts, agreements and other undertakings that may be deemed necessary or advisable for the conducting of the Partnership's affairs
- f. to make such elections under the tax laws of the United States and Florida regarding the treatment of items of Partnership income, gain, loss, deduction or credit and all other matters as they deem appropriate or necessary.
- g. TO ADMIT PARTNERS INTO THE PARTNERSHIP NOT EXCEEDING ONE HUNDRED AND FIFTY (150) PARTNERS UNLESS THE PARTNERS HAVE APPROVED PURSUANT TO SECTION 14.04 THE ADMISSION INTO THE PARTNERSHIP OF MORE THAN ONE HUNDRED AND FIFTY (150) PARTNERS.

#### Restrictions on Partners

8.03 Without the prior consent of the Managing General Partners or all of the other partners, no other Partner may act on behalf of the Partnership to: (i) borrow or lend money; (ii) make, deliver or accept any commercial paper; (iii) execute any mortgage, security agreement, bond or lease; or (iv) purchase or sell any property for or of the Partnership.

#### Meetings of the Partners

8.04 The Partners shall hold regular quarterly meetings on the 3rd Tuesday during the months of January, April, July, and October at 1:00 p.m. at the principal office of the Partnership. In the event such Tuesday falls on a declared Holiday, such meeting will take place the next following business day. In addition fifty-one percent (51%) in interest, not in numbers, of the Partners may call a special meeting to be held at any time after the giving of twenty (20) days' notice to all of the Partners. Any Partner may waive notice of or attendance at any meeting of the Partners, may attend by telephone or any other electronic communication device, or may execute a signed written consent to representation by another Partner or representative. At the meeting, Partners WILL REVIEW THE ENGAGEMENT WITH THE PARTNERSHIP OF ANY BROKER OR BROKERS AND shall transact any business that may properly be brought before the meeting. the Partners shall designate someone to keep regular minutes of all the proceedings. the minutes shall be placed in the minute book of the Partnership.

#### Action without Meeting

8.05 Any action required by statute or by this Agreement to be taken at a meeting of the Partners or any action that may be taken at a meeting of the Partners may be taken without a meeting if a consent in writing, setting forth the action taken or to be taken, shall be signed by all of the Partners entitled to vote with respect to the subject matter of the consent. That consent shall have the same force and effect as a unanimous vote of the Partners. Any signed consent, or a signed copy thereof, shall be placed in the minute book of the Partnership.

#### Death, Removal or Appointment of Managing General Partner

8.06 ANY MANAGING GENERAL PARTNER MAY BE REMOVED WITH OR WITHOUT CAUSE AS DETERMINED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF PARTNERS. In the event of any such removal, the removed Managing General Partner shall not be relieved of his obligations OR LIABILITIES to the Partnership and to the other Partners resulting from the events, actions, or transactions occurring during the period in which such removed Managing General Partner served as a Managing General Partner. From and after the effective date of such removal, however, the removed Managing General Partner may be deemed to be a Partner, shall forfeit all rights and obligations of a Managing General Partner, and thereafter shall have the same rights and obligations as a Partner. A MANAGING GENERAL PARTNER SHALL BE APPOINTED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS. THE PARTNERSHIP SHALL HAVE AS MANY MANAGING GENERAL PARTNERS AS THE PARTNERS BY THE AFFIRMATIVE VOTE OF FIFTY-ONE (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS SHALL DETERMINE TO BE IN THE BEST INTEREST OF THE PARTNERSHIP. ON THE DEATH OR INCOMPETENCY OF A MANAGING GENERAL PARTNER, ANY CO-MANAGING GENERAL PARTNER SHALL CONTINUE AS THE MANAGING GENERAL PARTNER OR, IF THERE SHALL BE NO CO-MANAGING GENERAL PARTNER, THEN THE PARTNERS SHALL, WITHIN TEN (10) DAYS OF SUCH DEATH OR DECLARATION OF INCOMPETENCY, APPOINT A NEW MANAGING GENERAL PARTNER IN ACCORDANCE WITH THE TERMS PROVIDED IN THIS AGREEMENT.

#### ARTICLE NINE

##### TRANSFERS AND ASSIGNMENTS

###### No Transfer of Assignment Without Consent

9.01 No Partner's interest may be transferred or assigned without the express written consent of fifty-one percent (51%) in interest, not in number, of the Partners provided, however, that a Partner's interest may be transferred or assigned to a party who at the time of the transfer or assignment is a Partner. Any transferee or assignee to whom an interest in the Partnership has been transferred or assigned and who is not at the time of the transfer or assignment to a party to this Agreement shall be entitled to receive, in accordance with the terms of the transfer or assignment, the net profits to which the assigning Partner would otherwise be entitled. Except as provided in the preceding sentence, the transferee or assignee shall not be a Partner and shall not have any of the rights of the Partner, unless and until the transferee or assignee shall have (i) received the approval of the Partners as provided IN THIS AGREEMENT, and (ii) accepted and assumed, in writing, the terms and conditions of this Agreement.

###### Death or Incompetency of Partner

9.02 Neither the death or incompetency of a Partner shall cause the dissolution of the Partnership. On the death or incompetency of any Partner, the Partnership business shall be continued and the surviving Partners shall have the option to allow the assets of the deceased or incompetent Partner to continue in the deceased or incompetent Partner's HEIR'S OR SUCCESSOR'S place, or to terminate the deceased or incompetent partner's interest and return to the estate his or her interest in the partnership.

B. If the surviving Partners elect to allow the estate of a deceased Partner to continue in the deceased Partner's place, the estate shall be bound by the terms and provisions of this Agreement. However, in the event that the interest of a deceased Partners does not pass in trust or passes to more than one heir or devise or, on termination of a trust is distributed to more than one beneficiary, then the Partnership shall have the right to terminate immediately the deceased Partner's interest in the Partnership. In that event, the Partnership shall return to the deceased Partner's heirs, devisees or beneficiaries, in cash, the value of the Partnership interest as calculated in ARTICLE ELEVEN as of the date of termination.

###### Withdrawals of Partners

9.03 Any Partner may withdraw from the Partnership at any given time; provided, however, that the withdrawing Partner shall give at least thirty (30) days written notice. THE PARTNERSHIP SHALL, WITHIN THIRTY (30) DAYS OF RECEIVING NOTICE OF THE PARTNER'S WITHDRAWAL,

PAY the withdrawing Partner, in cash, the value of his or her Partnership interest as calculated in ARTICLE ELEVEN as of the date of withdrawal. the withdrawing Partner or his or her legal representative shall execute such documents and take further actions as shall reasonable be required to effectuate the termination of the withdrawing Partner's interest in the Partnership.

## ARTICLE TEN

### TERMINATION OF PARTNERS

#### Events of Default

10.01 The following events shall be deemed to be defaults by a Partner:

- a. the failure to make when due any contribution or advance required to be made under the terms of this agreement and continuing that failure for a period of ten (10) days after written notice of the failure from the Managing general Partners.
- b. the violation of any of the other provisions of this Agreement and failure to remedy or cure that violation within (10) days after written notice of the failure from the Managing General Partners.
- c. THE INSTITUTION OF PROCEEDINGS UNDER ANY LAW OF THE UNITED STATES OR OF ANY STATE FOR THE RELIEF OF DEBTORS, FILING A VOLUNTARY PETITION IN BANKRUPTCY OR FOR AN ARRANGEMENT OR REORGANIZATION OR ADJUDICATION TO BE INSOLVENT OR A BANKRUPT, MAKING AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS.
- d. SUFFERING TO BE SEIZED BY A RECEIVER, TRUSTEE, OR OTHER OFFER APPOINTED BY ANY COURT OR ANY SHERIFF, CONSTABLE, MARSHALL OR OTHER SIMILAR GOVERNMENT OFFICER, UNDER LEGAL AUTHORITY, ANY SUBSTANTIAL PORTION OF ITS ASSETS OR ALL OR ANY PART OF ANY INTEREST THE PARTNER MAY HAVE IN THIS PARTNERSHIP AND SUCH IS HELD IN SUCH OFFICER'S POSSESSION FOR A PERIOD OF THIRTY (30) DAYS OR LONGER.
- e. the appointment of a receiver for all or substantially all of the Partner's assets and the failure to have the receiver discharged within ninety (90) days after the appointment.
- f. the bringing of any legal action against the Partner by his or her creditor(s), resulting in litigation that, in the opinion of the General Managing Partners or fifty-one (51) percent in interest, not in numbers, of the other Partners, creates a real and substantial risk of involvement of the Partnership property.
- g. THE COMMITTING OR PARTICIPATION IN AN INJURIOUS ACT OF FRAUD, GROSS NEGLIGENCE, MISREPRESENTATION, EMBEZZLEMENT OR DISHONESTY AGAINST THE PARTNERSHIP, OR COMMITTING OR PARTICIPATING IN ANY OTHER INJURIOUS ACT OR OMISSION WANTONLY, WILLFULLY, RECKLESSLY, OR IN A MANNER WHICH WAS GROSSLY NEGLIGENT AGAINST THE PARTNERSHIP, MONETARILY OR OTHERWISE, OR BEING CONVICTED OF ANY ACT OR ACTS CONSTITUTING A FELONY OR MISDEMEANOR, OTHER THAN TRAFFIC VIOLATIONS, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF.

10.02 On the occurrence of an event of a default by a Partner, fifty-one (51) percent in interest, not in numbers, or more of the other Partners shall have the right to elect to terminate the interest of the defaulting Partner without affecting a termination of the Partnership. This election may be made at any time within one (1) year from the date of default, on giving the defaulting Partner five (5) days written

notice of the election, provided the default is continuing on the date the notice is given. The defaulting Partner's interest shall be returned to him or her in accordance with the provisions of ARTICLE ELEVEN OF THIS AGREEMENT.

The defaulting Partner's Partnership interest shall be reduced by the aggregate amount of any outstanding debts of the defaulting Partner to the Partnership and also by all damages caused to the Partnership by the default of the defaulting Partner.

On return to the defaulting Partner of his or her interest in the Partnership, the defaulting Partner shall have no further interest in the Partnership or its business or assets and the defaulting Partner shall execute and deliver as required any assignments or other instruments that may be necessary to evidence and fully AND effectively transfer the interest of the defaulting Partner to the non-defaulting Partners. If the appropriate instruments are not delivered, after notice by the Managing General Partner that the interest is available to the defaulting Partner, the Managing General Partner may tender delivery of the interest to the defaulting Partner and execute, as the defaulting Partner's POWER OF ATTORNEY, any instruments AS ABOVE REFERENCED. All parties agree that the General Managing Partners shall not have any individual liability for any actions taken in connection HERETO.

No assignment, transfer OR TERMINATION of a defaulting Partner's INTEREST as provided in this Agreement shall relieve the defaulting Partner from any personal liability for outstanding indebtedness, liabilities, liens or obligations relating to the Partnership that may exist on the date of the assignment, transfer OR TERMINATION. The default of any Partner under this Agreement shall not relieve any other Partner from his, her or its interest in the Partnership.

#### Foreclosure for Default

10.03 If a Partner is in default under the terms of this Agreement, the lien provided for in Article four, Section 4.03 may be foreclosed by the Managing General Partner at the option of fifty-one (51) percent IN INTEREST, NOT IN NUMBERS, of the non-defaulting Partners.

#### Transfer by Attorney-in-Fact

10.04 Each Partner makes, constitutes, and appoints the Managing General Partners as the Partner's attorney-in-fact in the event that the Partner becomes a defaulting Partner whose interest in the Partnership has been foreclosed in the manner prescribed in this Article Ten. On foreclosure, the Managing General Partners are authorized and allowed to execute and deliver a full assignment or other transfer of the defaulting partner's interest in the Partnership and at the Managing General Partners shall have no liability to any person for making the assignment or transfer.

#### Additional Effects of Default

10.05 Pursuit of any of the remedies permitted by this Article Ten shall not preclude pursuit of any other remedies allowed by law, nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any amount due to the PARTNERSHIP OR remaining partners or of any damages accruing to IT OR them by reason of the violation of any of the terms, provisions and covenants contained in this Agreement.

### ARTICLE ELEVEN VALUATION OF PARTNERSHIP INTERESTS Purchase Price of Partnership Interests

11.01 The full purchase price of the Partnership interest of a deceased, incompetent, withdrawn or terminated Partner shall be an amount equal to the Partner's capital and income accounts as they appear on the Partnership books on the date of death, incompetence, withdrawal or termination and adjusted to include the Partner's distributive share of any Partnership net profits or losses not previously credited to or charged against the income and capital accounts. In determining the amount payable under this Section, no value shall be attributed to the goodwill of the Partnership, and adequate provision shall be made for any existing contingent liabilities of the Partnership.

### ARTICLE TWELVE

#### TERMINATION OF THE PARTNERSHIP

#### Termination Events

12.01 The Partnership SHALL be terminated AND DISSOLVED UPON THE FIRST TO OCCUR OF THE FOLLOWING:

- a. UPON THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE PARTNERSHIP, UNLESS SUCH ASSETS ARE REPLACED BY SIMILAR ASSETS WITHIN A REASONABLE TIME FOR THE PURPOSE OF CONTINUING THE PARTNERSHIP BUSINESS;
- b. at any time on the WRITTEN affirmative vote of AT LEAST fifty-one (51) percent in interest, not in numbers, of the Partners; AND
- c. except as otherwise provided in this Agreement, on the occurrence of any other event that under the Uniform Partnership Law would require the dissolution of general Partnership.

#### Distribution of Assets

12.02 On termination, the Partnership' business shall be wound up as timely as in practical under the circumstances; the Partnership's assets shall be applied as follows: (i) first to payment of the outstanding Partnership liabilities; (ii) then to a return of the Partner's capital in accordance with their Partnership interests. Any remainder shall be distributed according to the terms of Article Five; provided, however, that the Managing General Partners may retain a reserve in the amount they determine advisable for any contingent liability until such time as that liability is satisfied or discharged. If the Partner's capital has been returned, then the balance of the reserve shall be distributed in accordance with Article Five, otherwise, capital shall be returned in accordance with their Partnership interests, and then any remaining sums shall be distributed in accordance with Article Five.

#### ARTICLE THIRTEEN

##### AMENDMENTS

##### In Writing

13.01 Subject to the provisions of Article 8.01 and 8.02, this Agreement, except with respect to vested rights of any Partner, may be amended or modified in writing at any time by the agreement of Partners owning collectively at least fifty-one (51) percent in interest, not in numbers, in the Partnership.

#### ARTICLE FOURTEEN

##### MISCELLANEOUS

##### Partners

14.01 THE PARTNERSHIP MAY ADMIT AS A PARTNER ANY CORPORATION, INCLUDING AN ELECTING SMALL BUSINESS CORPORATION ("S CORPORATION") AS THAT TERM IS DEFINED IN THE INTERNAL REVENUE CODE OF 1986, AS AMENDED ("IRC"), CERTAIN EMPLOYEE BENEFIT PLANS INCLUDING PENSION PLANS, AND CERTAIN TAX EXEMPT ORGANIZATIONS, INCLUDING INDIVIDUAL RETIREMENT ACCOUNTS ("IRA"), AS DEFINED IN

THE IRC. IT WILL BE THE OBLIGATION OF ANY CORPORATE, BENEFIT PLAN, OR TAX EXEMPT ENTITY PARTNER TO COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES AND REGULATIONS GOVERNING ITS EXISTENCE AS IT RELATES TO BECOMING A PARTNER IN THE PARTNERSHIP. WHETHER OR NOT AN ENTITY CAN BECOME A PARTNER OF THE PARTNERSHIP, WILL DEPEND UPON ITS CHARACTER AND LOCAL LAW. EACH PARTNER, IF NOT AN INDIVIDUAL, SHOULD CONSULT WITH THEIR OWN ATTORNEY AS TO ANY LIMITATIONS OR QUALIFICATIONS OF BEING A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE RIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE RIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP.

FURTHERMORE, A PARTNER, IF OTHER THAN AN INDIVIDUAL, WILL BE REQUIRED TO DESIGNATE TO THE MANAGING GENERAL PARTNER PRIOR TO ADMITTANCE IN THE PARTNERSHIP, A PERSON UPON WHOM ALL NOTICES RELATING TO THE PARTNERSHIP AND SHALL BE THE ONLY PERSON ON BEHALF OF THE PARTNER THE PARTNERSHIP WILL BE REQUIRED TO BE BOUND BY AND COMMUNICATE WITH WHEN NECESSARY. FURTHERMORE, AND IN THIS REGARD, ALL DISTRIBUTIONS TO BE MADE TO THE PARTNER PURSUANT TO THIS SECTION AND THIS AGREEMENT SHALL BE MADE ONLY TO THE PARTNER'S REPRESENTATIVE, IF NOT AN INDIVIDUAL, AND THE PARTNERSHIP SHALL NOT BE OBLIGATED TO MAKE DISTRIBUTIONS TO ANY OTHER PERSON WHO HAS AN INTEREST IN A PARTNER. PAYMENT TO SUCH PARTNER'S REPRESENTATIVE SHALL EXTINGUISH ALL LIABILITIES THE PARTNERSHIP MAY HAVE TO SUCH PARTNER.

#### IRA ACCOUNTS

14.02 NOTICE IS HEREBY GIVEN TO ANY PARTNER CONSISTING OF AN IRA ACCOUNT THAT THE PARTNERSHIP IS NOT ACTION AS A FIDUCIARY ON BEHALF OF THE IRA ACCOUNT.

#### LIMITATIONS ON LIABILITY

14.03 THE PARTNERS SHALL HAVE NO LIABILITY TO THE PARTNERSHIP OR TO ANY OTHER PARTNER FOR ANY MISTAKES OR ERRORS IN JUDGMENT, NOR FOR ANY ACT OR OMISSIONS BELIEVED IN GOOD FAITH TO BE WITHIN THE SCOPE OF AUTHORITY CONFERRED BY THIS AGREEMENT. THE PARTNERS SHALL BE LIABLE ONLY FOR ACTS AND/OR OMISSIONS INVOLVING INTENTIONAL WRONGDOING, FRAUD, AND BREACHES OF FIDUCIARY DUTIES OF CARE AND LOYALTY. ACTIONS OR OMISSIONS TAKEN IN RELIANCE UPON THE ADVICE OF LEGAL COUNSEL APPROVED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS AS BEING WITHIN THE SCOPE CONFERRED BY THIS AGREEMENT SHALL BE CONCLUSIVE EVIDENCE OF GOOD FAITH; HOWEVER, THE PARTNERS SHALL NOT BE REQUIRED TO PROCURE SUCH ADVICE TO BE ENTITLED TO THE BENEFIT OF THIS SECTION. THE PARTNERS HAVE THE RESPONSIBILITY TO DISCHARGE THEIR FIDUCIARY DUTIES OF CARE AND LOYALTY AND THOSE ENUMERATED IN THIS AGREEMENT CONSISTENTLY WITH THE OBLIGATION OF GOOD FAITH AND FAIR DEALING.

#### Additional Partners

14.04 THE PARTNERSHIP MAY ADMIT UP TO ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP IN ACCORDANCE WITH SECTION 8.02. THE PARTNERSHIP SHALL HAVE THE RIGHT TO ADMIT MORE THAN ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP ONLY BY THE EXPRESS WRITTEN CONSENT OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBER, OF THE PARTNERS. ANY NEW OR ADDITIONAL PARTNER SHALL ACCEPT AND ASSUME IN WRITING THE TERMS AND CONDITIONS OF THIS AGREEMENT.

#### SUITABILITY

14.05 EACH PARTNER REPRESENTS TO THE PARTNERSHIP THAT IF THE PARTNER IS NOT AN ACCREDITED INVESTOR, AS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") (AS DEFINED BELOW), THAT THEY WILL NOTIFY THE MANAGING GENERAL PARTNERS IN WRITING WITHIN TEN (10) DAYS FROM THE DATE OF THAT PARTNER'S ADMISSION INTO THE PARTNERSHIP. AN ACCREDITED INVESTOR AS DEFINED IN THE ACT IS: A NATURAL PERSON WHO HAD INDIVIDUAL INCOME OF MORE THAN \$200,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS OR JOINT INCOME WITH THEIR SPOUSE IN EXCESS OF \$300,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS AND REASONABLY EXPECTS TO REACH THAT SAME INCOME LEVEL FOR THE CURRENT YEAR; A NATURAL PERSON WHOSE INDIVIDUAL NET WORTH (I.E. TOTAL ASSETS IN EXCESS OF TOTAL LIABILITIES), OR JOINT NET WORTH WITH THEIR SPOUSE, AT THE TIME OF ADMISSION INTO THE PARTNERSHIP IS IN EXCESS OF \$1,000,000.00; A TRUST, WHICH TRUST HAS TOTAL ASSETS IN EXCESS OF \$5,000,000.00, WHICH IS NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN AND WHOSE INVESTMENT IS DIRECTED BY A SOPHISTICATED PERSON WHO HAS SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT HE IS CAPABLE OF EVALUATING THE MERITS AND RISKS INVOLVED IN BECOMING A PARTNER; ANY ORGANIZATION DESCRIBED IN SECTION 501(c)(3) OF THE IRC, CORPORATION, MASSACHUSETTS OR SIMILAR BUSINESS TRUST, OR PARTNERSHIP, NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN, WITH TOTAL ASSETS IN EXCESS OF \$5,000,000.00; ANY PRIVATE BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 3(a)(2) OF THE ACT OR ANY SAVINGS AND LOAN ASSOCIATION OR OTHER INSTITUTION AS DEFINED IN SECTION 3(a)(5) (A) OF THE ACT, WHETHER ACTING IN ITS INDIVIDUAL OR FIDUCIARY CAPACITY; ANY BROKER-DEALER REGISTERED PURSUANT TO SECTION 15 OR SECTION 2(13) OF THE ACT; ANY INVESTMENT COMPANY REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 OR A BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 2(a)(48) OF THE ACT; ANY SMALL BUSINESS INVESTMENT COMPANY LICENSED BY THE U.S. SMALL BUSINESS ADMINISTRATION UNDER SECTION 301(c) OR (d) OF THE SMALL BUSINESS INVESTMENT ACT OF 1958; ANY PLAN ESTABLISHED AND MAINTAINED BY A STATE, ITS POLITICAL SUBDIVISION, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR ITS POLITICAL SUBDIVISIONS, FOR THE BENEFIT OF ITS EMPLOYEES, IF SUCH PLAN HAS TOTAL ASSETS IN EXCESS OF \$5,000,000; ANY EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF THE EMPLOYEE RETIREMENT INCOME SECURITIES ACT OF 1974, IF THE INVESTMENT DECISION IS MADE BY A PLAN FIDUCIARY, AS DEFINED IN SECTION 3(21) OF SUCH ACT, WHICH IS EITHER A BANK, SAVINGS AND LOAN ASSOCIATION, INSURANCE COMPANY, OR REGISTERED INVESTMENT ADVISOR, OR IF THE EMPLOYEE BENEFIT PLAN HAS TOTAL ASSETS IN EXCESS OF \$5,000,000.00, OR, IF A SELF-DIRECTED PLAN, WITH INVESTMENT DECISIONS MADE SOLELY BY PERSONS THAT ARE ACCREDITED INVESTORS; AND, ANY ENTITY WHICH ALL OF THE EQUITY OWNERS ARE ACCREDITED INVESTORS AS DEFINED ABOVE.

#### Notices

14.06 Unless otherwise provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopies, telexed or sent by United States mail and shall be deemed to have been given when delivered in person, or upon receipt of telecopy or telex or three (3) business days after depositing it in the United States mail, registered or certified, when postage prepaid and properly addressed. For purposes thereof, the addresses of the parties hereto are as set forth in Exhibit "A" and may be changed if specified in writing and delivered in accordance with the terms of this Agreement.

#### FLORIDA LAW TO APPLY

14.07 THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS.

11

#### **Disputes**

14.08 The Partners shall make a good faith effort to settle any dispute or claim arising under this Agreement. If, however, the Partners shall fail to resolve a dispute or claim, the Partners shall submit it to arbitration before the Florida office of the American Arbitration Association. In any arbitration, the Federal rules of Civil Procedure and the Federal rules of Evidence, as then existing, shall apply. Judgment on any arbitration awards may be entered by any court of competent jurisdiction.

#### **Headings**

14.09 Section headings used in this Agreement are included herein for convenience or reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

#### **Parties Bound**

14.10 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

#### **Severability**

14.11 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, that invalid, illegal or unenforceable provisions shall not affect any other provision contained IN THIS AGREEMENT.

#### **Counterparts**

14.12 This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute by one and the same instrument.

#### **Gender and Number**

14.13 Whenever the context shall require, all words in this Agreement in the male gender shall be deemed to include the female or neuter gender AND VICE VERSA, AND all singular words shall include the plural, and all plural words shall include the singular.

#### **Prior Agreements Superseded**

14.14 This Agreement supersedes any prior understandings or written or oral agreements among the parties respecting the subject matter contained herein.

Complete #1, #2, #3 and Exhibit A and mail this page only with  
check made payable to "S&P Associates, G/P" to:

**S & P ASSOCIATES, General Partnership**  
c/o SULLIVAN & POWELL  
6550 N. Federal Hwy., Suite 210  
Ft. Lauderdale, FL 33308-1404

- 1) The Parties hereto have executed this Agreement by the signature and date set forth below. Each party signing below hereby represents and warrants that such party is sophisticated and experienced in financial and business matters and, as a result, is in a position to evaluate and participate in the business and administration of the Partnership.

\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
Date: \_\_\_\_\_

2) Distributions:

- \_\_\_\_ I elect to receive distributions on a quarterly basis in the amount of \$ \_\_\_\_\_.  
\_\_\_\_ I elect to have my quarterly distribution reinvested in the Partnership.

3) Please check one of the following accredited investor choices:

- \_\_\_\_ I am an accredited investor as defined below.  
\_\_\_\_ I am not an accredited investor.

The following would qualify as an "accredited investor":

(i) A person with an individual net worth, or together with his or her spouse a combined net worth, in excess of \$1,000,000. Net worth means the excess of total assets at fair market value, including home, home furnishings and automobiles, over total liabilities.

(ii) A person with an individual income (exclusive of any income attributable to his or her spouse) in excess of \$200,000 in each of the past two years, and that he or she reasonably expects to have

an individual income in excess of \$200,000 during this year. Individual income means adjusted gross income, as reported for federal income tax purposes, less any income attributable to a spouse or to property owned by a spouse, increased by the following amounts (but not including any amounts attributable to a spouse or to property owned by a spouse): (i) the amount of any tax-exempt interest income received under Section 103 of the United States Internal Revenue Code of 1986, as amended (the "Code"), (ii) the amount of losses claimed as a limited partner in a limited partnership as reported on Schedule E of form 1040, (iii) any deduction claimed for depletion under Section 611 *et seq.* of the Code and (iv) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Code.

(iii) A person that together with his or her spouse, had a combined income in excess of \$300,000 in each of the past two years, and reasonably expects to have a combined income in excess of \$300,000 during this year.

**EXHIBIT A** (How you would like your account titled)

**IMPORTANT** - Please indicate your beneficiary.  
Please include address & phone #.

Name, Address  
Telephone No. and Fax No.

Social Security No. or  
Federal ID No.

Capital Contribution

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**IMPORTANT** - Please indicate your beneficiary.  
Please include address & phone #.



**BERNARD L. MADOFF**  
Investment Securities

885 Third Avenue New York, NY 10022-4834

212 230-2424  
800 221-2242  
Telex 235130  
Fax 212 486-8178

TAX ID NO.

ACCT# ASSIGNED

65-0371 058

~~Mr./Mrs./Ms.~~

NAME

STREET

CITY

TEL. NUMBER

STATE

BUSINESS

ZIP

RESIDENCE

REG. REP

P & S ASSOCIATES GENERAL PARTNERSHIP  
225 N. FEDERAL HWY., SUITE 600  
POMPANE BEACH, FL 33062  
305-782-3500 FAX 305-782-3602  
Michael Sullivan & Gray Powell, Managing Partners

WE DEEM THE QUESTIONS CONTAINED IN THIS SECTION TO BE REQUIRED BY THE "KNOW YOUR CUSTOMER" RULE OF THE NATIONAL ASSOCIATION OF SECURITY DEALERS, AND, THEREFORE, MUST BE ANSWERED IN FULL.

RESIDENCE

NAME OF EMPLOYER (IF HOUSEWIFE, NAME THE HUSBAND'S EMPLOYER)

EMPLOYER'S ADDRESS

OCCUPATION

BANK REFERENCE AND ADDRESS

OTHER BROKERAGE ACCOUNTS WITH

CLIENT INTRODUCED BY

**FOR OFFICE USE ONLY**

R. R.'S ESTIMATE OF CLIENTS NET WORTH

IS CLIENT OVER 21 YEARS OF AGE

YES

NO

HOW LONG HAVE YOU KNOWN CLIENT

CLIENT IS CITIZEN OF

APPROVED BY

DATE SENT TO CLIENT

DATE SENT TO CLIENT

MARGIN AGREEMENT

JOINT AGREEMENT

CORPORATE ACCOUNT FORM

CO-PARTNERSHIP FORM

MAIL WAIVER FORM

MULTIPLE A/C FORM

CORPORATE RESOLUTION

**FILE COPY**

Affiliated with:  
Madoff Securities International Ltd



**BERNARD L. MADOFF**  
**Investment Securities**

885 Third Avenue New York, NY 10022-4834

212 230-2424

800 221-2242

Telex 235130

Fax 212 486-8178

Congress has mandated that all interest and dividend payors including banks, corporations and funds must withhold 1% of all dividends or interest paid UNLESS you complete and return the form at the bottom of this page.

**Important New Tax Information**

"Under the Federal income tax law, you are subject to certain penalties as well as withholding of tax at a 20% rate if you have not provided us with your correct social security number or other taxpayer identification number. Please read this notice carefully.

You (as a payee) are required by law to provide us (as payor) with your correct taxpayer identification number. If you are an individual, your taxpayer identification is your social security number. If you have not provided us with your correct taxpayer identification number, you may be subject to a \$50 penalty imposed by the Internal Revenue Service. In addition, dividend payments that we make to you may be subject to backup withholding starting on January 1, 1984.

Backup withholding is different from the 10% withholding on interest and dividends that was repealed in 1983. If backup withholding applies, payor is required to withhold 20% of dividend payments made to you. Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained\*.

Please sign the form and return it to us.

Even if you have already provided this information it is required by the IRS that all information requested below be provided again.

Thank you for your cooperation.

(Corporations are exempt from this requirement and should not return this form.)

-----  
**SUBSTITUTE INTERNAL REVENUE SERVICE FORM W-9**

Account Number(s): \_\_\_\_\_

Taxpayer Identification Number:

65-0371258

Name: \_\_\_\_\_

P+S Associates, General Partnership

Address: \_\_\_\_\_

225 N. Federal Hwy, Suite 600, Pompano Beach, FL  
33061

(Signature) \_\_\_\_\_

Dan Powell, Managing Dir.

\*Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number.

Please fill in your name, address, taxpayer identification number, and sign above.

Affiliated with:

Madoff Securities International Ltd.

885 Third Avenue  
New York, NY 10022  
(212) 230-2400  
(800) 334-1343  
TELEX 235 190  
FAX (212) 486-8178

IN ACCOUNT WITH

BERNARD L. MADOFF  
Investment Securities  
New York o London

P & S ASSOCIATES GEN PTNRSHIP

225 N FEDERAL HIGHWAY STE 600  
POMPANO BEACH FL 33062

12/31/94

1

1-2A873-4-0

65-0371258

DATE	AMOUNT RECEIVED OR LOAN	BOLD DELIVERED OR SHORT	TRF	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
12/09	46		52660	BALANCE FORWARD			161,347.01
12/09		46	59563	S & P 100 INDEX DECEMBER 430 CALL	1/2	2,346.00	
12/30				S & P 100 INDEX DECEMBER 420 PUT TRANS TO 30 ACCT	4 7/8		22,379.01
				NEW BALANCE	JRNL	161,360.00	

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES



**BERNARD L. MADOFF**  
Investment Securities

885 Third Avenue New York, NY 10022-4834

212 230-2424  
800 221-2242  
Telex 235130  
Fax 212 486-8178

**TRADING AUTHORIZATION LIMITED TO**  
**PURCHASES AND SALES OF SECURITIES**

Gentlemen:

The undersigned hereby authorizes Bernard L. Madoff (whose signature appears below) as his agent and attorney in fact to buy, sell and trade in stocks, bonds and any other securities in accordance with your terms and conditions for the undersigned's account and risk and in the undersigned's name, or number on your books. The undersigned hereby agrees to indemnify and hold you harmless from, and to pay you promptly on demand any and all losses arising therefrom or debit balance due thereon. However, in no event will the losses exceed my investment.

In all such purchases, sales or trades you are authorized to follow the instructions of Bernard L. Madoff in every respect concerning the undersigned's account with you; and he is authorized to act for the undersigned and in the undersigned's behalf in the same manner and with the same force and effect as the undersigned might or could do with respect to such purchases, sales or trades as well as with respect to all other things necessary or incidental to the furtherance or conduct of such purchases, sales or trades.

The undersigned hereby ratifies and confirms any and all transactions with you heretofore or hereafter made by the aforesaid agent or for the undersigned's account.

This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which you may have under any other agreement or agreements between the undersigned and your firm.

This authorization and indemnity is also a continuing one and shall remain in full force and effect until revoked by the undersigned by a written notice addressed to you and delivered to your office at 885 Third Avenue but such revocation shall not affect any liability in any way resulting from transaction initiated prior to such revocation. This authorization and indemnity shall enure to the benefit of your present firm and any successor firm or firms irrespective of any change or changes at any time in the personnel thereof for any cause whatsoever, and of the assigns of your present firm or any successor firm.

Dated, 12/28/92

Pompano Beach  
(City)

FL  
(State)

Very truly yours,

Ray Powell, mg. Ptn., P+S Associates, Ben. Ptn.  
(Client Signature)

Signature Of Authorized Agent: \_\_\_\_\_