

**IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT, IN  
AND FOR BROWARD COUNTY, FLORIDA**

CASE NO.: 12-034121 (04)

P &S ASSOCIATES, GENERAL PARTNERSHIP,  
a Florida limited partnership; and S&P  
ASSOCIATES, GENERAL PARTNERSHIP, a  
Florida limited partnership, *et al.*,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST, a  
charitable trust, *et al.*,

Defendants.

\_\_\_\_\_ /

**PLAINTIFFS' MOTION FOR  
LEAVE TO FILE AN AMENDED COMPLAINT**

Pursuant to Fla. R. Civ. P. 1.190(a), Plaintiffs P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P") (collectively, the "Partnerships"), *et al.*, by and through their undersigned attorneys, hereby file this Motion for Leave to File an Amended Complaint (the "Motion") in this action, a copy of the proposed Amended Complaint is attached hereto as Exhibit A (the "Amended Complaint"). In support of the Motion, Plaintiffs state as follows:

1. As set forth at length in the record of related case no. 12-24051 (07) that is also before this Court, on December 10, 2012, Plaintiffs filed the complaint in this case as a placeholder in order to preserve claims against "net-winner" partners in the face of a statute of

limitations period that may or may not have been coming to a close.<sup>1</sup> The complaint included separate causes of action for breach of contract, unjust enrichment, money had and received, and fraudulent transfer pursuant to Fla. Stat. 726.105(1)(a).

2. Approximately one month later, because the management of the Partnerships was deadlocked due to a dispute over their management, by order dated January 17, 2013, this Court appointed a Conservator to oversee and manage the Partnerships.

3. Once the Conservator took control of the Partnerships and their books and records and other property, it became clear that the original complaint did not accurately contain all facts surrounding the claims against the named Defendants. Moreover, new claims have since accrued against the “net winner” Defendants due to the pending liquidation of the Partnerships.

4. Accordingly, Plaintiffs seek to refine the allegations in their complaint to accurately reflect their claims against the Defendants. These amendments provide good cause to grant this Motion.

5. Under Florida law, leave of court to file an amended pleading shall be given freely when justice requires. Fla. R. Civ. P. 1.190(a); *Hutson v. Plantation Open MRI, LLC*, 66 So. 3d 1042, 1044 (Fla. 4th DCA 2011) (“Florida Rule of Civil Procedure 1.190(a) provides that leave to amend shall be given freely when justice so requires”). Absent exceptional circumstances, motions for leave to amend pleadings should be granted. *Thompson v. Publix Supermarkets, Inc.*, 615 So. 2d 796, 797 (Fla. 1st DCA 1993).

6. “[R]efusal to allow amendment of a pleading constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing party; the

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<sup>1</sup> Originally, the Plaintiffs consisted of P&S and S&P and Margaret J. Smith, as Managing General Partner of S&P and P&S. Philip von Kahle was substituted in as Plaintiff by this Court order dated September 23, 2013.

privilege to amend has been abused; or amendment would be futile.” *Id.* at 1044-45. “The primary consideration in determining whether a motion for leave to amend should be granted is a test of prejudice. . . .” *Id.*

7. Moreover, “the decision to grant leave to amend rests upon the trial court’s discretion, and any doubts should be resolved in favor of the amendment.” *Overnight Success Constr., Inc. v. Pavarini Constr. Co., Inc.*, 955 So. 2d 658, 659 (Fla. 3d DCA 2007). “However, the trial court’s discretion should be exercised in accordance with the public policy of this state to freely allow amendments so that cases may be resolved on their merits.” *Dausman v. Hillsborough Area Reg. Transit*, 898 So. 2d 213, 215 (Fla. 2d DCA 2005) (citation omitted).

8. Consistent with Florida’s liberal rules on amended pleadings, Plaintiffs should be granted leave to file their Amended Complaint here.

9. First, no party will be prejudiced by the granting of this Motion. This case is not set for trial and, although two parties have filed motions for summary judgment, Plaintiffs are seeking leave to amend prior to any hearing on any motion for summary judgment. *Hutson*, 66 So. 3d at 1044 (“In addition, courts ‘should be especially liberal when leave to amend is sought at or before a hearing on a motion for summary judgment’”); *PNC Bank, N.A. v. Progressive Employer Servs. II*, 55 So. 3d 655, 660 (Fla. 4th DCA 2011) (“A party may, with leave of court, amend a pleading at or even after a hearing and ruling on a motion for summary judgment”).

10. Moreover, Defendants cannot claim any surprise caused by the proposed amendment because the Amended Complaint features the same basic parties, issues, and facts already at issue in this lawsuit. Discovery – which, aside from Plaintiffs’ response to a single document request has not even begun –, and the granting of this motion will not adversely impact the parties’ preparation for trial. Further, all of the Defendants received a demand letter

which should have informed them of the new cause of action being asserted against them, and mitigates against any finding of surprise.

11. Second, the proposed amendment would not be futile. An amendment is futile when the proposed amendment would not state a cause of action. *PNC Bank, N.A. v. Progressive Employer Servs. II*, 55 So. 3d 655, 660 (Fla. 4th DCA 2011) (“Finally, it does not appear from the record that PNC Bank’s amendment would be futile as it was legally sufficient to state a counterclaim for breach of contract.”); *Quality Roof Servs., Inc. v. Intervest Nat’l Bank*, 21 So.3d 883, 885 (Fla. 4th DCA 2009) (“A proposed amendment is futile if it is insufficiently pled, or is ‘insufficient as a matter of law’”).

12. Here, the proposed amendments are not insufficient as a matter of law and do not fail to state a cause of action. Primarily, these amendments buttress already sound factual allegations and legal claims asserted against the Defendants, and therefore should correct any of the perceived deficiencies noted in several motions to dismiss filed by Defendants without the expense and waste of time spent litigating the issues raised by those motions.

13. Furthermore, the two motions for summary judgment and many of the motions to dismiss appear to mistakenly believe that the statute of limitations is a valid defense to Plaintiffs’ claims. The proposed amendments clarify the factual underpinnings of Plaintiffs’ claims such that any statute of limitations defense should no longer be asserted improperly as a motion to dismiss or prematurely as a motion for summary judgment, as many Defendants have already done. Moreover, the winding up of the Partnerships – which had not yet begun as of the filing of the original complaint -- has created the factual basis for a new cause of action which is not subject to the same alleged statutes of limitation defenses.

14. Accordingly, Plaintiffs request that this Court grant them leave to file their Amended Complaint in the form attached hereto as Exhibit “A,” and enter an Order deeming the attached Amended Complaint filed. *Skilled Servs. Corp. v. Reliance Ins. Co.*, 763 So. 2d 1092, 1094 (Fla. 4th DCA 1999) (finding abuse of discretion where summary judgment entered prior to a hearing on motion to amend because it is “tantamount to denial of the motion”).

**WHEREFORE**, Plaintiffs respectfully request that this Court enter an Order granting Plaintiffs leave to file their Amended Complaint, in the form attached hereto as Exhibit “A;” deeming the attached Amended Complaint filed, and granting such other relief as this Court deems just and proper under the circumstances.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon counsel registered to receive electronic notifications and regular U.S. mail upon *Pro Se* parties this 29th day of October, 2013 upon the following:

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**CASE NO. 12-034121 (04)**

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**CASE NO. 12-034121 (04)**

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# *COMPOSITE EXHIBIT A*

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Exhibit "A"  
In re P&S Associates, General Partnership  
Congregation of the Holy Ghost- Western Province, Inc.

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1995	\$ -	\$ 100,000.00		\$ 100,000.00
1996	\$ 100,000.00	\$ 100,000.00	\$ (5,539.53)	\$ 194,460.47
1997	\$ 194,460.47	\$ -	\$ (26,034.86)	\$ 168,425.61
1998	\$ 168,425.61	\$ -	\$ (26,718.52)	\$ 141,707.09
1999	\$ 141,707.09	\$ -	\$ (27,704.67)	\$ 114,002.42
2000	\$ 114,002.42	\$ -	\$ (28,314.78)	\$ 85,687.64
2001	\$ 85,687.64	\$ -	\$ (27,718.11)	\$ 57,969.53
2002	\$ 57,969.53	\$ -	\$ (230,508.47)	\$ (172,538.94)
2003	\$ (172,538.94)	\$ -	\$ (9,993.41)	\$ (182,532.35)
2004	\$ (182,532.35)	\$ -		\$ (182,532.35)
2005	\$ (182,532.35)	\$ -		\$ (182,532.35)
2006	\$ (182,532.35)	\$ -		\$ (182,532.35)
2007	\$ (182,532.35)	\$ -		\$ (182,532.35)
2008	\$ (182,532.35)	\$ -		\$ (182,532.35)

Ending Balance= \$ (182,532.35)

tabbies

**EXHIBIT**  
COMPOSITE  
A

Exhibit "A"  
In re P&S Associates, General Partnership  
Abraham and Rita Newman

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 89,000.00	\$ (13,730.29)	\$ 75,269.71
1994	\$ 75,269.71	-	\$ (10,320.70)	\$ 64,949.01
1995	\$ 64,949.01	-	\$ (15,228.21)	\$ 49,720.80
1996	\$ 49,720.80	-	\$ (9,942.22)	\$ 39,778.58
1997	\$ 39,778.58	-	\$ (10,281.08)	\$ 29,497.50
1998	\$ 29,497.50	-	\$ (14,326.88)	\$ 15,170.62
1999	\$ 15,170.62	-	\$ (10,442.61)	\$ 4,728.01
2000	\$ 4,728.01	-	\$ (14,557.15)	\$ (9,829.14)
2001	\$ (9,829.14)	-	\$ (9,968.83)	\$ (19,797.97)
2002	\$ (19,797.97)	-	\$ (9,740.61)	\$ (29,538.58)
2003	\$ (29,538.58)	-	\$ (9,492.68)	\$ (39,031.26)
2004	\$ (39,031.26)	-	\$ (9,090.49)	\$ (48,121.75)
2005	\$ (48,121.75)	-	\$ (8,691.06)	\$ (56,812.81)
2006	\$ (56,812.81)	-	\$ (8,387.62)	\$ (65,200.43)
2007	\$ (65,200.43)	-	\$ (8,204.22)	\$ (73,404.65)
2008	\$ (73,404.65)	-	\$ (5,952.35)	\$ (79,357.00)

Ending Balance= \$ (79,357.00)

Exhibit "A"  
In re P&S Associates, General Partnership  
Janet B. Molchan, Trustee UTD 5-19-94

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 75,700.00		\$ 75,700.00
1994	\$ 75,700.00	-		\$ 75,700.00
1995	\$ 75,700.00	-		\$ 75,700.00
1996	\$ 75,700.00	-		\$ 75,700.00
1997	\$ 75,700.00	-	\$ (50,000.00)	\$ 25,700.00
1998	\$ 25,700.00	-		\$ 25,700.00
1999	\$ 25,700.00	\$ 50,000.00		\$ 75,700.00
2000	\$ 75,700.00	-	\$ (80,000.00)	\$ (4,300.00)
2001	\$ (4,300.00)	-	\$ (112,643.03)	\$ (116,943.03)
2002	\$ (116,943.03)	-		\$ (116,943.03)
2003	\$ (116,943.03)	-		\$ (116,943.03)
2004	\$ (116,943.03)	-		\$ (116,943.03)
2005	\$ (116,943.03)	-		\$ (116,943.03)
2006	\$ (116,943.03)	-		\$ (116,943.03)
2007	\$ (116,943.03)	-		\$ (116,943.03)
2008	\$ (116,943.03)	-		\$ (116,943.03)

Ending Balance= \$ (116,943.03)

Exhibit "A"  
In re P&S Associates, General Partnership  
Alexander E. Molchan, Trustee UTD 5-19-94

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 75,700.00		\$ 75,700.00
1994	\$ 75,700.00	-		\$ 75,700.00
1995	\$ 75,700.00	-		\$ 75,700.00
1996	\$ 75,700.00	-		\$ 75,700.00
1997	\$ 75,700.00	-		\$ 75,700.00
1998	\$ (51,832.52)	-	\$ (127,532.52)	\$ (51,832.52)
1999	\$ (52,427.58)	-	\$ (595.06)	\$ (52,427.58)
2000	\$ (52,427.58)	-		\$ (52,427.58)
2001	\$ (52,427.58)	-		\$ (52,427.58)
2002	\$ (52,427.58)	-		\$ (52,427.58)
2003	\$ (52,427.58)	-		\$ (52,427.58)
2004	\$ (52,427.58)	-		\$ (52,427.58)
2005	\$ (52,427.58)	-		\$ (52,427.58)
2006	\$ (52,427.58)	-		\$ (52,427.58)
2007	\$ (52,427.58)	-		\$ (52,427.58)
2008	\$ (52,427.58)	-		\$ (52,427.58)

Ending Balance= \$ (52,427.58)

*Exhibit "A"*  
*In re S&P Associates, General Partnership*  
 Catherine B. & Berry C. Smith

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1995		\$ 30,000.00		\$ 30,000.00
1996	\$ 30,000.00	\$ 25,000.00		\$ 55,000.00
1997	\$ 55,000.00	\$ 30,000.00		\$ 85,000.00
1998	\$ 85,000.00	\$ 50,000.00		\$ 135,000.00
1999	\$ 135,000.00	\$ 50,000.00		\$ 185,000.00
2000	\$ 185,000.00		\$ (15,000.00)	\$ 170,000.00
2001	\$ 170,000.00			\$ 170,000.00
2002	\$ 170,000.00		\$ (150,000.00)	\$ 20,000.00
2003	\$ 20,000.00		\$ (15,000.00)	\$ 5,000.00
2004	\$ 5,000.00		\$ (158,262.96)	\$ (153,262.96)
2005	\$ (153,262.96)		\$ (2,309.06)	\$ (155,572.02)
2006	\$ (155,572.02)			\$ (155,572.02)
2007	\$ (155,572.02)			\$ (155,572.02)
2008	\$ (155,572.02)			\$ (155,572.02)

Ending Balance= \$ (155,572.02)

Exhibit "A"

In re S&P Associates, General Partnership

Diane M. Denbleyker- Account #1

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
2000		\$ 70,000.00		\$ 70,000.00
2001	\$ 70,000.00	\$ 6,500.00	\$ (22,000.00)	\$ 54,500.00
2002	\$ 54,500.00			\$ 54,500.00
2003	\$ 54,500.00	\$ 15,000.00	\$ (55,000.00)	\$ 14,500.00
2004	\$ 14,500.00		\$ (30,000.00)	\$ (15,500.00)
2005	\$ (15,500.00)	\$ 10,000.00		\$ (5,500.00)
2006	\$ (5,500.00)		\$ (4,000.00)	\$ (9,500.00)
2007	\$ (9,500.00)	\$ 30,000.00	\$ (20,736.38)	\$ (236.38)
2008	\$ (236.38)		\$ (14,500.00)	\$ (14,736.38)

Ending Balance= \$ (14,736.38)



Exhibit "A"  
*In re S&P Associates, General Partnership*  
Diane M. Denbleyker- Account #2

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
2000		\$ 275,000.00		\$ 275,000.00
2001	\$ 275,000.00	\$ 150,630.64	\$ (223,180.82)	\$ 202,449.82
2002	\$ 202,449.82	\$ 40,000.00	\$ (55,000.00)	\$ 187,449.82
2003	\$ 187,449.82		\$ (170,000.00)	\$ 17,449.82
2004	\$ 17,449.82		\$ (178,271.11)	\$ (160,821.29)
2005	\$ (160,821.29)	\$ 190,000.00	\$ (74,000.00)	\$ (44,821.29)
2006	\$ (44,821.29)	\$ 40,000.00	\$ (90,000.00)	\$ (94,821.29)
2007	\$ (94,821.29)		\$ (111,300.00)	\$ (206,121.29)
2008	\$ (206,121.29)		\$ (73,000.00)	\$ (279,121.29)

Ending Balance= \$ (279,121.29)

Exhibit "A"  
In re S&P Associates, General Partnership  
Edith Rosen

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 15,000.00	\$ (414.24)	\$ 14,585.76
1994	\$ 14,585.76		\$ (1,809.11)	\$ 12,776.65
1995	\$ 12,776.65	\$ 15,000.00	\$ (1,985.23)	\$ 25,791.42
1996	\$ 25,791.42	\$ 20,000.00		\$ 45,791.42
1997	\$ 45,791.42	\$ 10,000.00		\$ 55,791.42
1998	\$ 55,791.42			\$ 55,791.42
1999	\$ 55,791.42	\$ 10,000.00		\$ 65,791.42
2000	\$ 65,791.42	\$ 23,000.00		\$ 88,791.42
2001	\$ 88,791.42	\$ 31,000.00		\$ 119,791.42
2002	\$ 119,791.42	\$ 15,000.00		\$ 134,791.42
2003	\$ 134,791.42		\$ (246,538.03)	\$ (111,746.61)
2004	\$ (111,746.61)		\$ (3,209.57)	\$ (114,956.18)
2005	\$ (114,956.18)			\$ (114,956.18)
2006	\$ (114,956.18)			\$ (114,956.18)
2007	\$ (114,956.18)			\$ (114,956.18)
2008	\$ (114,956.18)			\$ (114,956.18)

Ending Balance= \$ (114,956.18)

Exhibit "A"  
In re S&P Associates, General Partnership  
Sam Rosen

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1998		\$ 20,000.00		\$ 20,000.00
1999	\$ 20,000.00	\$ 50,000.00		\$ 70,000.00
2000	\$ 70,000.00	\$ 10,000.00		\$ 80,000.00
2001	\$ 80,000.00	\$ 30,000.00		\$ 110,000.00
2002	\$ 110,000.00	\$ 30,000.00		\$ 140,000.00
2003	\$ 140,000.00		\$ (190,379.03)	\$ (50,379.03)
2004	\$ (50,379.03)		\$ (763.10)	\$ (51,142.13)
2005	\$ (51,142.13)			\$ (51,142.13)
2006	\$ (51,142.13)			\$ (51,142.13)
2007	\$ (51,142.13)			\$ (51,142.13)
2008	\$ (51,142.13)			\$ (51,142.13)

Ending Balance= \$ (51,142.13)

Exhibit "A"  
In re S&P Associates, General Partnership  
Edna A. Profe Revocable Trust

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1998		\$ 200,000.00		\$ 200,000.00
1999	\$ 200,000.00	\$ 25,000.00		\$ 225,000.00
2000	\$ 225,000.00			\$ 225,000.00
2001	\$ 225,000.00			\$ 225,000.00
2002	\$ 225,000.00		\$ (337,538.76)	\$ (112,538.76)
2003	\$ (112,538.76)			\$ (112,538.76)
2004	\$ (112,538.76)			\$ (112,538.76)
2005	\$ (112,538.76)			\$ (112,538.76)
2006	\$ (112,538.76)			\$ (112,538.76)
2007	\$ (112,538.76)			\$ (112,538.76)
2008	\$ (112,538.76)			\$ (112,538.76)

Ending Balance= \$ (112,538.76)

Exhibit "A"  
In re S&P Associates, General Partnership  
Erica P. Gianna, Trustee

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 100,000.00	\$ (11,548.36)	\$ 88,451.64
1994	\$ 88,451.64	\$ 95,000.00	\$ (20,751.67)	\$ 162,699.97
1995	\$ 162,699.97		\$ (23,578.70)	\$ 139,121.27
1996	\$ 139,121.27		\$ (23,869.32)	\$ 115,251.95
1997	\$ 115,251.95		\$ (24,631.57)	\$ 90,620.38
1998	\$ 90,620.38		\$ (25,154.33)	\$ 65,466.05
1999	\$ 65,466.05		\$ (25,635.84)	\$ 39,830.21
2000	\$ 39,830.21		\$ (25,718.58)	\$ 14,111.63
2001	\$ 14,111.63		\$ (24,945.03)	\$ (10,833.40)
2002	\$ (10,833.40)		\$ (24,355.57)	\$ (35,188.97)
2003	\$ (35,188.97)		\$ (23,591.18)	\$ (58,780.15)
2004	\$ (58,780.15)		\$ (22,689.82)	\$ (81,469.97)
2005	\$ (81,469.97)		\$ (21,606.21)	\$ (103,076.18)
2006	\$ (103,076.18)		\$ (21,017.86)	\$ (124,094.04)
2007	\$ (124,094.04)		\$ (20,480.20)	\$ (144,574.24)
2008	\$ (144,574.24)		\$ (14,775.47)	\$ (159,349.71)

Ending Balance= \$ (159,349.71)

Exhibit "A"  
In re S&P Associates, General Partnership  
Ettoh Ltd.

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1998		\$ 250,000.00		\$ 250,000.00
1999	\$ 250,000.00			\$ 250,000.00
2000	\$ 250,000.00			\$ 250,000.00
2001	\$ 250,000.00		\$ (25,000.00)	\$ 225,000.00
2002	\$ 225,000.00		\$ (31,500.00)	\$ 193,500.00
2003	\$ 193,500.00			\$ 193,500.00
2004	\$ 193,500.00		\$ (250,000.00)	\$ (56,500.00)
2005	\$ (56,500.00)			\$ (56,500.00)
2006	\$ (56,500.00)	\$ 260,000.00		\$ 203,500.00
2007	\$ 203,500.00		\$ (490,954.40)	\$ (287,454.40)
2008	\$ (287,454.40)			\$ (287,454.40)

Ending Balance= \$ (287,454.40)

Exhibit "A"  
In re S&P Associates, General Partnership  
Greg Wallick

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1997		\$ 25,000.00	\$ (25,000.00)	\$ -
1998	\$ -	\$ 20,000.00		\$ 20,000.00
1999	\$ 20,000.00	\$ 355,400.00	\$ (120,000.00)	\$ 255,400.00
2000	\$ 255,400.00	\$ 149,000.00	\$ (93,000.00)	\$ 311,400.00
2001	\$ 311,400.00	\$ 408,000.00	\$ (553,000.00)	\$ 166,400.00
2002	\$ 166,400.00		\$ (150,000.00)	\$ 16,400.00
2003	\$ 16,400.00	\$ 50,000.00	\$ (79,000.00)	\$ (12,600.00)
2004	\$ (12,600.00)		\$ (95,349.47)	\$ (107,949.47)
2005	\$ (107,949.47)			\$ (107,949.47)
2006	\$ (107,949.47)	\$ 22,975.00		\$ (84,974.47)
2007	\$ (84,974.47)			\$ (84,974.47)
2008	\$ (84,974.47)			\$ (84,974.47)

Ending Balance= \$ (84,974.47)

Exhibit "A"  
In re S&P Associates, General Partnership  
Herbert Irwig

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1994		\$ 20,000.00	\$ (1,687.85)	\$ 18,312.15
1995	\$ 18,312.15		\$ (2,317.52)	\$ 15,994.63
1996	\$ 15,994.63		\$ (2,346.08)	\$ 13,648.55
1997	\$ 13,648.55	\$ 5,000.00	\$ (2,710.62)	\$ 15,937.93
1998	\$ 15,937.93		\$ (3,090.98)	\$ 12,846.95
1999	\$ 12,846.95		\$ (3,150.15)	\$ 9,696.80
2000	\$ 9,696.80		\$ (3,160.31)	\$ 6,536.49
2001	\$ 6,536.49		\$ (3,065.25)	\$ 3,471.24
2002	\$ 3,471.24		\$ (2,992.82)	\$ 478.42
2003	\$ 478.42	\$ 25,369.58	\$ (15,991.05)	\$ 9,856.95
2004	\$ 9,856.95		\$ (15,380.06)	\$ (5,523.11)
2005	\$ (5,523.11)		\$ (124,827.87)	\$ (130,350.98)
2006	\$ (130,350.98)		\$ (2,077.60)	\$ (132,428.58)
2007	\$ (132,428.58)			\$ (132,428.58)
2008	\$ (132,428.58)			\$ (132,428.58)

Ending Balance= \$ (132,428.58)



Exhibit "A"

In re P&S Associates, General Partnership  
Holy Ghost Fathers International Fund- Account # 2

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
2002	\$ -	\$ 227,343.90		\$ 227,343.90
2003	\$ 227,343.90	\$ 1,224,468.99		\$ 1,451,812.89
2004	\$ 1,451,812.89	\$ -	\$ (80,000.00)	\$ 1,371,812.89
2005	\$ 1,371,812.89	\$ -	\$ (150,000.00)	\$ 1,221,812.89
2006	\$ 1,221,812.89	\$ -	\$ (1,661,956.72)	\$ (440,143.83)
2007	\$ (440,143.83)	\$ -	\$ (32,480.44)	\$ (472,624.27)
2008	\$ (472,624.27)	\$ -		\$ (472,624.27)

Ending Balance= \$ (472,624.27)

Exhibit "A"

In re P&S Associates, General Partnership  
Holy Ghost Fathers Compassion Fund

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 220,000.00		\$ 220,000.00
1994	\$ 220,000.00	\$ 40,000.00		\$ 260,000.00
1995	\$ 260,000.00	-		\$ 260,000.00
1996	\$ 260,000.00	-		\$ 260,000.00
1997	\$ 260,000.00	-		\$ 260,000.00
1998	\$ 260,000.00	-		\$ 260,000.00
1999	\$ 260,000.00	-		\$ 260,000.00
2000	\$ 260,000.00	-		\$ 260,000.00
2001	\$ 260,000.00	-	\$ (100,000.00)	\$ 160,000.00
2002	\$ 160,000.00	-		\$ 160,000.00
2003	\$ 160,000.00	-		\$ 160,000.00
2004	\$ 160,000.00	\$ 21,235.46		\$ 181,235.46
2005	\$ 181,235.46	-	\$ (200,000.00)	\$ (18,764.54)
2006	\$ (18,764.54)	-	\$ (200,000.00)	\$ (218,764.54)
2007	\$ (218,764.54)	\$ 180,000.00		\$ (38,764.54)
2008	\$ (38,764.54)	-	\$ (225,000.00)	\$ (263,764.54)

Ending Balance= \$ (263,764.54)

Exhibit "A"

In re P&S Associates, General Partnership

Holy Ghost Fathers International Fund- Account # 1

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
2001	\$ -	\$ 100,100.00		\$ 100,100.00
2002	\$ 100,100.00	\$ 891,231.35	\$ (50,000.00)	\$ 941,331.35
2003	\$ 941,331.35	\$ 190,000.00	\$ (842,727.43)	\$ 288,603.92
2004	\$ 288,603.92	\$ -	\$ (200,000.00)	\$ 88,603.92
2005	\$ 88,603.92	\$ -	\$ (94,000.00)	\$ (5,396.08)
2006	\$ (5,396.08)	\$ -		\$ (5,396.08)
2007	\$ (5,396.08)	\$ -	\$ (119,393.88)	\$ (124,789.96)
2008	\$ (124,789.96)	\$ -	\$ (2,496.36)	\$ (127,286.32)

Ending Balance= \$ (127,286.32)

Exhibit "A"  
In re P&S Associates, General Partnership  
Holy Ghost Fathers -Mombasa

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 113,000.00	\$ (40,000.00)	\$ 73,000.00
1994	\$ 73,000.00	\$ -		\$ 73,000.00
1995	\$ 73,000.00	\$ -		\$ 73,000.00
1996	\$ 73,000.00	\$ 25,000.00	\$ (50,000.00)	\$ 48,000.00
1997	\$ 48,000.00	\$ 15,000.00		\$ 63,000.00
1998	\$ 63,000.00	\$ -		\$ 63,000.00
1999	\$ 63,000.00	\$ -		\$ 63,000.00
2000	\$ 63,000.00	\$ -		\$ 63,000.00
2001	\$ 63,000.00	\$ -	\$ (83,000.00)	\$ (20,000.00)
2002	\$ (20,000.00)	\$ -		\$ (20,000.00)
2003	\$ (20,000.00)	\$ -		\$ (20,000.00)
2004	\$ (20,000.00)	\$ -		\$ (20,000.00)
2005	\$ (20,000.00)	\$ -	\$ (50,000.00)	\$ (70,000.00)
2006	\$ (70,000.00)	\$ -		\$ (70,000.00)
2007	\$ (70,000.00)	\$ -	\$ (10,000.00)	\$ (80,000.00)
2008	\$ (80,000.00)	\$ -	\$ (37,000.00)	\$ (117,000.00)

Ending Balance= \$ (117,000.00)

Exhibit "A"  
In re P&S Associates, General Partnership  
Holy Ghost Fathers of Ireland- Kenema Parish

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 60,000.00		\$ 60,000.00
1994	\$ 60,000.00	-		\$ 60,000.00
1995	\$ 60,000.00	-		\$ 60,000.00
1996	\$ 60,000.00	-		\$ 60,000.00
1997	\$ 60,000.00	-		\$ 60,000.00
1998	\$ 60,000.00	-		\$ 60,000.00
1999	\$ 60,000.00	-		\$ 60,000.00
2000	\$ 60,000.00	-		\$ 60,000.00
2001	\$ 60,000.00	-		\$ 60,000.00
2002	\$ 60,000.00	-	\$ (150,000.00)	\$ (90,000.00)
2003	\$ (90,000.00)	-		\$ (90,000.00)
2004	\$ (90,000.00)	-		\$ (90,000.00)
2005	\$ (90,000.00)	-		\$ (90,000.00)
2006	\$ (90,000.00)	-	\$ (66,623.01)	\$ (156,623.01)
2007	\$ (156,623.01)	-	\$ (1,261.62)	\$ (157,884.63)
2008	\$ (157,884.63)	-		\$ (157,884.63)

Ending Balance= \$ (157,884.63)

**Exhibit "A"**  
**In re S&P Associates, General Partnership**  
**James and Valerie Bruce Judd**

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
2000		\$ 180,000.00		\$ 180,000.00
2001	\$ 180,000.00			\$ 180,000.00
2002	\$ 180,000.00			\$ 180,000.00
2003	\$ 180,000.00		\$ (100,000.00)	\$ 80,000.00
2004	\$ 80,000.00			\$ 80,000.00
2005	\$ 80,000.00			\$ 80,000.00
2006	\$ 80,000.00			\$ 80,000.00
2007	\$ 80,000.00		\$ (80,000.00)	\$ -
2008	\$ -		\$ (80,000.00)	\$ (80,000.00)

Ending Balance= \$ (80,000.00)

Exhibit "A"  
*In re S&P Associates, General Partnership*  
 Janet A. Hooker Charitable Trust

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
2002		\$ 4,000,000.00	\$ (449,444.90)	\$ 3,550,555.10
2003	\$ 3,550,555.10		\$ (461,011.62)	\$ 3,089,543.48
2004	\$ 3,089,543.48		\$ (3,882,018.36)	\$ (792,474.88)
2005	\$ (792,474.88)		\$ (67,405.53)	\$ (859,880.41)
2006	\$ (859,880.41)			\$ (859,880.41)
2007	\$ (859,880.41)			\$ (859,880.41)
2008	\$ (859,880.41)			\$ (859,880.41)

Ending Balance= \$ (859,880.41)

Exhibit "A"  
In re S&P Associates, General Partnership  
Jesse A. & Lois A. Goss, Trustees

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1996		\$ 48,705.19		\$ 48,705.19
1997	\$ 48,705.19		\$ (15,000.00)	\$ 33,705.19
1998	\$ 33,705.19			\$ 33,705.19
1999	\$ 33,705.19			\$ 33,705.19
2000	\$ 33,705.19		\$ (10,000.00)	\$ 23,705.19
2001	\$ 23,705.19			\$ 23,705.19
2002	\$ 23,705.19			\$ 23,705.19
2003	\$ 23,705.19			\$ 23,705.19
2004	\$ 23,705.19		\$ (5,000.00)	\$ 18,705.19
2005	\$ 18,705.19			\$ 18,705.19
2006	\$ 18,705.19			\$ 18,705.19
2007	\$ 18,705.19			\$ 18,705.19
2008	\$ 18,705.19		\$ (90,000.00)	\$ (71,294.81)

Ending Balance= \$ (71,294.81)



Exhibit "A"  
In re S&P Associates, General Partnership  
John and Lois Combs

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 120,000.00		\$ 120,000.00
1994	\$ 120,000.00	\$ 10,000.00		\$ 130,000.00
1995	\$ 130,000.00			\$ 130,000.00
1996	\$ 130,000.00	\$ 20,000.00		\$ 150,000.00
1997	\$ 150,000.00			\$ 150,000.00
1998	\$ 150,000.00			\$ 150,000.00
1999	\$ 150,000.00			\$ 150,000.00
2000	\$ 150,000.00		\$ (55,000.00)	\$ 95,000.00
2001	\$ 95,000.00		\$ (50,000.00)	\$ 45,000.00
2002	\$ 45,000.00			\$ 45,000.00
2003	\$ 45,000.00	\$ 25,000.00		\$ 70,000.00
2004	\$ 70,000.00			\$ 70,000.00
2005	\$ 70,000.00			\$ 70,000.00
2006	\$ 70,000.00			\$ 70,000.00
2007	\$ 70,000.00		\$ (296,761.03)	\$ (226,761.03)
2008	\$ (226,761.03)	\$ 50,000.00		\$ (176,761.03)

Ending Balance= \$ (176,761.03)

Exhibit "A"  
In re P&S Associates, General Partnership  
John or Jonathon Crowley

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 55,000.00	\$ (7,135.73)	\$ 47,864.27
1994	\$ 47,864.27	\$ -	\$ (6,685.52)	\$ 41,178.75
1995	\$ 41,178.75	\$ -	\$ (6,704.22)	\$ 34,474.53
1996	\$ 34,474.53	\$ -	\$ (6,788.17)	\$ 27,686.36
1997	\$ 27,686.36	\$ -	\$ (16,218.83)	\$ 11,467.53
1998	\$ 11,467.53	\$ -	\$ (6,056.70)	\$ 5,410.83
1999	\$ 5,410.83	\$ -	\$ (21,886.08)	\$ (16,475.25)
2000	\$ (16,475.25)	\$ -	\$ (4,308.13)	\$ (20,783.38)
2001	\$ (20,783.38)	\$ -	\$ (14,052.95)	\$ (34,836.33)
2002	\$ (34,836.33)	\$ -	\$ (12,201.56)	\$ (47,037.89)
2003	\$ (47,037.89)	\$ -	\$ (14,488.81)	\$ (61,526.70)
2004	\$ (61,526.70)	\$ -	\$ (180.48)	\$ (61,707.18)
2005	\$ (61,707.18)	\$ -		\$ (61,707.18)
2006	\$ (61,707.18)	\$ -		\$ (61,707.18)
2007	\$ (61,707.18)	\$ -		\$ (61,707.18)
2008	\$ (61,707.18)	\$ -		\$ (61,707.18)

Ending Balance= \$ (61,707.18)

Exhibit "A"  
In re S&P Associates, General Partnership  
JS&P General Partnership

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1999		\$ 676,377.06	\$ (27,287.31)	\$ 649,089.75
2000	\$ 649,089.75	\$ 5,577,183.00	\$ (90,734.90)	\$ 6,135,537.85
2001	\$ 6,135,537.85	\$ 695,758.38	\$ (198,377.12)	\$ 6,632,919.11
2002	\$ 6,632,919.11	\$ 3,608,248.44	\$ (10,267,675.80)	\$ (26,508.25)
2003	\$ (26,508.25)			\$ (26,508.25)
2004	\$ (26,508.25)			\$ (26,508.25)
2005	\$ (26,508.25)			\$ (26,508.25)
2006	\$ (26,508.25)			\$ (26,508.25)
2007	\$ (26,508.25)			\$ (26,508.25)
2008	\$ (26,508.25)			\$ (26,508.25)

Ending Balance= \$ (26,508.25)

Exhibit "A"  
In re S&P Associates, General Partnership  
Kenn Jordan ITF Corchia

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1997		\$ 25,000.00		\$ 25,000.00
1998	\$ 25,000.00		\$ (30,044.12)	\$ (5,044.12)
1999	\$ (5,044.12)		\$ (170.96)	\$ (5,215.08)
2000	\$ (5,215.08)			\$ (5,215.08)
2001	\$ (5,215.08)			\$ (5,215.08)
2002	\$ (5,215.08)			\$ (5,215.08)
2003	\$ (5,215.08)			\$ (5,215.08)
2004	\$ (5,215.08)			\$ (5,215.08)
2005	\$ (5,215.08)			\$ (5,215.08)
2006	\$ (5,215.08)			\$ (5,215.08)
2007	\$ (5,215.08)			\$ (5,215.08)
2008	\$ (5,215.08)			\$ (5,215.08)

Ending Balance= \$ (5,215.08)

Exhibit "A"  
In re P&S Associates, General Partnership  
Robert A. Uchin Revocable Trust

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
2003	\$ -	\$ 150,000.00	\$ -	\$ 150,000.00
2004	\$ 150,000.00	\$ 100,000.00	\$ -	\$ 250,000.00
2005	\$ 250,000.00	\$ -	\$ -	\$ 250,000.00
2006	\$ 250,000.00	\$ -	\$ -	\$ 250,000.00
2007	\$ 250,000.00	\$ -	\$ (338,751.16)	\$ (88,751.16)
2008	\$ (88,751.16)	\$ -	\$ (4,195.05)	\$ (92,946.21)

Ending Balance= \$ (92,946.21)

Exhibit "A"  
In re P&S Associates, General Partnership  
Susan E. Molchan & Thomas A. Whiteman

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 60,000.00		\$ 60,000.00
1994	\$ 60,000.00	\$ 21,000.00		\$ 81,000.00
1995	\$ 81,000.00	\$ 29,000.00		\$ 110,000.00
1996	\$ 110,000.00	\$ 38,000.00	\$ (80,000.00)	\$ 68,000.00
1997	\$ 68,000.00	-	\$ (80,000.00)	\$ (12,000.00)
1998	\$ (12,000.00)	-	\$ (56,438.59)	\$ (68,438.59)
1999	\$ (68,438.59)	-	\$ (75.48)	\$ (68,514.07)
2000	\$ (68,514.07)	-		\$ (68,514.07)
2001	\$ (68,514.07)	-		\$ (68,514.07)
2002	\$ (68,514.07)	-		\$ (68,514.07)
2003	\$ (68,514.07)	-		\$ (68,514.07)
2004	\$ (68,514.07)	-		\$ (68,514.07)
2005	\$ (68,514.07)	-		\$ (68,514.07)
2006	\$ (68,514.07)	-		\$ (68,514.07)
2007	\$ (68,514.07)	-		\$ (68,514.07)
2008	\$ (68,514.07)	-		\$ (68,514.07)

Ending Balance= \$ (68,514.07)

## *EXHIBIT B*

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**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

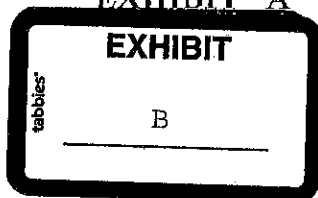
1.02 The Partnership shall be organized as a general partnership under the Uniform Partnership Law of the state of Florida. Following the execution of this Agreement, the partners shall execute or cause to be executed and filed any documents or instruments with such authorities that may be necessary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

1

EXHIBIT "A"

EXHIBIT

B





### 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.

## 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 principle 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 remove 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 devices 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.

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#### 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.

## *EXHIBIT C*

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**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.

EXHIBIT "B"

EXHIBIT

tabbies

#### 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.

### 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 principle 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, telecopied, 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.

13

#### 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.

## ***EXHIBIT D***

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IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL  
CIRCUIT, IN AND FOR BROWARD  
COUNTY, FLORIDA

CASE NO. 12-24051 1071  
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone  
Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc.  
Pension Trust, Carone Family Trust, Carone Marital  
Trust #1 UTD 1/26/00 and Matthew D. Carone  
Revocable Trust, JAMES JORDAN, as Trustee for  
the James A. Jordan Living Trust, ELAINE  
ZIFFER, an individual, and FESTUS AND HELEN  
STACY FOUNDATION, INC., a Florida  
corporation,

Plaintiffs,

v.

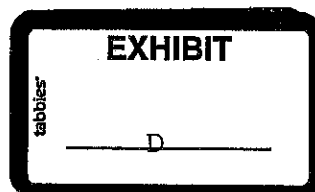
MICHAEL D. SULLIVAN, individually,

Defendant.

**AGREED ORDER RESOLVING PLAINTIFFS'  
EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

THIS CAUSE came before the Court on Plaintiffs' Emergency Motion for Temporary Injunction, and this Court having been advised of an agreement between the parties and being otherwise duly advised in the premises, it is hereby ORDERED that:

1. This Order implements the agreement of the Parties and is entered on an agreed basis. Plaintiffs' Emergency Motion for Temporary Injunction is resolved as provided herein.
2. Defendant Michael D. Sullivan ("Defendant") shall resign as Managing General Partner of both P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together with P&S, the "Partnerships"), and consents to the appointment of Margaret J. Smith ("Ms. Smith") as Managing General Partner in his



stead. Plaintiffs' agreement to allow Defendant to resign is not a waiver of any positions asserted in this action.

3. Ms. Smith is deemed the Managing General Partner of the Partnerships effective upon entry of this Order and will remain as such unless and until she withdraws from her role as Managing General Partner, or is removed consistent with the terms of the Partnership Agreements.
4. As Managing General Partner, Ms. Smith will be given full access to all of the Partnerships' books, records, assets and property and will be afforded all of the rights and duties of a Managing General Partner, including but not limited to those contemplated by Article 8.02 of each of the Partnerships' respective Partnership Agreements.
5. Defendant does not now and will not in the future challenge the appointment of Ms. Smith as Managing General Partner on August 17, 2012. Defendant agrees that he is no longer authorized to act in any capacity as Managing General Partner of the Partnerships, and is to direct all Partnership business to Ms. Smith. In so consenting to his withdrawal as Managing General Partner, Defendant reserves all other rights and defenses, and such consent to Ms. Smith's appointment shall not be deemed or considered an admission of liability either on his own behalf or on behalf of any of his employees, affiliates, assigns or agents.
6. The Parties further reserve all rights with respect to the action styled *P&S Associates, et al. v. Roberta Alves, et al.*, Case No. 2012CA013587, currently pending in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County (the "Interpleader Case"). Defendant may not act as representative or Managing General Partner of the Partnerships with respect to that action. However, the Parties specifically agree, as a condition of the

relief provided herein, that the Interpleader Case will not be unilaterally dismissed by Ms. Smith in her capacity as the Managing General Partner of the Partnerships. Without prejudice to the rights of the Managing General Partner pursuant to paragraphs 7.05 and 8.02 of the Partnership Agreements, it is the intent of the Parties that the Interpleader Action provide the basis for the methodology used to determine how distributions will be made to partners, *i.e.*, without limitation, based on the amount in the partner's capital account (last statement balance), in the amount of the net investment of the account holder over the life of the account, or based on other equitable principles. Plaintiffs reserve all defenses to the Interpleader Action, and do not, by virtue of this Order, concede that venue in Palm Beach County is appropriate.

7. On or before September 5, 2012, Defendant shall provide to Ms. Smith all books and records not previously provided to Plaintiffs or their representatives, including electronic records of the Partnerships. Subject to Defendant's right to raise any written objection under the Florida Rules of Civil Procedure, Defendant shall provide the books and records of JS&P Associates, General Partnership, and SPJ Investments, Ltd. Defendant has represented that he does not have custody, possession or control of the books or records, electronic or otherwise, of Guardian Angel Trust, LLC. Defendant further agrees to use his best efforts to insure an efficient, orderly and smooth transition from his role as Managing General Partner to Ms. Smith's role as Managing General Partner.
8. This case is hereby stayed pending further order of the Court, but for a period of not less than 60 days, without prejudice to the rights of any parties to this action. This stay will be lifted upon a motion by either party.



9. This Order is binding on all Parties, including Ms. Smith, who is not a named party but has submitted herself to the jurisdiction of this Court by accepting the appointment as Managing General Partner as provided in paragraph 3 above.

10. Defendant, by agreeing to the terms of this Order specifically denies and does not admit any liability or wrongdoing and nothing in this Order shall constitute any finding of liability or wrongdoing either by Defendant or any of his employees, affiliates, assigns or agents. It is Defendant's position that he has agreed to the relief herein to preserve the resources of the Partnerships.

DONE AND ORDERED in Chambers in Broward County, Ft. Lauderdale, Florida, on this \_\_\_\_\_ day of August, 2012.

JEFFREY E. STREIFELD

AUG 29 2012

JEFFREY E. STREITFELD  
CIRCUIT COURT JUDGE

A TRUE COPY

Copies furnished to:

All Counsel of Record

## *EXHIBIT E*

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GLASSRATNER

November 13, 2012

Congregation of the Holy Ghost - Western Providence  
1700 West Alabama Street  
Houston, TX 77087

Re: P&S Associates, General Partnership  
Case No.: 12-24051

Dear Sir or Madam:

Please be advised that on August 29, 2012, Michael D. Sullivan resigned and Margaret J. Smith was appointed as Managing General Partner of P&S Associates, General Partnership ("P&S" or the "Partnership"). Pursuant to §8.02 of the Amended and Restated Partnership Agreement dated December 1994, "the Managing General Partner [is] authorized and empowered to carry out and implement any and all purposes of the Partnership" including but not limited to (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".

Review of the Partnership books and records as of December 31, 2008 indicates you received funds in excess of contributions totaling \$182,532.35. Enclosed for your reference as **Exhibit A** is the detail of the funds contributed and funds disbursed from your capital account from December 1992 through December 2008. The immediate return of funds totaling \$182,532.35 to P&S is hereby requested.

To encourage a speedy and effective resolution of this matter prior to the commencement of litigation against you, we will accept \$164,279.12 in full satisfaction of the amount claimed, if paid within 10 calendar days of the date of this letter. This represents a 10% discount of the amount which the Partnership may sue you for if this matter is not resolved as set forth above.

Accordingly, we demand payment of \$164,279.12 in immediately available U.S. funds within 10 calendar days of the date of this letter, payable to:

Berger Singerman, LLP Trust Account  
Attn: Eitan Mark, Esq.  
1450 Brickell Avenue  
Suite 1900  
Miami, FL 33131

In the absence of a timely, conforming payment, Berger Singerman, on behalf of P&S, will take appropriate action, including the filing of a Complaint seeking recovery of all sums due, plus interest and costs of collection.

ATLANTA | CHICAGO | IRVINE | LA | MIAMI | NASHVILLE | NEW YORK | PHILADELPHIA | TAMPA  
1101 BRICKELL PLAZA, SUITE 5-503 | MIAMI, FL 33131 | TEL 305.356.6092 | FAX 305.356.7039 | WWW.GLASSRATNER.COM

EXHIBIT

E

November 13, 2012

Page 2

Be assured that we want to treat everyone fairly and to minimize the cost of responding to this demand letter for return of funds. Should you wish to do so, we are willing to schedule a call or meeting with you to discuss this matter. However, because time is of the essence, and to avoid litigation, we must receive either payment, a request for a timely call or meeting or an explanation (including copies of all cancelled checks, wire transfer advices and relevant agreements) of why you do not owe the sum demanded within 10 calendar days of this letter. If we elect to forbear from the commencement of litigation, entry into an acceptable tolling agreement may be required. To discuss this matter further, you may contact me via email at [msmith@glassrainer.com](mailto:msmith@glassrainer.com) or by phone at 305-358-6692.

Sincerely,



Margaret J. Smith  
[msmith@glassrainer.com](mailto:msmith@glassrainer.com)

P & S Associates, General Partnership  
General Partner Statement - Cash Basis

Bank	Account	Transferor/ Transferee	Statement Clearing Date	Check #	General Partner	Funds Received	Funds Disbursed	Net Funds Received (Disbursed)
S.O.A.	3-907087-9		12/20/99		Congregation of the Holy Ghost - Western Providence	\$ 200,000.00		
S.O.A.	3-907087-14		10/22/99		Congregation of the Holy Ghost - Western Providence	100,000.00		
S.O.A.	3-907087-9		01/04/97	1415	Congregation of the Holy Ghost - Western Providence		5,339.93	
S.O.A.	3-907087-9		04/04/97	1431	Congregation of the Holy Ghost - Western Providence		8,258.76	
S.O.A.	3-907087-9		07/05/97	1445	Congregation of the Holy Ghost - Western Providence		8,449.46	
S.O.A.	3-907087-17		10/08/97	1483	Congregation of the Holy Ghost - Western Providence		6,072.05	
S.O.A.	3-907087-3		01/08/98	1474	Congregation of the Holy Ghost - Western Providence		6,557.58	
S.O.A.	3-907087-8		08/08/98	1492	Congregation of the Holy Ghost - Western Providence		6,654.72	
S.O.A.	3-907087-2		07/06/98	1504	Congregation of the Holy Ghost - Western Providence		6,950.37	
SouthTrust	39-078-873		10/07/98	1500	Congregation of the Holy Ghost - Western Providence		6,800.00	
SouthTrust	39-078-873		01/14/99	1517	Congregation of the Holy Ghost - Western Providence		5,745.43	
SouthTrust	39-078-873		04/21/99	1530	Congregation of the Holy Ghost - Western Providence		6,656.28	
SouthTrust	39-078-873		07/19/99	1549	Congregation of the Holy Ghost - Western Providence		5,636.92	
SouthTrust	39-078-873		10/22/99	1564	Congregation of the Holy Ghost - Western Providence		7,102.15	
SouthTrust	39-078-873		01/19/00	1579	Congregation of the Holy Ghost - Western Providence		7,074.41	
SouthTrust	39-078-873		04/17/00	1592	Congregation of the Holy Ghost - Western Providence		6,880.49	
SouthTrust	39-078-873		07/17/00	1710	Congregation of the Holy Ghost - Western Providence		7,006.05	
SouthTrust	39-078-873		10/19/00	1727	Congregation of the Holy Ghost - Western Providence		7,158.59	
SouthTrust	39-078-873		01/11/01	1735	Congregation of the Holy Ghost - Western Providence		7,071.63	
SouthTrust	39-078-873		04/11/01	1755	Congregation of the Holy Ghost - Western Providence		6,622.48	
SouthTrust	39-078-873		07/15/01	1773	Congregation of the Holy Ghost - Western Providence		6,875.46	
SouthTrust	39-078-873		10/25/01	1784	Congregation of the Holy Ghost - Western Providence		7,007.55	
SouthTrust	39-078-873		01/24/02	1813	Congregation of the Holy Ghost - Western Providence		5,856.61	
SouthTrust	39-078-873		04/23/02	1850	Congregation of the Holy Ghost - Western Providence		6,021.75	
SouthTrust	39-078-873		07/16/02	1854	Congregation of the Holy Ghost - Western Providence		6,886.72	
SouthTrust	39-078-873		07/16/02	1863	Congregation of the Holy Ghost - Western Providence		217,000.00	
SouthTrust	39-078-873		01/23/03	1908	Congregation of the Holy Ghost - Western Providence		9,477.41	
SouthTrust	39-078-873		01/31/03	1913	Congregation of the Holy Ghost - Western Providence		619.99	
Providence Total						\$ 200,000.00	\$ 342,592.35	\$ (142,592.35)

DRAFT  
Privileged and Confidential

## *EXHIBIT F*

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IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL  
CIRCUIT, IN AND FOR BROWARD  
COUNTY, FLORIDA  
CASE NO. 12-24051 (07)  
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone  
Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc.  
Pension Trust, Carone Family Trust, Carone Marital  
Trust #1 UTD 1/26/00 and Matthew D. Carone  
Revocable Trust, JAMES JORDAN, as Trustee for  
the James A. Jordan Living Trust, ELAINE  
ZIFFER, an individual, and FESTUS AND HELEN  
STACY FOUNDATION, INC., a Florida  
corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendants.

ORDER APPOINTING CONSERVATOR

THIS CAUSE came before the Court at 10:00 a.m. on December 18, 2012, and at 1:30 p.m. on December 21, 2012, upon Plaintiffs' Motion to Appoint Receiver (the "Motion"), and the Court having reviewed the Motion, heard from counsel, and being otherwise duly advised in the premises, finds good cause to grant the relief requested.

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Appointment. Philip J. Von Kahle is hereby appointed Conservator (the "Conservator") of P&S, General Partnership and S&P, General Partnership (together, the "Partnerships").

2. Oath. Within twenty (20) days of the date of this Order, the Conservator shall file with this Court an Oath of Conservator.



3. Bond. The Conservator shall post a surety bond in the amount of \$25,000.00 with the Clerk of Court within thirty (30) days of the date of this Order.

4. Possession of Conservatorship Property. The Conservator shall immediately take possession of all property of the Partnerships. The property of the Partnerships, to the extent it exists, shall include the accounts, books of account, checkbooks, assets, files, papers, contracts, records, documents, monies, securities, choses in action, keys, pass codes and passwords, computer data, archived and historical data, and all other property, of the Partnerships including but not limited to any and all funds being held by any third-party on behalf of the Partnerships (the "Conservatorship Property"), which are within the jurisdiction of this Court, except as is otherwise set forth herein, and shall retain custody, except as is set forth hereinafter, of all such Conservatorship Property, until further order of this Court. All persons and corporations now or hereafter in possession of any Conservatorship Property, or any part thereof, shall forthwith turn over such possession to the Conservator. Further, the Partnerships and any persons in active participation with them, shall grant the Conservator unfettered access to any accounts, records, documents, files, plans, engineering reports, permits (whether expired or not), and computer equipment owned by the Partnerships.

The Conservatorship Property includes, but is not limited to, those assets and funds held by Helen Davis Chaitman, Esq. and Becker & Poliakoff LLP on behalf of or for the benefit of the Partnerships. The Conservatorship Property also includes, but is not limited to, all of the books and records of the Partnerships that have been turned over to and are currently in the possession of Margaret Smith and/or Glass Ratner.

All Conservatorship Property must be returned to or transferred to the Conservator within seven (7) days of the date of this Order. All property turned over to the Conservator shall be



delivered subject to the lien rights of any parties, including the rights of any attorneys to charging, retaining or other common-law liens, and the transfer, delivery or otherwise placing the property in the possession of the Conservator shall not prejudice, destroy or otherwise affect any parties' lien rights..

The Conservator may at any time, apply to this Court for further powers and authority as may be necessary and appropriate to carry out the purposes of this Order.

5. Conservator's Powers. The Conservator is empowered, directed and authorized by this Court to act on its behalf as the Conservator of the Conservatorship Property, and to do any and all things necessary for the proper management, wind-down, preservation, maintenance, protection and administration of the Conservatorship Property. The Conservator shall have and possess all powers and rights to facilitate its management and preservation, maintenance, protection and administration including, but not limited to, the following:

(a) Winding down of the affairs of the Partnerships and distribution of assets of the Partnerships, including following up on the Interpleader action filed with the Court to determine how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions;

(b) Reviewing, prosecuting, dismissing, initiating and/or investigating any and all potential claims that may be brought or have been brought on behalf of the Partnerships;

(c) Taking any action which could lawfully be taken by the managing general partner of the Partnerships pursuant to the Partnership Agreements of the respective Partnerships;

(d) Investing the Partnerships' funds in an interest-bearing account or accounts at one or several federally insured banks and/or depository institutions;

(e) Calling a Special Meeting of either or both of the Partnerships;

(f) Paying all fees or costs less than \$2,500.00 out of the Conservatorship Property reasonably necessary to conserve, maintain, secure, operate, preserve and protect the Conservatorship Property, including all such fees or costs incurred prior to date of this Order;

(g) Paying any taxes, assessments and charges in the nature thereof, due in connection with the Conservatorship Property;

(h) Opening accounts in the name of the Conservator in order to fulfill his duties pursuant to this Order;

(I) Hiring legal counsel to assist the Conservator in performing the responsibilities with respect to the Conservatorship Property as set forth in this Order. Nothing contained herein shall require the Conservator to expend any of his own funds.

6. Previous Elections of Managing General Partners. The previous elections of Margaret J. Smith and/or Steven Jacob are moot, provided however, that any party may raise the validity of the election of Margaret J. Smith or anyone Ms. Smith allegedly retained on behalf of the partnerships in connection with any application for compensation.

7. Specific Duties of Conservator. The Conservator shall manage, preserve, protect, and maintain the Conservatorship Property in a reasonable, prudent, diligent and efficient manner. Without limitation of that general duty, the Conservator shall have the following specific duties:

(a) Operating Account. The Conservator may establish and maintain, at a bank whose deposits are insured by the Federal Deposit Insurance Corporation, a separate operating account or accounts into which the Conservator shall deposit all receipts, if any, related to the Conservatorship Property and from which the Conservator shall disburse all amounts due

and payable as reasonable, necessary and proper operating expenses of the Conservatorship Property, subject to the terms of this Order and the availability of funds.

(b) Records. The Conservator shall maintain a system of books and accounts concerning the maintenance of the Conservatorship Property. Upon reasonable notice, and at all reasonable times, the general partners of the Partnerships, and their respective agents, shall have reasonable access to such records, accounts and books and to all other material pertaining to the operation of the Conservatorship Property, all of which the Conservator agrees to keep safe, available and separate from any records not having to do with the operation of the Conservatorship Property.

(c) Legal Requirements. The Conservator shall ensure that all aspects of the Conservatorship Property, and its operation, management, and development, comply with any and all laws, regulations, orders or requirements affecting the Conservatorship Property having jurisdiction there over.

(d) No Waste. Without the approval of the Court, the Conservator shall not suffer, cause or permit: (i) any removal of any Conservatorship Property; nor (ii) any waste of the Conservatorship Property or any of the components thereof.

8. Net Proceeds. Except as otherwise authorized in this Order, all proceeds from the Partnerships' actions shall be held by Conservator in a Conservatorship account or accounts, pending further Order of this Court, subject to paragraph 12, below.

9. No Interference. Except as otherwise requested or authorized by the Conservator, or until further order of this Court, all persons are hereby enjoined from: (i) interfering in any manner with the management of the Conservatorship Property by the Conservator as hereinabove

described until further order of this Court; or (ii) acting or purporting to act on behalf of the Partnerships, Conservatorship Property, and/or the Conservator.

10. Consultation. The Conservator shall meet or confer over the telephone, at least once, with Michael D. Sullivan, Steven Jacob, and Margaret J. Smith, to gather information that may assist him in carrying out his duties as Conservator, for the duration and to the extent that the Conservator deems necessary. The Conservator is encouraged, but is not required, to discuss the affairs of the Partnerships with other individuals as he deems it necessary and using his best judgment.

11. Consultants and Professionals. With the permission of the Court upon appropriate application and notice to all parties in interest, the Conservator may be empowered to retain others to provide legal or accounting services as may be necessary during the period of Conservatorship. All such persons shall be compensated in accordance with Paragraph 12 below.

12. Fees. The Conservator shall be compensated at a rate of \$ 300 per hour, plus the reasonable and necessary out-of-pocket expenses incurred by the Conservator on behalf of the Conservatorship Property, excluding travel, lodging and meal expenses. The Conservator and any professionals the Conservator retains after Court approval shall be authorized to file applications for compensation every sixty (60) days. Applications shall be filed in full with the Court only and shall not be served. The notice of hearing on the application shall be served on all partners and other parties in interest and shall set forth a) the amount of fees and costs that the applicant is seeking and b) a bulletin that any partner or other party in interest may obtain a full copy of the application by contacting the applicant, and provide the name of a person, email

address and telephone number at the applicant's office who can provide a copy of the application.

13. Creation of Website. In light of the significant number of interested parties, a website shall be set up within 20 days of entry of this order to provide notice to all Partners of ongoing developments, including but not limited to reports contemplated by paragraph 12. A notice of the existence of this website shall be mailed to each of the Partners listed on the certificate of service attached to Plaintiffs' Motion to Appoint Receiver. In order to preserve the assets of the Partnerships, any postings on the website will be deemed adequate notice to all Partners unless a Partner specifically requests for information to be mailed to him/her.

14. Applications for Reimbursement. Any accountants, attorneys, consultants and other professionals that have purported to incur costs and fees on behalf of the Partnerships prior to the date of this Order may submit an application within twenty-one (21) calendar days of the date of this Order to be reimbursed by the Partnerships for those amounts. The Conservator shall first review the fee/cost requests to determine a) if they are expenses properly chargeable to the Partnerships and b) if the fees and costs are reasonable. The Conservator shall then present the requests to the Court along with his recommendations and shall serve a notice of hearing in the same manner and that contains the same information as required in Paragraph 12 above. The Court shall make the final determination on any requests for fees and costs, and all partners and other parties in interest shall have the right to object.

15. Judicial Immunity. The Conservator and the Conservator's attorneys and agents: (i) may rely on any and all outstanding court orders, judgments, decrees and rules of law, and shall not be liable to anyone for their own good faith compliance with any such order, judgment, decree or rule of law; (ii) may rely on, and shall be protected in any action upon, any resolution,

certificate, statement, opinion, report, notice, consent, or other document believed by them to be genuine and to have been signed or presented by the proper parties; (iii) shall not be liable to anyone for their good faith compliance with their duties and responsibilities as a Conservator, or as attorney or agent for Conservator; and (iv) shall not be liable to anyone for their acts or omissions, except upon a finding by this Court that such acts or omissions were outside the scope of their duties or were grossly negligent or constitute misfeasance. Except for matters set forth in subsection (iv) of the preceding sentence, persons dealing with the Conservator shall only look to the Conservatorship assets and bond posted by the Conservator to satisfy any liability, and neither the Conservator nor his attorneys or his agents shall have any personal liability to satisfy any such obligation.

16. Further Instructions. The Conservator may at any time upon notice to all partners and parties in interest, apply to this Court for further or other instructions or powers, whenever such instructions or additional powers shall be deemed necessary in order to enable him to perform properly and legally the duties of his Conservatorship and to maintain, operate, protect and preserve the real property.

17. Duration. This Conservatorship will continue for such time until the Court enters an order terminating the Conservatorship and discharging the Conservator; provided that to the extent the Conservator no longer desires to serve in that capacity, upon notice to Plaintiff and Borrower, the Conservator may apply to the Court for termination of his appointment.

18. Jurisdiction. Jurisdiction of this action is retained to enter further orders as are appropriate.

DONE AND ORDERED in Chambers at Broward County, Florida, on this \_\_\_\_ day of  
January, 2013.

JEFFREY E. STREITFELD

JAN 17 2013

~~A TRUE COPY~~  
HONORABLE JEFFREY E. STREITFELD  
Circuit Court Judge

Copies furnished to:

See attached service list

## ***EXHIBIT G***

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Leonard K. Samuels  
(954) 712-5142  
L.Samuels@bergersingerman.com

October 18, 2013

Congregation Of the Holy Ghost- Western Province, Inc.  
Attention: Marc S. Dobin, Esq.  
Dobin Law Group, PA  
500 University Boulevard, Suite 205  
Jupiter, FL 33458

Re: P&S Associates, General Partnership  
Case No.: 12-34121

Dear Mr. Dobin:

I am counsel for the court-appointed Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P," together, the "Partnerships").

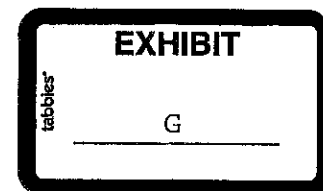
On October 7, 2013, Judge Streitfeld entered an order approving a method of distributing the Partnerships' assets to their respective partners in furtherance of winding up the Partnerships' business. As part of winding up the Partnership's business, each partner is entitled to a settlement of all partnership accounts.

In order to effectuate a settlement of partnership accounts, Florida law mandates that a partner contribute an amount equal to any excess of the charges over credits in the partner's account. *See Fla. Stat. § 620.8807.*

As of the date of this letter, the books and records of P&S state that your account has an excess of charges over credits because you have received \$182,532.35 from P&S in excess of your contributions to P&S, and there are partners in P&S who have received distributions from P&S that are less than their contributions. Enclosed as **Exhibit A** is a document setting forth the funds contributed to and disbursed from your P&S capital account from December 1992 through December 2008.

Therefore, pursuant to your obligation to contribute to P&S at the winding up of its business, **please pay the sum of \$182,532.35 no later than October 28, 2013, to:**

Berger Singerman, LLP Trust Account  
Attn: Leonard Samuels, Esq.  
350 E. Las Olas Blvd.  
Suite 1000  
Ft. Lauderdale, FL 33301

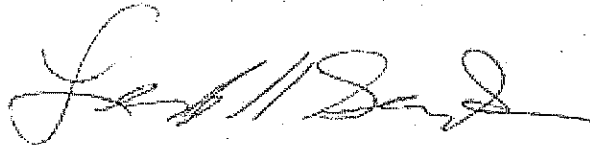


Congregation Of the Holy Ghost- Western Province, Inc.  
Marc S. Dobin, Esq.  
October 18, 2013  
Page 2

In the absence of a timely, conforming payment, appropriate action will be taken to recover this sum from you.

Should you have any questions, please do not hesitate to contact my colleague, Zachary Hyman, via e-mail at [zhyman@bergersingerman.com](mailto:zhyman@bergersingerman.com) or by phone at 954-712-5180. However, we must receive payment of the above amount no later than October 28, 2013.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard Samuels", written in a cursive style.

Leonard Samuels

Enclosure

Exhibit "A"  
In re P&S Associates, General Partnership  
Congregation of the Holy Ghost- Western Province, Inc.

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1995	\$	\$ 100,000.00		\$ 100,000.00
1996	\$ 100,000.00	\$ 100,000.00	\$ (5,539.53)	\$ 194,460.47
1997	\$ 194,460.47	\$ -	\$ (26,034.86)	\$ 168,425.61
1998	\$ 168,425.61	\$ -	\$ (26,718.52)	\$ 141,707.09
1999	\$ 141,707.09	\$ -	\$ (27,704.67)	\$ 114,002.42
2000	\$ 114,002.42	\$ -	\$ (28,314.78)	\$ 85,687.64
2001	\$ 85,687.64	\$ -	\$ (27,718.11)	\$ 57,969.53
2002	\$ 57,969.53	\$ -	\$ (230,508.47)	\$ (172,538.94)
2003	\$ (172,538.94)	\$ -	\$ (9,993.41)	\$ (182,532.35)
2004	\$ (182,532.35)	\$ -		\$ (182,532.35)
2005	\$ (182,532.35)	\$ -		\$ (182,532.35)
2006	\$ (182,532.35)	\$ -		\$ (182,532.35)
2007	\$ (182,532.35)	\$ -		\$ (182,532.35)
2008	\$ (182,532.35)	\$ -		\$ (182,532.35)

Ending Balance= \$ (182,532.35)

# *EXHIBIT A*

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**IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BROWARD COUNTY,  
FLORIDA**

Case No. 12-034121 (04)

P&S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited  
partnership; S&P ASSOCIATES,  
GENERAL PARTNERSHIP, a Florida  
limited partnership; Philip von Kahle as  
Conservator of P&S ASSOCIATES,  
GENERAL PARTNERSHIP, a Florida  
limited partnership; and S&P  
ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited  
partnership,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE  
TRUST, a charitable trust; DIANE M.  
DEN BLEYKER, an individual; ETTOH  
LTD., a Florida limited partnership; JOHN  
and/or LOIS COMBS, an individual;  
ERSICA P. GIANNA, Trustee;  
CATHERINE B. AND BERRY C.  
SMITH, individuals; EDNA A. PROFE  
REV. LIV. TRUST; HERBERT IRWIG  
REVOCABLE TRUST; HAMPTON  
FINANCIAL GROUP, INC., a Florida  
corporation; EDITH ROSEN, an  
individual; RICHARD F. AND BETTE  
WEST, individuals; GREGG WALLICK,  
an individual; JAMES AND VALERIA  
BRUCE JUDD, individuals; JULIANNE  
M. JONES, an individual; JESSE A. AND  
LOIS GOSS, Trustees; LISA RYAN, an  
individual; GERTRUDE GORDON, an  
individual; SAM ROSEN, an individual;  
PARAGON VENTURES, LTD., an  
Austrian limited partnership; HOLY  
GHOST FATHERS INTERNATIONAL  
FUND #2, a Tax-exempt Organization;



SUSAN E. MOLCHAN OR THOMAS A. WHITEMAN, individuals; JANET B. MOLCHAN TRUST DTD 05/19/94; ROBERT A. UCHIN REV TRUST; HOLY GHOST FATHERS, COMPASSION FUND, a Tax-exempt Organization; HOLY GHOST FATHERS HG-MOMBASA, a Tax-exempt Organization; HOLY GHOST FATHERS INTERNATIONAL FUND #1, a Tax-exempt Organization; HOLY GHOST FATHERS HG-IRELAND/KENEMA, a Tax-exempt Organization; CONGREGATION OF THE HOLY GHOST - WESTERN PROVIDENCE, a Tax-exempt Organization; ABRAHAM OR RITA NEWMAN, individuals; JOHN J. CROWLEY, and/or JONATHAN CROWLEY, individuals; ALEX E. MOLCHAN TRUST DTD 05/19/94; and ANN OR MICHAEL SULLIVAN, individuals,

Defendants.

/

### **AMENDED COMPLAINT**

P&S ASSOCIATES, GENERAL PARTNERSHIP (“P&S”), S&P ASSOCIATES, GENERAL PARTNERSHIP (“S&P”), and Philip von Kahle, as conservator of P&S Associates, General Partnership and S&P Associates, General Partnership (“S&P”) (“Conservator”), by and through their undersigned attorneys, sue Defendants JANET A. HOOKER CHARITABLE TRUST, a charitable trust, DIANE M. DEN BLEYKER, an individual, ETTOH LTD., a Florida limited partnership, JOHN AND/OR LOIS COMBS, an individual, ERSICA P. GIANNA, Trustee, CATHERINE B. AND BERRY C. SMITH, individuals, EDNA A. PROFE REV. LIV. TRUST, HERBERT IRWIG REVOCABLE TRUST, EDITH ROSEN, an individual, RICHARD F. AND BETTE WEST, individuals, GREGG WALLICK, an individual, JAMES AND

VALERIA BRUCE JUDD, individuals, JULIANNE M. JONES, an individual, JESSE A. AND LOIS GOSS, Trustees, LISA RYAN, an individual, GERTRUDE GORDON, an individual, SAM ROSEN, an individual, PARAGON VENTURES, LTD., an Austrian limited partnership HOLY GHOST FATHERS INTERNATIONAL FUND #2, a Tax-exempt Organization, SUSAN E. MOLCHAN OR THOMAS A. WHITEMAN, individuals, JANET B. MOLCHAN TRUST DTD 05/19/94, ROBERT A. UCHIN REV TRUST, HOLY GHOST FATHERS, COMPASSION FUND, a Tax-exempt Organization, HOLY GHOST FATHERS HG-MOMBASA, a Tax-exempt Organization, HOLY GHOST FATHERS INTERNATIONAL FUND #1, a Tax-exempt Organization, HOLY GHOST FATHERS HG-IRELAND/KENEMA, a Tax-exempt Organization, CONGREGATION OF THE HOLY GHOST - WESTERN PROVIDENCE, a Tax-exempt Organization, ABRAHAM OR RITA NEWMAN, individuals, JOHN J. CROWLEY, and/or JONATHAN CROWLEY, individuals, and ALEX E. MOLCHAN TRUST DTD 05/19/94, and allege as follows:

### **PARTIES, JURISDICTION, AND VENUE**

1. This is an action for breach of statutory duty, breach of contract, unjust enrichment, money had and received, and fraudulent transfer, exceeding \$15,000.00, exclusive of interest, costs, and attorneys' fees. All events giving rise to the claims alleged herein occurred in Broward County, Florida.

2. P&S and S&P are General Partnerships (together the "Partnerships").

3. The Conservator is currently the court-appointed Conservator of P&S and S&P.

4. Defendant Janet A. Hooker Charitable Trust, a charitable trust, invested \$4,000,000.00 in S&P and received \$4,859,880.41.

5. Defendant Diane M. Den Bleyker is *sui juris*. Defendant Diane M. Den Bleyker invested \$827,130.64 in S&P and received \$1,120,988.31.

6. Defendant Ettoh Ltd. is a Florida limited partnership. Defendant Ettoh Ltd. invested \$510,000.00 in S&P and received \$797,454.40.

7. Defendants John and/or Lois Combs are *sui juris*. Defendants John and/or Lois Combs invested \$225,000.00 in S&P and received \$401,761.03.

8. Defendant Ersica P. Gianna, Trustee is *sui juris*. Defendant Ersica P. Gianna, Trustee invested \$195,000.00 in S&P and received \$354,349.71.

9. Defendant Catherine B. Smith is *sui juris* and Defendant Berry C. Smith is deceased. Defendants Catherine B. and Berry C. Smith invested \$185,000.00 in S&P and received \$340,572.02.

10. Defendant Edna A. Profe Rev. Liv. Trust is, upon information and belief, organized and existing under the laws of Florida. Defendant Edna A. Profe Rev. Liv. Trust invested \$225,000.00 in S&P and received \$337,538.76.

11. Defendant Herbert Irwig Revocable Trust is *sui juris*. Defendant Herbert Irwig Revocable Trust invested \$50,369.58 in S&P and received \$182,798.16.

12. Defendant Edith Rosen is *sui juris*. Defendant Edith Rosen invested \$139,000.00 in S&P and received \$253,956.18.

13. Upon information and belief, Defendants Richard F. and Bette West are *sui juris*. Defendants Richard F. and Bette West invested \$152,000.00 in S&P and received \$237,032.70.

14. Defendant Gregg Wallick is *sui juris*. Defendant Gregg Wallick invested \$1,030,375.00 in S&P and received \$1,115,349.47.



15. Defendants James Judd and Valeria Bruce Judd are *sui juris*. Defendants James Judd and Valeria Bruce Judd invested \$180,000.00 in S&P and received \$260,000.00.

16. Defendant Julianne M. Jones is *sui juris*. Defendant Julianne M. Jones invested \$219,826.83 in S&P and received \$291,970.93.

17. Defendants Jesse A. and Lois Goss, Trustees are *sui juris*. Defendants Jesse A. and Lois Goss, Trustees invested \$48,705.19 in S&P and received \$120,000.00.

18. Defendant Lisa Ryan is *sui juris*. Defendant Lisa Ryan received approximately \$79,000 in excess of her share of her joint S&P Partnership account upon liquidation of her share.

19. Defendant Gertrude Gordon is *sui juris*. Defendant Gertrude Gordon invested \$47,000.00 in S&P and received \$109,180.21.

20. Defendant Sam Rosen is *sui juris*. Defendant Sam Rosen invested \$140,000.00 in both S&P and P&S and received \$191,142.13 from the Partnerships.

21. Defendant Paragon Ventures, Ltd. is an Austrian limited partnership. Defendant Paragon Ventures, Ltd. invested \$8,000,000.00 in P&S and received \$9,948,756.02.

22. Defendant Holy Ghost Fathers International Fund #2 is a Tax-exempt Organization. Defendant Holy Ghost Fathers International Fund #2 invested \$1,451,812.90 in P&S and received \$1,924,437.16.

23. Defendants Susan E. Molchan or Thomas A. Whiteman are *sui juris*. Defendants Susan E. Molchan or Thomas A. Whiteman invested \$134,000.00 in P&S and received \$216,438.59.

24. Defendant Janet B. Molchan Trust DTD 05/19/94 is, upon information and belief, organized and existing under the laws of Florida. Defendant Janet B. Molchan Trust DTD 05/19/94 invested \$125,700.00 in P&S and received \$242,643.03.

25. Defendant Robert A. Uchin Rev Trust is, upon information and belief, organized and existing under the laws of Florida. Defendant Robert A. Uchin Rev Trust invested \$250,000.00 in P&S and received \$342,946.21.

26. Defendant Holy Ghost Fathers, Compassion Fund is a Tax-exempt Organization. Defendant Holy Ghost Fathers, Compassion Fund invested \$461,235.46 in P&S and received \$725,000.00.

27. Defendant Holy Ghost Fathers HG-Mombasa is a Tax-exempt Organization. Defendant Holy Ghost Fathers HG-Mombasa invested \$153,000.00 in P&S and received \$270,000.00.

28. Defendant Holy Ghost Fathers International Fund #1 is a Tax-exempt Organization. Defendant Holy Ghost Fathers International Fund #1 invested \$1,181,331.35 in P&S and received \$1,308,617.68.

29. Defendant Holy Ghost Fathers HG-Ireland/Kenema is a Tax-exempt Organization. Defendant Holy Ghost Fathers HG-Ireland/Kenema invested \$60,000.00 in P&S and received \$217,884.63.

30. Defendant Congregation of the Holy Ghost - Western Providence is a Tax-exempt Organization. Defendant Congregation of the Holy Ghost - Western Providence invested \$200,000.00 in P&S and received \$382,532.35. (Defendant Holy Ghost Fathers International Fund #2, Defendant Holy Ghost Fathers, Compassion Fund, Defendant Holy Ghost Fathers HG-Mombasa, Defendant Holy Ghost Fathers International Fund #1, Defendant Holy Ghost Fathers

HG-Ireland/Kenema, and Defendant Congregation of the Holy Ghost - Western Providence are collectively referred to as the “Holy Ghost Entities”).

31. Defendants Abraham or Rita Newman are *sui juris*. Defendants Abraham or Rita Newman invested \$89,000.00 in P&S and received \$168,357.00.

32. Defendants John J. Crowley and/or Jonathan Crowley are *sui juris*. Defendants John J. and/or Jonathan Crowley invested \$55,000.00 in P&S and received \$116,707.18.

33. Defendant Alex E. Molchan Trust DTD 05/19/94 is, upon information and belief, organized and existing under the laws of Florida. Defendant Alex E. Molchan Trust DTD 05/19/94 invested \$75,700.00 in the P&S and received \$128,127.58.

34. A detailed list of the distributions and disbursements to the aforementioned Defendants is attached hereto as **Exhibit A**.

35. Venue is proper before this Court pursuant to Florida Statute § 47.011 because that is where the causes of action accrued, that is where the entities into which the parties’ invested reside, and this action arises from events which occurred or were due to occur in Broward County, Florida.

### **GENERAL ALLEGATIONS**

36. Each of the Partnerships is governed by a Partnership Agreement (collectively, the “Partnership Agreements”).<sup>1</sup>

37. Pursuant to the Partnership Agreements, the Partnerships were formed for the purpose of engaging in the business of investing.

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<sup>1</sup> The partnership agreements of S&P and P&S are identical in all material respects with the exception of the name of the applicable partnership entity.

38. Each of the partners in the Partnerships (the “Partners”), including, upon information and belief, Defendants, invested significant funds into one of two investment vehicles, each of which was expected to yield stable, consistent returns: S&P and P&S.

39. The purpose of each Partnership was to pool investor funds, and the former Managing General Partners of the Partnerships – Michael D. Sullivan (“Sullivan”) and Greg Powell (“Powell”) – invested the majority of those funds with Bernard L. Madoff Investment Securities, LLC.<sup>2</sup>

40. The Partnerships’ investments were to be overseen by Sullivan and Powell (the former “Managing General Partners”).<sup>3</sup> Additionally, the former Managing General Partners were to oversee the withdrawal of funds and distribution of funds from the Partnerships to the Partners.

41. Pursuant to the Partnership Agreements, the profits and losses attributable to the Partnerships were to be allocated among the Partners in the ratio of each Partner’s capital account 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 Partnerships as follows: twenty percent (20%) to the Managing General Partners and eighty percent (80%) to the Partners. A true and correct copy of the partnership agreement of S&P Associates, General Partnership is attached hereto as **Exhibit B**. A true and correct copy of the partnership agreement of P&S Associates, General Partnership is attached hereto as **Exhibit C**.

42. Distributions of profits to the Partners from the Partnerships were to be made at least once per year. Cash flow was to be distributed among all the Partners, in the ratio of each

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<sup>2</sup> Some of the funds was not invested with Bernard L. Madoff Investment Securities, LLC.

<sup>3</sup> Greg Powell is deceased.

Partner's capital account 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.

43. In other words, if the Partnerships distributed any profits to the Partners, those profits had to be distributed in equal proportion to all Partners depending on each Partner's pro rata share in the Partnerships as of the date of the distribution. *See* Sections 4.04, 5.01, and 5.02 of **Exhibits B** and **C** to the Complaint.

44. Further, no partner was considered to have breached the terms of the Partnership Agreements unless an "event of default," as described in Article Ten of the Partnership Agreements, occurred.

45. Under the Section 10.01 of the Partnership Agreements, the following constituted "events of default:"

- 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.

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- g. THE COMMITTING OR PARTICIPATION IN AN INJURIOUS ACT OF FRAUD, GROSS NEGLECT, 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.

46. Additionally, Section 10.02 of the Partnership Agreements provides that “[n]o 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 PARTNERS RECEIVED IMPROPER  
DISTRIBUTIONS FROM THE PARTNERSHIPS**

47. On August 29, 2012, this Court entered an Agreed Order by and between certain partners, acting on behalf of the Partnerships, and Michael D. Sullivan (the “Order”). Pursuant to the Order, Sullivan resigned as Managing General Partner and Margaret J. Smith (“Smith”) was deemed in his stead to be sole Managing General Partner of the Partnerships. Furthermore, Smith, as Managing General Partner, was to be given “full access to all of the Partnership’s books, records, assets and property and will be afforded all of the rights and duties of a Managing General Partner . . .” A true and correct copy of the Agreed Order is attached hereto as **Exhibit D**.

48. After an investigation of the books and records that have been made available to Smith, it was determined that Defendants did not comply with the terms of the Partnership Agreements because they received improper actual distributions from S&P and/or P&S in excess of their actual contributions to S&P and/or P&S, while other partners of S&P and/or P&S received actual distributions from the Partnerships that are less than their actual contributions to S&P and/or P&S.

49. Additionally, an investigation of the books and records of the Partnerships uncovered that the former Managing General Partners breached their fiduciary duties of loyalty and care to the Partners and the Partnerships by making distributions to certain Defendants that were not made from the Partnerships' profits but were rather made from the principal contributions of other Partners. In short, the former Managing General Partners did not invest all of the funds contributed by the Partners.

50. Due to distributions that were made in direct contravention to the plain terms of the Partnership Agreements, Defendants reaped profits from their investments in the S&P and/or P&S, while other Partners lost millions of dollars. Those distributions in excess of the Defendants' actual contributions were improper and rightfully belong to the Plaintiffs for distribution to the other Partners depending on each Partners' pro rata share.

51. After discovering the improper distributions made to Defendants, on November 13, 2012, Smith sent Demand Letters to those partners who received improper distributions. A true and correct copy of an example of the Demand Letters sent is attached hereto as **Exhibit E**.

52. The Demand Letters notified each partner who received an improper distribution of that fact and requested a return of those funds within 10 days of receipt of the letter. (Exhibit D at 1.). It further provided that if the partner who received the demand letter did not return the funds received, that legal action would be taken against it.

53. Accordingly, the Demand Letters constituted a notice as contemplated by Sections 10.01(a) and (b) of the Partnership Agreements.

54. To date, none of the Defendants who received those Demand Letters have returned the improper distributions that they received from the Partnerships.

## THE WINDING UP OF THE PARTNERSHIPS

55. In July of 2012, the Partnerships commenced an interpleader action seeking judicial oversight and direction as to the appropriate method of distributing the Partnerships' remaining assets ("Interpleader Action.").

56. In August of 2012, certain Partners filed a lawsuit against the Partnerships' former Managing General Partner, Sullivan. The lawsuit alleged that Sullivan diverted millions of Partnership dollars to himself and other insiders. *See Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051(07) (the "Conservator Suit").

57. Those Partners also sought the appointment of a neutral professional to take over the Partnerships, and pursue the Partnerships' best interests and report to the Court and Partners.

58. On or about January 17, 2013, Philip J. Von Kahle was appointed as Conservator of the Partnerships. A true and correct copy of the Order Appointing Conservator is attached hereto as **Exhibit F**. ("Order Appointing Conservator")

59. The Order Appointing Conservator has not been rescinded, modified or amended.

60. The Conservator was ordered to take possession of all property of the Partnerships. The property of the Partnerships included, the "accounts, books of account, checkbooks, assets, files, papers, contracts, records, documents, monies, securities, choses in action, keys, pass codes and passwords, computer data, archived and historical data, and all of the Partnerships including but not limited to any and all funds being held by any third-party on behalf of the Partnerships." (Exhibit F at 2).

61. Pursuant to the Order Appointing Conservator, the Conservator was provided with certain powers.



62. Specifically, the Conservator was provided with the authority to have and possess all powers and rights to facilitate its management and preservation, maintenance and protection and administration including, but not limited to, the following:

- (a) Winding down the affairs of the Partnerships and distribution of assets of the Partnerships, including following up on the Interpleader action filed with the Court to determine how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions;
- (b) Reviewing prosecuting, dismissing, initiating and/or investigating any and all potential claims that may be brought or have been brought on behalf of the Partnerships.

63. On or about May 31, 2013, the Conservator filed a Motion for Summary Judgment in the Interpleader Action, seeking a judicial determination of how the assets of the Partnerships should be distributed.

64. In his Motion, the Conservator recommended that distributions be made using the “Net Investment Method” to unwind the Partnerships, because, among others things, the Partnerships never realized any legitimate profit. Therefore, he suggested that the false profits should be omitted from the capital accounts. The Conservator’s proposed distributions would therefore initiate the winding up process as it relates to the Partnerships.

65. Under the net investment method, the partners in the Partnerships either: (1) contributed more cash to the Partnerships than they received (“Net Losers”); or (2) received more distributions from the Partnerships than they made contributions (“Net Winners”).

66. Under the Net Investment method, the Net Winners have a negative capital account, because they owe a debt to the Partnerships in the amount they received in excess of what is permitted in the Partnership Agreements.

67. Similarly, under the Partnership Agreements, because the Net Winners have an excess of charges over credits in their capital accounts in a greater proportion than other Partners of the Partnerships, certain distributions to them were not authorized under the Partnership Agreements.

68. Accordingly, under Fla. Stat. § 620.8807, Defendants are required to return the money they received in excess of their capital contributions, as a liability to be paid to the Partnerships.

69. Because the Partnerships are in the process of winding up, the Conservator sent out demand letters to certain Net Winners on October 18, 2013, requesting that they return to the Conservator all distributions that they received in excess of contributions. Those demand letters further provided that the Conservator would pursue legal action against them, if they failed to comply within 10 days of receipt of the letter. A true and correct copy of an example of the demand letters distributed is attached hereto as **Exhibit G**.

70. To date, none of the Defendants who received those demand letters have returned any money to the Conservator.

71. Plaintiffs have a bona fide cause of action against Defendants who have improperly received distributions for breach of statutory duty, breach of contract, unjust enrichment, money had and received, and fraudulent transfer pursuant to Fla. Stat. § 725.105(1)(a).

72. Plaintiffs are the proper party to the causes of action contemplated herein.

73. All conditions precedent to the bringing of this action have been performed, have occurred, have been waived or have been excused.

**COUNT I**  
**BREACH OF STATUTORY DUTY (NEGLIGENCE)**  
**(Against All Defendants)**

74. Plaintiffs reallege paragraphs 1 through 73 as if set forth in full herein.

75. Defendants' capital account with S&P and/or P&S has an excess of charges over credits because Defendants have received distributions in excess of their contributions to S&P and/or P&S, which constitutes a debt to the Partnerships.

76. The Partnerships are currently in the process of winding down, and each Partner is entitled to a settlement of all Partnership accounts.

77. Pursuant to Fla. Stat. § 620.8807, Defendants are obligated to reconcile their debts owed to either of the Partnerships, and must contribute "an amount equal to any excess of the charges over the credits" in their capital account.

78. Defendants are under a statutory duty to contribute to S&P and/or P&S an amount equal to any excess of the charges over the credits in their capital account.

79. By refusing to return the amount equal to any excess of the charges over the credits in their capital account with S&P and/or P&S, Defendants have breached their statutory duty.

80. Defendants' breach of their statutory duty has caused S&P and/or P&S to incur damages.

81. S&P and/or P&S have been damaged as a result of the breach described in Paragraph 81 because Defendants have refused to pay amounts that must be contributed to the S&P and/or P&S upon the winding up of their business.

82. Accordingly, all Defendants are required to immediately turnover all sums owed to either of the Partnerships.

**COUNT II**  
**BREACH OF CONTRACT**  
**(Against All Defendants)**

83. Plaintiffs reallege paragraphs 1 through 73 as if set forth in full herein.

84. The Partners, including Defendants, executed and agreed to the terms of the Partnership Agreements.

85. Defendants materially breached Sections 10.01(a) and (b) of the Partnership Agreements because, more than 10 days after receipt of demand letters from the Managing General Partner of the Partnerships, they failed to return the amount of distributions they received from S&P and/or P&S in excess of their actual contributions to P&S and/or S&P, while other partners of S&P and/or P&S received actual distributions from S&P and/or P&S that are less than their actual contributions to S&P and/or P&S.

86. Defendants materially breached Sections 10.01(g) of the Partnership Agreements by intentionally and willfully refusing to return Partnership funds after receiving notice of the fact that they were not entitled to retain them because they received an amount of distributions in excess of their actual contributions to S&P and/or P&S, while other partners of S&P and/or P&S received actual distributions from S&P and/or P&S that are less than their actual contributions to S&P and/or P&S.

87. Defendants materially breached Sections 4.04, 5.01, and 5.02 of the Partnership Agreements because they received and retained distributions in excess of their actual contributions to S&P and/or P&S, while other partners of S&P and/or P&S received actual

distributions from S&P and/or P&S that are less than their actual contributions to S&P and/or P&S.

88. Plaintiffs were damaged by Defendants' material breaches of the Partnership Agreements.

**WHEREFORE**, Plaintiffs demand entry of judgment against Defendants for damages, court costs, interest, and such other and additional relief as the Court deems just and proper.

**COUNT III**  
**UNJUST ENRICHMENT**  
**(Against All Defendants)**

89. Plaintiffs reallege the allegations set forth in paragraphs 1 through 35, 38 through 40, 42-42, 47, 49, 51, 52, 54, 55 through 65, and 68 through 73, and incorporate those allegations by reference.

90. S&P and/or P&S conferred a benefit on Defendants by making actual distributions to Defendants in excess of Defendants' actual contributions to S&P and/or P&S, while other partners of S&P and/or P&S received actual distributions from S&P and/or P&S that are less than their actual contributions to S&P and/or P&S.

91. Defendants were able to receive those distributions in excess of their contributions to S&P and/or P&S, which belong to other Partners of S&P and/or P&S, through undue advantage exercised by the former Managing General Partners, who made the distributions and breached their fiduciary duties of care and loyalty to the Partnerships and the Partners.

92. Defendants voluntarily accepted and retained those distributions from S&P and/or P&S.

93. Defendants were notified of the fact that the distributions they received were improperly retained.

94. It would be inequitable and unjust for Defendants to retain the distributions conferred by S&P and/or P&S, after being informed that of the improper nature of the distributions because a portion of the distributions received by Defendants belong to other Partners.

95. Plaintiffs are entitled to the return of those amounts by which Defendants were unjustly enriched, through disgorgement or another appropriate remedy.

**WHEREFORE**, Plaintiffs demand entry of judgment against Defendants in the amount that they were unjustly enriched, including pre- and post-judgment interest and costs, and to grant any other relief the Court deems appropriate.

**COUNT IV**  
**MONEY HAD AND RECEIVED**  
**(Against All Defendants)**

96. Plaintiffs reallege the allegations set forth in paragraphs 1 through 35, 38 through 40, 42-42, 47, 49, 51, 52, 54, 55 through 65, and 68 through 73, and incorporate those allegations by reference.

97. S&P and/or P&S conferred a benefit on Defendants by making actual distributions to Defendants in excess of their actual contributions to S&P and/or P&S, while other partners of S&P and/or P&S received actual distributions from S&P and/or P&S that are less than their actual contributions to the S&P and/or P&S.

98. Defendants were able to receive those distributions belonging to Partners of S&P and/or P&S through undue advantage exercised by the former Managing General Partners, who

made the distributions and breached their fiduciary duties of loyalty and care to the Partnerships and the Partners.

99. Defendants voluntarily accepted and retained those distributions from S&P and/or P&S.

100. Defendants were notified of the fact that the distributions they received were improperly retained.

101. It would be inequitable and unjust for Defendants to retain the distributions conferred by S&P and/or P&S, after being informed of the nature of such distributions, because a portion of the distributions received by Defendants belong to other Partners.

102. In equity and good conscience, Plaintiffs are entitled to the return of those amounts by which Defendants were unjustly enriched, through disgorgement or another appropriate remedy.

**WHEREFORE**, Plaintiffs demand entry of judgment against Defendants in the amount that they were unjustly enriched, including pre- and post-judgment interest and costs, and to grant any other relief the Court deems appropriate

**COUNT V**  
**AVOIDANCE OF FRAUDULENT TRANSFERS PURSUANT**  
**TO SECTION 726.105(1)(A) OF THE FLORIDA STATUTES**  
**(Against All Defendants)**

103. Plaintiffs reallege the allegations set forth in paragraphs 1 through 73, and incorporate those allegations by reference.

104. Throughout the operation of the Partnerships, the Partners were entitled to receive distributions from the Partnerships pursuant to the Partnership Agreements.

105. Defendants were able to receive actual distributions from S&P and/or P&S in excess of their actual contributions to S&P and/or P&S, while other partners of the Partnerships

received actual distributions from P&S and/or S&P that are less than their actual contributions to the Partnerships through undue advantage exercised by the former Managing General Partners, who breached their fiduciary duties of loyalty and care, and who made the distributions with the actual intent to hinder, delay or defraud certain of the Partners, who are and were creditors of the Partnerships, as well as the Partnerships themselves.

106. The distributions made by the former Managing General Partners from S&P and/or P&S to Defendants are transfers that could have been applicable to the payment of the distributions and obligations due to the Partners under the Partnership Agreements.

107. S&P and/or P&S did not receive reasonably equivalent value in exchange for the distributions made to Defendants.

108. The transfers to Defendants may be avoided under Section 726.105(1)(a) of the Florida Statutes.

**WHEREFORE**, Plaintiffs respectfully request the Court enter a Judgment:

- (a) Declaring the transfers to Defendants to have been fraudulent transfers pursuant to Section 726.105(1)(a) of the Florida Statutes;
- (b) Avoiding the transfers to Defendants as fraudulent transfers in violation of Section 726.105(1)(a) of the Florida Statutes;
- (c) Requiring Defendants to pay to Plaintiffs the transfers to Defendants.
- (d) Granting such other and further relief as may be just and proper.



**PLAINTIFFS DEMAND A JURY ON ALL ISSUES SO TRIABLE.**

Respectfully submitted,

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