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FAMILY LIMITED PARTNERSHIP PLANNING

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I. INTRODUCTION

A. [§7.1] Overview

The “family limited partnership” (FLP) is not a specific legal entity. The phrase is a popular description for a limited partnership governed by particular terms and conditions in the partnership agreement that meet specific goals for family enterprises and wealth. They can differ from or add to the goals of enterprises that are owned by unrelated people. Drafting for a commercial enterprise involves terms associated with arm’s-length negotiations by unrelated parties. When the partnership concerns a family business or family wealth, noncommercial considerations become important. Those considerations are referred to as “family limited partnership planning.” However, to enjoy the benefits of FLP planning, family members must deal with the partnership and with each other about partnership matters in the manner that unrelated parties normally deal with each other at arm’s length.

FLP planning integrates proper and technically correct drafting with various legal and financial disciplines, while also requiring effective counseling of clients about the proper conduct of the new legal and financial regime that they have adopted.

The limited liability company (LLC) entity is an alternative business entity vehicle for FLP planning because of the similarity between statutes governing LLCs and those governing partnerships; in addition, the Internal Revenue Service (IRS) allows taxation of LLCs as partnerships. This chapter uses the term “family limited partnership,” but the information may also be applicable when an LLC is used. For more discussion of partnerships, see Chapters 5 and 6 of this manual; for LLCs, see Chapter 8.

There is a large body of literature available for those who wish to pursue an in-depth study of FLP planning. This includes the Internal Revenue Code (*IRC* or Code), Internal Revenue Regulations (Regulations), IRS promulgations (*e.g.*, notices, revenue rulings, etc.), and cases from the Tax Court, the federal appellate courts, and the Court of Claims, in addition to numerous journals, articles, treatises, and research services. FLP planning applies federal income tax law, federal estate and gift tax law, state law related to partnerships and other entities, and principles of appraisal.

Achieving the benefits of FLP planning requires great care. The issues are complex and varied, and traps for unwary practitioners exist. Many nonlegal considerations are critical to carrying out planning goals. Selection of leadership after the retirement or passing of the parents is important. Some family members may become active in the family enterprise, while others may not. Proper division of profits between active and inactive family members, among other considerations, is an important issue. An interdisciplinary team of knowledgeable professionals is needed to advise clients on creating and living with an FLP plan.

Even if changes in the Code reduce tax benefits, the FLP provides additional options. When used correctly in proper circumstances, FLP planning can be one of the best tools for families that an attorney or other member of the estate planning team can provide. However, poor planning and disregard of legal formalities can negate any benefits and actually do harm.

B. Income And Estate Planning Issues

1. [§7.2] In General

When business and real estate lawyers deal with tax laws, the concern is usually with income tax effects. This is fitting in the normal commercial transaction. For FLP planning, those who provide general counsel regarding a closely held business entity or family enterprise must become familiar with the Code chapters for transfer, estate, gift, and generation-skipping transfer taxes. This chapter provides general background about those issues.

Transfer taxes on a closely held enterprise can be devastating; income taxes are merely expensive. While the income tax deals with the results of one transaction or a year's transactions, the transfer tax is on the total amassed net after-tax value of the FLP enterprise. For example, if in 2013, a company worth $20 million has $500,000 of net income, the income tax may be $155,800. However, in 2013, if a taxable estate includes the full value of the entire enterprise, the transfer tax cost could be as high as $8,345,800. *IRC* §2001(c). It does not make a difference that the values taxed are not liquid. In addition, the transfer tax is due within nine months of the date of death. *IRC* §6075(a). The Code outlines terms to extend the time for payment of estate tax when an estate consists largely of an interest in a closely held business. *IRC* §6166. Therefore, practitioners should be aware of the estate tax considerations of owning closely held businesses. Bringing in special tax advisers is acceptable; ignoring the issue is not.

A long-standing principle in tax law is that an arrangement lacking substance is not honored if its only purpose is tax savings. Therefore, it is important to have a real business purpose in creating an FLP. Providing consolidated management of family property can be enough of a business purpose. The Tax Court has been closely analyzing the underlying substance of arrangements to determine if the actual relationships among the parties show that a business purpose exists. Although state law will govern the effect of legal arrangements among parties, analysis of the potential to exercise legal rights is becoming more important. Clients must be educated in the proper conduct related to creation and management of FLPs.

To ensure that clients are in a position to argue that they are entitled to the benefits sought from FLP planning mechanisms, practitioners should oversee how clients involved in FLP planning manage their affairs. FLPs have planning and maintenance issues after the tax professionals creating them leave the scene. The client and the client's other advisers should always be mindful of the FLP planning.

2. [§7.3] Family Partnership Rules And The Family Limited Partnership

There is an important distinction between family partnerships and family limited partnerships: a partnership does not pay taxes. Instead, the partners are assigned the items of income and loss charged because of the partnership's activities. At the same time, taxes charged to partners are not necessarily tied to distributions of cash. There are divisions of tax results whether or not there is a cash distribution.

IRS Form 1065 is the partnership tax return form. However, it accounts only for the items of income and loss and their allocation to partners; there is no tax paid with the return. Partners receive a Schedule K-1 (Form 1065) with their share of expenses and losses, which they then attach to their individual tax returns.

Before adoption of the family partnership rules, the rules provided income tax planning opportunities, especially in periods of high marginal tax brackets. A parent would run a business through a partnership and make low-bracket family members (even small children) partners. When assigning items of income and loss, the low-bracket taxpayer was charged with income and filed a Schedule K-1 (Form 1065) that reported the amounts. The income was taxed at the child's lower bracket, thus saving taxes for the family. Because the partnership did not have to give cash to the partners, the creator of the income still controlled it. Therefore, more money stayed in the family enterprise merely because of the allocations.

Under *IRC* §704(e), if the family member "partner" has a capital interest in the partnership so that the capital is a "material income-producing factor," the income shifting is legitimate. Therefore, in a partnership in which the "income-producing factor" is the personal services of a parent (such as a doctor or lawyer), the income shifting is not legitimate. See *Treas.Reg.* §1.704-1(e)(1)(iv).

With an FLP, shifting the value of underlying assets is the goal, not merely shifting income. In its most basic form, FLP tax planning includes (1) a limited partnership agreement (or an operating agreement if an LLC), (2) a parental contribution of assets to the partnership or LLC, and (3) a parental gift or gifts to the parent's children of interests in the partnership or LLC (not interests in the contributed assets). These gifts usually include both the capital account and the profits interest parts of a partnership/LLC interest. However, the terms and conditions of the partnership or operating agreement make the value of the partnership/LLC interest less than the commensurate value of the same percentage of underlying assets. This is because of the "discounts" given to the value of the partnership interest. See §7.7.

The "family partnership" defined by *IRC* §704(e) and the "family limited partnership" defined by practice are different. This does not mean that a planning engagement would not consider both. When creating a family enterprise, whether for commercial or tax planning reasons, addressing both tax and practical considerations helps to achieve client goals and to avoid traps for the unwary.

3. [§7.4] "Check-The-Box" Regulations And Choice Of Entity

After many years of litigation and analysis of how different business organizations should be taxed, the IRS finally issued rules that settled most questions. *Reg.* §301.7701-3(c). The details of these "check-the-box" rules allow the taxpayer to decide, within reasonable limits, the income tax treatment of an entity. For example, an LLC can elect to be taxed as an association. However, if there are two or more members, the default classification for an LLC is a partnership. *Reg.* §301.7701-3(b)(1). Because many important features under state law for the LLC are similar to partnership law, the tax and state law benefits of partnership ownership can also exist by owning units of an LLC.

Certain features of an LLC that is taxed as a partnership make it better to use in FLP planning than a limited partnership. The most important is that no member in an LLC has personal liability, unlike the general partner in a partnership. However, the LLC taxed as a partnership is still subject to self-employment tax, which makes it less favorable than a subchapter S corporation, which allows for pass-through income. As a result, under current IRS rulings, added tax cost might come from using the LLC for FLP planning, unless the LLC elects to be taxed as an S corporation. See Chapter 11 of this manual. In Florida, the Annual Report fee, as well as filing and other fees paid to the Florida Department of State for a limited partnership, are significantly higher than those for an LLC. Therefore, the additional state fees for a limited partnership must be examined to determine if they are more or less than the self-employment tax costs of an LLC taxed as a partnership.

"Check-the-box" rules provide flexibility when doing FLP planning. However, there are many factors that must be considered when deciding which box to check. For discussion of general and limited liability partnerships, see Chapter 5 of this manual; for discussion of limited partnerships and limited liability limited partnerships, see Chapter 6; and to compare the tax considerations and implications among these entities, see §1.32.

4. General Estate Tax Considerations

a. [§7.5] Estate And Gift Tax

IRC §2001 imposes payment of an estate tax on the transfer of a taxable estate. The "taxable estate" is determined after taking all allowable deductions under the Code from the "gross estate" as defined under *IRC* §2031. *IRC* §2051. Gifts qualifying for the annual exclusion, which is $14,000 for calendar year 2013 (this amount will continually be adjusted for inflation in increments of $1,000), do not count for gift tax purposes. *IRC* §2503(b). The taxable estate is taxed at marginal rates. The estate tax calculated is lessened by credits against tax, including the applicable exclusion amount. The exclusion amount for 2013 equals $5,250,000 and will continue to be increased for inflation in multiples of $10,000. *IRC* §2010(c), as amended by Pub.L.No. 112-240 (January 2, 2013). Additionally, the applicable exclusion amount is increased, in the case of a surviving spouse, by the deceased spousal unused exclusion amount. *IRC* §2010(c)(2), as amended by Pub.L.No. 112-240. This is much like the income tax. However, the gross estate is the amassed net worth (after income tax) value of a lifetime of work; the income tax deals with only one year's gross income from all sources. There is also a gift tax, so lifetime transfers do not avoid the estate tax. The gift and estate taxes make up a "unified" regime. This means the value of taxable lifetime gifts stack on top of the decedent's gross estate for tax purposes, and that amount is taxed at the higher marginal brackets.

b. [§7.6] Inclusion Of Property Value

Whether to include the value of property in a gross estate is not a simple question. Legal title is not the only determinant. Even when a person does not "own" property, the value of the property may be included in the person's gross estate for estate tax calculations.

Control of property may cause inclusion of the property's value in an estate when calculating the tax. For example, if a person holds an irrevocable general power of appointment over property, for tax purposes the person's gross estate would include the value of the property for estate tax calculations. See *IRC* §2041.

Transfers with a retained life interest may cause inclusion of the value of transferred property when calculating the tax. See *IRC* §2036. If the decedent previously transferred property, its value can still be included in the gross estate for estate tax purposes. Some of these types of transfers are understandable as examples of the decedent's previous exertion of control. However, there are several retained life interests that are not so obvious. This is because the law brings back into the gross estate values still enjoyed by the decedent, even if not controlled by the decedent. However, keeping certain subtle rights or interests can amount to keeping "control" for estate tax purposes.

An example of this principle is the transfer of property with a reservation of a life estate. Under general law, this creates two different legal interests: the life estate and the remainder interest. However, the Code considers the retained life estate a "string" that pulls the full value of the property (life estate and remainder interest) back into the gross estate for calculating estate tax. There are many subtle examples of this principle, such as a transfer to an irrevocable trust when the decedent keeps the right to change the trustee of the trust to a trustee related or subordinate to the decedent. This is a "string" pulling the value of the transferred property back into the gross estate for purposes of calculating the estate tax. This happens even though the transferor cannot demand a return of legal title or other beneficial interest from the remainderman.

It is helpful for practitioners to focus on the idea that it is the transfer of the *value* of the property that is the subject of taxation, not the property itself. Therefore, matters of legal title are not necessarily a consideration. "Control" by a person under state law is not the same as a "retained life interest." The inquiry for tax law purposes is whether the transferor is divested of *all* vestiges and benefits of ownership. If so, a transfer was completed and is considered for potential inclusion of the value of the transferred property for gift tax purposes. If not, the value of the property transferred under state law purposes may be included in the gross estate of the transferor at the time of death.

These "strings" are important in considering the FLP. This is because most FLP plans include the transferor keeping control over the partnership by being general partner. If done correctly, this alone will not cause taxation, because retention of control over the property contributed to the partnership. At the same time, this consideration and the failure to deal properly with it is the basis of significant case law limiting the benefits of FLPs. See the discussion in §7.15.

c. [§7.7] Determining Property Value

One reason FLP planning is popular is that property value can be reduced for tax calculation purposes without a loss of the use and control of the underlying assets. Other good reasons are discussed in §§7.16–7.24.

Value on the date of gift or death fixes the value for gift and estate tax purposes. *IRC* §§2031(a), 2512(a). An alternate value date for estate tax purposes is available for six months from the date of death. *IRC* §2032(a). Several alternative rules apply to fix value. Publicly traded shares are easily valued based on the listed value on the date of death. Determining the value of real estate, closely held shares, and tangible personal property is not as easy. There are many rules about valuing property in each of these categories. Of importance is the value of a closely held business when no ready market exists to fix the value of interests in that business, because FLP planning involves eventually valuing interests in the partnership entity, not only the value of its underlying assets.

Rev.Rul. 59-60, 1959-1 C.B. 237, *modified by Rev.Rul.* 65-193, 1965-2 C.B. 370, *amplified by Rev.Rul.* 77-287, 1977-2 C.B. 319, and *Rev.Rul.* 83-120, 1983-2 C.B. 170, governs valuation of closely held business interests. Although the taxpayer can challenge the IRS' value in court, these rules contain the principles that apply in valuing closely held businesses and are the ingredients of any business appraiser's repertoire of value techniques when working with a closely held business. A key item involved when determining the value of a family partnership and its interests is "discounts."

The business value of a closely held enterprise is subject to various discounts. A discount is an adjustment applied to the value of the business interest to account for effects on value unrelated to earnings performance of the business. Stock analysts regularly apply these discounts when valuing securities, whether bonds or stocks. There are several different discounts. The key point is that from the view of an investor, value can decrease because of how the valued property is held or created, without someone else getting an increased value that is equal to the decrease.

A leading commentator involved in the early FLP cases describes value as follows:

> Value really does appear and disappear, and that fact does not mean that a transfer has occurred from one person to another. For example, suppose A, B, and C contribute $100 each to form a corporation, each receiving one share. With only one share, none of them alone can force a liquidation so as to get his $100 back. Under the willing buyer-willing seller test, what is the value of A's share? The value has decreased from the $100 contributed to something much smaller, perhaps $45, because he has no right to liquidate. Does this diminution in value mean that a taxable transfer has occurred if B and C are A's children? No. Where did the lost $55 go? It did not go to B or C, for each of them has suffered the same $55 "loss." Such a "loss"

> may continue indefinitely as the corporation does business. We can see that readily by noting that the stocks of hundreds of corporations sell on exchanges at substantial discounts below liquidation values. Just as value can disappear, however, it can reappear. We can see that readily by noting what happens to the prices of those discounted stocks just mentioned when a tender offer is made for a controlling block that would include a power to liquidate. Value reappears suddenly, as the price moves up to the tender offer amount, which is usually near the liquidation value.

Eastland, *The Art of Making Uncle Sam Your Assignee Instead of Your Senior Partner: The Use of Partnerships in Estate Planning*, SK069 ALI-ABA 999, 1054 (2005).

Ownership of a controlling interest, control of an underlying asset, and the extent, if any, of control of an interest in the FLP are all factors in determining discounts. With respect to control, the mere fact that a transferee's interest does not carry a vote in the partnership reduces the value of the financial interest received. Even when voting rights are included, owning enough interest in a business to vote for its future creates a "premium" over the same percentage of the liquidation value. On the other hand, the simple value of an interest is reduced if the interest owned does not carry enough votes to control the future of the business, because a controlling vote is tantamount to the ability to liquidate the entity and sell the underlying assets for their value. If a minority interest cannot control the underlying assets, then owning that minority interest is not as valuable as owning the controlling interest. Therefore, there is a "discounting" of value for not having control.

Another feature of an FLP interest that can create a discount is its marketability. Business interests are often subject to agreements that restrict the right to sell them. If they are not available on the open market, classical fixing of price based on the "willing buyer/willing seller" standard does not apply. Therefore, the appraiser applies a "discount" that adjusts the value of a business interest based on the lack of marketability.

Taxpayers may be challenged by the IRS regarding the discount amounts applied. United States Tax Court cases offer some guidance, but it must be noted these cases are very fact-specific. See, *e.g.*, *Astleford v.*

Commissioner, 95 T.C.M. (CCH) 1497, T.C.M. (RIA) 2008-128 (2008); *Estate of Kelley v. Commissioner*, 90 T.C.M. (CCH) 369, T.C.M. (RIA) 2005-235 (2005); *Knight v. Commissioner*, 115 T.C. 506 (2000).

Control and marketability are examples of several discounts applied by professional analysts and business value experts. The discounts are a significant consideration in the use of the FLP. The artful drafting of a limited partnership agreement adds terms that reduce the value of owning an interest in the partnership. Artfulness and craftsmanship in drafting allow a full enjoyment of the interest at the same time. At the least, the first generation clients are able to live with the discounts because they do not affect the value of the underlying property.

d. [§7.8] Estate "Freeze" Rules And Unintended Gifts

Much of FLP planning involves surviving the gauntlet of Code rules designed to stop the so-called "estate freeze." Failing to consider these rules in planning can result in unintended gift or estate taxable transfers, as outlined below.

The concept of an "estate freeze" uses rules of tax deferral, which originated in corporate reorganizations, for family transactions, thereby allowing parents to transfer to the next generation the right to enjoy future growth of the family enterprise without gain or gift tax. This scheme relied on the terms and conditions of articles of incorporation, partnership agreements, and other governing documents.

The general rule is that liquidation of a corporation results in a taxable transaction: the exchange of corporate property in return for the stockholder's shares of the corporation. The gain is the difference between the stockholder's tax basis in the value of the stock surrendered and the fair market value of the corporate property received in return. If the property instead passes to another legal entity with the same ownership, the underlying business is considered reorganized, and the stockholder does not realize any gain. These reorganization rules are common and often used in corporate takeovers, mergers, and acquisitions.

In the past, freezing estate value was achieved by creating one of these reorganizations in an entity including parents and children as equity owners. The following example illustrates the situation: Parents and children own all the common stock of a family corporation. A reorganization resulted in the parents owning all the nonvoting preferred stock with a specific income coupon. The children received all the remaining voting common shares with all the upside potential for realizing the corporation's value on future liquidation. Value of the preferred stock was based on the liquidation value, now fixed, and the potential income stream. Common stock was valued with a premium for voting control and the potential to realize future increases in value. If this transaction met the reorganization rules, there was no recognized gain or loss on which tax was paid when the parents' common stock was traded for preferred stock. Typically, the new "preferred stock" owned by the parents was valued the same as the common stock they surrendered in return. This too caused a result of no gain or loss.

In these numerous case, the IRS would assert that these transfers by gift from the parents to the children of the "growth" of the corporation would allow a taxfree transfer of value of the corporation merely because of the structure of the transaction. Therefore, according to the IRS, the parents' estates' values would be unrealistically low when the resulting preferred stock was included in the estate. Upon the enactment of the special valuation rules set forth in *IRC* §§2701–2704, these tax free reorganizations were no longer a useful technique to transfer interests in the family business.

Freezes and FLP planning intersect because the IRS asserts that the legislation subsequently passed to stop freezes can affect FLP planning. See *IRC* §§2701–2704. Thus, consideration of the Code and Treasury Regulations is critical because certain legal events not normally viewed as transfers are considered transfers.

Chapter 14 of the Code, *IRC* §§2701–2704, deals with freezes in a complex fashion. Instead of stating that freezes cannot be accomplished, Chapter 14 recognizes that transfers can take place, but it calls for ignoring certain terms and conditions of the articles of incorporation, partnership agreement, and other governing documents that otherwise affect value. Chapter 14 provides different value treatment on transactions among related parties. Rights of distribution, liquidations, puts, calls, and conversion rights are subject to Chapter 14 treatment.

When valuing rights transferred to a family member, *IRC* §2701 provides the value of the rights kept by the donor as zero. This means an inclusion, for gift tax calculation purposes, of the entire value of the interest from which the transferred rights arose. Therefore, the gift tax is greater.

IRC §2702 applies the same rule to transfers of interests in trusts.

IRC §2703 ignores (1) options or other rights to buy at less than fair market value and (2) limits on the right to sell or use property when valuing property subject to those terms.

IRC §2704 treats as a transfer of an interest the "lapse" of a voting or liquidation right over that interest. An option expiring is considered an act of the holder. Expiring the option allows the person owning the property subject to it to have the increase in value resulting from the lapse. This is a potentially taxable transfer.

A full explanation of Chapter 14 is not possible in this chapter. Its terms are subtle and complex and can be a trap for the unwary. A tax court decision involving the application of *IRC* §2703 emphasizes the need to carefully evaluate Chapter 14 provisions. In *Holman v. Commissioner*, 130 T.C.No. 12, 130 T.C. 170 (2008), the Tax Court applied *IRC* §2703 to the restrictions the taxpayers had included in a paragraph of their FLP agreement and held that the restrictions did not assist a bona fide business arrangement of the taxpayers under *IRC* §2703(b)(1). Furthermore, the court held that, under *IRC* §2703(b)(2), the restrictions were a device to transfer property to the taxpayers' children for less than adequate and full consideration in money or money's worth. With this finding, the partnership interests were valued without regard to a discount for the restrictions of that paragraph of the FLP agreement.

C. Limits On Liquidations And Transfers Of Interests

1. [§7.9] In General

One of the general rules of tax law is that, in capital transactions, there is taxation on realized gains. For example, if one buys a share of stock for $1 and sells it for $100, there is a capital gain of $99, which is subject to taxation. (For purposes of this example, long- or short-term gains are not considered.) Increases in value that are not "realized" (*i.e.*, cashed in) are not taxed. Therefore, until the stock is sold, the taxpayer can enjoy increases without taxation. This situation affects the ability of the taxpayer to seize an opportunity and diversify the taxpayer's portfolio. If the $99 is taxed when the taxpayer sells the share to raise cash for another investment, the amount available for purchase of the new investment is less than the $100 of value sold, because of the reduction of cash to pay tax on the $99.

Corporate tax law provides a world of "reorganization" in which repositioning of assets does not amount to a "recognition" of gain. If a small corporation owner sells stock that was originally worth $1 and is now worth $100, for cash, a $99 gain is realized, and a tax becomes due. However, if, in a qualifying reorganization, the taxpayer receives from the corporate buyer $100 worth of the buyer's corporate stock instead of cash, no gain is recognized at that time; the gain is deferred until that new stock holding is sold. This result occurs because, when the new stock is later sold, it is still treated as though the taxpayer paid only $1 for it. Therefore, the $99 gain that was unrecognized in the earlier transaction is then taxed.

Partnership tax law deals more with aggregation of assets, so the conditions described above do not apply. Although taxpayers may try to find a way to take advantage of increases in the value of assets to diversify or pyramid their portfolios without paying capital gains on each transaction, a number of tax code provisions inhibit the ability to do this.

2. [§7.10] Disguised Sales

A partner may acquire a partnership interest by contributing appreciated property to the entity. The partner's tax basis in the contributed property is the same as the partner's tax basis in the partnership interest. If the partnership subsequently redeems the partnership interest in return for other property of the partnership, the redeemed partner would take the distributed property at the same basis again. The partner could, in essence, exchange property, like kind or not, without a realization of gain and taxation. To prevent this, the Code and Treasury Regulations have rules that treat this type of distribution occurring within five years of the original contribution as a presumed sale of the contributed property, unless the facts and circumstances clearly establish that there is no sale. *Reg.* §1.704-4. Therefore, practitioners must be alert to contributions to and distributions from the FLP, another area where traps for the unwary exist.

3. [§7.11] Buy-Sell Agreements

In the general circumstances of business arrangements among principals, buy-sell agreements are typical. There are several general reasons for them. Liquidation of a deceased principal's interest for the benefit of the principal's family is one reason for a buy-sell agreement. The correlative is that the remaining principals do not have to be involved with the decedent's estate or spouse.

Another reason to have a buy-sell agreement is that it fixes value for estate tax purposes. As noted in §7.7, without a market, the value of an interest in a closely held business is subject to appraisal. *Rev.Rul.* 59-60, 1959-1 C.B. 237, *modified by Rev.Rul.* 65-193, 1965-2 C.B. 370, *amplified by Rev.Rul.* 77-287, 1977-2 C.B. 319, and *Rev.Rul.* 83-120, 1983-2 C.B. 170, guides that analysis. However, even with a Code guideline, appraisal of a closely held business interest is more art than science. This leaves business owners with a risk of estate taxation when a principal dies; this risk cannot be planned for with exactness. However, if the market for an interest is limited to only those subject to a buy-sell agreement, the price provided can stand as the value of that interest for estate tax purposes. Many closely held businesses have a buy-sell agreement to provide that degree of certainty. Insurance policies often provide the source of funds for the buy-sell transaction when it occurs.

IRC §2703 creates results different from those described above. Because FLPs do not involve unrelated parties and arm's-length dealings, the limits of a buy-sell agreement in a family enterprise may not be held to fix the estate tax value of the decedent's interest. FLP planning is important because it is an alternative that will limit the value that would be subject to tax. If three conditions exist, the value in a buy-sell agreement can fix the value of the subject shares for estate tax purposes. The necessary conditions are (1) a real business purpose is shown, (2) the transaction does not include a transfer "for less than full and adequate consideration in money or money's worth" to the "natural objects of the transferor's bounty," and (3) it is similar to agreements entered into at arm's length. *IRC* §2703(b)(1)–(b)(3); *Reg.* §25.2703-1(b)(1)(i)–(b)(1)(iii).

The best tax planning practice of FLP planning is not to consider the buy-sell terms of the partnership agreement as a method for fixing value. Nevertheless, buy-sell agreements serve many general useful purposes and should be considered; it is important to know their value to the client and to plan accordingly.

4. [§7.12] Transferees And The Partnership

Voting participation in a partnership and the financial benefits of owning an interest in the partnership are two different sets of rights. There can be a purchase and sale of a partnership interest, but a denial, by the remaining partners or general partner, of voting rights to the transferee. Only an approved transaction that allows transfer of the voting rights can give the transferee a right to vote on partnership matters. Typically, the so-called "buy-sell" terms in a partnership agreement provide a right of first refusal to the partnership or other partners before a partner can sell to an unrelated third party. If there is no election by the partnership or a partner to buy the partnership interest for sale, the transaction can go forward to complete a sale of the financial benefits of the partnership interests. However, the other partners do not have to allow the transferee voting rights.

Denial of voting rights to a transferee provides significant control to the general partner or managing member. A second-generation partner may wish to sell his or her interest to an unrelated third party that no one in the partnership knows or wants in the business. This could even inhibit a gift to an "in-law" married to that family member. The limit on the right to transfer voting rights with financial benefits reduces the value of the interest. It is unlikely that a good-faith unrelated third party will invest in a closely held commercial enterprise without obtaining the right to vote.

5. [§7.13] Related Party Transactions

Tax laws try to stop transactions created among related parties intended to produce favorable tax results. This occurs under many different sets of facts, such as creating capital gain instead of ordinary income, and triggering losses without loss to the family group of the property in the transaction.

Family members and commonly owned business entities are all affected by these laws. One major problem is the rule crediting to related parties the ownership of interests by one another. See *IRC* §267. Related parties are members of a family (as specifically defined in *IRC* §267(c)(4)) and commonly owned legal entities (also as defined in the statute). *IRC* §267 affects trusts, beneficiaries, and their fiduciaries.

IRC §267 contains basic rules on related party transactions. It denies

- a loss deduction arising from a loss in a transaction between related parties, and

- deferral timing benefits in payments among related parties.

For partnerships, the rules of *IRC* §267 apply through a cross-reference in *IRC* §707(b).

Some outcomes concerning these rules are surprising. For example, assume a father owns 49% of a partnership, his son owns 2%, and a third party owns the remaining 49%. Attribution rules view the father and son both as owners of 51% when analyzing if one or the other has a controlling interest in the partnership. Therefore, a deduction is not allowed if the son has a loss transaction with the partnership. He is a control partner when his 2% and his father's 49% interest are added together. If the transaction was typically a capital gains type, the son would, nonetheless, have to treat the gain as ordinary income. *IRC* §707(b)(2).

Therefore, practitioners must use the utmost care in preparing a partnership transaction to plan for the effect of these rules.

6. [§7.14] Is Gift A Sale Or Exchange?

A gift is not typically a "sale or exchange." The rules about "liabilities in excess of basis" deal with transactions involving a sale or exchange. Forgiveness of debt is generally income for tax purposes. If the taxpayer is transferring property that is subject to a debt , resulting in someone else assuming the debt, that is income to the transferor. To the extent the taxpayer has tax basis in the property, the debt forgiveness is a return of capital that reduces the tax basis. However, if the debt is higher than the tax basis, that difference will be included in the taxpayer's gross income for income tax purposes. Therefore, the question arises whether the gratuitous transfer of property subject to a nonrecourse debt is a relief of that debt to the donor.

Consideration of this issue becomes important under the circumstances of an unintended termination of the partnership under *IRC* §708(b)(1)(B). This is another reason to assemble a proper team of professional advisers when performing FLP planning. Often just "running the numbers" can identify whether an issue amounts to a problem.

D. [§7.15]Current Battles Regarding "Substance" Over "Form"

Drafting alone does not create the significant tax results available. In fact, a well-drafted set of documents is for naught if clients do not honor the formalities set forth in the documents. If clients choose to ignore them, it can be fatal to the execution of even the most carefully planned process.

When preparing IRS Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return, practitioners would be mistaken to believe that a partnership can be formed, property transferred into it, and interests transferred to the second generation by the application of an easy rule of thumb concerning discounts when valuing the interests gifted. Practitioners must be aware that there currently is not a general rule regarding discounts when valuing the gifted interests.

The IRS does not like FLP planning, for obvious reasons. Even after some significant losses in court on the matter, the IRS continues to attack FLP planning. This means the gauntlet of Code and general law provisions must be carefully approached.

Several cases, discussed below, involve a decedent's gross estate property that was transferred to an FLP. The transactions were ruled transfers with a retained life interest in that specific property. As a result, the limited partnership interests, with their associated discounts, were not the property taxed; the higher value of the underlying property was instead included in the decedent's estate.

In these cases, legally enforceable partnership agreements did not provide a controlling separation of the transferor from the property transferred. Instead, an analysis of the facts resulted in rulings that the real relationships amounted to retained personal control over and use of the contributed property. Thus, practitioners should consider the rules of inclusion, which treat the value of the partnership's underlying property as part of the transferor's gross estate.

In *Estate of Harrison v. Commissioner*, 52 T.C.M. (CCH) 1306, T.C.M. (P-H) ¶87,008 (1987), the Tax Court decided a discount based on the facts, and the IRS did not argue that there was a lack of business purpose. In *Estate of Harrison*, the decedent's son created a limited partnership under a power of attorney granted by his father when he was in declining health. Both the son and a brother also contributed separately and independently acquired assets along with their father's. All three were named general partners and received interests. They issued proportionate interests in the partnership in return for the contributed properties. The decedent received the entire limited partner's interest issued, as well as his general partner's interest. A key term of the partnership agreement was that, on the death of a general partner, that general partner's right to terminate the partnership ended. Thus, when the general partnership interest transferred because of its owner's death, the associated right to terminate the partnership was not a component of the transfer. Therefore, the court approved the discount of the value of the interests because of this lack of right in a transferee to reach into the partnership and take out the underlying assets.

In *Estate of Harrison*, the government asserted that retained life interest "strings" caused inclusion of the value of the underlying assets in the gross estate for tax purposes. The Tax Court ruled to the contrary, noting several key points. The Harrison sons, who contributed independently acquired assets, were subject to the same terms and conditions as the decedent, and the government did not state that there was a lack of business purpose to the partnership. Furthermore, the government's stipulation with the taxpayer conceded there was no increase in the value of the sons' interests on the death of the father, which caused a loss of that interest's right to cause a liquidation of the partnership. A key point was that the decedent had received adequate consideration for the property he transferred by the partnership interests issued to him in return.

The *Strangi* cases illustrate different IRS tactics and different facts creating different results. *Estate of Strangi v. Commissioner*, 115 T.C. 478 (2000), *aff'd in part, rev'd in part* 293 F.3d 279 (5th Cir. 2002) (*Strangi I*); *Estate of Strangi v. Commissioner*, 85 T.C.M. (CCH) 1331, T.C.M. (RIA) 2003-145 (2003), *aff'd* 417 F.3d 468 (5th Cir. 2005) (*Strangi II*). In *Strangi I*, the Tax Court did not allow the government to argue the issue of inclusion resulting from a retained life interest, on the basis that the government brought it up too late. The ruling was in favor of the taxpayer because, under the remaining principles applied, the family honored the formalities of the partnership agreement and state law. The Fifth Circuit remanded the case to the Tax Court to allow consideration of the "retained life interest" test. On remand (*Strangi II*), in a memorandum decision (which has implications about its precedential authority), the Tax Court ruled that the taxpayer failed the retained life interest test. The value of the underlying property was, therefore, included in the decedent's estate.

The facts in the *Strangi* cases are instructive to show how clients should not conduct themselves when seeking the benefits of FLP planning. In *Strangi I* and *Strangi II*, a power of attorney was issued to a son-in-law, Gulig, by the decedent, Strangi, when in declining health. Gulig went to a seminar given by a financial planning firm that claimed to have expertise in FLP planning. Using the forms from that seminar, Gulig created a "family limited partnership." Later he got other family members to join him and his father-in-law as shareholders of the corporate general partner. Gulig took action under the power of attorney granted to him by Strangi. The partnership was created and funded, resulting in Strangi owning 99% of the partnership interests as a limited partner and 47.5% of the corporate general partner. Subsequently, a gift of a 1% interest in the corporate general partner was given to a charity.

There were many disproportionate distributions to Strangi or for his benefit. The court decided the property was never treated differently after the various transfers and transactions. The memorandum decision held that all the property contributed by Strangi remained under his control through the potential and actual exercise of the power of attorney granted to Gulig; he was in control of the partnership through corporate actions of the corporate general partner. Therefore, the court held it proper to include the value of the underlying property of the partnership in Strangi's estate, not the values of the limited and general partnership interests instead (with the discounts they would carry).

Two other cases that illustrate that the Tax Court will look at substance over form are *Estate of Reichardt v. Commissioner*, 114 T.C. 144 (2000), and *Estate of Harper v. Commissioner*, 83 T.C.M. (CCH) 1641, T.C.M. (RIA) 2002-121 (2002).

In *Estate of Reichardt*, the decedent created a trust and had the trust create a limited partnership. The decedent's children were named cotrustees, but only Reichardt was active as a trustee. The trust was the general partner of the limited partnership; Reichardt managed the limited partnership. He also continued to manage directly the partnership assets as though no transactions ever occurred. In addition, he lived without paying rent in a house "owned" by the partnership, and only he signed partnership papers or was a signatory on partnership accounts. Partnership property and the decedent's personal property were commingled. Based on the decedent's actions, the court included the value of the underlying property of the partnership in the decedent's gross estate, not the partnership or trust interests. As a result, the discounts that would have been available if the partnership interests had been the valued property were not available to the estate.

Estate of Harper involved a trust and partnership created by the decedent, an accomplished lawyer whose career included, among other areas of practice, tax law. Harper created a trust that formed a limited partnership. His son and daughter served as general partners, with the son serving as managing general partner. The trust held the limited partnership interest and, in that regard, had some rights of approval over certain actions of the general partners. When he became ill, Harper caused the trust to give the children varying interests in the partnership. Amendments created "guaranteed payments" to the trust that subsequently went to Harper.

The court found that the decedent had kept control over the assets after their transfer into the partnership because distributions to or for the decedent's benefit were later "adjusted" by a CPA to reflect what should have been proper treatment, there were no separate accounts for a long period, and there was a commingling of funds. In addition, property transfers did not take place for long periods after partnership formation. The decedent's personal needs governed distributions, even though these distributions were made in the managing general partner's discretion.

Estate of Reichardt and *Estate of Harper* show that the terms and conditions of trust and partnership agreements, even if legally enforceable, do not override the conduct of the parties. Evaluation of the facts in both cases led the court to conclude that the decedent retained an interest causing the value of the underlying property to be included in the decedent's gross estate.

A Fifth Circuit case, *Kimbell v. United States*, 371 F.3d 257 (5th Cir. 2004), supports taxpayers by finding that family members can enter into bona fide transactions, and that FLP planning is not per se precluded. The court stated that the test is an objective one, *i.e.*, whether "objective facts demonstrate that the transfer was made for a full and adequate consideration." *Id.* at 263. Thus, at least in the Fifth Circuit, family transactions that pass muster under *Kimbell*'s objective test should be upheld.

In *Kimbell*, the taxpayer entered into a family limited partnership so that the general partner was an LLC consisting of contributions made by the decedent, her son, and his wife. The decedent contributed property to the family limited partnership as a limited partner and received back an interest of 99%, commensurate with the percentage of total capital she contributed. The government and lower court ruled that the family relationship precluded a discount for the decedent's interest based on lack of control and lack of marketability. The circuit court ruled that there is no per se rule that a family relationship precludes valuation discounts. The court acknowledged that under certain circumstances, valuation of an interest in an entity at less than the value of contributed property makes business sense, and there are trade-offs any investor makes when contributing property to an entity in return for an interest that "has a present fair market value, *i.e.*, immediate sale potential of substantially less" than the contributed property. *Id.* at 266. The court held that the decedent's "transfer [of assets] to the Partnership" in exchange for a pro-rata partnership interest "qualifies as a bona fide sale." *Id.* at 269.

The fine point of *Kimbell* is that *IRC* §2036 requires a bona fide sale for full and adequate consideration, and that this type of sale may occur among family members as part of FLP planning. The rationale for the court's objective test was based, in part, on *Wheeler v. United States*, 116 F.3d 749, 766 (5th Cir. 1997), which stated:

> [T]he present transfer tax scheme eschews subjective intent determinations in favor of the objective requirements set forth in the statutes. Therefore, section 2036(a) permits the *conclusion* that a split-interest transfer was testamentary when, and if, the objective requirement that the transfer be for an adequate and full consideration is not met. Section 2036(a) does not, however, permit a perceived testamentary intent, *ipse dixit*, to determine what amount constitutes an adequate and full consideration.

Kimbell, 371 F.3d at 262.

The *Kimbell* court cautioned that, "when the transaction is between family members, it is subject to heightened scrutiny to insure [sic] that the sale is not a sham transaction or disguised gift," *id*. at 265, but the court went on to clarify that, at least in the Fifth Circuit, "[t]he scrutiny is limited to the examination of objective facts that would confirm or deny the taxpayer's assertion that the transaction is bona fide or genuine." *Id*. Thus, in fashioning family limited partnerships, a family need meet only the same objective standards as those required of strangers.

A number of additional cases have addressed FLPs, issues related to *IRC* §2036, and the "bona fide sale for an adequate and full consideration in money or money's worth" exception. These cases are fact driven, and, if the transferor parent is in poor health on formation, or in situations that result in, for example, commingling assets, majority assets transferring to the partnership, or the transferor retaining enjoyment of the property or its income, the IRS is likely to be successful. These decisions can assist practitioners and clients in structuring and operating an FLP by identifying the facts that led to negative results. See, *e.g.*, *Estate of Rector v. Commissioner*, 94 T.C.M. (CCH) 567, T.C.M. (RIA) 2007-367 (2007); *Estate of Gore v. Commissioner*, 93 T.C.M. (CCH) 1436, T.C.M. (RIA) 2007-169 (2007), *supplemented* 94 T.C.M. (CCH) 1436, T.C.M. (RIA) 2007-169 (2007); *Estate of Erickson v. Commissioner*, 93 T.C.M. (CCH) 1175, T.C.M. (RIA) 2007-107 (2007); *Estate of Rosen v. Commissioner*, 91 T.C.M. (CCH) 1220, T.C.M. (RIA) 2006-115 (2006); *Estate of Disbrow v. Commissioner*, 91 T.C.M. (CCH) 794, T.C.M. (RIA) 2006-034 (2006); *Estate of Bigelow v. Commissioner*, 89 T.C.M. (CCH) 954, T.C.M. (RIA) 2005-065 (2005), *aff'd* 503 F.3d 955, 27 A.L.R.Fed.2d 753.

The lesson for practitioners is that merely drafting documents, making transfers of property, and having a different family member serve as the general partner will not, by themselves, cause favorable tax results. Conduct that does not recognize the integrity of the legal relationships will result in the loss of the desired benefits.

For an excellent analysis of the issues discussed in this section, see Pratt & Zakin, *Estate of Thompson: Respecting the Formalities of the Family Limited Partnership*, 77 Fla. Bar J. 51 (Mar. 2003). The article also provides a checklist for the management of partnership affairs to help avoid common FLP problems. In addition, the *Kimbell* and *Strangi* cases are analyzed in the context of the bona fide sale exception, and some valuable planning considerations are provided to avoid potential application of *IRC* §2036, in Pratt & Zakin, *Family Limited Partnerships: To Qualify or Not to Qualify for the Bona Fide Sale for Full and Adequate Consideration*

Exception Under §2036, 79 Fla. Bar J. 53 (Nov. 2005).

E. General Nontax Issues

1. [§7.16] In General

Tax planning is not the only reason for FLP formation. Even if there is no tax benefit gained, reasons to consider FLP planning include consolidating asset ownership, protecting assets, controlling asset management and the inheritance line, and planning for succession in the family business.

2. [§7.17] Consolidating Ownership Of Assets

A limited partnership can own practically any asset. This means that separate individual assets can be transferred to the entity. The transfer of an asset from the individual family member to the entity precludes its inclusion in the family member's probate estate, if any, and thereby avoids administration. Note, however, that the value of the family member's interest in the entity remains an asset of the member and will be included in the member's estate inventory. Likewise, when funding a "credit shelter trust" (see Glossary, Appendix) or other estate planning vehicle, interests in the partnership are used instead of the separate underlying assets. The family avoids the costs of transferring individual assets to the trust, and the personal representative avoids dealing with values of undivided interests of specific underlying assets to fund distributions.

The main entity used in FLP planning can have subsidiaries created to hold individual assets. In this manner, the entity created for FLP planning can be a family holding company with each asset protected from the liabilities of the other. Whether an individual entity or an entity with subsidiaries, the general partner or a side management company can manage all the consolidated holdings.

3. Asset Protection Planning

a. [§7.18] In General

Partnership law provides an opportunity for asset protection planning. Business entities typically protect the owners from the liabilities of the enterprise. With a partnership (or an LLC when the statutes provide), there is opportunity to protect the assets of the enterprise from the liabilities of the owner. For general and limited partnerships, the sole remedy of a judgment creditor against the partnership for the separate liabilities of a partner is a charging order against that partner's interest in the partnership. *Givens v. National Loan Investors L.P.*, 724 So.2d 610 (Fla. 5th DCA 1998); *Krauth v. First Continental Dev-Con, Inc.*, 351 So.2d 1106 (Fla. 4th DCA 1977); *Myrick v. Second National Bank of Clearwater*, 335 So.2d 343 (Fla. 2d DCA 1976).

F.S. 620.1404(3) provides that "[a]n obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership," making this the typically preferred form of FLP. See also Chapter 5 of this manual for discussion concerning general and limited liability partnerships, and Chapter 6 for discussion of limited partnerships.

b. [§7.19] Judgments And Postjudgment Remedies

Judgments are enforced through execution. A writ of execution is issued and delivered to the sheriff. The sheriff levies on assets of the judgment debtor and sells them at auction. Funds from the auction satisfy the judgment. Any excess is returned to the judgment debtor. Discovery in aid of execution provides the judgment creditor an avenue to find assets on which to levy. *F.S.* Chapter 56; *Fla.R.Civ.P.* 1.560.

Aid of the court is available to deal with a stubborn judgment debtor. Court orders can compel a judgment debtor to bring assets into a condition allowing the sheriff's levy. Refusal to comply with an order can result in a contempt order to compel performance. However, a contempt order is not enforceable if it is not possible for the person ordered to perform the act, and the existence and rights of other partners can legitimately make it impossible for a judgment creditor to act, thereby allowing a debtor to avoid a contempt of court citation for noncompliance. *Id.*

c. [§7.20] Charging Order

Historically, partnership case law recognized that a partner is not the only owner of assets of the partnership. *B.A. Lott v. Padgett*, 153 Fla. 308, 14 So.2d 669 (Fla. 1943). Therefore, the sheriff would not levy on assets held in a partnership. Instead, the court would impose a charging order on the financial interest of the partner that was the judgment debtor. Whenever cash distributions from the partnership flowed to the judgment debtor, those funds would be applied to satisfy the judgment. However, the holder of the charging order would have no vote on partnership issues.

The charging order came to modern times by statute. The National Conference of Commissioners on Uniform State Laws has adopted Uniform Laws for partnerships, limited partnerships, and limited liability companies. Many of the rules about charging orders are also in statutes governing LLCs. Florida has adopted the relevant Uniform Laws, and provides for the remedy of a charging order. *F.S.* 620.1703(1). Under the Florida Revised Uniform Limited Partnership Act of 2005, *F.S.* 620.1101–620.2205, a judgment creditor is entitled only to a charging lien and has no right to foreclose a debtor's interest in a limited partnership or to receive the underlying partnership assets. *F.S.* 620.1703(3). In 2010, the Florida Supreme Court held that Florida law does permit a court to order a judgment debtor to surrender all right, title, and interest in the debtor's single-member limited liability company to satisfy an outstanding judgment. *Olmstead v. FTC*, 44 So.3d 76 (Fla. 2010). However, in *Olmstead*, the Florida Supreme Court emphasized that for limited partnerships a charging order is the exclusive remedy. *Id.* at 82.

4. [§7.21] Control Of Family And Its Enterprises

The matriarch and patriarch of a family typically do not wish to give up control of family enterprises or assets. Pride or security concerns are often the reason; apprehension over the readiness of the next generation to manage assets may also arise. It is not uncommon that clients simply want to avoid making tough decisions.

FLP planning allows for tax and general estate planning-oriented transfers, while effectively allowing the head of the family to keep control over asset management. If carried out correctly, this also occurs without the retained interest "string" pulling the value of partnership property back into the gross estate for estate tax purposes. Thus the head of the family, by virtue of being the general partner, can give current value away for tax planning purposes without losing control over the underlying assets of the partnership. This ability is a key reason the FLP has reached great levels of popularity.

5. [§7.22] Control Of Inheritance Line

Interests in partnerships can be subject to restrictive agreements. Partnership terms can trigger transactions that keep control of the partnership and all of its interests in the family. A divorce with an award of property in a property settlement can trigger a purchase of the former in-law's partnership interest at a discounted rate. As a result, the interest stays in the family. Control over the price can keep the result from being too expensive.

6. [§7.23] Control Over Limited Partners

Parents usually want to control the underlying assets in FLP planning. Gifts of interests to the children (the limited partners) also transfer control of the interests. Because they are limited partnership interests, final control over underlying assets stays with the parents as general partners. Nonetheless, ownership of even a limited partnership interest can provide an opportunity to influence or damage partnership affairs, even if not directly or substantially.

Concern over this influence transferring to the children is reduced by some partnership details. A partnership is not a testamentary document. Therefore, terms not allowable in a will or testamentary trust can be included. For example, a partnership agreement can include an attorneys' fees clause so that a child (a limited partner) risks the cost of legal fees if he or she litigates and is unsuccessful. Alternative dispute resolution can also be provided for in the partnership agreement. In that manner, parents can choose to limit their potential legal expenses if a child brings an action.

7. [§7.24] Succession Plan

Many family enterprises have members of the family's second generation who are active in the business, while others of the same or other generations are not. The active members often devote their time to the family business as a choice of career. They may also be adding, over time, significant value to the family business. On the other hand, members of the family who are not active in the business are important to the parents as well. How can they be given an interest in the parents' assets without undermining the futures of the active members of the family enterprise?

FLP planning provides one solution. While the parents can determine that the successor general partner will likely be one of their children who is active in the business, the interest given to nonactive members of the family can carry rights to audit and minimums of net cash flow. Thus, the child who is active and has experience in the business can take comfort in the fact that his or her career choice will not be jeopardized. Moreover, interference from siblings who are not active in the business is kept to a minimum. At the same time, the nonactive children achieve some tangible benefits with terms of the agreement that protect the nonactive partners from potential abuse by the active partners.

F. [§7.25]Living With The Planning

Creating an FLP sets up a legal entity with continuing consequences that include decisions to be made about matters such as the underlying assets, the need to change titles, and distributions of cash to the parents without violating the allocation rules. The partnership must file an IRS Form 1065 yearly. Partnership transactions require close scrutiny to avoid traps for the unwary. The limited partners will each receive IRS Schedule K-1 (Form 1065) with allocations of income and loss that have personal tax effects. Planning for cash distributions to deal with taxes of limited partners will be needed. Therefore, carrying out FLP planning calls for a long-term commitment. It is an approach to family legal and financial management, not merely a complex contract.

II. CREATION OF FAMILY LIMITED PARTNERSHIP

A. [§7.26]In General

Although certain issues are important in FLP planning because family members are partners, all other considerations involved in creating a limited partnership (or an LLC) are the same as for any other enterprise. While initial filing fees are greater for limited partnerships than for LLCs, the choice of entity considerations are the same for an FLP as for any other business. See §1.32 of this manual, “Selection of Entity Chart,” for further discussion of this issue.

B. [§7.27]Contribution Of Property In Return For Partnership Interest

The transaction is the crucial factor in FLP planning, not the mere creation of a limited partnership having family members as partners. Therefore, to ensure the desired benefits, care is necessary when preparing the various related transactions.

It is important that all partnership contributions to be made by a parent precede the gift of a partnership interest. Care is necessary to ensure that the asset contributions are properly transferred and documented. IRS challenges to FLP planning include declaring later additions to the partnership as gifts to the noncontributing partners. Therefore, the parents must have direct or indirect ownership of all general partner and limited partner interests immediately after creation.

Complete conveyances of property and transfers of cash must occur as soon as possible after creating the limited partnership. Mere assignments, oral or written, without proper recording and title transfer, support IRS arguments that continued retained control over the underlying property by the transferor exists. There must be substantive change of ownership of contributed property. If the IRS prevails, the ability to discount the gift of interests is lost.

Formalities must be followed from the beginning of implementation of the plan, such as creating separate partnership bank and financial accounts. Otherwise, the retained life interest rule can ruin the plan.

Debt burdening property is a large concern in creating partnerships. *Crane v. Commissioner*, 331 U.S. 1, 67 S.Ct. 1047, 91 L.Ed. 1301 (1947), is the seminal case in this area. *Crane* holds that creation and relief of indebtedness can create realizations of income that cause taxation under general income tax principles. Encumbered property contributed to a partnership is proportionately added to the basis of partners. Therefore, the partner entitled to that basis associated with the debt may have more basis against which to take losses or receive tax-deferred income. The partner contributing the encumbered property might be relieved of the debt. To that extent, there is income realized on the transaction, but that occurs only to the extent the relief of indebtedness is more than the contributing partner's basis. Various special rules created to stop tax shelter abuse make all this even more complicated. Therefore, if there is debt associated with creating a partnership, practitioners must take extra care.

This consideration of liabilities in excess of basis finds its way into many tax issues of partnerships. Practitioners should counsel clients who are the control stockholders against giving away the stock of a corporation while retaining control of the corporation, because retaining control is considered "strings" that bring the value of the stock back into the gross estate. With stock given to certain family members, attribution rules will likely result in retained control treatment, even if there is no real control. Therefore, when using the FLP for tax planning purposes, contributing control stock will not be subject to the discount.

C. [§7.28]Appraisal

Although not required under tax law, courts typically look to appraisals (and their quality) in value disputes. Therefore, appraisers and appraisals may be critical to the goal of achieving "discounts" in value. Appraisals are potentially needed at two levels.

If the contribution is of real estate or other nontraded property, an appraisal of that underlying partnership property is needed. The value of underlying property is the beginning point in an appraisal of partnership interests. Discounts sought are against the proportionate share of underlying assets that the interest holder would receive on liquidation. Therefore, the second-level appraisal is necessary.

The second-level appraisal is of the partnership interest itself, which requires a business value expert, not a real estate appraiser. Here, artistry can strengthen craftsmanship. Many practitioners hire an appraiser before creation of the FLP or before transfer of interests to the FLP to help develop the terms and conditions of the partnership agreement. In this manner, risk is reduced because there is already consideration of items the appraiser finds significant. Some practitioners describe the gift amount of a partnership interest as that percentage of the partnership interest that amounts to a specifically described dollar figure. In that manner, the percentage given becomes the contingent item and the value, for tax planning purposes, is fixed where the planner designs. One tries to create an "asset" when doing FLP planning just as an investment banker does when negotiating terms of corporate governance. Because of this, previous negotiation and analysis are useful.

What is the risk that may be reduced by this process? In FLP planning, making gifts of nontaxable amounts is a primary goal. Discounts involved in valuing interests in the partnership provide, in essence, a way to get a greater percentage of the correlative underlying value transferred with less gift tax effect. It follows that if the court does not accept the taxpayer's value, and fixes a higher value of the transferred interests, a tax cost may be incurred. This would occur if the FLP planning calls for gifts that absorb both the exemption equivalent of the unified credit and available annual exclusions in the same year. If the court finds that the value claimed by the taxpayer is too low, the higher value fixed by the court can result in a need to spend cash to pay a tax. This is the worst of all cases.

D. [§7.29]Investment Company Rules

A trap for the unwary is potential treatment of the partnership as an "investment company" (within the meaning of *IRC* §351) under the Code. *IRC* §721(b). Because FLP planning may often involve contributions to the FLP of publicly traded stock, practitioners must be aware of the tax treatment of this type of contribution.

Investors will often want to sell one publicly traded stock and use the funds to buy another. There are many reasons for this. One key reason is to gain diversification and reduce investment risk. However, a sale of a publicly traded share can result in a gain, leaving only the net after-tax gain to buy the share bought for diversification. To avoid this, taxpayers contribute publicly traded shares to businesses with other investors (usually family members). As a result, the underlying value of the interest taken in return consists of a beneficial interest in undivided shares of the various items of property each investor contributed. If this technique was allowed to occur without limit, taxpayers could diversify their holdings without recognizing the inherent gain.

IRC §721(b) restricts this technique. The general rule of partnerships is that no gain or loss is recognized when partners transfer property to a partnership in exchange for an interest in the partnership. *IRC* §721(a). However, if more than 80% of the property contributed to the partnership consists of stocks and securities, the rules of *IRC* §351(e)(1) apply as if the partnership were a corporation. *Reg.* §1.351-1(c)(1).

This results in treatment of the partnership as an "investment company" for tax purposes. Consequently, the taxable reorganization rules do not apply, and there is an income tax on contributing property to the partnership and receiving an interest in return.

E. [§7.30]Fraudulent Conveyance Or Conversion

A question may arise concerning whether a conveyance to the limited partnership is a fraudulent conveyance or fraudulent conversion. This is because a charging order limits the rights of a partner's creditor to reach partnership assets to the charging lien and any distributions that may or may not occur.

A fraudulent conveyance is a transfer without adequate consideration and with the intent to defraud creditors. A contribution to a partnership in return for an interest is not likely a fraudulent conveyance if there is adequate consideration found in the interest in the partnership received in return. Even though only subject to a charging order, the interest remains available to satisfy judgment creditors. The underlying property indirectly provides value to support collection of the judgment. Although creditors do not prefer this method, it is nonetheless a form of satisfaction. The debtor has not transferred away the creditor's access to the debtor's property; the debtor has only changed the form to one in which a specific remedy is available to creditors seeking collection.

A fraudulent conversion involves replacing reachable assets with exempt assets.

Constitutional and statutory rules provide there can be no levy on certain assets to satisfy creditors' claims. Homestead is the most prominent. Art. X, §4(a), Fla. Const. Cash values in insurance contracts are exempt as well. *F.S.* 222.14.

A transfer of property to a partnership in return for an interest is not a fraudulent conversion if the partnership interest to which the property is converted is not exempt. Transfer to a partnership does not make this property exempt. The limits a judgment creditor faces are not a result of exemption; they are only a limit of the choices for seeking satisfaction. That is, only a charging interest is available to apply the value of a partnership distribution to satisfaction of a claim.

Because FLP planning is often undertaken for estate tax or general asset consolidation purposes, it is wise to document those purposes to help defeat any fraudulent conveyance or fraudulent conversion arguments.

III. CAPITAL AND TAX STRUCTURE

A. [§7.31]Distinction Between Capital Account And Tax Basis

Entities taxed as partnerships need two sets of financial records. This is legitimate because the partners have two different interests for which to account.

The capital account records the value of each partner's contributions to the partnership. Unlike with corporate dilution, the capital contributed, with adjustments, stays credited to the partner contributing it. On liquidation, the partner is entitled to the remaining balance in the capital account, after certain adjustments.

The second set of records accounts for the tax basis in the partnership interest. The tax basis of contributed property is the partnership's tax basis. The partner's tax basis in the partnership interest received in return is the tax basis of the property contributed. The allocable share of tax loss to be applied to reduce a partner's individual income is limited by the partner's basis in the partnership interest. The partner's ability to take losses against other income is further limited by the passive activity loss rules under *IRC* §469. Additionally, a share of partnership debt is added to each partner's tax basis. However, special rules apply on allocation of debt to the basis of the limited partners.

Many variations exist between the rules of financial accounting and the rules of tax accounting. At the same time, they are applied on an integrated basis, with one affecting the other. Thus, the FLP accountant or practitioner will have two sets of books for proper accounting for two different interests: the rights of the parties in their transactions with one another, and the rights of the IRS to collect tax on the transactions.

Practitioners should remember that "taxable income" for tax accounting is not the same as net cash distributions for financial accounting. In the FLP context, "income" refers to taxable income, whereas "net cash distribution" refers only to actual cash received.

The distinction between capital accounts and tax basis is foreign to most small business owners. They are mostly familiar with the subchapter S corporation. Both the S corporation and an entity taxed as a partnership feature pass-through of income tax items. However, they are different when one looks at how and when that occurs. FLP planning deals with far more than the classical considerations of an S corporation owned by a family. Therefore, the client should be fully educated in the continuing implications of placing family wealth or a family enterprise in an FLP.

B. [§7.32]Valuation, Credits, And Debits On Formation

Family relationships of partners often cause tax results different from those of unrelated partners. There are opportunities for divisions of values, deferral of taxes, and other outcomes to create favorable results not available otherwise. The general rule allowing no gain or loss on contribution of property in return for an FLP interest is the basis for much of the difference.

Contributors have often already held property contributed to the partnership for a long time. Appreciation is typical. Original cost (with certain adjustments) is the cost basis for tax purposes (tax basis). (See §7.31 for a discussion of tax basis implications of property transferred to a partnership.)

Nonetheless, for financial accounting purposes, the current fair market value of the contributed property is what counts. This difference has great impact, because the result of the different treatments is that the partner has, under the general rule, no taxable gain or loss because of the contributing transaction. However, the full value of the financial contribution is recognized by all partners.

FLP planning concerning giving partnership interests generally involves the goal of transferring all of the value, including the value of the capital account. On liquidation of the gifted interest, the contributor of the property does not expect to get back the value. Instead, it will carry over to the next generation, which is the major goal of FLP planning.

However, for purposes of valuing given partnership interests for estate tax purposes, the underlying value of the capital account portion transferred is considered. That it is held in the partnership and not under direct control of the donee of the interest contributes to the discount, reducing the full gift tax impact of the gift.

An interest in profits might not be a direct correlative of the respective capital contributions. For example, the organizer of a partnership often receives a partnership interest for the work done, but without a right to an interest in the capital contributed by the other partners. In other words, the service partner's capital account is zero. Even so, the service partner receives an interest in the net cash flow of the partnership.

IV. OPERATIONAL ISSUES

A. [§7.33]General Partner's Duties And Investment Risks

The parents creating the FLP and contributing property to it want control of that property. Therefore, they typically take the roles of general partners in a partnership or of managing members in an LLC. This provides them with the authority to manage the entity's underlying assets. Parents, as general partners or managing members, and their children, who own gifted limited partnership interests as limited partners, have different legal and tax interests. Although the parents control buying, selling, and managing assets, management of the investment result is subject to the terms of the partnership agreement (or operating agreement if an LLC) and governing statutes. Thus, the parents do not have unfettered power to do anything they wish.

Not complying with the terms of the governing agreement is dangerous. Courts have held that ignoring the formalities of the partnership can undo FLP planning. *Estate of Schauerhamer v. Commissioner*, 73 T.C.M. (CCH) 2855, T.C.M. (RIA) ¶97,242 (1997).

Day-to-day operations of the partnership and the property it owns are in the hands of the general partner or partners or the managing members. Therefore, general operating and investment activity of the partnership can continue without significant interference from a donee of a partnership interest.

Even though the parents have control of the entity, they have a fiduciary duty to their children. FLP general partners and managing members have control, but are also held accountable. Fiduciary principles govern their conduct because they are in a position of trust to manage matters with the best interests of all interest holders in mind, and must do so under the terms of the governing agreement. The holders of noncontrol interests hold the interests they acquire as they find them. Because it is a business interest they are holding, they must look to the governing agreements and to the law to determine their rights. The goals embodied in the governing agreement provide standards for general partners of limited partnerships and managing members of limited liability companies. Therefore, the reasonableness or propriety of risk in a given case stems from the terms of the governing agreement. General fiduciary principles do not create a guarantee of trust. If the fiduciary is conducting business in a demonstrably reasonable and responsible way, there will not be an automatic liability for losses. Furthermore, if the governing agreement calls for or allows for the type of risks taken, there is further assurance of no liability for investment losses.

If the general partner or managing members invest or manage property in a manner outside the terms of the governing agreement, they take a personal risk and may be found in breach of the entity's governing agreement. If there is no authority for the action in the agreement and their actions amount to self-dealing, fiduciary standards apply, regardless of the terms of the agreement. As a result, general partners and managing members must recognize and follow fiduciary principles. See *F.S.* 620.1408 (partnership), 608.4225 (LLC).

B. Record Maintenance

1. [§7.34] In General

FLP planning typically involves appraisals of the underlying assets and of the partnership interests themselves. The first is a property appraisal; the second is a valuation of the business.

Given the potential outcomes, it is important to obtain good appraisals and to keep them. Consideration of the appraisals can come years after they are issued. Unlike use of an appraisal to support issuing credit, in FLP planning, the value of an appraisal is in the future.

Proper recording of allocations of income and loss for tax purposes is also important. These adjustments can cause changes in capital accounts. Of equal importance is the proper identification and recording of cash payouts to partners. This is a key area because it is important to show that the formalities of the partnership, especially the partners' rights to cash (see

§7.36), are honored.

2. [§7.35] Basis

Future tax results rely on records of tax basis. Basis is the amount that reduces the sales price to fix the gain realized. For example, if an asset was bought for $100 and later sold for $150, the realized gain is $50.

Therefore, records about basis are critical to calculate gain in future transactions. Given that a partnership interest has both a capital account portion and a profits interest portion, this can be tricky. Current calculations when a transaction comes easily to mind are easier than backtracking in later years to remember the necessary adjustments.

Including a property in the gross estate of a decedent potentially creates tax. The heirs, however, take the property with a “step-up” (see Glossary, Appendix) in the basis. The new basis is the fair market value of the property at death. Therefore, when the property is sold, there is already a reckoning for the latent capital gain at death. The taxes on sale do not create capital gain to that extent.

Potential estate tax reform or repeal increases the importance of basis records. Reform may reduce the ability to step up basis on death. If there is no estate tax, there would be no inclusion and no related step-up in basis. When the heirs want to later sell or liquidate, they must know the basis. Because the heir’s basis would be the basis at acquisition by the parent, records of the parent’s original basis become essential as well. Therefore, if the estate tax is fully repealed, basis planning will be necessary to reduce future capital gain to heirs.

C. [§7.36]Distributions Of Cash

In commercial partnerships there is a great interest in all partners receiving cash flow. It is likely the partnership agreement obligates the managing partner to distribute cash after setting aside reasonable reserves. In FLP planning, that is not the best practice. The better provision leaves to the managing partner the discretion to distribute available net cash. This is one way parents can keep control. Further, this limit on the value of partnership interests given to the next generation adds to the discounts for gift tax purposes.

At the same time, it is expected that distributions of net cash made will be proportional. Therefore, the general partners cannot arbitrarily distribute net cash only to themselves. If they do, the IRS can assert that the partnership is a sham, and nullify many planned benefits.

In any event, the parent generation expects the FLP to give it cash to live on. Therefore, cash flow to the parents must be planned. Because the parents are going to receive income, the question is how the partnership can take a deduction for it. The rules under *IRC* §707(c) guide this consideration. The answer depends on whether the distribution is dependent on the capital-sharing and profit-dividing terms of the partnership. If so, there is no deduction, and the payment is treated as a distribution. However, if the transaction and its terms are independent of the capital-sharing and profit-dividing terms of the partnership, the deduction is allowed. Thus, a partner can provide the partnership the services or products in the partner's normal trade or business and receive payments deductible to the partnership, and there can be agreement on a specific payment payable yearly ("guaranteed payment"), no matter what, that will also be deductible to the partnership. *Id.* However, it is important to treat those payments as a separate matter from regular partnership distributions. More agreements and similar documentation are advisable.

D. [§7.37]Tax Elections And Profit Division; Allocation Of Income And Capital Account Adjustments

Tax accounting identifies income and loss based on tax principles. A deduction based on a depreciation schedule is not a current outlay of cash. However, a depreciation deduction reduces taxable income. Therefore, the net cash available for distribution can be more than the taxable income on which tax is paid.

Allocations of income and loss arise from the profits interest. Therefore, the donee who receives the partnership interest is assigned these items of income or loss even if there is no cash flow. This is the case regardless of whether the partnership interest carries a balance in its capital account. During the life of a partnership created for FLP planning, there will be a recurring annual analysis if cash must be distributed for payment of partner taxes.

Partners can agree among themselves how to divide partnership benefits. This is obvious in cases of net cash available for distributions.

However, there are other matters that have a financial impact. Allocation of tax results is one area that can provide significant benefits to the partners. For example, the partners could decide that all tax "losses" could be allocated to one partner.

IRC §704(b) requires the allocation of loss to one partner to have "substantial economic effect." The primary way to ensure this result is to reduce the partner's capital account in an amount equal to the disproportionate allocation. As a result, the amount that partner would receive on liquidation is less than if there were no adjustment. This is called the "substantial economic effect."

Practitioners should note that capital account adjustments occur even if there is no intent for a disproportionate allocation of deductions. This can theoretically cause unintended results that have a financial impact. However, with the full array of adjustments that occur in partnership matters, it usually "washes out" in the end.

The "cost basis" of a partner in a partnership includes a proportionate percentage of debt financing of partnership property. In the past, tax adjustments were available to the extent of a partner's basis. Therefore, allocating the debt-financing basis increased the extent to which a partner could take advantage of tax adjustments. When those tax adjustments exceeded net cash flow in any year, the excess tax adjustments sheltered income from other sources. This is the core principle behind the "tax shelter" investments that were popular in the 1970s and 1980s. This result could occur even if the partner had no personal liability for the debt that increased the partner's basis.

Promoters of tax shelters arranged partnerships so that the passive investors would receive a disproportionate share of losses by "special allocations." These special allocations distorted the deductions tax shelter investors would receive, and the financial impact was zero. However, the tax shelter investor could take the large tax deductions against other income. This deferred tax costs in any one year to a later day of reckoning.

These arrangements were considered an abuse of tax benefits. Several cures were started in the Code of 1986. Among the key cures was limiting the ability to disproportionately allocate tax benefits to provide shelter of other sources of income from taxes. Case law supported the proposition that there must be some substantial economic effect to the allocation. Capital account adjustments thus settled in as a legitimate way to have substantial economic effect. Codifying the principle removed any benefit of litigation on the issue, and effectively chilled the market for tax shelter investments.

V. TERMINATION OF ENTITY OR OWNERSHIP

A. [§7.38]In General

FLP planning provides significant opportunities beyond the discounts of transferred values at the inception of the plan. Dealing with interests in an FLP gives practitioners an opportunity for creativity when seeking the best net-after-tax result for clients in the future.

After the FLP is created and funded, and transfers are made, the partners (especially the transferees) hold percentage interests in the partnership with a much lower value than the basis or value of the correlative percentage interest in the underlying assets. Sale or liquidation would create capital gain instead of the higher estate or gift tax rates.

FLP long-term planning anticipates the deaths of interest holders. This and other developments involving family members may require transactions to terminate a partner's inclusion and interest, create liquidity with the partnership interest, or confront other realities of life.

B. Death Of Interest Holder

1. [§7.39] Effect On Existence Of Partnership

If the surviving parent in the family dies owning at least 50% of the interests in the FLP, disposition of the interest would be 50% or more of the interests in the partnership. *IRC* §708(b) would regard this as a termination of the partnership in most circumstances. This triggers many unwanted consequences, some of which have a cash cost in taxes. With the death of an unrelated partner, this does not happen. If, because of the partner's death, there will be a sale of 50% or more of the partnership interests for some other reason, then the problem arises. Therefore, a redemption (an exchange of partnership interests for partnership property) of the deceased partner's interest is preferred over a sale to other partners under the buy-sell terms of the partnership agreement.

Thus, the potential for avoidable termination outcomes calls for planning and care in anticipation of the death or retirement of a partner.

2. [§7.40] Liquidity

When an interest holder dies, especially if it is the surviving parent in the first generation, there is sometimes a need to raise cash. Some estate taxes and administrative expenses can still accrue despite planning (which reduces, but does not necessarily remove, transfer taxes). If a significant portion of an estate's value is in partnership interests of an FLP, liquidity issues arise.

Estate taxes are due nine months from the date of death. *IRC* §6075(a). Administrative expenses of an estate administration or trust settlement require funding. However, the partnership interest is not liquid. Therefore, transactions are necessary to raise cash. Loans from the FLP to the estate, or redeeming the estate's interest in the FLP can, if carefully planned and carried out, create significant further tax advantages while also providing liquidity.

The difference in the basis of the partnership interest and the underlying assets provides further planning opportunities. Because of value discounts when calculating estate tax, less cash is needed for tax than would otherwise be the case. Therefore, there remains in the partnership a greater proportionate amount than the remaining partners would otherwise have available to them. In addition, loans from the partnership can raise cash that, indirectly, will reduce the estate tax due when the estate deducts interest payments as administrative expenses.

C. [§7.41]Liquidation Of Entity

It is rare that an FLP is liquidated, at least until after the death of both parents. If it does cease to operate, the normal issues of liquidation will apply. It will be necessary to make a determination of distribution of the assets to the partners. On liquidation, a partner will recognize gain to the extent that any money (which may include marketable securities) received exceeds the adjusted basis of the partner's partnership interest. *IRC* §731.

However, if one of the siblings who is a partner wants to liquidate his or her interest, but the others do not, planning is needed and opportunities exist. Here, too, good transaction planning can determine the tax consequences to the withdrawing partner and the remaining partners.

The withdrawing partner will prefer to have the withdrawal treated as a sale, while the remaining partners would benefit more by treating it as a liquidation. By treating the withdrawal as a sale, the withdrawing partner will be allowed to treat any gain as capital versus ordinary gain, and the partnership will not be entitled to a deduction. *IRC* §741. However, if the withdrawal is treated as a liquidation, the partner will be required to recognize any payment as ordinary income, while the partnership will be entitled to a deduction for the payment. *IRC* §736. These potentially stormy issues need calm guidance from practitioners to reach an outcome agreeable to all.

VI. [§7.42] ETHICAL CONSIDERATIONS

FLP planning involves a cornucopia of ethical issues. For example, given the number of parties to an FLP transaction, exactly which party is the client must be determined. A central question when representing spouses is whether one will be a general partner and whether that decision amounts to a loss of rights by the other. If it does, does that spouse then need separate representation? The partnership itself is an entity entitled to representation. What is the organizing attorney's role for it? The children who will receive interests in the FLP must also be considered. With those interests come potential consequences, such as responsibility for taxes on K-1 income without distribution of cash to pay taxes. Does the lawyer owe a duty to the children to explain the potential outcomes if they accept the gift?

Professionals planning and organizing FLPs may also have other parties who assert duties are owed by the attorney. If there are creditors lurking, even unknown to the lawyer, they might claim that the lawyer helped hide assets. Tax preparer penalties may be an issue if the IRS decides there was a fraud or aiding of a tax avoidance scheme.

During the years the partnership is in existence, ethical issues are also present. If the lawyer represents the parents, what are the lawyer's duties to the partnership or the other partners? Can the attorney allow the parents indiscriminately to take cash? Disproportionate distributions can result in loss of tax benefits. There is also the possibility that the parents might somehow take something that, in the strictest legal sense, does not belong to them. If this may damage the benefits of the FLP planning, to whom does the attorney owe a duty? What happens if the parents do not want to give out enough cash for partners to pay tax on their assigned income? In that case, the partners suffer damages to the extent they must take money out of their own pockets to pay tax. To whom does the attorney owe a duty in that case?

The general partner is usually the "tax matters partner" for an FLP. *IRC* §6231(a)(7). This gives the general partner control over tax elections that can have an impact on the limited partners. In turn, the limited partners have little recourse with the IRS. Even if a negative decision is adjusted later, there is a current liquidity problem.

When conflicts of interests are a consideration, the parties should seek separate counsel. At a minimum, effective disclosure and consent should take place.

In the arena of tax considerations, the lawyer owes it to himself or herself, if not to the IRS, to control key matters about FLP planning. If not preparing the gift tax return, the lawyer should insist on approval of the return preparer to be assured that it will be handled professionally, because of the complexity of the matter. Choosing a qualified appraiser should be a precondition set down by the lawyer. Even though an appraiser is not required under law, one is necessary to obtain assurance that the planning will more likely survive an IRS challenge. Furthermore, the lawyer then has a demonstration of good faith in the proper conduct of affairs if there is a tax deficiency and a preparer penalty is proposed.

Of equal importance is consultation with clients about continuing responsibilities and commitments needed of them in FLP planning. Many clients come to a tax and estate planning attorney on urging from their accountants or other professional advisors. Their goal often is to engage in a transaction to save taxes, but there is little awareness of the overall cost, not only in fees, but also in time. In addition, there is often little warning about the risks of FLP planning. Without proper care, gifts of interests can result in gift tax liability. Clients should understand that this risk exists, and must realize the lifelong commitment involved before agreeing to any transactions.

VII. [§7.43] PLANNING CHECKLIST

Opportunities exist for the business or real estate lawyer to provide an important service to clients by promoting, when suitable, the creation and maintenance of an FLP. It is not necessary to become an expert in tax and appraisal matters. General familiarity with the goals, objectives, and challenges of FLP planning opens the door to this service.

However, one point above all should be clear to practitioners. Creation and maintenance of the FLP (or an LLC with similar features) is a major step for the client. It requires in-depth analysis of the client's affairs. The strategic steps for completion of the first set-up are comprehensive and complex. The clients will be engaging in a new method for managing their assets and ultimately transferring their estate.

Overseeing later actions of the client regarding the FLP is important. The benefits gained by excellent planning and meticulous drafting can be lost through improper handling of the partnership's affairs. The *Strangi* cases (see §7.15) and other decisions make that certain. The demands of adhering to the partnership formalities are minimal when compared to the benefits obtained from FLP planning.

As FLPs increase in use, it is more likely that practitioners will meet new clients who are managing FLPs. Being familiar with FLP planning helps practitioners to recognize FLP clients' important issues and better handle transactions for clients. It would be a disservice to allow transactions to go forward that risk the viability of FLP planning, or that do not take advantage of inherent planning opportunities.

While tax benefits have been the "sizzle" that sells FLP planning, other considerations may also make it attractive to many clients. Clients will likely be just as interested in the asset protection benefits and asset consolidation features. People are taking advantage of the disregarded entity rules to create subsidiary limited liability companies for holding individual properties. A "parent" FLP can, therefore, become the head of a group of entities so that all the properties are protected from each other's assets without the need for several tax returns.

The FLP becomes an excellent tool to avoid probate. Even popular revocable trust planning requires, on the death of the settlor, transfer of existing underlying assets to gain the advantages of marital deduction and credit shelter trust planning. This has transfer costs, even if not a "probate" fee. If the assets in a probate estate or a revocable trust are partnership interests or LLC units, only they need transferring. This prevents disturbing the title to or liens on the underlying property.

The following checklist is a simple strategic plan for completing FLP planning with some practical points. Readers are referred to Pratt & Zakin, *Estate of Thompson: Respecting the Formalities of the Family Limited Partnership*, 77 Fla. Bar J. 51 (March 2003), for good suggestions on conduct to preserve the tax benefits of FLP planning.

- **With respect to information gathering and analysis:**

  All asset value information and proper title information must be obtained.

- **With respect to client education:**

  Explain to the client the implications of FLP planning and that it involves changes in operations of the family's business or wealth; these changes must be made and sustained or the client could face problems, including an unexpected loss of benefits.

- **With respect to document drafting:**

  Confer with an appraiser and the client's other advisers to determine the terms to depress the value of the partnership interest without reducing the value of the underlying assets, obtain planning flexibility, and reduce risk of unintended gift taxes.

- **With respect to the continuing nature of the FLP:**

  Involve the client's accountants in the planning to simplify later actions.

- **With respect to document review:**

  All interested parties should review all documents, including the partnership agreement, documents of conveyance of property to

fund the partnership, and any certificates of partnership interest to be issued to the first partners, as well as documents that will transfer partnership interests as gifts to the donees.

- **Schedule a conference for signing the entity creation agreement and filing the necessary certificates.**

- **Schedule a conference for signing the documents that convey property and record those documents. This should be completed before delivery of assignments of partnership interests gifted to others. Prompt transfers support the argument that the transaction is legitimate. Delay and laxness in following up do not support legitimacy of the new legal relationships.**

- **Arrange for signing of documents of assignment of partnership interests.**

- **Practitioners should note that appraisals are expensive. Therefore, ideal planning calls for gifts on December 31 of one year and January 1 of the immediately following year. In this way, assignments can be made just before and just after the new year, with one set of appraisals serving for both the first and second year of making gifts.**

- **To ensure exactness of values and avoid unintentional gift taxes, an assignment of partnership interests should include the following terms:**

  The assignment is of that percentage of the partnership interests that will be valued at specific amounts. Therefore, the contingency is what percentage of the partnership will be transferred. If, instead, a specific percentage is transferred, the value is the contingency, and the risk of gift taxes exists. The assignments are in two sets. One set is dated to be effective December 31 of the first year and the other set effective for January 1 of the next year.

- **With the delivery of appraisal reports, begin preparing two IRS Forms 709 (gift tax returns) that will be due under the suggestion above. The first is due on April 15 of the year immediately following the first gift. The second is due on April 15 of the next following year for the January 1 gift.**

- **Take steps to preserve the records of the transaction, especially the appraisals, so they are available in the future.**

See the samples below for a partnership agreement, a certificate of partnership, and conveyance of partnership interests. These are samples for initial drafts. Practitioners should prepare documents that reflect a full analysis of the specific client's needs and goals.

It cannot be emphasized enough that FLP planning involves a comprehensive engagement that is really the initiation and organization of a new enterprise. There will be continuing issues of management of this enterprise. Just as when a "regulated" enterprise is formed, ongoing compliance with the governing regulations is required. In the case of an FLP, the regulations are common sense in light of the goals pursued. Proper education of the clients and, when allowed, monitoring client conduct related to the planning, are just as critical as understanding subtle distinctions in case law.

Practitioners serve as the ultimate guide to clients in preserving the benefits of FLP planning. Practitioners should refer clients to tax professionals and business managers and should periodically review the affairs of the FLP. The "annual meeting" of an FLP should be a comprehensive review of a variety of matters.

While FLP planning is challenging, that challenge is also an opportunity to deal with a variety of interesting issues. The area is evolving, with new cases and new IRS challenges to claimed tax benefits. Asset protection cases will continue to hold interest as practitioners develop ways to protect clients from nuisance litigation. Equally important will be the opportunity to help clients better organize a family's financial arrangements. If nothing else, FLP planning is a real opportunity to get clients' affairs in order.

VIII. SAMPLES

A. [§7.44]Family Limited Partnership Agreement

LIMITED PARTNERSHIP AGREEMENT
OF
SAMUEL O. SAMPLE FAMILY PARTNERSHIP, LTD.
A Florida Limited Partnership (the "Partnership")

THIS LIMITED PARTNERSHIP AGREEMENT ("Agreement" or "Partnership Agreement") is made and entered into and shall be effective as of the date of signing by a general partner hereunder and a limited partner

hereunder, by and between SAMUEL O. SAMPLE ("SAM") and SYLVIA O. SAMPLE ("SYLVIA"), the "General Partners," and the persons whose names are set forth on the exhibit attached hereto titled "Schedule of Information Regarding Partners of the Partnership" ("Limited Partners"), under the provisions of the Florida Revised Uniform Limited Partnership Act of 2005, F.S. 620.1101 et seq., as amended (the Act).

WHEREAS, the parties hereto desire to form a limited partnership under the laws of Florida for the purposes set forth here;

NOW, THEREFORE, for and in consideration of the sum of $10 and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
GENERAL PROVISIONS, REPRESENTATIONS, AND COVENANTS

A. GENERAL.

1. READING OF THE AGREEMENT. All of the above recitals are true and correct, incorporated herein by reference, and made a part of this Agreement. All capitalized terms used herein shall have the meanings ascribed to them in the references after the terms or phrases that they describe and/or in any specific provisions that define the terms of this Agreement. Words such as "herein," "hereinafter," "hereof," "hereto," and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires. Other specific definitions of terms used in this Agreement are provided in the "MISCELLANEOUS" Article of this Agreement under "DEFINITIONS."

2. FORMATION. The parties hereby form a limited partnership (the "Partnership" or the "Limited Partnership") under the Act for the limited purposes and scope set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Act.

3. GENERAL PARTNERS.

a. TERM OF GENERAL PARTNER.

(i) The General Partner may serve as the general partner as long as the General Partner desires and, in advance of resignation, bankruptcy, or inability to perform his or her duties hereunder, the General Partner may designate a successor general partner hereunder by giving written notice to the

Partnership and all other Partners. The designated successor general partner shall have the right to acquire all of the Interests in the Partnership of the General Partner and become a substitute partner, thereby acquiring all of the rights, powers, and interests of the General Partner hereunder. If the General Partner fails to designate a successor general partner or anyone so designated declines to acquire all of the Interests of the General Partner, the Limited Partners may select, within 180 days of this event, a successor general partner by vote of the Limited Partners owning in the aggregate more than 65% of the Percentage Interests of the Limited Partners at the time of this vote.

Any successor general partner selected by the Limited Partners shall (a) purchase all of the Interests of the General Partner (or then existing general partner) for its then fair market value (determined as if the underlying net worth of the Partnership were valued at its Book Value) if required by the General Partner, or (b) if not required by the General Partner, acquire an appropriate general partner interest directly from the Partnership on terms and conditions determined by the Limited Partners. On the affirmative vote of the Limited Partners owning in the aggregate more than 60% of the Percentage Interests of the Limited Partners at the time of this vote, the Limited Partners shall have the right to remove any successor general partner selected by them.

(ii) On withdrawal of the General Partner or any successor general partner for any reason without a transfer of all of his or her Interest, the General Partner or the successor general partner shall have the right to convert its Interest to an equivalent Interest and become a Limited Partner within the 90 days after the appointment of a successor general partner. If this conversion is not made, the Partnership shall have the same rights to redeem the Interest on the same terms and conditions as provided in the section hereof titled "WITHDRAWAL AND RIGHTS TO PURCHASE ON CERTAIN EVENTS." On the withdrawal of a successor general partner, the Partnership shall redeem all of the Interest of this successor general partner within 60 days of this event. The Partnership shall pay the successor general partner an amount equal to this partner's Capital Account Balance as of the date of withdrawal in cash in complete redemption of his or her Interest.

b. APPOINTMENT OF MANAGING PARTNERS. In the event that there is more than one General Partner, there shall be named from among the General Partner(s) (a) Managing Partner(s) (the "Managing Partner" or "Managing Partners"). Until and unless SAM resigns or is removed in accordance with the terms of this Agreement, he shall serve as the Managing Partner.

4. FILINGS; AGENT FOR SERVICE OF PROCESS.

a. The General Partner(s) shall file a certificate of

partnership ("Certificate") with the Florida Department of State in accordance with the provisions of the Act. The General Partner(s) shall take any and all other actions reasonably necessary to perfect and maintain the status of the Partnership as a limited partnership under the laws of Florida. The General Partner(s) shall file amendments to the Certificate whenever required by the Act. These amendments may be executed by any General Partner.

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

c. The agent for service of process on the Partnership shall be SAM or any successor as appointed by the General Partner(s).

d. On the dissolution of the Partnership, the General Partner(s) (or if there is no remaining General Partner, any person elected under the section titled "DISSOLUTION AND WINDING UP") shall promptly execute and file a certificate of dissolution in accordance with the Act and the laws of any other states or jurisdictions in which the Partnership had filed certificates.

5. PURPOSE AND SCOPE OF THE PARTNERSHIP. The purpose and business of the Partnership shall be limited strictly to the following:

> **The Partners desire to consolidate the ownership and management of investments, income-producing properties, and business holdings with a view toward growth appreciation and the continuation of the Partnership throughout the lives of the Limited Partners. To that end, the Partnership shall hold and manage the real, tangible, and intangible property of the Partnership, including, but not limited to, the management of business enterprises owned by the Partnership or entities owned or controlled by the Partnership to the extent allowed by the laws of the state of Florida. In all respects when necessary and appropriate, the Partnership shall exercise the rights and obligations of an interest owner when the Partnership is the owner of an interest in another legal entity. Furthermore, the Partners desire that all money and other Partnership property, including Net Cash from Operations and Net Cash from Sales or Refinancings (as hereinafter defined in the subsection titled "DISTRIBUTIONS"), be distributed from time to time to the Partners to the extent not reinvested by the Partnership.**

In addition to the above, the conduct of any and all activities incidental thereto shall be deemed purposes of the Partnership (the "Business").

These purposes shall not be extended by implication or otherwise unless approved by the Partners except as otherwise specifically provided herein. (The phrase "Approved by the Partners" shall mean approved in writing by the affirmative vote of the General Partner and Limited Partners holding an Interest or Percentage Interest (as hereinafter defined in the subsection hereof titled "INTEREST" or "PERCENTAGE INTEREST" in the section titled "DEFINITIONS") greater than 50% of the outstanding Percentage Interests held by the General Partner and the Limited Partners.)

6. SCOPE OF PARTNERS' AUTHORITY.

a. GENERAL. Except as otherwise expressly and specifically provided in this Agreement, no Partner shall have any authority to act for, or assume any obligations or responsibility on behalf of, any other Partner or the Partnership. Neither the Partnership nor any Partner shall be responsible, liable, or obligated for any indebtedness, obligation, or duty of any other Partner of the Partnership. Neither the Partnership nor any Partner shall be responsible, liable, or obligated for any indebtedness, obligation, or duty of the other Partner or otherwise relating to the Business incurred or arising either before or after the execution of this Agreement, except to those joint responsibilities, liabilities, indebtednesses, or obligations incurred after the date hereof under and as limited by the terms of this Agreement. This Agreement shall not be deemed to create a general partnership between the Partners, except to the relationship of the General Partner(s) to each other; and not with respect to any activities whatsoever other than activities within the scope and business purposes of the Partnership as specified in the subsection titled "PURPOSE AND SCOPE OF THE PARTNERSHIP."

b. INDEPENDENT ACTIVITIES. Unless otherwise specifically provided herein, any of the Partners may engage in or possess an interest in other business ventures of every nature and description that are unrelated to the Partnership, independently or with others, even if the business or activity competes with the business of the Partnership. Neither the Partnership nor the other Partners shall have any right by virtue of this Agreement in or to these independent ventures or to the income or profits derived therefrom. A Partner shall not be under an obligation to first offer any opportunity to any Partner or the Partnership, but may proceed without obligation to any Partner or the Partnership. Neither this Agreement nor any activity undertaken under this Agreement shall prevent any Partner from engaging in these activities, or require any Partner to permit the Partnership or any Partner to participate in any of these types of activities, and as a material part of the consideration for the execution of this Agreement by each Partner, each Partner hereby waives, relinquishes, and renounces any right or

claim of participation.

7. NAME AND PLACE OF BUSINESS. The name of the Partnership shall be "SAMUEL O. SAMPLE FAMILY PARTNERSHIP, LTD." The name shall be used at all times in connection with the Partnership's business and affairs. The principal place of business for the Partnership shall be at the following address:

555 Seashore Boulevard
Tampa, Florida 33606

or any other place as may be approved by the Partners.

8. TERM. The term of the Partnership shall commence on the date described in the Act or the date the Certificate is filed with the Florida Department of State. The Partnership shall commence on that date and shall continue until December 31, 2100, unless sooner terminated, as provided in the section titled "DISSOLUTION AND WINDING UP" in the Article of this Agreement titled "CONTRIBUTIONS AND DISTRIBUTIONS."

9. NATURE OF INTEREST IN PARTNERSHIP. An Interest or a Percentage Interest shall be personal property for all purposes. All real and other property owned by the Partnership shall be deemed owned by the Partnership as an entity, and no Interest Holder, individually, shall have any ownership of this property.

B. DEFAULTING PARTNER. If any Partner fails to perform any of its obligations hereunder (the Partner being referred to as the "Defaulting Partner"), any other Partner shall have the right to give the Defaulting Partner a notice of default specifically setting forth the nature of the default and stating that the Defaulting Partner shall have a period of 60 days to pay any sums of money specified therein as due and owing to the Partnership or to any Partners and to cure any other default specified. This right shall be provided to all Partners pro rata. If the money specified is not paid or the Defaulting Partner does not cure all other defaults within the 60-day period, or if the default is not a monetary default and is not susceptible of cure within the 60-day period, and the Defaulting Partner has not commenced and is not diligently pursuing cure, the remedies that shall be available to any other Partners (the "Non-Defaulting Partner(s)") shall, at the expense of the Defaulting Partner, include the right to:

(1) Bring any proceeding in the nature of specific performance, injunction, or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a default or threatened breach of this Agreement;

(2) Bring any action at law as may be permitted to recover damages;

(3) Institute any proceedings as may be appropriate to secure an accounting and to dissolve, wind up, and terminate the Partnership (including, without limitation, the right to make a loan to the Partnership convertible into a contribution to capital as provided in the subparagraph immediately following below);

(4) Elect to perform any act or advance any amount required of the Defaulting Partner, and in that event the amount so advanced or the cost of performance shall constitute an indebtedness of the Defaulting Partner to any Non-Defaulting Partner payable, unless extended by the Non-Defaulting Partner, 90 days from the date of the loan, and shall bear interest at a per annum rate equal to one percentage point over and above the then Prime Rate, but in no event exceeding the maximum contract rate of interest permitted by law, as amended from time to time. The Partner making this loan will not be obligated to contribute to the Partnership any of the funds necessary to repay the loan.

Should this loan not be repaid in accordance with its terms, the Non-Defaulting Partner, at its option, may convert the loan, plus accrued and unpaid interest thereon, to a contribution to the capital of the Partnership. Thereafter, the Partners' Percentage Interests in the Partnership shall be ratably adjusted to reflect a reduction in the Defaulting Partner's interest and an increase in the Non-Defaulting Partners' interests by an amount equal to the percentage determined by dividing (i) the Defaulted Amount by (ii) an amount equal to the then sum of all Capital Contributions by all Partners to the Partnership plus the Defaulted Amount.

By way of example, if the Defaulted Amount is $10,000 and the sum of the amounts described in clause (ii) above is $100,000, the Defaulting Partner's Percentage Interest would be reduced by 10% and the Non-Defaulting Partner's Percentage Interest would be increased by 10%.

ARTICLE II
CONTRIBUTIONS AND DISTRIBUTIONS

A. CAPITAL CONTRIBUTIONS.

1. INITIAL INTERESTS AND CONTRIBUTIONS.

a. PERCENTAGE INTERESTS (hereinafter sometimes called the "Percentage Interest" or, in the aggregate, the "Percentage Interests").

(1) GENERAL PARTNERS. The initial Percentage Interest,

in the aggregate, in the Partnership of any parties acting as General Partner shall always be at least one percent. The actual initial Percentage Interest in the Partnership of each General Partner is listed on the Schedule of Information Regarding Partners of the Partnership. If at any time the initial Percentage Interest is adjusted for any reason, the adjusted initial Percentage Interest shall be the Percentage Interest.

(2) LIMITED PARTNERS. The Percentage Interest in the Partnership of each Limited Partner is listed on the Schedule of Information Regarding Partners of the Partnership. If at any time the initial Percentage Interest is adjusted for any reason, the adjusted initial Percentage Interest shall be the Percentage Interest.

b. INITIAL CAPITAL CONTRIBUTIONS. The total of initial cash and Property Capital Contributions shall be credited to the Partner's Capital Account as provided for in this Agreement.

(1) GENERAL PARTNERS. The General Partners shall make initial Capital Contributions of cash and property as provided in the Schedule of Information Regarding Partners of the Partnership.

(2) LIMITED PARTNERS. The Limited Partners shall make initial Capital Contributions of cash and property as provided in the Schedule of Information Regarding Partners of the Partnership.

2. ADDITIONAL CAPITAL CONTRIBUTIONS. Except as otherwise specifically limited by any other term(s) of this Agreement, additional Capital Contributions may be called for by the Managing Partner by written demand on the Interest Holders from time to time for any purpose deemed appropriate by the Managing Partner in his or her reasonable discretion, as long as the purpose is consistent with the terms of the subsection titled "PURPOSE AND SCOPE OF THE PARTNERSHIP" of the Article of this Agreement titled "GENERAL PROVISIONS, REPRESENTATIONS, AND COVENANTS" or is necessary and appropriate in connection with any matter approved by the Partners. This additional Capital Contribution shall be payable in proportion to the Percentage Interests of the Interest Holders. In the event any Interest Holder shall fail to make any additional Capital Contribution within 10 days of written demand from the Managing Partner, the Interest Holder shall be in breach of its obligations hereunder, and the Partnership and the other Interest Holders shall have the rights and remedies set forth in this Agreement.

3. RIGHTS REGARDING CAPITAL CONTRIBUTIONS.

a. REGARDING RETURN OF CAPITAL. Except as otherwise provided in this Agreement, no Interest Holder shall demand or

receive a return of his or her Capital Contributions or withdraw from the Partnership without the consent of all Partners. Under circumstances requiring a return of any Capital Contributions, no Interest Holder shall have the right to receive property other than cash except as may be specifically provided herein, and each Interest Holder shall look solely to the assets of the Partnership for the return of his or her capital, except as may otherwise be specifically provided in this Agreement.

b. REGARDING RETURNS ON CAPITAL. No Interest Holder shall receive any interest, salary, or draw with respect to his or her Capital Contributions or his or her Capital Account or for services rendered on behalf of the Partnership or otherwise in his or her capacity as Interest Holder, except as may otherwise be specifically provided in this Agreement.

c. NO DISTRIBUTIONS UNDER COMPULSION OF LEGAL PROCESS. No Interest Holder, or transferee thereof, shall receive any distribution of his or her Capital Contributions or his or her Capital Account nor any return thereon as a result of any order of Court or other legal compulsion.

B. DISTRIBUTIONS.

1. NET CASH FROM OPERATIONS. Except as provided in the section of this Article titled "DISSOLUTION AND WINDING UP," relating to the liquidation of the Partnership, Net Cash From Operations shall be determined by the Managing Partner quarterly, and the amount so determined shall be applied to the Capital Accounts of the Interest Holders and, if distributed (in the sole and absolute discretion of the General Partner), shall be distributed in the following order:

a. First, to pay all principal and interest payments then due on the Partnership's debts and liabilities to creditors other than Interest Holders;

b. Second, to pay accrued and unpaid interest then due on the Partnership's debts and liabilities to Interest Holders in proportion to the outstanding amount of the accrued and unpaid interest owed to the respective Interest Holders;

c. Third, to pay unpaid principal due on the Partnership's debts and liabilities to Interest Holders in proportion to the outstanding amount of the unpaid principal owned to the respective Interest Holders;

d. Fourth, to pay principal on outstanding Partnership debts and liabilities to Interest Holders in proportion to the outstanding amount of the principal owed to the respective Interest Holders; and

e. Finally, to the Interest Holders in accordance with their Percentage Interests, as the same may have been adjusted under the terms of this Agreement.

2. NET CASH FROM SALES OR REFINANCING. Except as provided in the section of this Agreement titled "DISSOLUTION AND WINDING UP," relating to the liquidation of the Partnership, all Net Cash From Sales or Refinancing, if any, shall, if distributed (in the sole and absolute discretion of the General Partner), be distributed in the following order:

a. First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than Interest Holders;

b. Second, to the payment and discharge of all of the Partnership's debts and liabilities to Interest Holders;

c. Third, to the Limited Interest Holders until their Adjusted Capital Contributions are reduced to zero, in accordance with their Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods; and

d. Finally, to the Interest Holders in accordance with their Percentage Interests, as the same may have been adjusted under the terms of this Agreement.

3. DISTRIBUTION AMONG PARTNERS.

a. WHEN NO PERMITTED TRANSFER HAS OCCURRED. If the Partnership does not receive a notice stating the date a partnership interest was transferred and any other information the Managing Partner may reasonably require within 30 days after the end of the accounting period during which the transfer occurs, or if a transfer is not a permitted transfer, then all profits, losses, distributions, and all other items attributable to the Partnership Interest for this period shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Partnership, on the last day of the accounting period, was the owner of the Partnership Interest. The Managing Partner and the Partnership shall incur no liability for making allocations and distributions in accordance with the provisions of this section, whether or not the Managing Partner or the Partnership has knowledge of any Transfer of ownership of any interest in the Partnership.

b. WHEN A PERMITTED TRANSFER HAS OCCURRED. If a Permitted Transfer occurs during any accounting period, Profits, Losses, distributions, and all other items attributable to the Partnership Interest for this period shall be divided and allocated between the transferor and the

transferee by taking into account their varying interests during the period in accordance with Internal Revenue Code §706(d), using any conventions permitted by law and selected by the Managing Partner. All distributions on or before the date of a Permitted Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making these allocations and distributions, the Partnership shall recognize a Permitted Transfer not later than the end of the calendar month during which it is given notice of this Transfer.

4. AMOUNTS WITHHELD. All amounts withheld under the Code or any provision of any state or local tax law with respect to any payment or distribution to the Partnership or the Interest Holders shall be treated as amounts distributed to the Partnership or the Interest Holders under this Article for all purposes under this Agreement. The Managing Partner may allocate any amounts among the Interest Holders in any manner that is in accordance with applicable law.

C. DISSOLUTION AND WINDING UP.

1. LIQUIDATING EVENTS. The Partnership shall dissolve and commence winding up and liquidating on the first to occur of any of the following (hereinafter sometimes called the "Liquidating Events"):

a. The expiration of the term of the Partnership as declared in the subsection titled "TERM" in the Article of this Agreement titled "GENERAL PROVISIONS, REPRESENTATIONS, AND COVENANTS."

b. The sale of all or substantially all of the Property and/or Business, including receipt of the full sales proceeds;

c. The vote by Partners holding 100% of the Percentage Interests to dissolve, wind up, and liquidate the Partnership;

d. The happening of any other event that makes it unlawful or impossible to carry on the business of the Partnership; or

e. Any event that causes there to be only one Partner.

2. WINDING UP. On the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Interest Holders. No Interest Holder shall take any action that is inconsistent with, or not necessary to or appropriate for, winding up the Partnership's Business and affairs. The General Partner(s) (or, in the event there is no remaining General Partner, any person elected by a majority in interest of the Limited Partner(s)) shall be responsible for overseeing the winding up and liquidation of the Partnership and shall take full account of the

Partnership's liabilities and Property, and the Property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

a. First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than Interest Holders;

b. Second, to the payment and discharge of all of the Partnership's debts and liabilities to Interest Holders;

c. Third, to the Interest Holders in proportion to their relative positive Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods; and

d. Finally, to the Interest Holders in accordance with their Percentage Interests, as the same may have been adjusted under the terms of this Agreement.

The Managing Partner shall not receive any additional compensation for any services performed under this Section.

3. DEEMED DISTRIBUTION AND RE-CONTRIBUTION. Notwithstanding any other provisions of this Article, in the event the Partnership is liquidated within the meaning of Treas.Reg. §1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the Property shall not be liquidated, the Interest Holder's liabilities shall not be paid or discharged, and the Partnership's affairs shall not be wound up. Instead, the Partnership and relevant Partners or Interest Holders shall be deemed to have engaged in transactions described in Reg. §1.708-1(b)(4).

4. NOTICE OF DISSOLUTION. In the event a Liquidating Event occurs or an event occurs that would, but for provisions of the subsection titled "LIQUIDATING EVENTS," result in a dissolution of the Partnership, the Managing Partner shall, within 30 days thereafter, (a) provide written notice thereof to each of the Partners and to all other parties with whom the Partnership regularly conducts business (as determined in the discretion of the Managing Partner), and (b) publish notice of the dissolution in a newspaper of general circulation in each place in which the Partnership regularly conducts business (as determined in the discretion of the Managing Partner).

ARTICLE III
SALE, ASSIGNMENT, TRANSFER, OR OTHER DISPOSITION

A. PERMITTED TRANSFERS.

1. TRANSFERS QUALIFYING AS "PERMITTED TRANSFERS." The following are transactions that constitute "Permitted Transfers" and are in accordance with the terms of this Agreement.

a. PURCHASES AND SALES. A transfer resulting from a Purchase and Sale of Partnership Interest provided for by the section of this Agreement titled "PURCHASES AND SALES OF PARTNERSHIP INTERESTS" is a Permitted Transfer.

b. PERMITTED CLOSE TRANSFERS. Notwithstanding any other provisions in this Agreement, an Interest Holder, Partner, or owner of an interest in a Partner may at any time transfer all or any part of his or her Partnership Interest or interest in the Partner (i) in the case of an Interest Holder who is not a General Partner (a) by gift to a spouse, or other members of his or her direct family, or (b) to a trust for the principal benefit of himself or herself, a spouse, or other members of his or her direct family; and (ii) in the case of a General Partner (a) by gift to a spouse, or other members of his or her direct family, (b) to a trust for the principal benefit of himself or herself, a spouse, or other members of his or her direct family, (c) at any time to any Person who is a General Partner's Affiliate on both the day the General Partner became a General Partner and the day of the Transfer, or (d) to any Person who is approved by all of the other General Partners and the holders of a majority of the Percentage Interests as Limited Partners ("Permitted Transferees").

In the event of a transfer of a Partnership Interest or interest in a Partner under this provision titled "PERMITTED CLOSE TRANSFERS," any Permitted Transferee shall hold the transferred Partnership Interest or interest in the Partner subject to the same provisions of this Agreement that govern the transferor's Partnership Interest or interest in the Partnership. The consequences of the immediately preceding sentence shall include, but not be limited to, the following:

(i) In the event the transferor or its estate becomes a "Seller" (as defined elsewhere in this Agreement), any Permitted Transferee shall also become a "Seller"; the Permitted Transferee's Partnership Interest shall, to the rights and obligations of a Partner who is not a Permitted Transferee, also become subject to the transaction of purchase and sale; and the Permitted Transferee shall comply with all the terms of this Agreement governing this transaction of purchase and sale of a Partnership Interest.

(ii) In the event the transferor or its estate becomes a "Purchaser" (as defined elsewhere in this Agreement) of a Partnership Interest of an Interest Holder who is not a Permitted Transferee, the Permitted

Transferee's Partnership Interest, instead of being considered a Partnership Interest of the Permitted Transferee, will be considered a Partnership Interest of the transferor for purposes of determining the pro rata share of "Offered Interests" (as defined elsewhere in this Agreement), which may be purchased in the aggregate by the transferor and the transferee.

Notwithstanding any other provision of this Agreement to the contrary, no spouse or direct family member of a transferor shall be entitled or obligated to purchase a Partnership Interest of a transferor from whom the originally transferred Partnership Interest was received.

Nothing in this subsection shall be construed to override any other provision of this Agreement that provides the Partnership shall retain or have a right to purchase the Interest of any Permitted Transferee on any dissolution of marriage or court-ordered separation or division of property between a Seller and the Seller's spouse.

c. CERTAIN PLEDGES. Notwithstanding any other provision of this Agreement, the Partnership Interests may be encumbered as collateral for a note or notes in favor of the Partnership or any one or more of the other Partners or in favor of a recognized lending institution, but only if the proceeds of the loan are used in their entirety to purchase interests in the Partnership and the borrowing Partner delivers to the Managing Partner and the other Partners the written commitment of the lender, in form acceptable to the Managing Partner, that the lender will not dispose of the Partnership Interest without first affording the Partners a right of first refusal governed by the terms of the section of this Agreement titled "RIGHT OF FIRST REFUSAL."

2. CONDITIONS TO PERMITTED TRANSFERS. A transfer that is otherwise a Permitted Transfer shall not be treated as a Permitted Transfer under this Agreement unless and until the following conditions are satisfied:

a. Except in the case of a Transfer of Interests at death or involuntarily by operation of law, the transferor and transferee shall execute and deliver to the Partnership documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Partnership to effect the Transfer and to confirm the agreement of the transferee to be bound by all the provisions of this Agreement. In any case not described in the preceding sentence, the Transfer shall be confirmed by presentation to the Partnership of legal evidence of a Transfer, in form and substance satisfactory to counsel to the Partnership. In all cases, the Partnership shall be reimbursed by the transferor and/or transferee for all costs and expenses that it reasonably incurs in connection with this Transfer.

b. Except in the case of a Transfer at death or involuntarily

by operation of law, the transferor shall furnish to the Partnership an opinion of counsel, which counsel and opinion shall be satisfactory to counsel of the Partnership, that the Transfer will not cause the Partnership to terminate for federal income tax purposes and that the Transfer will not cause the application of the rules of IRC §§168(g)(1)(B) and (h) (generally referred to as the "tax exempt entity leasing rules") or similar rules to apply to the Partnership, Partnership Property, or the Interest Holders.

c. The transferor and transferee shall furnish the Partnership with the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the Interest transferred, and any other information reasonably necessary to permit the Partnership to file all required federal and state tax returns and other legally required information, statements, or returns. Without limiting the generality of the foregoing, the Partnership shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Interests until it has received this information.

d. Except in the case of a Transfer at death or involuntarily by operation of law, either (a) these Interests shall be registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or (b) the transferor shall provide an opinion of counsel, which opinion and counsel shall be satisfactory to counsel of the Partnership, to the effect that the Transfer is exempt from all applicable registration requirements, that the Transfer will not violate any applicable registration requirements, and that the Transfer will not violate any applicable laws regulating the Transfer of securities.

B. GENERAL.

1. RESTRICTIONS ON TRANSFERS. Except in the case of a Permitted Transfer, no Partner or Interest Holder may sell, transfer, assign, or otherwise dispose of all or any part of its Interest or the proceeds thereof unless Approved by the Partners and any attempt to so transfer this interest shall be void.

2. PROHIBITED TRANSFERS. Any purported Transfer of Interests that is not a Permitted Transfer shall be null and void and of no effect whatever; provided that, if the Partnership is required to recognize a Transfer that is not a Permitted Transfer (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), (i) the transferee shall be deemed to assume the debts, obligations, or liabilities for damages that the transferor of the Interest may have to the Partnership; (ii) the transferee shall be entitled only to allocations and distributions with respect to the Interest in accordance with this Agreement, but shall have no right to any information or accounting of the affairs of the Partnership, shall

not be entitled to inspect the books and records of the Partnership, and shall not have any of the rights of a Partner under the Act or the Agreement, including, but not limited to, the right to vote on matters required to be Approved by the Partners; and (iii) any allocations and distributions to which the transferee would otherwise be entitled may be applied (without limiting any other legal or equitable rights of the Partnership) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of the Interests may have to the Partnership.

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

3. RIGHTS OF UNADMITTED ASSIGNEES. A Person who acquires one or more Interests but who is not admitted as a Substituted Limited Partner (under the subsection of this agreement titled "ADMISSION OF INTEREST HOLDERS AS PARTNERS") shall be entitled only to allocations and distributions with respect to the Interest in accordance with this Agreement, but shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, and shall not have any of the rights of a Partner under the Act or the Agreement, including, but not limited to, the right to vote on matters requiring approval of partners.

4. ADMISSION OF INTEREST HOLDERS AS PARTNERS. Subject to the other provisions of this section, a transferee of an Interest may be admitted to the Partnership as a substituted Limited Partner ("Substituted Limited Partner") only on satisfaction of the conditions set forth below in this section:

a. Each General Partner consents to admission;

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

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

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

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

C. ACTIONS OF GENERAL PARTNERS.

1. COVENANT NOT TO WITHDRAW, TRANSFER, OR DISSOLVE. Except as otherwise permitted by this Agreement, each General Partner hereby covenants and agrees not to (i) withdraw or attempt to withdraw from the Partnership, (ii) exercise any power under the Act to dissolve the Partnership, or (iii) transfer all or any portion of his or her interest in the Partnership as a General Partner. Furthermore, each General Partner hereby covenants and agrees to continue to carry out the duties of a General Partner hereunder until the Partnership is dissolved and liquidated under this Agreement. Any consequence of an act specifically provided in this Agreement shall not preclude the bringing of any other appropriate cause of action.

2. ADDITIONAL GENERAL PARTNERS. Except as otherwise specifically provided in this Agreement, no Person shall be admitted to the Partnership as a General Partner without the unanimous consent of the Partners.

3. TERMINATION OF STATUS AS GENERAL PARTNER.

a. A General Partner shall cease to be a General Partner on the first to occur of (a) the Transfer of a portion of the Partner's interest as a General Partner that causes the General Partner to hold less than 25% of the interest that the Person initially held as a General Partner, (b) the General Partner's death, permanent disability, or mental incompetence, (c) the involuntary Transfer by operation of law of the General Partner's interest in the Partnership, (d) the vote of a majority in interest of the Limited Partners to approve a request by the General Partner to retire, or (e) the vote of a majority in interest of the Limited Partners to remove the General Partner after the General Partner has attempted to make a Transfer of his or her Partnership interest that is not permitted by this Agreement, committed a material breach of this Agreement, or committed any other act or suffered any other condition that would justify a decree of dissolution of the Partnership under the laws of the state of Florida. In the event a person ceases to be a General Partner without having transferred his or her entire interest as a General Partner, the person shall be treated as an unadmitted transferee of a Partnership interest as

a result of an unpermitted Transfer of an interest under this Agreement.

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

b. It is the intention of the Partners that the Partnership not dissolve as a result of the cessation of any General Partner's status as a General Partner; provided, however, that if a dissolution nevertheless occurs under the Act, the Partnership's property and business shall continue to be held and conducted in a new limited partnership under this Agreement with any remaining General Partners as general partners, the Limited Partners as limited partners, and any unadmitted assignees of Interests as Interest Holders. Notwithstanding any provision of the Act to the contrary, each partner and Interest Holder (including any successor to the Partnership interest of a General Partner) hereby (a) waives any rights that the Person may have as a result of any unintended dissolution to demand or receive an accounting of the Partnership or any security for the return or distribution thereof, and (b) agrees to indemnify and hold the Partnership and each other Partner and Interest Holder wholly and completely harmless from all costs or damage (including, without limitation, legal fees and expenses of enforcing this indemnity) that any indemnified Person may incur as a result of any action inconsistent with part (a) of this sentence.

c. Notwithstanding any provision to the contrary herein, if a Person ceases to be a General Partner, the remaining General Partners shall refile the Certificate as if the Partnership had dissolved as a result of the cessation and a new limited partnership were formed under this Agreement to hold the assets and continue the business of the Partnership.

d. If at the time a Person ceases to be a General Partner the Person is also a Limited Partner or an Interest Holder with respect to Interests other than his or her interest as a General Partner, this cessation shall not affect the Person's rights and obligations with respect to these Interests.

D. TRANSFERS BY INTEREST HOLDERS.

1. PERMITTED TRANSFERS. Subject to the conditions and restrictions set forth herein, an Interest Holder may at any time Transfer all or any portion of the Interest Holder's Interest in a Permitted Transfer.

2. RIGHTS OF UNADMITTED ASSIGNEES. A Person who acquires one or more Interests but who is not admitted as a Substituted Limited Partner (under the subsection of this Agreement titled "ADMISSION OF INTEREST HOLDERS AS PARTNERS") shall be entitled only to allocations and distributions with respect to the Interest in accordance with this Agreement, but shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, and shall not have any of the rights of a Partner under the Act or the Agreement, including, but not limited to, the right to vote on matters requiring approval of partners.

3. ADMISSION OF INTEREST HOLDERS AS PARTNERS. Subject to the other provisions of this section, a transferee of an Interest may be admitted to the Partnership as a substituted Limited Partner ("Substituted Limited Partner") only on satisfaction of the conditions set forth below in this section:

a. Each General Partner consents to the admission;

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

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

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

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

4. PROHIBITED TRANSFERS. Any purported Transfer of any Partnership interest held by a General Partner that is not permitted by this Agreement shall be null and void and of no effect whatever; provided that, if

the Partnership is required to recognize a Transfer that is not so permitted (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not so permitted), the interest transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Partnership) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of the interest may have to the Partnership.

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

E. PURCHASES AND SALES OF PARTNERSHIP INTERESTS. Transactions executed according to the provisions of this Section are considered "Purchases and Sales of Partnership Interests," which is a Permitted Transfer under this Agreement. Each of the Transactions stands alone as a separate transaction with different, although often similar, terms and conditions to be applied in the event of its initiation.

1. OFFER PRECEDING AND PURCHASE AND SALE TO THIRD PARTIES.

a. GENERAL OFFER. If any Interest Holder desires to dispose of all of his or her Partnership Interest during his or her lifetime, the Interest Holder shall give written Notice to that effect to the Partners (hereinafter sometimes called the "Remaining Partners"). This written Notice shall serve as an offer to sell, by the said Interest Holder (hereinafter sometimes called the "Seller"), all of his or her Partnership Interest. On receipt of the written Notice, the Remaining Partners shall have a total of 30 days to accept the offer. (If more than one of the Remaining Partners wishes to purchase the Partnership Interest of the Seller, the purchase shall be on a pro rata basis.) In the event of acceptance by any of the other Interest Holders, the purchase price for the shares and the terms of purchase shall be as hereinafter set forth.

b. RIGHT OF FIRST REFUSAL. If the offer to sell a Partnership Interest is not accepted by the remaining partners before the expiration of the total 30-day period, in accordance with the terms and conditions as provided in the previous subsection titled "GENERAL OFFER,"

the following provisions shall apply. If an Interest Holder proposes to sell, assign, transfer, mortgage, alienate, hypothecate, pledge, encumber, or otherwise dispose of any of his or her Partnership Interest, the Interest Holder proposing to make the transfer (hereinafter sometimes called the "Seller") shall first make an offer to sell the Partnership Interest to the other Interest Holder(s) (hereinafter referred to as the "Remaining Partners"), all of the Partnership Interest that the Seller proposes to sell, transfer, or otherwise dispose of (hereinafter sometimes referred to as the "Offered Interest") in the manner hereinafter described in this section.

c. MANNER OF OFFER BY SELLER. The offer to sell to the Remaining Partners under the subsection of this section titled "RIGHT OF FIRST REFUSAL" shall be given in writing and include the nature of the proposed transaction (whether sale or transfer), the name and address of the party or parties to the proposed transaction (hereinafter sometimes referred to as the "Proposed Transferee"), which Proposed Transferee shall have placed 10% of the proposed purchase price in escrow, and the terms of the proposed transaction, including the amount of the Seller's Partnership Interest involved, the purchase price, and the payment terms (hereinafter sometimes referred to as the "Proposed Transaction"). The written statement shall be accompanied by a copy of the written offer, proposal, or contract, if any, between the Seller and the Proposed Transferee. The offer given in writing by the Seller to the Remaining Partners shall consist of an offer to sell to the Remaining Partners the Offered Interest in accordance with the terms of this section.

d. ACCEPTANCE OF OFFER. Notice of acceptance of the offer in the subsection titled "RIGHT OF FIRST REFUSAL" shall be given to the Seller within 30 days after receipt of notice that the Seller desires to sell any of his or her Partnership Interest to a Proposed Transferee. The Remaining Partners shall have the right to purchase the Offered Interest, individually (and pro rata); it is understood and agreed, however, that the Remaining Partners shall have a total of only 30 days to accept the offer. There shall be no obligation or requirement that the Remaining Partners purchase any of the Offered Interest under this section, any purchase of the Offered Interest being solely at the discretion of the Remaining Partners; provided, however, if the Remaining Partners exercise their option to purchase any of the Offered Interest, the Remaining Partners must exercise their option to purchase all of the Offered Interest.

e. PURCHASE PRICE.

(1) ON ACCEPTANCE OF GENERAL OFFER. The purchase price to be paid to the Seller on a purchase and sale under the subsection titled "GENERAL OFFER" above shall be determined by applying, on a percentage basis, the Appraised Value of the total Partnership as of the end of the Partnership's fiscal year immediately preceding the date of the

notice provided in the subsection titled "GENERAL OFFER" above. (When applicable, the Appraised Value shall hereinafter sometimes be called the "Purchase Price.")

(2) ON EXERCISE OF RIGHT OF FIRST REFUSAL. If the Remaining Partners elect to purchase the Offered Interest under the subsection of this section titled "RIGHT OF FIRST REFUSAL," the price for the Offered Interest (hereinafter sometimes called the "Purchase Price") shall be the price (disclosed in the written offer the Seller submits to the Remaining Partners under the provisions of the subsection of this section titled "RIGHT OF FIRST REFUSAL") established by the Proposed Transaction.

f. CLOSING. The notice of exercise of option by the Remaining Partners shall specify a date for the closing of all the purchases of Offered Interests (hereinafter referred to as the "Closing" or "Closing Date"). (The Remaining Partners who purchase Partnership Interests under this Section are hereinafter sometimes called the "Purchaser.") The Closing shall be held at the principal office of the Partnership or at any other place as the Seller and the Purchaser shall mutually agree. The Closing shall occur on a date that shall not be less than 10 nor more than 30 days after the expiration of the time within which the Remaining Partners may exercise their option, unless the Seller and the Purchaser otherwise mutually agree on another date. Any acceptance of the offer made in accordance with the terms hereof shall be binding as hereinafter provided.

g. TERMS OF PURCHASE.

(1) ON GENERAL OFFER. If the Remaining Partners exercise the option under the subsection titled "GENERAL OFFER," the Purchaser, at Purchaser's option, shall pay the Purchase Price either entirely in cash at the Closing or by the payment in cash at the Closing of at least 10% of the Purchase Price, and the remaining balance of the Purchase Price shall be evidenced by a negotiable promissory note in the form hereinafter described (all of which together is hereinafter sometimes called the "Terms of Purchase").

(2) ON RIGHT OF FIRST REFUSAL. If the Remaining Partners elect to purchase the Offered Interest, the terms for the payment of the Purchase Price shall be the terms established by the Proposed Transaction (hereinafter sometimes called the "Terms of Purchase"), which shall be disclosed in the written offer the Seller submits to the Remaining Partners under the requirements set forth in the subsection titled "RIGHT OF FIRST REFUSAL."

(3) UNPAID BALANCES. If the Terms of Purchase provide for the payment of the Purchase Price by payment at the Closing of a portion

thereof in cash and the remaining balance of the Purchase Price to be evidenced by a promissory note, the Purchase Price shall be paid as follows:

(a) At the Closing, the Purchaser shall pay to the Seller the portion of the Purchase Price to be paid in cash at the Closing.

(b) If the Terms of Purchase are as provided in the subsection titled "ON GENERAL OFFER," the unpaid balance of the Purchase Price shall be evidenced by a negotiable promissory note made by the Purchaser to the order of the Seller, said note bearing interest per annum at the then Prime Rate, to be paid in 60 equal monthly installments of principal and interest until paid in full.

(c) If the Terms of Purchase are as provided in the Proposed Transaction, the unpaid balance of the Purchase Price shall be evidenced by a negotiable promissory note made by the Purchaser to the order of the Seller, said note bearing interest per annum at the rate provided for in the Proposed Transaction to be paid in installments of principal and/or interest as provided for in the Proposed Transaction until paid in full.

h. RELEASE FROM RESTRICTION. If the offers are not accepted by any of the Remaining Partners with respect to all of the Offered Interests, as provided in this section, the Seller may make a bona fide transfer of the Offered Interests in accordance with the Proposed Transaction, the terms of which are described in the Seller's written offer to the Remaining Partners. The sale or encumbrance of the Offered Interests shall be made only in strict accordance with the terms of the Proposed Transaction as described in the Seller's offer to the Remaining Partners and within the time period hereinafter set forth. If the Seller shall fail to make the transfer or encumbrance within 90 days following the expiration of the time provided for exercise of the option to purchase by the Remaining Partners, the Offered Interests shall again become subject to all the restrictions of this Agreement.

i. CONTINUANCE OF RESTRICTIONS ON SUBSEQUENT HOLDERS. In the event the Seller makes a bona fide transfer under the provisions of this section, the Offered Interests transferred to the Proposed Transferee shall be subject to all the provisions of this Agreement.

2. WITHDRAWAL AND RIGHTS TO PURCHASE ON CERTAIN EVENTS. The Remaining Partners (hereinafter sometimes called "Purchaser") shall have the right to purchase all, but not less than all, the Partnership Interest (the "Offered Interest") of an Interest Holder or Partner (hereinafter sometimes called "Seller") in the Partnership at a price and on terms hereinafter set forth in this Section, in the event any one or more of the following events ("Triggering Events") shall have occurred:

(i) Levy or attachment of any interest of the Seller in the Partnership, his or her property, or his or her assets by a creditor or by any person claiming a lien thereon or right to levy on or attach same, which levy or attachment is not vacated, superseded, or stayed within 30 days after this occurrence; any assignment by Seller for the benefit of creditors; the voluntary filing by Seller of a petition for bankruptcy; the taking of any bankruptcy or insolvency relief by Seller; the involuntary filing by another against Seller of a petition for adjudication of Seller as insolvent or bankrupt that is not dissolved and discharged within 90 days after it is filed; the use of any insolvency act by Seller with regard to his or her own property or assets; the reorganization or arrangement of Seller under any provision of state or bankruptcy laws of any country then in force and effect; the appointment of any receiver or trustee in any insolvency proceedings of Seller for any substantial part of Seller's property; or the filing of any petition for or consent to any of the foregoing by Seller.

(ii) Any assignment by Seller of any of his or her rights or interests in the Partnership contrary to the provisions hereof.

(iii) The breach of any material provision of this Agreement that is not remedied within 10 days of written notice of the breach.

(iv) The event of dissolution of the marriage of the Seller or any other proceeding resulting in a division or separation of property that would include an order of a court of competent jurisdiction assigning the Interests to the spouse of the Seller.

a. EXERCISE OF OPTION. The Remaining Partners shall have the option, but not the duty, within 10 days after the Remaining Partners receive actual notice of the occurrence of a Triggering Event, to give notice of the exercise of this option to purchase the Offered Interest. The Purchaser shall exercise the option by giving written notice thereof to the Seller (provided, however, that in the event the Seller is the estate of a decedent Partner and the legal representative of that estate has not yet been appointed, then within 10 days of the appointment of the legal representative). The Remaining Partners shall have the right to purchase the Offered Interest, individually (and pro rata). There shall be no obligation or requirement that the Remaining Partners purchase any of the Offered Interest under this section, any purchase being solely at the discretion of the Remaining Partners; provided, however, if the Remaining Partners exercise their option to purchase any of the Offered Interest, the Remaining Partners must exercise their option to purchase all of the Offered Interest.

b. PURCHASE PRICE. The purchase price (hereinafter referred to as "Purchase Price") to be paid to the Seller on a purchase and sale under this section shall be determined by applying, on a basis pro rata to the

Percentage Interests of the Interest Holders, the Book Value (as defined in this Agreement) of the total Partnership as of the end of the Partnership fiscal year immediately preceding the date of the notice provided herein.

c. CLOSING. The notice of exercise of option by the Remaining Partners shall specify a date for the closing of the purchase of the Offered Interest (hereinafter referred to as the "Closing" or "Closing Date"). The Closing shall be held at the principal office of the Partnership or at any other place as the Seller and the Purchaser shall mutually agree. The Closing shall occur on a date that shall be not less than 10 nor more than 30 days after the expiration of the time within which the Remaining Partners may exercise their option unless the Seller and the Purchaser otherwise mutually agree on another date. Any acceptance of the offer made in accordance with the terms hereof shall be binding as hereinafter provided.

d. TERMS OF PURCHASE.

(1) PAYMENT OF PURCHASE PRICE. If the Remaining Partners exercise the option under this subsection, the Purchaser, at Purchaser's option, shall pay the Purchase Price either entirely in cash at the Closing or by the payment in cash at the Closing of at least 10% of the Purchase Price, and the remaining balance of the Purchase Price shall be evidenced by a negotiable promissory note in the form hereinafter described.

(2) UNPAID BALANCES. The unpaid balance of the Purchase Price shall be evidenced by a negotiable promissory note made by the Purchaser to the order of the Seller, said note bearing annual interest at the then Prime Rate, to be paid in 60 equal monthly installments of principal and interest until paid in full.

e. CONTINUANCE OF RESTRICTIONS. If the option provided for herein is not exercised by the Partnership and/or Remaining Partners with respect to the Offered Interests, as hereinabove provided, the Interests of the Seller shall continue to be subject to all of the terms of this Agreement.

3. DEATH OF A PARTNER. The surviving Partners (hereinafter sometimes called "Purchaser") shall have the right to purchase all, but not less than all, the Partnership Interest (the "Offered Interest") of a deceased Interest Holder, Partner, or principal beneficiary of a revocable trust the trustee of which holds title to the Partnership Interest (hereinafter sometimes called "Deceased Interest Holder"), at a price and on terms hereinafter set forth in this Section. (In that event, the personal representative of the estate of the Deceased Interest Holder or the trustee of the trust under the terms of which the Deceased Interest Holder was the principal beneficiary and title to

the Partnership Interest was held shall be the "Seller.")

a. EXERCISE OF OPTION. The Purchaser shall have the option, but not the duty, within 60 days after the Purchaser receives actual notice of the death of the Deceased Interest Holder or, when title to the subject interests was held directly by the Deceased Interest Holder and not in trust, then on the expiration of the later of the 60-day period or 30 days from the appointment of a personal representative of the estate of the Deceased Interest Holder, to give notice of the exercise of this option to purchase the Offered Interest. If title to the subject interests was held directly by the Deceased Interest Holder and not in trust, then on the expiration of the 60-day period, if a personal representative of the estate of the Deceased Interest Holder has not been appointed, it is agreed that the Purchaser or the Partnership is a party in interest qualified by reason of being a creditor that is qualified to file a petition for administration of the Deceased Interest Holder's estate and seek the appointment of a qualified personal representative. The Purchaser shall exercise the option by giving written notice thereof to the Seller. The surviving Partners shall have the right to purchase said Offered Interest, individually (and pro rata). There shall be no obligation or requirement that the surviving Partners purchase any of the Offered Interest under this section, any purchase being solely at the discretion of the surviving Partners; provided, however, if the surviving Partners exercise their option to purchase any of the Offered Interest, the surviving Partners must exercise their option to purchase all of the Offered Interest.

b. PURCHASE PRICE. The purchase price (hereinafter referred to as "Purchase Price") to be paid to the Seller on a purchase and sale under this Section shall be determined by applying, on a basis pro rata to the Percentage Interests of the Interest Holders, the Appraised Value (as defined in this Agreement) of the total Partnership as of the end of the Partnership fiscal year immediately preceding the date of the notice provided herein.

c. CLOSING. The notice of exercise of option by the Purchaser shall specify a date for the closing of the purchase of the Offered Interest (hereinafter referred to as the "Closing" or "Closing Date"). The Closing shall be held at the principal office of the Partnership or at another place on which the Seller and the Purchaser shall mutually agree. The Closing shall occur on a date that shall be not less than 10 nor more than 30 days after the expiration of the time within which the surviving Partners may exercise their option unless the Seller and the Purchaser otherwise mutually agree on another date. Any acceptance of the offer made in accordance with the terms hereof shall be binding as hereinafter provided.

d. TERMS OF PURCHASE.

(1) PAYMENT OF PURCHASE PRICE. The Purchaser, at

Purchaser's option, shall pay the Purchase Price either entirely in cash at the Closing or by the payment in cash at the Closing of at least 10% of the Purchase Price, and the remaining balance of the Purchase Price shall be evidenced by a negotiable promissory note in the form hereinafter described.

(2) UNPAID BALANCES. The unpaid balance of the Purchase Price shall be evidenced by a negotiable promissory note made by the Purchaser to the order of the Seller, said note bearing annual interest at the then Prime Rate, to be paid in 60 equal monthly installments of principal and interest until paid in full.

e. CONTINUANCE OF RESTRICTIONS. If the option provided for herein is not exercised by the Partnership and/or surviving Partners with respect to the Offered Interests, as hereinabove provided, the Interests of the Seller shall continue to be subject to all of the terms of this Agreement.

F. TREATMENT ON TRANSFERS.

1. NONRECOGNITION OF CERTAIN TRANSFERS. The Partnership will not, nor be compelled to, recognize any Transfer, or issue any certificate or other instrument representing any Partnership interest, to any Person who has not delivered to the Partnership a written undertaking to be bound by the terms and conditions of this Agreement.

2. APPROVED TRANSFERS. A Permitted Transferee shall become a substituted Partner in the place of the Transferor on the completion of the Transfer by which the Permitted Transferee receives its Partnership Interest, or, if required, when this Agreement is subsequently amended in accordance with the applicable laws of Florida and which shall occur within 30 days of the Transfer. Until a Permitted Transferee becomes a substituted Partner, all rights in respect of the assigned Partnership Interest shall continue in the Transferor, and the Partnership shall continue to recognize the record owner of the Interest or Interests for all purposes as the true owner thereof.

3. IMPROPER TRANSFERS. A proposed or purported Transfer, assignment, or other disposition of a Partnership Interest shall not be allowed if the purported Transfer:

(a) is to be made to a minor or an incompetent;

(b) would not comply with applicable provisions of the federal and state securities laws;

(c) would violate any other applicable law or statute;

(d) is not in compliance with the terms of this Agreement;

(e) would violate any loan of the Partnership; or

(f) would cause any adverse tax consequences, including but not limited to a determination that the Partnership's status as a partnership would terminate under IRC §708(b); provided, however, that in the event there is provided to the Managing Partner a letter of opinion of an attorney qualified to practice law in the state of organization of the Partnership that the adverse consequences would not occur, then the Transfer shall be allowed.

4. EFFECTIVENESS OF TRANSFER.

a. TIME AND COSTS. The Transfer by a Partner or a transferee of a Partner, in accordance with the terms of this Article, or with the consent of the Partners, of all or part of a Partnership Interest shall become effective on the first day of the month following receipt by the Managing Partner of evidence of the Transfer, in form and substance reasonably satisfactory to the Managing Partner, and a transfer fee sufficient to cover all reasonable expenses of the Partnership connected with the Transfer.

b. RECOGNITION. No Transfer of Partnership Interests or any part thereof that is in violation of this Article shall be valid or effective, and the Partnership shall not recognize the same for the purposes of making distributions of Net Cash From Operations or Net Cash From Sales or Refinancing, return of Capital Account balances or other distributions with respect to the Partnership Interest, or part thereof. The Partnership may enforce the provisions of this Article either directly or indirectly or through its agents by entering an appropriate stop-transfer order on its books or otherwise refusing to register or Transfer or permit the registration or Transfer on its books of any proposed Transfers not in accordance with this Article.

c. REGISTRATION. The Partnership shall, from the time that Partnership Interests are registered in the name of the transferee on the Partner's books in accordance with the above provisions, disburse to the transferee all further distributions or return of Capital Account balances, on account of the Partnership Interest transferred. Until the registration of Transfer on the Partnership's books, the Managing Partner may proceed as if no Transfer has occurred.

G. ADDITIONAL TERMS OF PURCHASE AND SALE.

1. RIGHT OF OFFSET. The Partners hereby expressly agree that in the event an Interest Holder (hereinafter the "Seller") whose Partnership Interest is being purchased by the other Interest Holder(s) under the provisions of this Agreement, as the case may be, shall have any outstanding

obligations owing to either the Partnership and/or another Interest Holder, the Purchaser(s) may deduct from the Purchase Price otherwise payable by the Purchaser(s) the principal and accrued interest on the obligation to the Purchaser(s) or the Partnership by the Seller. This paragraph shall apply regardless of whether the debt otherwise owed by the Seller is due and payable according to its terms at the time of Closing, and shall serve to accelerate the maturity date for any obligation.

2. ADDITIONAL TERMS OF NOTE. When a note is given in a transaction of Purchase and Sale to evidence the unpaid balance of the Purchase Price, the following terms shall also be included in it. The first payment on the note shall be on the first day of the first calendar month following one month from the Closing. The note shall provide for a 30-day grace period, for acceleration of the due date, at the option of the holder, on default of any payment, and shall give the Maker thereof the option of prepayment in whole or in part, at any time, without penalty. The note shall also provide that the holder thereof shall have the option to accelerate the due date on the happening of any one or more of the following events: (i) the liquidation of the Partnership; (ii) the merger, consolidation, or reorganization of the Partnership in which the Remaining Partners cease to own a majority of the Percentage Interests; (iii) in the event, for any reason, that the Remaining Partners shall cease to own a majority of the Percentage Interests; (iv) the death of all of the Remaining Partners; or (v) the sale of a substantial portion of the Partnership's Property.

3. TRANSFER OF SELLER'S PARTNERSHIP INTEREST.

a. INSTRUMENTS OF TRANSFER. On receipt of the Purchase Price in cash, or in cash and notes, as provided in this Agreement, in payment for Seller's Partnership Interest, the Seller shall execute and deliver to the Purchaser any instruments of sale, assignment, and transfer of the Partnership Interest (including declared and unpaid distributions, if any) as are necessary and proper to transfer to the Purchaser full and complete title to the Seller's Partnership Interest; provided, however, that the Purchaser shall immediately give to the Seller an assignment of the Partnership Interest, as collateral security for the payment of any unpaid notes of the Purchaser, signed in blank by the Purchaser, the assignment to be operative on Purchaser's default under its note that is not cured within 30 days after written notice has been given to Purchaser of the default. When the entire Purchase Price has been paid, the Seller shall cancel the promissory note so paid, return the note to the Purchaser, and deliver the assignment held as collateral to the Purchaser.

b. ADDITIONAL DOCUMENTS. On any Closing of a transaction of Purchase and Sale provided for in this Agreement, when the Seller delivers instruments of sale, assignment, and transfer of the Partnership

Interest, Seller shall also deliver evidence of due authorization, execution, and delivery, and evidence of the absence of any liens or competing claims, as the Purchaser shall reasonably request. When the Purchaser pays the Purchase Price, the Purchaser shall also pay any and all documentary stamps, recording and similar transactional taxes imposed by the state of Florida or any governmental authority having jurisdiction, which are payable on the sale, assignment, and transfer, it being understood that this is not intended to require payment by the Purchaser of any taxes imposed on or with respect to income, gain, or profit derived by the Seller that may be or become payable as a result of the sale, assignment, or transfer, including, without limitation, those imposed by any similar state or local tax code. The Purchaser shall also execute and deliver to the Seller an indemnity agreement, which shall indemnify the Seller against obligations and liabilities of the Partnership and shall include the undertaking of the Purchaser to use its best efforts to obtain the release of the Seller from any liabilities, direct or contingent, for the payment of any obligations of the Partnership. The aforementioned indemnity shall be applicable to all obligations and liabilities of the Partnership, excluding obligations and liabilities of which the Seller knew or should have known and did not promptly disclose to the Purchaser at the time of their incurrence and of which the Purchaser could not be reasonably expected to have knowledge. The Seller shall be relieved from the Partnership, and Purchasers shall release the Seller of his or her liabilities with respect to the Partnership.

c. DEFAULT IN PAYMENT OF NOTES. In the event of default in the payment of interest or principal on any note given to evidence the unpaid balance of the Purchase Price in a transaction of Purchase and Sale of any Partnership Interest provided for in this Agreement, and if the default shall continue for 30 days, then on written notice thereof to the Purchaser by the Seller, at Seller's option, the due date of any unpaid note shall be accelerated, the amount that has been received by the Seller shall be retained as damages, and the Seller shall have and may exercise, from time to time, any and all rights and remedies of a Secured Party under the Florida Uniform Commercial Code, and any and all rights and remedies available to it under any other applicable law, or granted by agreement between the parties, including, but not limited to, the right to retain the collateral in satisfaction of the debtor's obligation. By affixing their signatures to this Agreement, the parties hereby acknowledge that this Agreement shall serve as a Security Agreement and that it is the intention of all of the parties to comply with the requirements of the Florida Uniform Commercial Code. It is agreed that five days' written notice of the time or place of any sale, whether public or private, under the Uniform Commercial Code shall be reasonable notice for all purposes.

ARTICLE IV
MANAGEMENT AND OPERATIONS

A. RIGHTS, POWERS, AND DUTIES OF THE GENERAL PARTNER AND PARTNERS IN THEIR CAPACITIES AS SAME.

1. GENERAL PARTNER.

a. RIGHTS, POWERS, AND LIMITATIONS OF GENERAL PARTNER(S). Unless otherwise provided in this Agreement, the management and control of the Partnership and its business and affairs shall rest exclusively with the General Partner(s) and in turn with any Managing Partner selected from among them in accordance with the terms and conditions of this Agreement. Except as otherwise provided in this Agreement, all actions that any General Partner may take and all determinations that any General Partner may make under this Agreement may be taken and made at the sole and absolute discretion of the General Partner. The General Partner, acting through the Managing Partner, shall have the rights and powers as are otherwise conferred by law or by this Agreement or as are necessary, advisable, or convenient to the discharge of its duties hereunder and to the management of the business and affairs of the Partnership. The signature of the General Partner (which authority shall be deemed delegated to any Managing Partner named herein) shall be sufficient to bind the Partnership in all matters unless otherwise provided herein. In all cases in which the Managing Partner is identified in this Agreement as having a power, authority, or limitation on same, it is understood that this provision refers to the General Partner acting through the Managing Partner. PROVIDED, HOWEVER, notwithstanding the foregoing, neither the General Partner, the Managing Partner, nor any other Partner shall, without first having obtained Approval of the Partners:

(1) Do any act in contravention of this Agreement;

(2) Do any act that would make it impossible to carry on the Partnership's business and investment activities;

(3) Amend or otherwise change this Agreement to modify the rights or obligations of the Partners as set forth herein;

(4) Intentionally create any personal liability for a Partner other than liability to which the Partner may agree in writing;

(5) Distribute any cash or property of the Partnership, other than as provided in this Agreement.

Notwithstanding the above, the Managing Partner shall have the right to take any actions as he or she, in the General Partner's reasonable judgment, deems necessary for the protection of life or health or the preservation of Partnership Property if, under the circumstances, in the good-faith estimation

of the Managing Partner, there is insufficient time to allow the Managing Partner to obtain the Approval of the Partners to the action and any delay would materially increase the risk to life or health or preservation of Property. The Managing Partner shall notify the Partners of each action contemporaneously therewith or as soon as reasonably practicable thereafter. This authority shall lapse and terminate on reduction of the risk to life or health or preservation of Property or on receipt by the Managing Partner of telephonic, telegraphic, or written notice from any Partner of his or her disapproval of any or all of the proposed actions.

b. DUTIES AND OBLIGATIONS OF GENERAL PARTNER(S).

(1) GENERAL. The General Partner(s) shall take all action that may be necessary or appropriate (i) for the continuation of the Partnership's valid existence as a limited partnership under the laws of Florida (and of each other jurisdiction in which the existence is necessary to protect the limited liability of the Limited Partners or to enable the Partnership to conduct the business in which it is engaged), and (ii) for the accomplishment of the Partnership's purposes, including the acquisition, development, maintenance, preservation, and operation of Property in accordance with the provisions of this Agreement and applicable laws and regulations. The General Partner(s) shall be under a fiduciary duty to conduct the affairs of the Partnership in the best interests of the Partnership and of the Limited Partners, including the safekeeping and use of all of the Property and the use thereof for the exclusive benefit of the Partnership.

(2) SPECIFIC PROVISIONS RELATING TO MANAGING PARTNER. The Managing Partner shall, at the expense of and on behalf of the Partnership, conduct or cause to be conducted the ordinary and usual business and affairs of the Partnership in accordance with and as limited by this Agreement, including, but not limited to, the following:

(a) Protecting and preserving the title and interests of the Partnership with respect to the Property owned by the Partnership;

(b) Keeping all books of account, vouchers, statements, receipted bills and invoices, and all other records in proper form covering all collections, disbursements, and other data in connection with the Partnership;

(c) Retaining and coordinating the services of all investment advisors, accountants, attorneys, consultants, and other persons who may be necessary or appropriate to carry out the business of the Partnership;

(d) To the extent that funds are available therefor, paying all debts and other obligations of the Partnership;

(e) When permitted or required by this Agreement, making distributions in accordance with the provisions of this Agreement;

(f) Expending the capital and income of the Partnership to the extent permitted by this Agreement;

(g) Asking for, collecting, and receiving any dividends, rents, issues, and profits or income from any Property of the Partnership, or any part or parts thereof, and disbursing Partnership funds for Partnership purposes to those persons entitled to receive same;

(h) Purchasing from or through others, contracts of liability, casualty, or other insurance for the protection of the properties or affairs of the Partnership or the Partners, or for any purpose convenient or beneficial to the Partnership;

(i) Paying all taxes, licenses, or assessments of whatever kind or nature imposed on or against the Partnership or Partnership Property, and for those purposes to make returns and do all other acts or things as may be deemed necessary and advisable by the Partnership;

(j) Establishing, maintaining, and supervising the deposit of any money or securities of the Partnership with federally insured banking institutions or other institutions as may be selected by the Managing Partner, in accounts in the name of the Partnership with the institutions;

(k) Instituting, prosecuting, defending, settling, compromising, and dismissing lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, the Partnership or the Partners in connection with activities arising out of, connected with, or incidental to this Agreement, and to engage counsel or others in connection therewith;

(*l*) Executing for and on behalf of the Partnership all applications for permits and licenses as the Managing Partner deems necessary and advisable, and executing, filing, and recording all subdivision, parcel, or similar maps covering or relating to the Project that the Managing Partner deems advisable;

(m) Performing all ministerial acts and duties relating to the payment of all indebtedness, taxes, and assessments due or to become due with regard to the Partnership Property, and giving and receiving notices, reports, and other communications arising out of or in connection with the ownership, indebtedness, or maintenance of the Partnership Property; and

(n) Conducting the affairs of the Partnership with the general objective of financial gain.

(3) GENERAL OBLIGATIONS OF MANAGING PARTNER. The Managing Partner shall regularly consult with the Partners regarding Partnership affairs, shall comply with the provisions of this Agreement, shall manage and control the Partnership and its business and affairs to the best of its ability, and shall use its best efforts to carry out the business of the Partnership and to comply with the terms of all agreements to which the Partnership is a party or to which Partnership Property is subject. The Managing Partner shall devote itself to the business of the Partnership to the extent necessary to conduct the business of the Partnership. The Managing Partner shall execute any further documents and take any further action as shall be appropriate to comply with the requirements of the Act or other laws by which the Partnership is bound.

(4) REMOVAL OF GENERAL PARTNER. The General Partner(s) of the Partnership may be removed as General Partner on the occurrence of any fraud by the General Partner.

(5) RIGHT TO RELY ON GENERAL PARTNER(S). Any person dealing with the Partnership may rely (without duty of further inquiry) on a certificate signed by any General Partner concerning:

(a) the identity of any General Partner or Limited Partner;

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

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

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

(6) ADDITIONAL GENERAL PARTNERS. Except as provided in this Article and in the section titled "DISSOLUTION AND WINDING UP" of the article titled "CONTRIBUTIONS AND DISTRIBUTIONS," no person shall be admitted to the Partnership as a General Partner without the unanimous consent of the Partners.

2. LIMITED PARTNER(S).

a. MANAGEMENT. Except as specifically provided for herein, no Limited Partner shall have any right or power to take part in the management or control of the Partnership or its business and affairs or to act for or bind the Partnership in any way. The Limited Partner(s) shall have the right to vote on the matters explicitly set forth in this Agreement. Any Partner who acts beyond the scope of the authority granted by the Agreement shall, in

addition to any other remedy available to the Partnership or the other Partners, be liable in damages to the Partnership and each other Partner for any loss or damages that they may incur or suffer as a consequence of the act.

b. LIMITED LIABILITY. Except as otherwise provided by this Agreement or by an Assumption Agreement, no Limited Partner shall be liable for the debts, liabilities, contracts, or any other obligations of the Partnership. Except as otherwise provided by this Agreement, any other agreements among the Partners, or applicable state law, a Limited Partner shall be liable only to make his or her Capital Contributions and shall not be required to lend any funds to the Partnership or, after his or her Capital Contributions have been paid, to make any additional contributions to the Partnership. No General Partner shall have any personal liability for the repayment of any Capital Contributions of any Limited Partner.

B. COMPENSATION OF PARTNERS.

1. PAYMENTS TO GENERAL PARTNER(S). Payments for services may be made by the Partnership to any partner, stockholder, officer, director, or employee of any Partner, or to any person related to or that is an Affiliate (as hereinafter defined) of any Partner.

2. PARTNERSHIP EXPENSES PAID. The Partnership shall pay, as an expense of the Partnership, all direct expenses reasonably incurred by any Partner in connection with the operation and management of the affairs of the Partnership. It is considered a proper expense of the Partnership for the Partnership to pay any allocable portion of central office overhead or general or administration expenses of the General Partner(s) or any salaries or fees paid to the administrative employees of a Partner. The Partnership shall bear the expense of keeping the books and records of the Partnership. It is also considered a proper expense of the Partnership for the Partnership to pay a management fee or other compensation to the General Partner(s) or any partner, stockholder, officer, director, or employee of any General Partner(s), or to any person who is related to or an Affiliate of any General Partner.

3. COMPENSATION. It is considered a proper expense of the Partnership for the Partnership to pay a management fee or other compensation to the General Partner(s) or any trustee, partner, stockholder, member, officer, director, or employee of any General Partner(s), or to any person related to or that is an Affiliate of any General Partner.

4. LOANS. Any person may, with the consent of the General Partner(s), lend or advance money to the Partnership. If any Partner shall make any loan or loans to the Partnership or advance money on its behalf, the amount of any loan or advance shall not be treated as a Capital Contribution, but shall be a debt due from the Partnership. The amount of any loan or

advance by a lending Partner shall be repayable out of the Partnership's cash and shall bear interest at the rate as the General Partner(s) and the lending Partner agree. If a General Partner is the lending Partner, the rate of interest shall be determined by the General Partner(s), taking into consideration, without limitation, prevailing interest rates and the interest rates the General Partner is required to pay in the event the General Partner has itself borrowed funds to lend or advance to the Partnership. Unless otherwise specifically provided for herein, none of the Partners shall be obligated to make any loan or advance to the Partnership.

C. NOTICE OF DEFAULTS. The Managing Partner shall provide written notice to Partners of any claimed default of the Partnership under any debt, liability, or obligation in excess of $10,000, this notice to be given as soon as practically possible on occurrence of the claimed default. Concerning any claimed default, Partners shall have the right, but not the obligation, to act unilaterally in curing the claimed default, by lending to the Partnership, at the then Prime Rate, plus five percent, the amount necessary to cure the default.

D. ATTENTION TO PARTNERSHIP MATTERS. The General Partner(s) shall devote the time and/or attention to the affairs of the Partnership as may be reasonably necessary to the conduct of Partnership's business and investment activities. Any of the Partners may, unless otherwise specifically provided in this Agreement, engage in or possess an interest in other business ventures of every nature and description that are unrelated to the Partnership, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, and development of real property or other projects of similar type to the project, without any accountability to the Partnership or any party thereto, even if the business or activity competes with the business of the Partnership. Neither the Partnership nor the other Partners shall have any right by virtue of this Agreement in or to the independent ventures or to the income or profits derived from them. A Partner shall not be under an obligation to first offer any opportunity to the Partnership, but may proceed without obligation to the Partnership.

E. INDEMNITY.

1. The Partnership, its receiver, or its trustee shall indemnify, save harmless, and pay all judgments and claims against any General Partner relating to any liability or damage incurred by reason of any act performed or omitted to be performed by that General Partner in connection with the business of the Partnership, including attorneys' fees incurred by that General Partner in connection with the defense of any action based on any act or omission, which attorneys' fees may be paid as incurred, including all liabilities under federal and state securities laws (including the Securities Act of 1933, as

amended) as permitted by law.

2. In the event of any action by a Limited Partner against any General Partner, including a Partnership derivative suit, the Partnership shall indemnify, save harmless, and pay all expenses of that General Partner, including attorneys' fees, incurred in the defense of the action, if the General Partner is successful in the action.

3. The Partnership shall indemnify, save harmless, and pay all expenses, costs, or liabilities of any General Partner who for the benefit of the Partnership makes any deposit, acquires any option, or makes any other similar payment or assumes any obligation in connection with any property proposed to be acquired by the Partnership and who suffers any financial loss as a result of the action.

F. ACCOUNTING AND RECORDS.

1. BOOKS AND RECORDS. The Partnership shall maintain at its principal place of business separate books of account for the Partnership that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the operation of the Partnership's business and investment activities in accordance with generally accepted accounting principles consistently applied. The Partnership shall use the cash or accrual method of accounting in preparation of its annual reports and for tax purposes, as determined by the accountants for the Partnership, and shall keep its books accordingly. The expenses chargeable to the Partnership shall include those that are reasonable and necessary for the ordinary and efficient operation of the Partnership's business and investment activities and the performance of the obligations of the Partnership under any agreements relating to the Business of the Partnership.

2. REPORTS. The Managing Partner shall be responsible for the preparation of financial reports of the Partnership and the coordination of financial matters of the Partnership with the Partnership's accountants. Within 90 days after the end of each fiscal year, the Managing Partner may cause each Partner to be furnished with a copy of the balance sheet of the Partnership as of the last day of the applicable period, and a statement of income or loss for the Partnership for the period. Annual statements shall also include a statement showing any item of income, deduction, credit, or loss allocable for federal income tax purposes under the terms of this Agreement. Annual statements may be reviewed by the Partnership's accountants.

3. TAX MATTERS.

a. TAX RETURNS. The Managing Partner shall cause the

Partnership's accountants to prepare all income and other tax returns of the Partnership and shall cause them to be filed in a timely manner. The Managing Partner shall furnish to each Partner a copy of each return, together with any schedules or other information that each Partner may require in connection with that Partner's own tax affairs.

b. SPECIAL BASIS ADJUSTMENT. In connection with any Purchase, Sale of a Partnership Interest, or other transfer, the Managing Partner shall cause the Partnership, at the written request of the transferor or the transferee, on behalf of the Partnership and at the time and in the manner provided in Reg. §1.754-1(b), to make an election to adjust the basis of the Partner's property in the manner provided in IRC §§734(b) and 743(b). The transferee shall pay all costs incurred by the Partnership in connection therewith, including, without limitation, reasonable attorneys' and accountants' fees.

c. TAX MATTERS PARTNER. If a Managing Partner is named in this Agreement, the Managing Partner shall be the party designated to receive all notices from the Internal Revenue Service that pertain to the tax affairs of the Partnership. That Managing Partner shall be the "Tax Matters Partner" under the Code. If no Managing Partner is named in this Agreement, the General Partner(s) shall designate from among them who will be the Tax Matters Partner.

d. FISCAL YEAR. The fiscal year of the Partnership shall be the calendar year, unless otherwise approved by the Partners. As used in this Agreement, a fiscal year shall include any partial fiscal year at the beginning and end of the Partnership term.

e. BANK ACCOUNTS. The Managing Partner shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in its immediate possession or control. The funds of the Partnership shall not be commingled with the funds of any other Person, and the Managing Partner shall not employ, or permit any other Person to employ, these funds in any manner except for the benefit of the Partnership. The bank accounts of the Partnership shall be maintained in banking institutions as are designated by the Managing Partner, and withdrawals shall be made only in the regular course of the Partnership's business and investment activities, and as otherwise authorized in this Agreement on signature or signatures as the Managing Partner may determine.

G. POWER OF ATTORNEY.

1. GENERAL PARTNER(S) AS ATTORNEY(S)-IN-FACT. Each Limited Partner hereby makes, constitutes, and appoints each General Partner

and each successor General Partner, with full power of substitution and resubstitution, his or her true and lawful attorney-in-fact for him or her and in his or her name, place, and stead and for his or her use and benefit, to sign, execute, certify, acknowledge, swear to, file, and record (i) this Agreement and all agreements, certificates, instruments, and other documents amending or changing this Agreement as now or hereafter amended that the General Partner(s) may deem necessary, desirable, or appropriate including, without limitation, amendments or changes to reflect (a) the exercise by any General Partner of any power granted to him or her under this Agreement; (b) any amendments adopted by the Partners in accordance with the terms of this Agreement; (c) the admission of any substituted Partner; (d) the disposition by any Partner of his or her interest in the Partnership; and (ii) any certificates, instruments, and documents as may be required by or may be appropriate under the laws of Florida or any other state or jurisdiction in which the Partnership is doing or intends to do business. Each Limited Partner authorizes each attorney-in-fact to take any further action that the attorney-in-fact shall consider necessary or advisable in connection with any of the foregoing, hereby giving each attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite or advisable to be done in connection with the foregoing as fully as the Limited Partner might or could do personally, and hereby ratifying and confirming all that the attorney-in-fact shall lawfully do or cause to be done by virtue thereof or hereof.

2. NATURE AS SPECIAL POWER. The power of attorney granted under this section:

a. is a special power of attorney coupled with an interest and is irrevocable;

b. may be exercised by any attorney-in-fact by listing the Limited Partners executing any agreement, certificate, instrument, or other document with the single signature of any attorney-in-fact acting as attorney-in-fact for the Limited Partners; and

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

H. MEETINGS OF THE PARTNERS.

1. GENERAL. Meetings of the Partners may be called by any General Partner. The call shall state the nature of the business to be transacted. Notice of any meeting shall be given to all Partners not less than 7 nor more than 30 days before the date of the meeting. Partners may vote in person or by proxy at the meeting. Whenever the vote or consent of Partners is permitted or required under the Agreement, the vote or consent may be given at a meeting of Partners or may be given in accordance with the alternative procedure prescribed herein. The alternative procedure shall be a written vote, and for purposes of obtaining a written vote, the General Partner(s) may require response within a reasonable specified time, but not less than 15 days, and failure to respond in that time period shall constitute a vote that is consistent with the recommendation of the General Partner(s) with respect to the proposal. A proposed action of the Partnership shall be effective as an action of the Partnership if it receives the affirmative vote of the holders of a majority of the Percentage Interests in the Partnership.

2. PARTNERS OF RECORD. For purposes of determining the Partners entitled to vote at any meeting of the Partners or any adjournment thereof, the General Partner(s) or the Limited Partner(s) requesting a meeting may fix, in advance, a date as the record date for the determination. The date shall not be more than 30 days nor less than 10 days before any meeting.

3. PROXIES. Each Limited Partner may authorize any Person(s) to act for him or her by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or his or her attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Limited Partner executing it.

4. RULES. Each meeting of the Partners shall be conducted by any other Person as the General Partner(s) may appoint under the rules for the conduct of the meeting as the General Partner(s) or the other Person deems appropriate.

ARTICLE V
ALLOCATIONS AND EFFECT OF TAX CONSEQUENCES

A. GENERAL CONSEQUENCES. The Partners are aware of the income tax consequences of the allocations made by this Article and hereby agree to be bound by the provisions of this Article in reporting their shares of Partnership income and loss for income tax purposes. The Partners, notwithstanding any other provision of this Partnership Agreement contrary to or inconsistent with

this Article, hereby acknowledge the existence of and agree to any other adjustments in their Percentage Interests and/or Capital Account balances occasioned by the allocations in this Article as provided in this Agreement.

B. ALLOCATION OF INCOME, GAIN, LOSS, DEDUCTION, AND CREDIT.

1. PROFITS. Profits for any fiscal year shall be allocated among the Partners in proportion to their Percentage Interests, unless otherwise specifically provided for herein.

2. LOSSES. Losses for any fiscal year shall be allocated among the Partners in proportion to their Percentage Interests, unless otherwise specifically provided for herein.

3. ITEMS OF INCOME AND CREDIT. Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Partners in the same proportions as they share Profits or Losses for the year.

4. METHOD OF DETERMINING. For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any other items shall be determined on a daily, monthly, or other basis, as determined by the Managing Partner using any permissible method under IRC §706 and the Treasury Regulations thereunder.

5. SHARES OF EXCESS NONRECOURSE LIABILITIES. Solely for purposes of determining a Partner's proportionate share of "excess nonrecourse liabilities" of the Partnership within the meaning of Reg. §1.752-3(a)(3), the Partners' interests in Partnership Profits are in proportion to their Percentage Interests.

6. TREATMENT OF NET CASH. To the extent permitted by Treasury regulations, the Managing Partner shall endeavor not to treat distributions of Net Cash From Operations or Net Cash From Sales or Refinancing as having been made from the proceeds of a Nonrecourse Liability or a Partnership Nonrecourse Debt.

C. TAX ALLOCATIONS REGARDING CONTRIBUTED PROPERTY.

In accordance with IRC §704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners to take account of any variation between the adjusted basis of the Property to the Partnership for federal income tax

purposes and its initial Gross Asset Value (computed in accordance with the subsection of this Agreement titled "GROSS ASSET VALUE").

In the event the Gross Asset Value of any Partnership asset is adjusted under the subsection of this Agreement defining the term "Gross Asset Value," subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its Gross Asset Value in the same manner as under IRC §704(c) and the Treasury Regulations thereunder.

Any elections or other decisions relating to the allocations shall be made by the Managing Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations under this section titled "TAX ALLOCATIONS REGARDING CONTRIBUTED PROPERTY" are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account unless in computing, any Person's Capital Account or share of Profits, Losses, other items, or distributions under any provisions of this Agreement.

ARTICLE VI
MISCELLANEOUS

In addition to the other provisions of this Agreement, the parties agree the following provisions under this Section shall govern the execution of this Agreement and the legal relationships of the parties created hereby.

A. NOTICES.

1. GENERAL. All notices, demands, or requests provided for or required to be given under this Agreement shall be in writing, and shall be deemed to have been properly given or served if sent by certified mail, return receipt requested, postage prepaid, to the following addresses:

If to the Partnership:

SAMUEL O. SAMPLE FAMILY LIMITED PARTNERSHIP
c/o Samuel O. Sample
Managing Partner
555 Seashore Boulevard
Tampa, FL 33606

If to Samuel O. Sample:

Samuel O. Sample
555 Seashore Boulevard

Tampa, FL 33606

If to Sylvia O. Sample:

Sylvia O. Sample
555 Seashore Boulevard
Tampa, FL 33606

The foregoing addresses may be changed by any of the aforesaid persons, and additional persons may be added thereto by notifying all of the other parties in writing and in the manner set forth above.

2. EFFECTIVENESS OF NOTICE. All notices, demands, and requests shall be effective on being deposited in the United States mail. However, the time period in which a response of any notice, demand, or request must be given shall commence to run from the date of receipt on the return receipt of the notice, demand, or request by the address thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, or request sent. In the event that registered or certified mail is not being accepted for prompt delivery, notices may then be served by personal service on any officer, director, member, or partner of any Partner, or on any individual who is a Partner.

3. CHANGE OF ADDRESS FOR NOTICE. By giving to the other parties at least three days' written notice thereof, the parties and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses, and each shall have the right to specify as its address any other address within the United States.

B. TERMINATION. This Agreement shall terminate, unless otherwise specifically provided, on the happening of any of the following events:

1. The judicial determination that the Partnership is bankrupt, or the appointment by any court having jurisdiction of a receiver for the Partnership's Property or the assignment by the Partnership of its assets for the benefit of its creditors;

2. The liquidation of the Partnership and the distribution to its Partners of all of its Property subject to any undischarged liabilities, provided that the liquidation shall have been approved in accordance with this Agreement and completed in accordance with this Agreement and the Act; or

3. The completion of the term of this Agreement as described in the

section of this Agreement titled "TERM."

C. STATUS REPORTS. Recognizing that each party hereto may find it necessary from time to time to establish to third parties, such as accountants, banks, mortgagees, or the like, the status of performance hereunder, each party agrees, on the written request of any other made from time to time, to furnish promptly a written statement (in recordable form, if requested) on the status of any matter pertaining to this Agreement to the best of the knowledge and belief of the party making the statement. The party seeking the report shall bear all of the expenses regarding it and shall pay to a General Partner required to make the report under this provision a reasonable fee for the time required to comply.

D. FURTHER ACTION. Each Partner agrees to perform all further acts and execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement. The party seeking the act provided herein shall bear all of the expenses regarding it and shall pay to a General Partner required to take action under this provision a reasonable fee for the time required to comply.

E. AMENDMENTS.

1. GENERAL. Amendments to this Agreement may be proposed by any General Partner. Following the proposal, the General Partner(s) shall submit to the Limited Partner(s) a verbatim statement of any proposed amendment, providing that counsel for the Partnership shall have approved in writing the form of the proposal, and the General Partner(s) shall include in any submission a recommendation to the proposed amendment. The General Partner(s) shall seek the written vote of the Partners on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it or they may deem appropriate. For purposes of obtaining a written vote, the General Partner(s) may require a response within a reasonable specified time, but not less than 15 days, and failure to respond in this time period shall constitute a vote that is consistent with the recommendation of the General Partner(s) with respect to the proposal. A proposed amendment shall be adopted and be effective as an amendment hereto if it receives a vote sufficient to be an Approval of the Partners.

2. AFFECTED PERSONS. Notwithstanding the paragraph above titled "GENERAL" of this section titled "AMENDMENTS," this Agreement shall not be amended without the consent of each Person adversely affected if the amendment would (i) convert a Limited Partner's Partnership Interest in the partnership into a general partner's interest, or (ii) modify the limited liability of a partner.

F. SUBROGATION. Whenever any interest in the Partnership is subject

to any pledge, seizure for obligations of a Partner, or any other encumbrance, and the debt evidenced by the encumbrance is in default, the other Partners may, at their election, pay to the holder of the obligation the amount, pro rata to their Percentage Interests, of the debt to release the interest from the encumbrance. Any Partners will then be subrogated to all the legal rights and privileges of the creditor and can enforce payment in the same manner as the creditor, or in the alternative, deem the existence of the obligation as a default under this Agreement and treat the Partner who initially incurred any obligation as a Defaulting Partner.

G. WAIVER OF PARTITION. No Partner shall, either directly or indirectly, take any action to require partition or appraisal of the Partnership or of any of its assets or properties or cause the sale of any Partnership property, and notwithstanding any provisions of applicable law to the contrary, each Partner (and his or her legal representatives, successors, or assigns) hereby irrevocably waives any and all rights to maintain any action for partition or to compel any sale with respect to his or her Partnership Interest, or with respect to any assets or Properties of the Partnership, except as expressly provided in this Agreement.

H. COVENANT NOT TO WITHDRAW OR DISSOLVE. Notwithstanding any provision of the Act, each Partner hereby covenants and agrees that the Partners have entered into this Agreement based on their mutual expectation that all Partners will continue as Partners and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly required or permitted hereby, no Partner shall withdraw or retire from the Partnership, be entitled to demand or receive a return of the Partnership's Capital Contributions or Capital Account balance (or a bond or other security for the return of the Capital Contributions or Capital Account balance), or exercise any power under the Act to dissolve the Partnership without the unanimous consent of the Partners.

I. CONSENTS. In all events for which the consent of a Partner is required, any Partner may request consent in writing and include the nature of the proposed transaction. The written request will be accompanied by any related contracts or other documents, and terms, if any. The request for consent shall be transmitted in accordance with the section hereof titled "NOTICES," provided, however, that facsimile transmission shall be an acceptable form of delivery of any request for consent. If a written denial of the request is not delivered within 10 days of the initial request, the requested consent shall be deemed given.

J. INSURANCE. "All-risks" hazard insurance in an amount equal to the full insurable value of the Partnership Property and the Business and any other Partnership Property shall be carried and maintained in force by and for

the benefit of the Partnership. In addition, the Partnership shall maintain public liability insurance against all claims for personal or bodily injury, death, or property damage occurring on or about or with any Partnership Property or from operation of the Business in an amount not less than $1,000,000 for injury or damage from any one accident. The Partnership shall further carry workers' compensation insurance as is required by law. All policies of insurance to the full extent permitted shall name the Partnership and each of the Partners as named insureds, as their respective interests may appear.

K. DEFINITIONS. The following capitalized words and phrases used in this Agreement have the meanings provided in this section.

1. "ADJUSTED CAPITAL ACCOUNT DEFICIT" means, with respect to any Partner, the deficit balance, if any, in the Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

a. Credit to the Capital Account of any amounts that the Interest Holder is obligated to restore under any provision of this Agreement or is deemed to be obligated to restore under the penultimate sentences of Reg. §§1.704-1(b)(2)(ii)(b) and 1.704-1(b)(2)(ii)(d); and

b. Debit to the Capital Account of the items described in Reg. §§1.704-1(b)(2)(ii)(d)(4)–1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Reg. §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

2. "ADJUSTED CAPITAL CONTRIBUTIONS" means, as of any day, an Interest Holder's Capital Contributions adjusted as follows:

a. Increased by the amount of Partnership liabilities that, in connection with distributions under this Agreement, are assumed by the Interest Holder or are secured by any Partnership Property distributed to the Interest Holder;

b. Increased by any amounts actually paid by the Interest Holder to any Partnership lender under the terms of any Assumption Agreement;

c. Reduced by the amount of cash and the Gross Asset Value of any Partnership Property distributed to the Interest Holder under this Agreement; and

d. Reduced by the amount of any liabilities of the Interest Holder assumed by the Partnership or that are secured by any property

contributed by the Interest Holder to the Partnership.

In the event any Interest Holder transfers all or any portion of his or her Interest in accordance with the terms of this Agreement, his or her transferee shall succeed to the Adjusted Capital Contribution of the transferor to the extent it relates to the transferred interest.

3. "AFFILIATE" means, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by, or under common control with the Person, (ii) any Person owning or controlling 10% or more of the outstanding voting interests of the Person, (iii) any officer, director, or general partner of the Person, or (iv) any Person who is an officer, director, general partner, trustee, or holder of 10% or more of the voting interests of any Person described in clauses (i) through (iii) of this sentence.

4. "APPROVED BY THE PARTNERS" means approved in writing by the affirmative vote of the General Partner and Limited Partners holding an Interest or Percentage Interests (as hereinafter defined in either of the subsections titled "INTEREST" or "PERCENTAGE INTEREST") greater than 50% of the outstanding Percentage Interests held by the General Partner and the Limited Partners. The process described above shall also be known as "APPROVAL OF THE PARTNERS."

5. "HEREIN, etc." Words such as "herein," "hereinafter," "hereof," "hereto," and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires.

6. "ASSUMPTION AGREEMENT" means any agreement among the Partnership, any of the Partners, and any Person to whom the Partnership is indebted under a loan agreement, any seller financing with respect to an installment sale, a reimbursement agreement, or any other arrangement (collectively referred to as a "loan" for purposes of this Agreement) under which any Partner expressly assumes any personal liability with respect to the loan. The amount of any loan shall be treated as assumed by the Partners for all purposes under this Agreement in the proportions set forth in the Assumption Agreement and their respective amount so assumed shall be credited to their respective Capital Accounts under this Agreement. To the extent the loan is repaid by the Partnership, the Partner's Capital Accounts shall be debited with their respective shares of the repayments under this Agreement. To the extent the loan is repaid by some or all of the Partners with their own funds, there shall be no adjustments to their Capital Accounts.

7. "CAPITAL ACCOUNT" means, with respect to any Partner, the Capital Account maintained for the Person in accordance with the following provisions:

a. To each Person's Capital Account there shall be credited the Person's Capital Contributions, the Person's distributive share of Profits, and, if there appears in this Agreement a section titled "SPECIAL ALLOCATIONS" in the Article of this Agreement titled "ALLOCATIONS AND EFFECTS OF TAX CONSEQUENCES," any items in the nature of income or gain that may be specially allocated under that section, and the amount of any Partnership liabilities assumed by the Person or that are secured by any Property distributed to the Person.

b. To each Person's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Property distributed to the Person under any provision of this Agreement, the Person's distributive share of Losses, and, if there is a section titled "SPECIAL ALLOCATIONS" in the Article of this Agreement titled "ALLOCATIONS AND EFFECTS OF TAX CONSEQUENCES," then also any items in the nature of expenses or losses that are specially allocated under the subsection titled "CODE §754 ADJUSTMENT," and the amount of any liabilities of the Person assumed by the Partnership or that are secured by any property contributed by the Person to the Partnership.

c. In the event any Partnership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Partnership Interest.

d. In determining the amount of any liability for purposes of paragraphs a. and b. of this subsection, there shall be taken into account IRC §752(c) and any other applicable provisions of the Code and Treasury Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg. §1.704-1(b), and shall be interpreted and applied in a manner consistent with this regulation. In the event the Managing Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Partnership or the Partners), are computed to comply with the regulations, the Managing Partner may make the modification, provided that it is not likely to have a material effect on the amounts distributable to any Partner under the section titled "DISSOLUTION AND WINDING UP" of the Article of this Agreement titled "CONTRIBUTIONS AND DISTRIBUTIONS" on the dissolution of the Partnership. The Managing Partner shall also (a) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on

the Partner's balance sheet, as computed for book purposes in accordance with Reg. §1.704-1(b)(2)(iv)(q), and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Reg. §1.704-1(b).

8. "CAPITAL CONTRIBUTIONS" means, with respect to any Partner, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Partnership with respect to the Partnership Interest held by the Partner under the terms of this Agreement. The principal amount of a promissory note that is not readily traded on an established securities market and that is contributed to the Partnership by the maker of the note shall not be included in the Capital Contribution of any Person until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Reg. §1.704-1(b)(2)(iv)(d)(2).

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

10. "EVENT OF BANKRUPTCY" means with respect to any Partner or the Partnership, any of the following:

a. filing a voluntary petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code (as now or in the future amended) or an admission seeking the relief therein provided;

b. making a general assignment for the benefit of creditors;

c. consenting to the appointment of a receiver for all or a substantial part of the Person's property;

d. in the case of the filing of an involuntary petition in bankruptcy, an entry of an order for relief;

e. the entry of a court order appointing a receiver or trustee for all or a substantial part of the Person's property without that Person's consent; or

f. the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of the Person's property.

11. "GENERAL PARTNER" means any Person who (i) is referred to as General Partner in the first paragraph of this Agreement or has become a General Partner under the terms of this Agreement, and (ii) has not ceased to be a General Partner under the terms of this Agreement. "General Partners"

means all these persons.

12. "GROSS ASSET VALUE" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

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

b. The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing Partner, as of the following times: (a) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Partnership to a General Partner or Interest Holder of more than a de minimis amount of Property as consideration for an interest in the Partnership; and (c) the liquidation of the Partnership within the meaning of Reg. §1.704-1(b)(2)(ii)(g); provided, however, that adjustments under clauses (a) and (b) above shall be made only if the Managing Partner reasonably determines that the adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

c. The Gross Asset Value of any Partnership asset distributed to any General Partner or Interest Holder shall be the gross fair market value of the asset on the date of distribution; and

d. The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of these assets under IRC §734(b) or §743(b), but only to the extent that these adjustments are taken into account in determining Capital Accounts under Reg. §1.704-1(b)(2)(iv)(m), provided, however, that Gross Asset Values shall not be adjusted under this paragraph d. to the extent the Managing Partner determines that an adjustment under paragraph b. of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment under this paragraph d.

If the Gross Asset Value of an asset has been determined or adjusted under paragraphs a., b., or d. of this definition, the Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to the asset for purposes of computing Profits and Losses.

13. "INTEREST" or "PERCENTAGE INTEREST" means an ownership interest in the capital and/or profits of the Partnership, including any and all benefits to which the holder of an Interest may be entitled as provided in this Agreement, together with all obligations of the Person to

comply with the terms and provisions of this Agreement.

14. "INTEREST HOLDER" means any Person who holds an Interest, regardless of whether the Person has been admitted to the Partnership as a Limited Partner. "Interest Holders" means all these Persons.

15. INTEREST RATES.

a. "PRIME RATE." When used in this Agreement, the term "Prime Rate" shall mean the base rate announced by Citibank, N.A., of New York, New York, or its successor or survivor in the event of a bank merger, acquisition, or consolidation, that it charges to corporate commercial customers of the highest credit rating on a 90-day unsecured basis.

b. "MINIMUM RATE." Notwithstanding the terms of any other provision in this Agreement, when, in the event of a purchase and sale, there is to be paid an unpaid balance, to be evidenced by a note or otherwise, and interest is to be charged thereon, the interest rate to be charged shall be, at least, the minimum rate of interest necessary to satisfy, on the Closing Date, the requirements set forth in IRC §483, §1274, or §7872, whichever section shall be applicable, giving due consideration to the term of the debt or any note evidencing the debt and the frequency of payments thereunder.

c. "MAXIMUM RATE." In all events, any interest rate charged under this Agreement shall be no more than the maximum rate allowed by law.

16. "LIMITED PARTNER" means any Person (i) whose name is set forth on the exhibit attached hereto titled "Schedule of Information Regarding Partners of the Partnership" or who has become a Limited Partner under the terms of this Agreement, and (ii) who holds an Interest. "Limited Partners" means all these Persons. All references in this Agreement to a majority in interest or a specified percentage of the Limited Partners shall mean Limited Partners whose combined Interests represent more than 50%, or the specified percentage, respectively, of the Interests then held by all Limited Partners.

17. "NET CASH FROM OPERATIONS" means the gross cash proceeds from Partnership operations less the portion thereof used to pay or establish reserves for all Partnership expenses, debt payments, capital improvements, replacements, contingencies, and anticipated or pending reinvestment consistent with the purposes of the Partnership, all as determined by the General Partner(s). Net Cash From Operations shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions or reserves previously established.

18. "NET CASH FROM SALES OR REFINANCING" means the net

cash proceeds from all sales, other dispositions (other than in the ordinary course of business), and refinancing of Property, less any portion thereof used to establish reserves for all Partnership expenses, debt payments, capital improvements, replacements, contingencies, and anticipated or pending reinvestment consistent with the purposes of the Partnership, all as determined by the General Partner(s). "Net Cash From Sales or Refinancing" shall include all principal and interest payments with respect to any note or other obligation received by the Partnership in connection with sales or other dispositions (other than in the ordinary course of business) of Partnership Property.

19. "NONRECOURSE DEDUCTIONS" has the meaning set forth in Reg. §1.704-2(b)(1). The amount of Nonrecourse Deductions for a Partnership fiscal year equals the excess, if any, of the net increase, if any, in the amount of Partnership Minimum Gain during that fiscal year over the aggregate amount of any distributions during that fiscal year of proceeds of a Nonrecourse Liability that are allocable to an increase in Partnership Minimum Gain, determined according to the provisions of Reg. §1.704-2(c).

20. "PARTNERS" means all the General Partners and all the Limited Partners, when no distinction is required by the context in which the term is used herein. "Partner" means any one of the Partners. All references in this Agreement to a majority in interest or a specified percentage of the Partners shall mean Partners who are entitled to receive, in the aggregate, more than 50% or the specified percentage, respectively, of any distributions under this Agreement.

21. "PARTNERSHIP" means the partnership formed under this Agreement and the partnership continuing the business of this partnership in the event of dissolution as herein provided.

22. "PERMITTED TRANSFEREE" means a transferee of an Interest in the Partnership in a transaction that is a Permitted Transfer.

23. "PERSON" means any individual, partnership, corporation, trust, or other entity.

24. "PROFITS" and "LOSSES" mean, for each fiscal year or other period, an amount equal to the Partner's taxable income or loss for the year or period, determined in accordance with IRC §703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately under IRC §703(a)(1) shall be included in taxable income or loss), with the following adjustments:

a. Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or

Losses under this subsection shall be added to the taxable income or loss.

b. Any expenditures of the Partnership described in IRC §705(a)(2)(B), or treated as an IRC §705(a)(2)(B) expenditure under Reg. §1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses under this subsection, shall be subtracted from the taxable income or loss.

c. In the event the Gross Asset Value of any Partnership asset is adjusted under paragraph b. or c. of the definition describing "Gross Asset Value," the amount of the adjustment shall be taken into account as gain or loss from the disposition of the asset for purposes of computing Profits or Losses.

d. Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of the Property differs from its Gross Asset Value.

e. In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing the taxable income or loss, there shall be taken into account Depreciation for the fiscal year or other period, computed in accordance with the definition in this Agreement of "Depreciation."

f. Notwithstanding any other provision of this definition, any items that are specially allocated under the subsection titled "SPECIAL ALLOCATIONS" of the Article of this Agreement titled "ALLOCATIONS AND CONSEQUENCES OF TAX CONSEQUENCES" shall not be taken into account in computing Profits or Losses.

25. "PROPERTY" means all real and personal property contributed to or acquired by the Partnership and any improvements thereto, and shall include both tangible and intangible property.

26. "REGULATIONS" means the Income Tax Regulations, including Temporary Regulations, promulgated by the Internal Revenue Service under the Code, as the Regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

27. "TRANSFER" means, as a noun, any voluntary or involuntary transfer, sale, pledge, hypothecation, or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, hypothecate, or otherwise dispose of.

28. VALUES. The values of Partnership Interests shall be determined as provided in the paragraphs that follow under the letter of the provisions in this portion of the Agreement called "Values."

a. BOOK VALUE. When this Agreement refers to "Book Value," the Book Value shall be determined in following manner.

The "Book Value" of the Partnership shall be determined by the Certified Public Accountant then servicing the Partnership, or, if no Certified Public Accountant is then servicing the Partnership, by any Certified Public Accountant mutually agreeable to the parties, in accordance with generally accepted accounting principles, subject to the following provisions:

(1) No allowance of any kind shall be made for goodwill or any other intangible assets of the Partnership;

(2) All accounts payable shall be included and shall be valued at 100% of face value;

(3) Accounts receivable, including accounts receivable from Partners and Interest Holders, shall be included and shall be valued at 100% of face value;

(4) All fixed assets used by the Partnership in its business shall be valued at their respective book values (purchase price less depreciation), and no consideration shall be taken for appraised or fair market value; provided, however, that all assets of the Partnership held for investment by the Partnership shall be valued at their respective fair market; and

(5) All marketable securities shall be valued at their fair market value.

b. APPRAISED VALUE. When this Agreement refers to "Appraised Value," the Appraised Value shall be determined in the following manner:

(1) Within 10 days after receipt by the Purchaser of written notice of the Seller's election to purchase all or any of the Partnership Interests that are subject to this Agreement, the Seller and Purchaser shall each designate a Certified Public Accountant licensed in Florida ("CPA").

(2) Within 10 days after selection, the CPAs shall select an appraiser who shall determine the fair market value of the Partnership Interests being offered based on the value of the Partnership's assets and taking into consideration the Partnership's goodwill and its obligations and liabilities.

(3) In the event that a party shall fail to select a CPA within the 10-day time period, the appraiser shall be selected by the CPA selected by the other party, which appraiser shall determine the valuation of the Offered Interests.

(4) Any valuation made in accordance with this section shall be conclusive and binding on the parties.

29. "WITHDRAWING PARTNER" means a Partner who has given notice of its intention to withdraw from active participation in the Partnership.

L. PARTNER LOANS. The Partnership may, but shall not be required to, make loans to the Partners on terms and conditions determined by the General Partner, in its sole and absolute discretion. Any loan shall be evidenced by a promissory note in form acceptable to the General Partner ("Note"), and the Note shall have a stated rate of interest that is commercially reasonable but not less than the rate, if any, provided by the Code for these loans. The Note shall have a reasonable term, and the borrowing Partner may prepay the outstanding principal balance of the Note at any time without penalty. If the borrowing Partner defaults on his or her obligations under the Note, the Partnership may, in the sole and absolute discretion of the General Partner, withhold amounts from distributions otherwise due the borrowing Partner and apply the amounts in payment of the Note until the entire balance of the Note is paid in full.

The Partnership may refuse a loan request from any of the Limited Partners without cause or reason, and no cause or reason for the refusal need be given by the Partnership or the General Partner. The determination by the General Partner of the specific terms of the Note or any extension, modification, or renewal thereof shall be final and absolute and shall not be subject to challenge or objection by any Limited Partner on any ground whatsoever. The Partnership may refuse to extend, modify, or renew a Note without cause or reason, and no explanation for the refusal need be given by the Partnership or the General Partner.

M. PROTECTION OF INTERESTS.

1. SOLE BENEFIT. This Agreement is for the sole benefit of the Partners to permit the Partners to consolidate the holding and management of family assets and other business investments that may be acquired from time to time. The contributions to the Partnership as of the date hereof made, and that may occur from time to time as provided in the Article hereof titled "CONTRIBUTIONS AND DISTRIBUTIONS," will be made solely to accomplish the purposes of the Partnership as provided in the subsection titled "PURPOSE AND SCOPE OF THE PARTNERSHIP" of the Article of this Agreement titled "GENERAL PROVISIONS, REPRESENTATIONS, AND

COVENANTS." This Agreement is not intended to benefit any person to whom any claims, debts, liabilities, or obligations are or hereafter may become owed or any person who otherwise has or hereafter acquires any claim against the Partnership or a Partner. A claim by any creditor or other person against Partnership Property, or all or part of a Partner's Total Interest, would seriously frustrate the purposes of the Partnership and disrupt its operations. Accordingly, except as otherwise specifically provided in this Agreement, no creditor or other person shall obtain any rights under this Agreement, nor shall a creditor or other person be able to make any claim in respect of any claims, liabilities, or obligations of the Partnership or a Partner by reason of the provisions hereof.

2. RESTRICTIONS ON ALIENATION. To prevent frustration of the purposes of the Partnership and disruption of operations, a Partner may not, directly or indirectly, sell, assign, exchange, anticipate, hypothecate, pledge, mortgage, or in any other manner transfer or encumber all or part of its Interest, except as a result of a "Permitted Family Transfer" or on previous approval of the Partners (which may be withheld absolutely and without cause or reason). Any attempted transfer or encumbrance in violation of this Agreement shall be void ab initio and ineffective for all purposes, and the Partnership shall refuse to acknowledge the validity thereof for any purpose whatsoever. If all or part of a Total Interest is seized by creditors of a Partner, whether by attachment, garnishment, execution, or otherwise, or becomes subject to a charging order under any law, all rights of the Partner to exercise any voting or consensual powers, including giving Partner Approval (or other approval expressly provided herein) to inspect the books and records, to receive and approve the financial statements or any adjustment relating thereto, or to seek judicial dissolution, shall cease in all respects effective as of the time and date of the entry of a charging order.

3. POWER TO WITHHOLD DISTRIBUTIONS. If the General Partner believes that all or part of the Interest of a Limited Partner is or may be diverted or is under threat of diversion in any manner that would frustrate the purposes of the Partnership or disrupt its operations, including as a result of a charging order under any law, the General Partner may, in his or her sole and absolute discretion, withhold distributions otherwise permitted under the Article hereof titled "CONTRIBUTIONS AND DISTRIBUTIONS" to the Limited Partner until the General Partner concludes that the diversion or the threat thereof no longer exists.

ARTICLE VII
LITIGATION, CONSTRUCTION, AND INTERPRETATION

A. CONSTRUCTION AND INTERPRETATION. It is the desire and the

intention of the parties that this Agreement be accorded a liberal interpretation consistent with the declared purposes and intentions expressed herein. The parties acknowledge that they have carefully reviewed this Agreement and understand its contents; therefore, they agree that no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party to it by any court or other governmental or judicial authority by reason of the person having or being deemed to have structured or dictated the provision and regardless of who is responsible for its preparation. The following provisions shall also guide the construction and interpretation of this Agreement.

1. GOVERNING LAW. This Agreement and each transaction consummated hereunder shall be deemed to be made under the laws of Florida and shall be construed in accordance with and governed by the laws of Florida, excepting, however, its laws or principles regarding conflicts of laws or choice of laws.

2. ENTIRE AGREEMENT. This Agreement contains the entire understanding among the parties regarding the subject matter and extinguishes and cancels any and all previous agreements or understanding regarding the subject matter, whether oral or written, among the parties.

3. AMENDMENT. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing, signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

4. WAIVER. No waiver of any of the terms of this Agreement shall be valid unless signed by the party against whom the waiver is asserted. A waiver on any one occasion shall not be construed as a bar to or a waiver of any right on any future occasion. No failure to exercise, and no delay in exercising, any right shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or future exercise thereof or the exercise of any other right.

5. BINDING EFFECT. This Agreement shall be binding, not only on the parties to it, but also on their heirs, personal representatives, legal representatives, executors, administrators, successors, or assigns, to execute any instruments and to perform any acts that may be necessary or proper to carry out the purposes of this Agreement.

6. SPECIFIC PERFORMANCE. The Partnership Interests subject to this Agreement cannot be readily purchased or sold in the open market, and for that reason, among others, the parties will be irreparably damaged in the event that this Agreement is not specifically enforced. Should any dispute arise concerning the sale and disposition of any Partnership Interest, an injunction

may be issued restraining any sale or disposition pending the determination of the controversy. In the event of any controversy concerning the right or obligation to purchase or sell any of the Partnership Interests, the right or obligation shall be enforceable in a court of equity by a decree for specific performance. Any remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy that the parties may have.

7. SPECIFIC TERMS. When the context so requires, the use of the masculine gender shall include the feminine and the neuter gender and the singular shall include the plural and vice versa. Unless the context of this Agreement otherwise clearly requires, the term "including" is not limiting, and the terms "hereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Additionally, as used herein, the term "affiliate" means a spouse and/or any person or entity controlling, controlled by, or under common control with the subject person or entity.

8. PARTIAL INVALIDITY. In case any term of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in whole or in part, neither the validity of the remaining part of the term nor the validity of any other term of this Agreement shall in any way be affected thereby. The parties agree that any offending provision shall be modified as necessary by a court of competent jurisdiction so that the term or terms is thereafter held to be enforceable, and if any court of competent jurisdiction fails or refuses to so modify any term or terms of this Agreement, the parties agree that this Agreement shall be construed and enforced as if the term or terms had never been a part of this Agreement.

9. HEADINGS. Any captions or headings of the articles, sections, and subsections of this Agreement are for convenience and reference and are not to be considered a part hereof and shall not limit or otherwise affect any of the provisions or terms hereof.

10. EXECUTED IN COUNTERPARTS. This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any counterpart.

11. EXHIBITS. Any and all exhibits, schedules, or appendices attached hereto are an integral part hereof and are hereby incorporated into and included in the terms of this Agreement.

12. SOLE BENEFIT. The rights and benefits set forth in this Agreement are for the sole and exclusive benefit of the parties to it and may be relied on only by them.

B. LEGAL MATTERS.

1. ATTORNEYS' FEES AND COSTS. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred including its reasonable attorneys' fees for services rendered in connection with litigation, including appellate proceedings and postjudgment proceedings. As used herein, the term "attorneys' fees" shall be deemed to include charges for paralegals, law clerks, and other staff members operating under the supervision of an attorney and all sales or use taxes imposed thereon by an appropriate governmental authority.

2. CONSENT TO JURISDICTION AND VENUE. The parties hereby consent to jurisdiction and venue for any action, proceeding, counterclaim, crossclaim, or other litigation arising out of a breach or threatened breach of this Agreement in the United States District Court for the .... District of Florida, or in the Circuit Court of the .... Judicial Circuit in and for .... County, Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the latest of the dates set forth below.

As to SAMUEL O. SAMPLE on .....(date)......

WITNESSES TO SAM

/s/ Walter Witness **/s/ Samuel O. Sample**
SAMUEL O. SAMPLE

/s/ William Witness

As to SYLVIA O. SAMPLE on .....(date)......

WITNESSES TO SYLVIA

/s/ Walter Witness **/s/ Sylvia O. Sample**
SYLVIA O. SAMPLE

/s/ William Witness

COMMENT: The sample agreement includes terms unique to FLP planning through use of a limited partnership that incorporates the ideas of an FLP. The agreement's main feature is to increase the powers and choices of the general partner or partners and decrease the rights of limited partners to vote on issues, receive information, and impose otherwise commercial standards on the general partners. These terms reduce the value of the limited partners' partnership "Interest." Omitted here, but included under certain circumstances when the tax planning of the individual requires, are the "Special Allocations" of losses term.

B. [§7.45] Schedule Of Partners' Information

SAMUEL O. SAMPLE, LTD.
(THE "PARTNERSHIP")
SCHEDULE OF INFORMATION
REGARDING
PARTNERS OF THE PARTNERSHIP

GENERAL PARTNER(S)

Name of General Partner No. 1: SAMUEL O. SAMPLE

Percentage of Interest:	**1%**
Initial Cash Capital Contribution:	**$100.00**
Initial Property Capital Contribution:	**$100.00**

LIMITED PARTNER(S)

Name of Limited Partner No. 1: SAMUEL O. SAMPLE, Jr.

Percentage of Interest:	**49.5%**
Initial Cash Capital Contribution:	**$300.00**
Initial Property Capital Contribution:	**$300.00**

Name of Limited Partner No. 2: SYLVIA O. SAMPLE

Percentage of Interest:	**49.5%**
Initial Cash Capital Contribution:	**$300.00**
Initial Property Capital Contribution:	**$300.00**

C. [§7.46]Certificate Of Limited Partnership For Family Limited Partnership

CERTIFICATE OF LIMITED PARTNERSHIP
OF
SAMUEL O. SAMPLE FAMILY PARTNERSHIP, LTD.

This Certificate of Limited Partnership of SAMUEL O. SAMPLE FAMILY PARTNERSHIP, LTD. (the "Limited Partnership"), made and filed under the Florida Revised Uniform Limited Partnership Act of 2005, is executed as provided for by §620.1201, Florida Statutes, and sets forth the

following for the purpose of forming a limited partnership under Florida law:

(a) The name of the limited partnership is: SAMUEL O. SAMPLE FAMILY PARTNERSHIP, LTD.

(b) The address of the office and the name and address of the agent for service of process required to be maintained by §620.1114, Florida Statutes, are as follows:

Office Address:
555 Seashore Boulevard
Tampa, FL 33606

Name and Address of Agent for Service of Process:

Larry Lawyer, Esquire
555 Seashore Boulevard
Tampa, FL 33606

(c) The name and business address of each General Partner is:

Name of General Partner:

Samuel O. Sample
Address of General Partner:
555 Seashore Boulevard
Tampa, FL 33606

(d) The mailing address for the Limited Partnership is:

555 Seashore Boulevard
Tampa, FL 33606

(e) The latest date on which the limited partnership is to dissolve is December 31, 2100.

This certificate is executed by the undersigned for the purposes declared herein.

SAMUEL O. SAMPLE

/s/ Samuel O. Sample
As General Partner

Executed on behalf of the Limited Partnership under §620.1206,

Florida Statutes.