

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE: 3/2/16

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



732
**SUBMITTAL DATE:
 MAR 2 1 2016**

FROM: Don Kent, Treasurer-Tax Collector

SUBJECT: Recommendation for Distribution of Excess Proceeds for Tax Sale No. 200, Item 641. Last assessed to: Murrieta Land 60, LLC, a California Limited Liability Company. District 3 [\$355,286]. Fund 65595 Excess Proceeds from Tax Sale.

RECOMMENDED MOTION: That the Board of Supervisors:
 1. Approve the claim from Famille Holdings, L.P. for payment of excess proceeds resulting from the Tax Collector's public auction sale associated with parcel 949170037-4;
 (continued on page two)

BACKGROUND:

Summary
 In accordance with Section 3691 et seq. of the California Revenue and Taxation Code, and with prior approval of the Board of Supervisors, The Tax Collector conducted the April 29, 2014 public auction sale. The deed conveying title to the purchasers at the auction was recorded June 20, 2014. Further, as required by Section 4676 of the California Revenue and Taxation Code, notice of the right to claim excess proceeds was given on July 16, 2014, to parties of interest as defined in Section 4675 of said code. Parties of interest have been determined by an examination of lot book reports as well as Assessor's and Recorder's records, and various research methods were used to obtain current mailing addresses for these parties of interest.
 (continued on page two)

Don Kent
 Don Kent
 Treasurer-Tax Collector

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 355,286	\$ 0	\$ 355,286	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: Fund 65595 Excess Proceeds from Tax Sale				Budget Adjustment: N/A	
				For Fiscal Year: 15/16	

C.E.O. RECOMMENDATION: APPROVE
 BY: *Samuel Wong*
 Samuel Wong
 County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
 Nays: None
 Absent: None
 Date: May 24, 2016
 xc: Treasurer

Kecia Harper-Ihem
 Clerk of the Board
 By: *Kecia Harper-Ihem*
 Deputy

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: | District: 3 | Agenda Number:

9-26

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Recommendation for Distribution of Excess Proceeds for Tax Sale No. 200, Item 641. Last assessed to: Murrieta Land 60, LLC, a California Limited Liability Company. District 3 [\$355,286]. Fund 65595 Excess Proceeds from Tax Sale.

DATE: MAR 21 2016

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RECOMMENDED MOTION:

2. Deny the claim from Murrieta Land 60, LLC;
3. Authorize and direct the Auditor-Controller to issue a warrant to Famille Holdings, L.P. in the amount of \$355,286.19, no sooner than ninety days from the date of this order, unless an appeal has been filed in Superior Court, pursuant to the California Revenue and Taxation Code Section 4675.

BACKGROUND:

Summary (continued)

The Treasurer-Tax Collector has received two claims for excess proceeds:

1. Claim from Famille Holdings, L.P. based on Deed of Trust, with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded August 15, 2007 as Instrument No. 2007-0525088.
2. Claim from Murrieta Land 60, LLC based on a Grant Deed recorded March 31, 2006 as Instrument No. 2006-0229916.

Pursuant to Section 4675 of the California Revenue and Taxation Code, it is the recommendation of this office that Famille Holdings, L.P. be awarded excess proceeds in the amount of \$355,286.19. Since the amount claimed by Famille Holdings, L.P. exceeds the amount of excess proceeds available, there are no funds available for consideration for the claim from Murrieta Land 60, LLC. Supporting documentation has been provided. The Tax Collector requests approval of the above recommended motion. Notice of this recommendation was sent to the claimants by certified mail.

Impact on Citizens and Businesses

Excess proceeds are being released to the Deed of Trust holders of the property.

ATTACHMENTS (if needed, in this order):

Copies of the Excess Proceeds Claim forms and supporting documentation are attached.

CLAIM FOR EXCESS PROCEEDS FROM THE SALE OF TAX-DEFAULTED PROPERTY
 (SEE REVERSE SIDE FOR FURTHER INSTRUCTIONS)

To: Don Kent, Treasurer-Tax Collector

Re: Claim for Excess Proceeds

TC 200 Item 641 Assessment No.: 949170037-4

Assessee: MURRIETA LAND 60

Situs:

Date Sold: April 29, 2014

Date Deed to Purchaser Recorded: June 20, 2014

Final Date to Submit Claim: June 22, 2015

RECEIVED
 2015 MAR 17 AM 7:10
 RIVERSIDE COUNTY
 TREASURER-TAX COLLECTOR

I/We, pursuant to Revenue and Taxation Code Section 4675, hereby claim excess proceeds in the amount of \$ 355,286.19 from the sale of the above mentioned real property. I/We were the lienholder(s), property owner(s) [check in one box] at the time of the sale of the property as is evidenced by Riverside County Recorder's Document No. 2007-0525088, recorded on 8-15-2007. A copy of this document is attached hereto. I/We are the rightful claimants by virtue of the attached assignment of interest. I/We have listed below and attached hereto each item of documentation supporting the claim submitted.

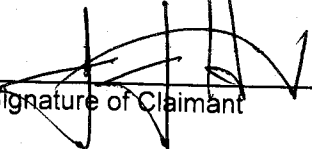
NOTE: YOUR CLAIM WILL NOT BE CONSIDERED UNLESS THE DOCUMENTATION IS ATTACHED.

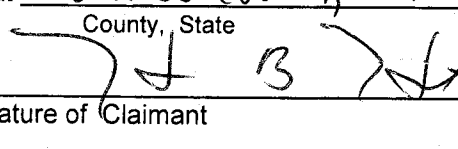
- 1.) "DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING"
- 2.) "\$2,000,000 PROMISSORY NOTE SECURED BY DEED OF TRUST"
- 3.) DOCUMENTS FOR FAMILLE HOLDINGS, LP 4.) DOCUMENTS FOR HOPE FINANCIAL, LLC

If the property is held in Joint Tenancy, the taxsale process has severed this Joint Tenancy, and all Joint Tenants will have to sign the claim unless the claimant submits proof that he or she is entitled to the full amount of the claim; the claimant may only receive his or her respective portion of the claim.

I/We affirm under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of MARCH, 2015 at ORANGE COUNTY, CALIFORNIA
 County, State


 Signature of Claimant


 Signature of Claimant

JAMES J. HERBST
 Print Name

Hope B. Herbst
 Print Name

27675 CHAPALA
 Street Address

27675 Chapala
 Street Address

MISSION VIEJO, CA 92692
 City, State, Zip

Mission Viejo, CA 92692
 City, State, Zip

(949) 291-4560
 Phone Number

(949) 291-4063
 Phone Number

1/94

Recording Requested By
First American Title NHS

DOC # 2007-0525088
08/15/2007 08:00A Fee:106.00
Page 1 of 22

Recorded in Official Records
County of Riverside
Larry W. Ward
Assessor, County Clerk & Recorder

~~RECORDING REQUESTED BY~~
~~AND WHEN RECORDED MAIL TO:~~



FAMILLE HOLDINGS, L.P.
27675 Chapala Street
Mission Viejo, California 92692
Attn: James J. Herbst

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**DEED OF TRUST
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THE PARTIES TO THIS DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made as of August 15, 2007, are MURRIETA LAND 60, LLC, a California limited liability company ("Trustor"), First American Title Insurance Company ("Trustee"), and FAMILLE HOLDINGS, L.P., a Delaware limited partnership ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the County of Riverside, State of California, described on Exhibit A attached hereto, together with all right, title, interest, and privileges of Trustor in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; Trustor's rights under any covenants, conditions or restrictions ("CC&Rs") pertaining to the real property described on Exhibit A, hereto, provided, however, that Beneficiary shall have no liability under such CC&Rs unless and until Beneficiary forecloses on the real property; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the "Improvements"); all warrants, stock options or similar rights owned by Trustor or any of its affiliates in and to any Tenant, or any licensee or any other Person providing services related to or for the benefit of the real property, or any affiliates thereof; deposits, security deposits, letters of credit, lease bonds and other deposit substitutes, credit enhancements and other like items under or with respect to any Lease of any portion of the real property; all interest or estate which Trustor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being

22-58445A-22

collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

ARTICLE 2. OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing the following obligations ("Secured Obligations"):

- (a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note ("Note") of even date herewith, in the principal amount of Two Million and No/100ths Dollars (\$2,000,000.00) executed by Trustor ("Borrower"), and payable to the order of Beneficiary, as lender; and
- (b) Payment and performance of all covenants and obligations of Trustor under this Deed of Trust; and
- (c) Payment and performance of all covenants and obligations on the part of Borrower under that certain Loan Agreement ("Loan Agreement") of even date herewith by and between Borrower and Beneficiary; and
- (d) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
- (e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Loan Agreement.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, revenue, income, issues, deposits security deposits, letters of credit, lease bonds and other deposit substitutes or credit enhancements and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases, and all deposits, security deposits, letters of credit, lease bonds and other deposit substitutes, or credit enhancements ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.
- 3.2 **GRANT OF LICENSE.** Beneficiary confers upon Trustor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Beneficiary or Trustee hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary as of the "Effective Date" (defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal

property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral");

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the real property pursuant to Section 1.1 above) or (ii) the Improvements (which real property and Improvements are collectively referred to herein as the Subject Property); together with all rents (to the extent, if any, they are not subject to Article 3); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Subject Property or any business now or hereafter conducted thereon by Trustor; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property, or any of their affiliates; all warrants, stock options or similar rights owned by Trustor in and to any Tenant, any licensee or any other Person providing services related to or for the benefit of the Property, or any of their affiliates; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, security deposits, letters of credit, lease bonds and other deposit substitutes, credit enhancements, other like items, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the California Uniform Commercial Code, as amended or recodified from time to time ("UCC").

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Trustor's principal place of business is located at the address shown in Section 7.11; and (d) Trustor's legal name is exactly as set forth on the first page of this Deed of Trust and all of Trustor's organizational documents or agreements delivered to Beneficiary are complete and accurate in every respect.

- 4.3 **COVENANTS**. Trustor agrees: (a) to execute and deliver such documents as Beneficiary deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Beneficiary prior written notice thereof; (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Beneficiary is authorized to file financing statements in the name of Trustor to perfect Beneficiary's security interest in Collateral.
- 4.4 **RIGHTS OF BENEFICIARY**. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and, following the occurrence of a Default, enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9620, or other applicable law.
- 4.5 **RIGHTS OF BENEFICIARY ON DEFAULT**. Upon the occurrence of a Default (hereinafter defined) and during the continuance of a Default under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:
- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
 - (b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral; and
 - (c) In disposing of Collateral hereunder, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Beneficiary to the payment of expenses incurred by Beneficiary in connection with the foregoing, including reasonable attorneys' fees,

and the balance of such proceeds may be applied by Beneficiary toward the payment of the Secured Obligations in such order of application as Beneficiary may from time to time elect.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §9620, or other applicable law. Trustor agrees that Beneficiary shall have no obligation to process or prepare any Collateral for sale or other disposition.

4.6 **POWER OF ATTORNEY.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

4.7 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

5.1 **TITLE.** Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty or in the title policy delivered to Beneficiary, Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that the Construction Loan (as defined in the Loan Agreement) is or will be the first and prior lien on the Subject Property, and that this Deed of Trust is or will be subordinate only to the lien of the Construction Loan (as defined in the Loan Agreement).

5.2 **TAXES AND ASSESSMENTS.** Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.

5.3 **TAX AND INSURANCE IMPOUNDS.** At any time following the occurrence of a Default, at Beneficiary's option and upon its demand, provided any senior mortgagee is not then impounding therefore, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount

estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts when due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and the Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid, unless required to be paid to a senior mortgagee, directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d),

Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.

- (b) At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

- 5.7 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Subject to the provisions of the Loan Agreement, Trustor covenants: (a) to insure the Subject Property and Collateral against such risks as Beneficiary may require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent or as provided in the Loan Agreement; (d) provided Beneficiary makes any

insurance proceeds actually received by Beneficiary reasonably available to Trustor pursuant to Section 5.6, to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or Collateral; and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.

5.9 **ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.**

- (a) Trustee accepts this trust when this Deed of Trust is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
- (b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
- (c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the

employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Subject Property for debts contracted for or liability or damages incurred in the management or operation of the Subject Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. **TRUSTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES.**

- (d) All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.
- (e) Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.
- (f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

5.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION.**

- (a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured

Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or Collateral or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) **TRUSTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR (EXCEPT FOR THOSE ARISING POST FORECLOSURE): (i) BY REASON OF THIS DEED OF TRUST; (ii) BY REASON OF THE EXECUTION OF THIS TRUST OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE SUBJECT PROPERTY. THE ABOVE OBLIGATION OF TRUSTOR TO INDEMNIFY AND HOLD HARMLESS TRUSTEE AND BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE AND RECONVEYANCE OR PARTIAL RELEASE AND RECONVEYANCE OF THIS DEED OF TRUST.**

(c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

5.11 **SUBSTITUTION OF TRUSTEES.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

- 5.12 **DUE ON SALE OR ENCUMBRANCE.** If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor, except as permitted in the Loan Agreement), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary (but expressly excluding any mortgage or other encumbrance placed on the subject Property in connection with a Construction Loan permitted hereunder or under the other Loan Documents), THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Deed of Trust upon the Subject Property and Collateral.
- 5.14 **RECONVEYANCE.** Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.
- 5.15 **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Deed of Trust.
- 5.16 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Trustor's compliance with the terms hereof, provided that Beneficiary shall exercise commercially reasonable efforts to not unreasonably interfere with the rights of tenants in connection therewith.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean (a) at Beneficiary's option, the failure of Trustor to make any payment of principal or interest on the Note or to

pay any other amount due hereunder or under the Note within ten (10) days after the due date (except at maturity, or upon acceleration following the expiration of any applicable cure period); (b) the failure of Trustor to perform any non-monetary obligation hereunder, or the failure to be true of any representation or warranty of Trustor contained herein and the continuance of such failure for thirty (30) days after notice, or within any longer grace period, if any, allowed in the Loan Agreement for such failure, or (c) the existence of any Default as defined in the Loan Agreement.

6.2 **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
- (b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.
- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;
- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;

- (f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.
- (h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's

credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations (other than accelerated amounts) then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of

assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Beneficiary under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference.
- 7.2 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.
- 7.3 **OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL.** If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 7.4 **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property, and any community property of which that person is a manager.
- 7.5 **WAIVER OF MARSHALLING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation ("Other Property") marshalled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.6 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.

- 7.7 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.7 does not waive or modify the provisions of Section 5.12.
- 7.8 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.9 **CALIFORNIA LAW.** This Deed of Trust shall be construed in accordance with the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California.
- 7.10 **INCORPORATION.** Exhibit A, as attached, is incorporated into this Deed of Trust by this reference.
- 7.11 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Trustor: Murrieta Land 60, LLC
c/o Cameo Homes
1103 Quail Street
Newport Beach, California 92660

Trustee: First American Title Company
1 First American Way
Santa Ana, California 92707
714-800-3467

Beneficiary: FAMILLE HOLDINGS, L.P.
27675 Chapala Street
Mission Viejo, California 92692
Attn: James J. Herbst

With a copy to: Cox, Castle & Nicholson LLP
19800 MacArthur Boulevard, Suite 500
Irvine, California 92612
Attn: Robert J. Sykes

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Trustor naming Beneficiary, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note or the Loan Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"TRUSTOR"

MURRIETA LAND 60, LLC, a California
limited liability company

By: Cameo Homes, a California
corporation, its managing member

By: 

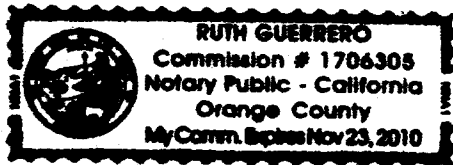
Its: Christine Sixesi, Chief Operating Officer

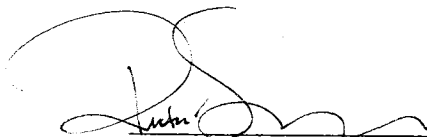
(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF California)
) SS:
COUNTY OF Orange)

On August 2nd, 2007, before me, Ruth Guerrero, Notary Public, personally appeared ~~James~~ Christine Soresi, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.





Notary Public

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

Exhibit A to Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by MURRIETA LAND 60, LLC, as Trustor to First American Title Insurance Company], as Trustee for the benefit of FAMILLE HOLDINGS, L.P., as Beneficiary, dated as of August ___, 2007.

All the certain real property located in the County of Riverside, State of California, described as follows:

[*PLEASE SEE THE ATTACHED LEGAL DESCRIPTION PREPARED BY THE TITLE COMPANY.]

Title Order Number:

File Number: 989445A

Exhibit "A"

Real property in the City of Murrieta, County of Riverside, State of California, described as follows:

PARCEL A OF LOT LINE ADJUSTMENT NO. 2005-1073 RECORDED MARCH 31, 2006 AS INSTRUMENT NO. 2006-0229914 OF OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA AND FURTHER DESCRIBED AS FOLLOWS:

IN THE CITY OF MURRIETA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA; AN ADJUSTMENT OF PARCEL 3 OF PARCEL MAP NO. 19724 AS SHOWN ON MAP RECORDED IN BOOK 124, PAGES 86 AND 87 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND LOT 3 OF TRACT NO. 31102 AS SHOWN ON MAP RECORDED IN BOOK 386, PAGES 98 THROUGH 100 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 3 OF SAID TRACT NO. 31102, TOGETHER WITH THAT PORTION OF PARCEL 3 IN SAID PARCEL MAP 19724 LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL 3, SAID POINT BEING ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF LOS ALAMOS ROAD; THENCE LEAVING SAID RIGHT OF WAY LINE S62°25'45"E A DISTANCE OF 465.77 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL 3, SAID POINT BEING ON THE NORTHWESTERLY LINE OF SKYPARK ROAD.

APN: 949-170-032-9

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$2,000,000.00

Newport Beach, California
August 15, 2007

FOR VALUE RECEIVED, the undersigned MURRIETA LAND 60, LLC, a California limited liability company ("Borrower"), promise(s) to pay to the order of FAMILLE HOLDINGS, L.P., a Delaware limited partnership ("Lender"), c/o James J. Herbst, 27675 Chapala Street, Mission Viejo, California 92692, or at such other place as may be designated in writing by Lender, the principal sum of TWO MILLION AND NO/100THS DOLLARS (\$2,000,000.00) (the "Loan") or so much thereof as may from time to time be owing hereunder by reason of advances by Lender to or for the benefit or account of Borrower, with interest thereon, per annum, compounded monthly, at the Effective Rate set forth below (based on a 360-day year and charged on the basis of actual days elapsed together with such other amounts as may be payable under the Loan Agreement and other Loan Documents). All sums owing hereunder are payable in lawful money of the United States of America, in immediately available funds.

The "Effective Rate" upon which interest shall be calculated for this Note shall, provided no Default, breach, or failure of condition exists under the Loan Agreement or any of the Loan Documents described therein (this Note is one of the Loan Documents), be fifteen percent (15%) per annum, compounded monthly. During such time as a Default exists under the Loan Agreement or any of the Loan Documents; or from and after the Maturity Date, then at the option of Lender, the rate applicable to the then outstanding principal balance of this Note shall be equal to five percent (5%) per annum, compounded monthly, in excess of the interest rate otherwise accruing under this Note.

Interest accrued on this note ("Note") shall be due and payable as follows:

From and after the Effective Date through and including the Maturity Date, interest on the Loan shall be due and payable on the first day of each month commencing with the first month after the date of this Note, in a daily amount of Eight Hundred and Thirty-Three and 33/100 Dollars (\$833.33) per day ("Daily Interest Amount").

The interest calculations shall be based on actual days elapsed and a 360 day year. Payments received by Lender shall be applied toward Borrower's obligations under the Loan Documents, and toward the portions of the Loan owing with respect to the Loan, in such manner as Lender may determine. The outstanding principal balance of this Note, together with all accrued and unpaid interest, shall be due and payable in full on the Maturity Date.

If any interest payment required hereunder is not received by Lender (whether by direct debit or otherwise) on or before the tenth (10th) calendar day of the month in which it becomes due, Borrower shall pay, at Lender's option, a late or collection charge equal to four percent (4%) of the amount of such unpaid interest payment.

This Note is secured by, among other things, that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing ("Deed of Trust") of even date

herewith, executed by Borrower, as trustor, to a trustee for the benefit of Lender, and is executed in connection with that certain Loan Agreement (the "Loan Agreement") of even date herewith by and between Borrower and Lender. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

If: (a) Borrower shall fail to pay within 10 days of the due date any sums payable hereunder; or (b) a Default (as defined in the Deed of Trust) occurs under the Deed of Trust or under any obligation secured thereby; or (c) the property which is subject to the Deed of Trust, or any portion thereof or interest therein, is sold, transferred, mortgaged, assigned, encumbered or leased, whether voluntarily or involuntarily or by operation of law or otherwise, other than as expressly permitted by Lender in writing; THEN Lender may, at its sole option, declare all sums owing under this Note immediately due and payable; provided, however, that if any document related to this Note provides for automatic acceleration of payment of sums owing hereunder, all sums owing hereunder shall be automatically due and payable in accordance with the terms of that document.

If any attorney is engaged by Lender to enforce or defend any provision of this Note or the Deed of Trust, or as a consequence of any Default, with or without the filing of any legal action or proceeding, then Borrower shall pay to Lender immediately upon demand all attorneys' fees and all costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance owing hereunder as if such unpaid attorneys' fees and costs had been added to the principal.

No previous waiver and no failure or delay by Lender in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

If this Note is executed by more than one person or entity as Borrower, the obligations of each such person or entity shall be joint and several. No person or entity shall be a mere accommodation maker, but each shall be primarily and directly liable hereunder.

Except as otherwise provided in any agreement executed in connection with this Note, Borrower waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs, expenses or losses and interest thereon; notice of late charges; and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests in or to properties securing payment of this Note.

Time is of the essence with respect to every provision hereof. This Note shall be construed and enforced in accordance with the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and all persons and entities in any manner obligated under this Note consent to the jurisdiction of the state courts of the State of California,

City of Santa Ana, or in U.S. Federal Court for the applicable district of California having proper venue and also consent to service of process by any means authorized by California or federal law.

All notices or other communications required or permitted to be given pursuant to this Note shall be given to the Borrower or Lender at the address and in the manner provided for in the Loan Agreement.

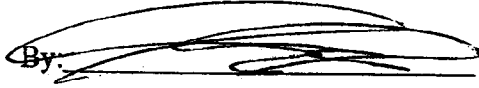
The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender and Borrower in writing.

[SIGNATURE PAGE FOLLOWS]

"BORROWER"

MURRIETA LAND 60, LLC, a California
limited liability company

By: Cameo Homes, a California
corporation, its managing member

By: 

Its: *Christine Soresi, Chief Operating Officer*

THE PARTNERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES OR BLUE SKY LAWS OF THE STATE OF DELAWARE OR ANY OTHER STATE AND MAY BE OFFERED AND SOLD ONLY IF REGISTERED PURSUANT TO THE RELEVANT PROVISIONS OF FEDERAL AND STATE SECURITIES OR BLUE SKY LAWS OR IF AN EXEMPTION FROM SUCH REGISTRATION IS APPLICABLE.

THE SALE OF THE PARTNERSHIP INTERESTS WHICH ARE THE SUBJECT OF THIS AGREEMENT HAVE NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH PARTNERSHIP INTERESTS OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFORE PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SUCH PARTNERSHIP INTERESTS IS EXEMPT FROM THE QUALIFICATION BY SECTIONS 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

FIRST AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
FAMILLE HOLDINGS, L.P.
A DELAWARE LIMITED PARTNERSHIP

Prepared by:

Reish Luftman McDaniel & Reicher
Attorneys at Law
11755 Wilshire Boulevard
10th Floor
Los Angeles, CA 90025-1539
(310) 478-5656

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FIRST AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
FAMILLE HOLDINGS, L.P.

THIS FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (the "Agreement") is made and entered into as of January 1, 2002, by and among Hope Financial, L.L.C., a Delaware limited liability company, as general partner (the "General Partner"), and each person who has executed (either individually or by such person's attorney-in-fact) this Agreement and is identified in the books and records of the Partnership as a Limited Partner (hereinafter referred to individually as a "Limited Partner" and collectively as the "Limited Partners").

On or about May 1, 1997, Famille Holdings, L.P., a Delaware limited partnership (the "Partnership") was formed pursuant to a Certificate of Limited Partnership filed with the Office of the Secretary of State of the State of Delaware, and the General Partner and the Limited Partners entered into a limited partnership agreement. The Partners now desire to amend and restate the limited partnership agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Partners hereby set forth their agreement for the operation of the Partnership under the laws of the State of Delaware upon the terms and subject to the conditions of this Agreement.

ARTICLE I
DEFINITIONS

Capitalized terms (other than those specifically defined in this Agreement) shall have the meanings set forth below:

- 1.1 "Act" shall mean the Delaware Revised Uniform Limited Partnership Act, Delaware Code Annotated Title 6, Section 17-101 et seq., as the same may be amended from time to time (or any corresponding provisions of succeeding law).
- 1.2 "Agreement" shall mean this First Amended and Restated Agreement of Limited Partnership, including all the exhibits hereto, as originally executed and as it may be amended from time to time. Words such as "herein," "hereinafter," "hereto," "hereby" and "hereunder," when used with reference to this Agreement, shall refer to this entire Agreement and not only to a particular paragraph, section or portion of this Agreement, unless the context requires otherwise.

- 1.3 "Assignee" means a Person who receives a Transfer, but has not been admitted as a Substitute Limited Partner.
- 1.4 "Available Cash" shall mean all cash received by the Partnership resulting from all of the Partnership's business activities, or as determined by the General Partner no longer to be needed for reserves previously established, reduced by (i) all cash expenditures of the Partnership, (ii) any reserve deemed necessary and established by the General Partner to maintain the Partnership in sound financial condition, and (iii) any amounts deemed necessary in the sole discretion of the General Partner to enable the Partnership to make additional investments as investment opportunities arise or to engage in going concerns.
- 1.5 "Bankruptcy" or "Bankrupt" means, with respect to any Partner: (i) such Partner makes a general assignment for the benefit of creditors; (ii) such Partner becomes a party to any liquidation or dissolution action or proceeding or any bankruptcy, reorganization, insolvency or other proceeding for the relief of financially distressed debtors; (iii) a receiver, liquidator, custodian or trustee is appointed for such Partner or a substantial part of such Partner's assets and, if any of the same occur involuntarily, the same not being dismissed, stayed or discharged within thirty (30) days; or (iv) an order for relief is entered against such Partner under Title 11 of the United States Code. A Partner shall be deemed Bankrupt if the Bankruptcy of such Partner shall have occurred and be continuing.
- 1.6 "Capital Account" shall mean the capital account maintained for each Partner in accordance with Section 3.5, below.
- 1.7 "Capital Contribution" means the total amount of cash and the gross fair market value of any property other than money contributed to the Partnership (determined as of the contribution date) by each Partner pursuant to Article 3 hereof.
- 1.8 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.9 "Fiscal Year" shall have the meaning set forth in Section 7.1, below.
- 1.10 "General Partner" shall refer to Hope Financial, L.L.C., a Delaware limited liability company, or any successor general partner or general partners of the Partnership. Reference to a "General Partner" shall refer to any one of them unless the context otherwise indicates.
- 1.11 "Limited Partners" shall refer to those Persons designated as such in the preamble to this Agreement, and any Substitute Limited Partners. Reference to a "Limited Partner" shall refer to any one of them unless the context otherwise indicates.
- 1.12 "Liquidation" shall have the meaning as set forth in Regulations Section 1.704-1(b).

- 1.13 "Net Profits" and "Net Losses" shall mean for each Fiscal Year or other period an amount equal to the net taxable income or loss of the Partnership, as the case may be, for such year or period, determined in accordance with Code Section 703(a) and as shown on its Federal income tax return as prepared and determined by the Partnership's accountants who shall be selected by the General Partner.
- 1.14 "Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(b)(1).
- 1.15 "Nonrecourse Liability" has the meaning set forth in Regulations Section 1.704-2(b)(3).
- 1.16 "Partner Nonrecourse Debt" has the meaning set forth in Regulations Section 1.704-2(b)(4).
- 1.17 "Partner Nonrecourse Debt Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).
- 1.18 "Partner Nonrecourse Deductions" has the meaning set forth in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).
- 1.19 "Partners" shall refer collectively to the General Partner and the Limited Partners as constituted from time to time. Reference to a "Partner" shall be a reference to any of the Partners unless the context otherwise requires.
- 1.20 "Partnership" means Famille Holdings, L.P., a Delaware limited partnership.
- 1.21 "Partnership Minimum Gain" shall have the meaning as set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).
- 1.22 "Percentage Interest(s)" shall mean the percentage interest(s) of the Partners in the income, gain, losses, deductions and credits of the Partnership as set forth opposite each Partner's name on Exhibit "A" attached hereto, but does not include any other rights of a Partner in the Partnership.
- 1.23 "Permitted Transfer" shall mean any assignment or transfer of a Partnership interest, or any portion thereof (a) at the transferor's death by will, intestate succession or through a trust, or (b) during the transferor's lifetime, by inter vivos gift to a Partner's parents, spouse, siblings, descendants and/or ancestors, or to a trust for the benefit of the transferor and any one or more of such related persons; provided, however, that the transferor shall be a trustee of such trust, and prior to any such transfer (i) the transferor shall have delivered a copy of the trust document to the General Partner which shall be held on a confidential basis; (ii) the terms and provisions of the trust shall have been approved by the General Partner, which approval shall not be unreasonably withheld; and (iii) the trustee(s) of such trust shall have agreed in a writing delivered to the Partnership to be

bound by all of the provisions of this Agreement as if such transferee were an original signatory hereto.

- 1.24 "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association, or any foreign trust, or foreign business organization.
- 1.25 "Regulations" shall mean the Regulations promulgated under the Internal Revenue Code of 1986, as amended.
- 1.26 "Substitute Limited Partner" shall mean any Person admitted as a Substitute Limited Partner pursuant to this Agreement.
- 1.27 "Transfer" means any voluntary or involuntary sale, exchange, assignment, transfer, donation, pledge, bequest, hypothecation or other disposition or transfer, whether by operation of law or otherwise, of all or any portion of a Partnership interest, other than (i) a Permitted Transfer, or (ii) a transaction described in Sections 8.9 and 8.10, herein. "Transferor" means a Person who makes a Transfer.

ARTICLE II

PARTNERSHIP

2.1 Formation of Limited Partnership. On May 1, 1997, the General Partner and the Limited Partners agreed to form a limited partnership (the "Partnership") pursuant to the provisions of the Act. Effective as of January 1, 2002, the General Partner and the Limited Partners acknowledge and agree that this amended and restated Agreement will govern their respective rights and obligations as Partners of the Partnership. The terms and provisions hereof will be construed and interpreted to accord with the terms and provisions of the Act, and if any of the terms and provisions of this Agreement should be adjudged inconsistent with those of the Act, the Act will be controlling unless the Act provides the Agreement is controlling.

2.2 Name. The business and affairs of the Partnership shall be conducted under the name "Famille Holdings, L.P.," or such other name as the General Partner may from time to time determine. The General Partner shall cause to be filed on behalf of the Partnership such assumed or fictitious name certificate or certificates as may from time to time be required by law.

2.3 Purpose and Scope. On May 1, 1997, the Partnership was formed in order to achieve the following four (4) goals: (i) to facilitate centralized management; (ii) to establish a common vehicle for family investing; (iii) to generate, encourage and foster family harmony; and (iv) to protect the family; as of the date of this amended and restated Agreement, the goals described hereinabove are still the primary goals of the Partnership. In order to achieve the goals described hereinabove, the Partnership may engage in any lawful activity for which the Partnership may be organized under the Act and as may be permitted by law, as the General Partner may, from time to time, choose consistent with this Agreement. The scope of its authority includes, but shall not be limited to, the following:

2.3.1 The Partnership, acting by and through its authorized representative, may acquire, hold, rent, lease, sell, convey, exchange, convert, improve, repair, manage, create, control, and invest and reinvest the funds of the Partnership in real and personal property (both tangible and intangible), including property acquired "subject to" or "in assumption of" an existing indebtedness or property acquired in whole or in part for the promissory obligation of the Partnership. Investments may include the acquisition of and the exercise of options to purchase real and personal property. The Partnership may make any payment, receive any money, take any action, and make, execute, deliver and receive any contract, deed, instrument or document which may be considered necessary or advisable to exercise any of the powers conferred hereunder or to carry into effect any provisions herein contained and which in the judgment of the authorized representative of the Partnership are necessary or prudent for the proper administration and conservation of the investments of the Partnership.

2.3.2 The Partnership, acting by and through its authorized representative(s), shall have the authority to lend, borrow, lease, sell, and purchase property, including undivided fractional interests in property, and upon such terms and conditions as are reasonably prudent under the facts and circumstances then existing. The Partnership shall have the authority to guarantee the promissory obligations of others with or without charging a fee therefore.

2.3.3 The Partnership, acting by and through its authorized representative(s), shall have the authority to engage in any business, enterprise or going concern activity or operations permitted under the Act.

2.3.4 Without limiting the general authority above given, the Partnership shall have the authority to hold, acquire and sell as investment property:

(a) Publicly traded securities, including stocks, bonds, warrants, futures, mutual funds, partnerships, real estate investment trusts, diversified asset funds, including international investments and investment funds;

(b) Interests in a closely held corporation, partnership, limited liability company or trust, whether registered or not registered for public sale, including any corporation, partnership, limited partnership, limited liability company, investment trust or other entity; this authority to further include (i) the acquisition of a general partnership interest or limited partnership interests, (ii) the execution of a partnership agreement in the capacity of a general partner or as a limited partner, (iii) participation as a member of a joint venture, or (iv) participation in any other form of syndication for investment;

(c) Obligations of the United States government or of any foreign government;

(d) Cash deposits, money market funds, brokerage company investment, margin and money market accounts, certificates of deposit, savings

accounts and checking accounts, without limitation as to the location of the account or depository;

(e) Promissory notes, secured and unsecured, including mortgage notes purchased at a discount;

(f) Land, improved and unimproved, whether presently income producing or held for potential appreciation in value;

(g) Land, building and equipment leases;

(h) Minerals, mineral rights and working interests in mineral producing property or property held for future development;

(i) Equipment, machinery, implements, stock in trade, leasehold improvements and livestock; and

(j) Annuities and insurance policies (including life insurance policies).

2.3.5 In addition to the broad investment powers granted hereunder and without in any way limiting these powers, the Partnership, acting by its authorized representative(s), may with respect to real property of any kind, wheresoever located, sell, convey, release, mortgage, encumber, lease, partition, improve, manage, protect and subdivide such property or any interests therein or parts thereof and may dedicate for public use or vacate any subdivision or parts thereof. The Partnership is also authorized to re-subdivide, contract to sell, grant options to purchase, sell on any terms, convey, mortgage, pledge, or otherwise encumber such property or any part thereof, from time to time, in possession or reversion, by leases to commence either presently or at some future time and upon any terms and for any period or periods of time including a term beyond the duration of this organization, and to renew leases and options to purchase the whole or any part of any reversion.

2.3.6 These powers include the power to purchase or lease rights for the exploration for and the removal of gas, oil and all other minerals. The Partnership may likewise partition or exchange real property, or any part thereof, for other real or personal property, grant easements or charges of any kind, release, convey or assign any right, title or interest in or about an easement appurtenant to the property or alter, repair, add to or take from buildings on the premises, purchase or hold real property, improved or unimproved, or to act as trustee of any land trust of which the Partnership is a beneficiary, to convey title to the real estate subject to such land trust and to execute all documents pertaining to the property subject to such land trust and act in all matters regarding such trust and execute assignments of all or any part of the beneficial interests in such land trusts.

2.3.7 The Partnership may serve as the general partner of a limited partnership. The Partnership may form or invest in a trust, partnership, corporation, limited liability company or other organization in which it is a shareholder, partner,

member, beneficiary or owner, including trusts formed by the Partnership to acquire, own, manage, operate, sell, mortgage and otherwise deal with the property of the Partnership located in the jurisdiction of organization or located in another jurisdiction.

2.4 Principal Place of Business. The principal place of business of the Partnership shall be:

27675 Chapala
Mission Viejo, California 92692

and the mailing address for the Partnership shall be:

27675 Chapala
Mission Viejo, California 92692

or such other additional locations as the General Partner shall from time to time designate.

2.5 Term. The Partnership commenced on the date on which the Certificate of Limited Partnership was filed with the Secretary of State of Delaware in the manner required by the Act and shall continue until December 31, 2097, unless sooner terminated pursuant to the terms of this Agreement. Notwithstanding any other provision contained herein, the Partners may, at any time, upon the affirmative vote of the General Partner and a majority in interest of the Limited Partners, vote to renew and/or extend the term of the Partnership as a limited partnership.

2.6 Certificate of Limited Partnership. The General Partner has executed and previously caused to be filed a Certificate of Limited Partnership in the office of the Secretary of State of Delaware. The General Partner shall execute and cause to be filed certificates of amendment of the Certificate of Limited Partnership whenever required by the Act or this Agreement. The General Partner shall execute and cause to be filed original or amended certificates evidencing the formation and operation of the Partnership whenever required under the laws of any other states in which the Partnership determines to do business.

2.7 Title to Partnership Property. All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed owned by the Partnership as an entity, and no Partner, individually, shall have any ownership interest in any such property, except in the capacity of a Partner.

2.8 Registered Agent. The name and address of the registered agent of the Partnership for service of process in the State of Delaware shall be as stated in the Certificate of Limited Partnership. The name and address of the registered agent of the Partnership for service of process in the State of California shall be James J. Herbst. The name and address of any registered agent of the Partnership may be changed as determined from time to time by the General Partner by amendment to this Agreement and the Certificate of Limited Partnership or any other document as required by applicable law.

ARTICLE III
CAPITAL CONTRIBUTIONS

3.1 Capital Contributions. The property set forth on Exhibit "B" attached hereto states the amount of money and other property which the Partners have contributed to the Partnership. No Partner shall have priority over any other Partner, either as to return of any Capital Contribution or as to profits, losses or distributions, except as otherwise specifically provided herein. Moreover, no Partner shall be personally liable for the return of the Capital Contribution of any Partner, or any portion thereof, it being expressly understood that any such return shall be made solely from assets of the Partnership.

3.2 Additional Capital Contributions. Except for the Capital Contributions specified in Section 3.1, above, and except as expressly provided in this Agreement or otherwise agreed to by the Partners, no Partner shall be obligated to make any additional Capital Contribution or loan to the Partnership, and no Partner shall have personal liability for any obligation of the Partnership except as expressly provided by law.

3.3 Interest on Contributions. No interest shall be payable on the Capital Contributions made by the Partners to the Partnership.

3.4 Withdrawal of Contributions. Except as otherwise expressly provided by this Agreement, no Partner may withdraw any Capital Contribution or the balance in such Partner's Capital Account without the prior written consent of the General Partner.

3.5 Capital Accounts. There shall be maintained for each Partner a separate Capital Account which shall be governed and maintained throughout the term of the Partnership in accordance with the provisions of Regulations Section 1.704-1(b).

3.6 Loans From Partners. A Partner may make a loan to the Partnership on such terms and conditions as the General Partner determines to be fair and reasonable. Any Partner who makes a loan to the Partnership shall (except as may be provided otherwise by the terms and conditions of such loan) have the same rights and obligations with respect to such loan as a Person who is not a Partner. The amount of a loan, if any, made to the Partnership, or guaranteed or otherwise arranged, by a Partner shall not be considered an increase in such Partner's Capital Contribution or otherwise constitute a contribution to the Partnership nor shall the making of such loan entitle such Partner to an increased share of the profits, losses, or distributions to be made pursuant to the provisions of this Agreement. Loans made to the Partnership shall be on such terms as the General Partner may agree in its sole discretion; provided, however, that no loan shall have an equity participation feature without the consent of a majority in interest of the Limited Partners.

ARTICLE IV
PROFITS, LOSSES AND DISTRIBUTIONS

4.1 Allocation of Net Profits and Net Losses. Except as otherwise expressly provided in this Agreement, the Partnership's Net Profits or Net Losses shall be credited or debited, as the case may be, to the Partners in proportion to their respective Percentage Interests.

4.2 Distribution of Available Cash. Except as otherwise expressly provided in this Agreement, distributions of Available Cash from the Partnership shall be made to the Partners in proportion to their respective Percentage Interests in such amounts and at such intervals as the General Partner, in its discretion, shall deem appropriate. In exercising such discretion, the General Partner shall use reasonable business judgment with due regard to the financial interests of the Limited Partners.

4.3 Tax Distributions. The Partnership shall use reasonable efforts to distribute to the Partners, net of any withholding, in proportion to their Percentage Interests in respect of each Fiscal Year of the Partnership at least an amount which equals (i) the net taxable income of the Partnership multiplied by (ii) the Maximum Tax Rate. The "Maximum Tax Rate" for a Fiscal Year shall mean the maximum combined effective Federal, state and local income tax rate applicable to any Partner for such Fiscal Year (including in the computation of such income tax rate, taxes based on income whether or not denominated as an "income tax" and taking into account the deductibility of state income taxes for Federal income tax purposes).

4.4 Allocations Between Transferor and Transferee. Upon the transfer of all or any part of a Partner's interest in the Partnership as provided herein, Net Profits and Net Losses shall be allocated between the transferor and transferee on the basis of the computation method which is in the best interest of the Partnership, provided such method is in conformity with the methods prescribed by Code Section 706 and Regulations Section 1.706-1(c)(2)(ii). Distributions of Available Cash shall be made to the holder of record of the Partner's interest on the date of distribution.

4.5 Minimum Gain Chargeback Allocation Provisions.

4.5.1 Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Agreement, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Partner shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 4.5(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

4.5.2 Partner Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Agreement, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of

the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 4.5(b) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

4.6 Qualified Income Offset. Notwithstanding any other provision of this Agreement, should a Partner unexpectedly receive an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes or increases a deficit balance in such Partner's Capital Account, such Partner shall be specially allocated items of income and gain (consisting of a pro rata portion of each item of Partnership income, including gross income, and gain for such year) in an amount and manner sufficient to eliminate, to the extent required by such Regulations, such deficit balance as quickly as possible. This Section 4.6 is intended to comply with the qualified income offset requirement in Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

4.7 Nonrecourse Deductions.

4.7.1 In General. Nonrecourse Deductions for any Fiscal Year shall be specially allocated among the Partners in proportion to their respective Percentage Interests

4.7.2 Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

4.8 Curative Allocations. The allocations set forth in Sections 4.5, 4.6 and 4.7, above, (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset as quickly as possible with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 4.8 so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations had not occurred.

4.9 Section 704(c) Tax Allocations. In accordance with the principles of Code Section 704(c) and the 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 so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial gross fair market value as determined by the Partners. Any elections or other decisions relating to such allocations shall be made by the Partners in any manner that reasonably reflects the purpose and intention of

this Agreement. Allocations pursuant to this Section 4.9 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account, in computing any Partner's Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any provision of this Agreement.

4.10 Order of Application. The listed provisions shall be applied in the following order (from first to last): (a) Section 4.5; (b) Section 4.6; (c) Section 4.7; (d) Section 4.8; (e) Section 4.1; (f) Section 4.2; and (g) Section 11.2.

ARTICLE V **GENERAL PARTNER**

5.1 Powers, Duties and Obligations of the General Partner. Subject to the restrictions otherwise contained in this Agreement, the day-to-day business and affairs of the Partnership shall be managed and supervised solely by the General Partner. The General Partner shall have all necessary and advisable powers to carry out the purposes of the Partnership and is authorized to enter into agreements with respect to any and all matters pertaining to the Partnership business. The General Partner shall devote so much of its time and efforts to the Partnership as it in its sole discretion shall determine is reasonably necessary to carry out the business of the Partnership. Nothing contained herein, however, shall prevent the General Partner from engaging in any other business or activity. The General Partner shall in no way be bound to devote all of its business time to the affairs of the Partnership, and may engage for its own account and for the account of others in any business venture, and employment, including ventures and employments having a business similar, identical or competitive with the business of the Partnership, and neither the Partnership nor any Limited Partner shall have any right or claim with respect to the proceeds or profits from such activities.

5.2 Certain Specific Authorities Granted to the General Partner. By way of extension of the foregoing, and not in limitation thereof, the General Partner shall, in its sole discretion and without consent of the Limited Partners, have the full, right, power, and authority, from time to time and at any time, on behalf of the Partnership:

5.2.1 To acquire, hold, lease, encumber, pledge, option, exchange, or otherwise dispose of real or personal property (or rights or interests therein) of any nature whatsoever as may be necessary or advisable for the operation of Partnership business;

5.2.2 To open, maintain and close bank, brokerage, margin, or other accounts and draw checks or otherwise provide for the payment of monies;

5.2.3 To receive, receipt for, and otherwise dispose of and deal in all checks, monies, securities, and other property of the Partnership;

5.2.4 To do any act or execute any document or enter into any contract or agreement of any nature as may be necessary or desirable, in the opinion of the General Partner, for any Partnership purpose;

5.2.5 To negotiate and execute any document or enter into any contract or agreement for a joint venture or other arrangement in accordance with any Partnership purpose, so long as the Limited Partners' interests in the Partnership are not diluted;

5.2.6 To borrow or lend monies for any of the purposes of the Partnership, including, without limitation, to draw, make, issue, accept, endorse, execute, sell, or otherwise dispose of promissory notes, drafts, bills of exchanges, warrants, bonds, debentures, and other negotiable or non-negotiable instruments and evidences of indebtedness, and, if security is required for the borrowing thereof, to execute and deliver all instruments, deeds of trust, mortgages, security agreements, assignments, and other security documents relating to all or any portion of the Partnership's assets as may be necessary or advisable for the operation of the Partnership business; provided, however, that no loan shall have an equity participation feature without the consent of a majority in interest of the Limited Partners. For purposes hereof, the borrowing or lending of monies for Partnership purposes shall include: (i) lending monies to Partners or other Persons, whether related or unrelated, or borrowing monies from any of the foregoing, upon such terms and conditions as the General Partner shall determine in its sole and absolute discretion, and (ii) the guaranteeing of, or pledging the property of the Partnership for any of the foregoing loans, or for loans to or from Partners to or from other Persons, all as determined in the sole and absolute discretion of the General Partner;

5.2.7 To invest the assets of the Partnership in any investments which are in furtherance of any purpose of the Partnership;

5.2.8 To exercise any and all rights, privileges, and powers available to the Partnership, or any nominee of the Partnership, in connection with any Partnership property;

5.2.9 To exercise all right, power and privileges of ownership with respect to any property held by the Partnership, including, without limitation, the right to sell, grant options affecting, exchange, transfer, finance, mortgage, pledge, hypothecate, or otherwise dispose of or encumber such property, all upon such terms as the General Partner deems proper;

5.2.10 To adjust, compromise, settle, or refer to arbitration any claim against or in favor of the Partnership or any nominee, and to institute, prosecute, or defend any legal proceedings relating to the affairs and property of the Partnership;

5.2.11 To maintain for the conduct of the Partnership's affairs one or more offices and do such other acts as the General Partner may deem necessary or advisable in connection with the maintenance or administration of such office or offices;

5.2.12 To determine the use of the revenues of the Partnership for Partnership purposes;

5.2.13 If required in the opinion of counsel, or for any purpose convenient or beneficial to the Partnership, to register or place record title to, or the right to use, Partnership assets in the name or names of the Partnership, or in the name of a trustee or

nominee for the Partnership, with or without disclosing the identity of his, her or its principal, or to permit the registration of securities in "street name" under a custodial arrangement with an established securities brokerage firm, trust department or other custodian;

5.2.14 To purchase from others, at the expense of the Partnership, contracts of liability, casualty and other insurance which the General Partner deems advisable, appropriate or convenient for the protection of the assets or affairs of the Partnership or for any purpose convenient or beneficial to the Partnership;

5.2.15 To engage independent attorneys, accountants, consultants, advisors, or such other persons, firms, or corporations as the General Partner may deem necessary or advisable for the operation of the Partnership business, and for such compensation as the General Partner may determine;

5.2.16 To set up and, from time to time increase or decrease, such reserve for Partnership expenses, losses and liabilities as the General Partner in its sole discretion deems reasonable and necessary for the operation of the Partnership business;

5.2.17 To do any and all of the foregoing upon such terms and conditions as the General Partner may deem proper, and to execute, acknowledge, and deliver any and all instruments in connection with any or all of the foregoing and to take such further action as the General Partner may deem necessary or advisable in connection with the management and business of the Partnership; and

5.2.18 Otherwise to carry out its duties, the General Partner shall have, in addition to the powers specifically enumerated above, all rights and powers generally conferred by law or necessary, advisable, or consistent in connection therewith, or in connection with accomplishing the purpose of the Partnership.

5.3 Formation of Trusts, Corporations, Partnerships, Limited Liability Companies. The Partnership, acting by its General Partner or General Partners, is permitted and authorized to form, or to participate in the formation of, a trust (revocable or irrevocable), corporation, partnership, limited partnership, joint venture, and/or limited liability company, and to invest all or any part of the Partnership property in one or more trusts (revocable or irrevocable), partnerships, joint ventures, limited partnerships, corporations, limited liability companies and/or other entities which are intended to accomplish any one or more of the following objectives:

5.3.1 The organization provides a greater protection to the assets of the Partnership or protection of the Partnership and its Partners from operating liabilities incident to the conduct of a trade or business; and/or

5.3.2 The organization provides for the convenient management of property located in a jurisdiction other than the state in which the Partnership is formed; and/or

5.3.3 The organization provides greater access to investment opportunities and to world-wide investment markets.

5.4 Investment in Trusts, Corporations, Partnerships, Limited Liability Companies. The Partnership, or in the alternative, the General Partner, may serve as the general partner of a limited partnership in which the Partnership has made (or intends to make or otherwise acquire) an investment. An investment may be in a closely held corporation, partnership, limited partnership, joint venture, and/or limited liability company even though federal and state law restrictions and contractual restrictions on ownership, transfer of interests, and liquidation contained in the governing instrument or instruments, may cause the ownership interest of the Partnership in a corporation, partnership, limited partnership or limited liability company to have a fair market value which is less than the fair market value of the assets contributed to the entity. The formation of, or investment in, a trust (revocable or irrevocable), corporation, partnership, limited partnership, joint venture, and/or limited liability company is not restricted as to jurisdiction or duration. The beneficiary of any trust created for the management and investment of Partnership property will be the Partnership. The Limited Partners (other than a Limited Partner who is also a General Partner) shall take no part in and have no vote respecting the Partnership's management and operations.

5.5 Charitable Remainder Trusts, Lead Income Trust, Other Charitable Planning Opportunities. The Partnership may form, and/or contribute to one or more charitable remainder trusts created under Section 664 of the Code, a charitable lead income trust created under Regulations Section 1.170A-6(c)(2)(i) and (ii); Regulations Section 25.2522(c)(2)(v) and (vi); Regulations Section 20.2055-2(e)(2)(v) and (vi), a charitable foundation, a Code Section 509(a)(3) supporting organization, or any other charitable organization described in each of the following sections of the Code: Section 170(b)(1)(A) [and, as an alternative, Section 170(b)(1)(E)]; Section 170(c); Section 2055(a); and Section 2522(a); and/or Section 664 with regard to charitable remainder trusts. In the case of a charitable remainder trust or charitable lead income trust, the beneficiary for the non-charitable term of the trust will be the Partnership.

5.5.1 If, and only as, permitted by the tax laws of the United States with regard to a termination of the Partnership prior to the expiration of the term of a charitable trust, the beneficiaries during the non-charitable term, or of the non-charitable remainder (in the case of a charitable lead income trust), will be the Partners of the Partnership at the time of its termination according to their Percentage Interests and rights of ownership determined at the time the Partnership terminates.

5.5.2 Contributions to, and for the formation of, a charitable organization or trust will require the consent of the General Partner and a majority in interest of the Limited Partners.

5.6 Restrictions. The General Partner shall not, without the prior consent of a majority in interest of the Limited Partners, have the power to:

5.6.1 Do any act in contravention of this Agreement;

5.6.2 Subject to the other provisions hereof, perform any act which would impair or make impossible the ordinary conduct of the Partnership business; provided, however, the sale or other disposition of all or any portion of the Partnership's assets shall not be deemed to be an act making it impossible for the Partnership to carry on the ordinary conduct of the Partnership business;

5.6.3 File or consent to the filing of a petition under any federal or state bankruptcy, insolvency or reorganization act with respect to the Partnership;

5.6.4 Possess Partnership property or assign rights in Partnership property for other than a Partnership purpose, except as provided for herein;

5.6.5 Change or reorganize the Partnership into any other legal form; or

5.6.6 Except as provided in Article 8 hereof, admit any additional Partners into the Partnership.

5.7 Reimbursement of Partnership Expenses. The General Partner shall be entitled to prompt reimbursement from the Partnership for all direct out-of-pocket expenses borne, incurred or advanced by it on behalf of the Partnership in connection with the carrying out of its duties under this Agreement.

5.8 Indemnification.

5.8.1 The General Partner shall not be liable for the return of any contribution made to the Partnership by any Limited Partner.

5.8.2 The General Partner shall not be personally liable to the Partnership or to any Limited Partner for any act or omission performed or omitted by the General Partner; provided the General Partner was acting in good faith within what the General Partner reasonably believed to be within the scope of the General Partner's authority and for a purpose which the General Partner reasonably believed to be in the best interests of the Partnership, except where in so acting or omitting to act the General Partner is guilty of fraud, willful misconduct, gross negligence or a breach of fiduciary duty.

5.8.3 The General Partner shall be indemnified as follows:

(a) The Partnership (but not the Limited Partners) shall indemnify, defend and hold the General Partner, its agents, representatives, attorneys and associates (each an "Indemnified Party") harmless from any liability, loss, damage, fine, penalty, expense (including attorneys' fees), judgment, or amount paid in settlement incurred by such Indemnified Party by reason of its performance or nonperformance of any act concerning the activities of the Partnership or in furtherance of the Partnership's interests or purposes; provided, however, that there shall be no indemnification in relation to matters as to which such Indemnified Party is adjudged to have been guilty of fraud, willful misconduct, gross negligence or a breach of fiduciary duty.

(b) Expenses incurred in defending a civil or criminal action, suit, or proceeding against an Indemnified Party shall be paid by the Partnership in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of an Indemnified Party to repay such amount if it shall finally be determined that the Indemnified Party is not entitled to be indemnified by the Partnership as authorized herein.

(c) The indemnification provided by this Section 5.8.3 shall not be deemed exclusive of any other rights to which an Indemnified Party may be entitled under any agreement, vote of Limited Partners, or otherwise, and shall continue as to a Person who was an Indemnified Party, but has ceased to be an Indemnified Party and shall inure to the benefit of the heirs, personal representatives, executors and administrators of such a person.

(d) The Partnership shall have the power to purchase and maintain insurance on behalf of any Person who is or was an Indemnified Party against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Partnership would have the power to indemnify him against such liability under the provisions of this section.

5.8.4 Persons dealing with the Partnership are entitled to rely conclusively upon the certificates of the General Partner to the effect that it is then acting as a general partner and has the power and authority of a general partner as herein set forth.

5.9 Liability of General Partner. Except as otherwise provided in this Agreement, the liability of the General Partner arising from the conduct of the business affairs or operations of the Partnership or for the debts of the Partnership is unrestricted.

5.10 Compensation of General Partner. The General Partner shall be entitled to receive reasonable compensation from the Partnership, directly or indirectly, for services rendered or to be rendered, goods or property furnished or to be furnished, or other consideration to the Partnership. Such compensation shall be reviewed and adjusted from time to time upon the consent of a majority in interest of the Limited Partners.

5.11 Nominees. All Partners recognize that sometimes there are practical difficulties in doing business as a limited partnership, occasioned by outsiders seeking to satisfy themselves relative to the capacity of the General Partner to act for an on behalf of the Partnership, or for other reasons. Therefore, the Limited Partners hereby specifically authorize the General Partner to acquire real and personal property, arrange financing, enter contracts, and complete any other arrangements needed to effectuate the purposes of this Partnership, either in its own name or in the name of a nominee without having to disclose the existence of this Partnership. If the General Partner elects to transact any portion of the Partnership's business in its own name or in the name of a nominee, it shall place a written declaration of trust in the Partnership books and records that acknowledges the capacity in which it or the nominee acts and the name of the true or equitable owner, being the Partnership.

ARTICLE VI
LIMITED PARTNERS

6.1 Rights of Limited Partners. No Person in its capacity as a Limited Partner shall take part in, or interfere in any manner with, the management, supervision, conduct or control of the business of the Partnership, nor shall he have the right or authority to act for or on behalf of, or bind, the Partnership. The Limited Partners shall have no right to vote on any matters other than those (i) specifically provided for herein, or (ii) which are required by the Act to be voted on by limited partners and which may not, under applicable law, be waived or released. By way of extension of the foregoing, and not in limitation thereof, the Limited Partners hereby waive, to the greatest extent permitted by law, any and all rights they may have with respect to voting on matters affecting the Partnership, the operation of its business affairs, and the relationship of the Partners pursuant to this Agreement.

6.2 Limitation of Liability. Notwithstanding anything contained herein to the contrary, no Limited Partner shall be liable for any of the debts, liabilities or obligations of the Partnership and no Limited Partner shall be required to make any contributions of cash (other than the Capital Contributions specified in Article 3 hereof) or other property to the Partnership, or return any distributions received from the Partnership, except as may be required by law. No Limited Partner shall be liable to pay any portion of the Capital Contribution of any other Limited Partner.

6.3 Withdrawal of a Limited Partner. Notwithstanding any other provision in this Agreement to the contrary, no Limited Partner shall have the right to withdraw from the Partnership during the term of this Agreement.

ARTICLE VII
BOOKS, RECORDS AND ACCOUNTS

7.1 Annual Accounting Period and Tax Information. The annual accounting period for the Partnership (the "Fiscal Year") shall commence on January 1 and shall end on December 31, of each calendar year. Within 90 days after the close of each Fiscal Year of the Partnership, the Partnership shall deliver to the Partners the following: (i) a balance sheet and income statement for the preceding Fiscal Year of the Partnership (or portion thereof) in conformity with generally accepted accounting principles, (ii) a copy of the Partnership's federal income tax return for said Fiscal Year, which the appropriate Schedule K-1 attached thereto, and (iii) a copy of each other foreign, federal, state, or local income, franchise, or similar tax return of the Partnership for said Fiscal Year, unless extensions of time have been obtained to file said returns, in which case they shall be delivered not later than fifteen (15) days prior to the expiration of the extension period in which to file them.

7.2 Records. All books and records of the Partnership shall be kept in accordance with generally accepted accounting practices and maintained at the place or places approved by the General Partner and shall be available upon forty-eight (48) hours prior notice for the reasonable inspection and examination of the Partners or their duly authorized representatives.

7.3 Bank Accounts. The funds of the Partnership shall be deposited in separate bank accounts in the bank or banks chosen by the General Partner.

7.4 Other Business Activities. All of the Partners may engage in or possess any interest in any other business venture of any nature or description independently or with others, whether or not such other enterprises shall be in competition with the Partnership or otherwise might be an actual or potential conflict of interest with a Partner or the Partnership. Neither the Partnership nor the other Partners shall have any right by virtue of this Agreement in or to any such activity or the income or profits derived therefrom unless otherwise agreed.

7.5 Tax Matters Partner. The General Partner shall act as "Tax Matters Partner" for the Partnership as provided in Subchapter C of Chapter 63 of Subtitle F of the Code (currently Code Sections 6221 to 6234, inclusive), and the Regulations or other Internal Revenue Service ("IRS") pronouncements in effect and promulgated thereunder (the "Partnership Audit Provisions"). To the extent and in the manner provided by the Partnership Audit Provisions, the Tax Matters Partner shall inform each Partner of administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by a Partner for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"). The Tax Matters Partner is authorized, but not required:

7.5.1 To file and prosecute any petition for readjustment of any Partnership items, the filing and prosecution of which the Tax Matters Partner believes should be filed and prosecuted on behalf of the Partnership;

7.5.2 To enter into any settlement with the IRS with respect to any tax audit or judicial review; in the settlement agreement for such settlement the Tax Matters Partner may expressly state that such agreement shall bind all Partners except any Partner who (within the time prescribed pursuant to the Partnership Audit Provisions) files a statement with the IRS providing that the Tax Matters Partner shall not have the authority to enter into a settlement agreement on behalf of such Partner;

7.5.3 To seek judicial review of a final administrative adjustment (at the Partnership level) of any item required to be taken into account by a Partner for tax purposes (a "final adjustment"), if a notice of such final adjustment is mailed to the Tax Matters Partner; in this regard, the Tax Matters Partner may file a petition for readjustment with the United States Tax Court or the United States Claims Court, or file a complaint for refund with the District Court of the United States for the district in which the Partnership's principal place of business is located;

7.5.4 To intervene in any action brought by any other Partner for judicial review of a final adjustment;

7.5.5 To file a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

7.5.6 To enter into an agreement with the IRS to extend the period for assessing any tax that is attributable to any Partnership item required to be taken into account by a Partner for tax purposes, or an item affected by such item; and

7.5.7 To take any other action on behalf of the Partners or the Partnership in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

Notwithstanding any other provision of this Agreement, the Partnership shall indemnify and reimburse, to the full extent provided by law, the Tax Matters Partner for all expenses, including legal and accounting fees (as such fees are incurred), claims, liabilities, losses and damages incurred in connection with any tax audit or judicial review with respect to the tax liability of the Partners; provided, however, that such indemnification and reimbursement shall not include reimbursement for any reallocation of taxes, interest on tax or tax penalties, or the like. The payment of any expenses pursuant to the previous sentence is to be made before the distribution by the Partnership of any Available Cash.

ARTICLE VIII

TRANSFERABILITY OF LIMITED PARTNERSHIP INTERESTS

8.1 Limitation on Transfer of Limited Partner's Interest. Except as otherwise provided in this Agreement, no Limited Partner may Transfer all or any part of its interest in the Partnership without the written consent of the General Partner and a majority in interest of the Limited Partners, which consent may be withheld for any reason, with or without cause. Each Partner hereby acknowledges the reasonableness of the restrictions on Transfer of Partnership interests imposed by this Agreement in view of the Partnership's purposes and the relationship of the Partners. Accordingly, the restrictions on Transfer contained herein shall be specifically enforceable. Notwithstanding any other provision of this Agreement, any Transfer or attempted Transfer in contravention of any of the provisions hereunder shall be invalid, null and void ab initio, of no force or effect whatsoever and shall not bind or be recognized by the Partnership; provided, however, that if the Partnership is required 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 the debts, obligations, or liabilities for damages that the Transferor or transferee of such interest may have in the Partnership, but shall have no right to vote or participate in the management of the business, property and affairs of the Partnership or to exercise any rights of a Limited Partner. Notwithstanding any other provision of this Agreement, if, in the determination of the General Partner, a Transfer in violation of this Agreement would cause the termination of the Partnership under the Code, in the sole discretion of the General Partner, the Transfer shall be null and void ab initio and the proposed transferee shall not become a Partner nor have any economic interest in the Partnership.

8.2 Transfer of Limited Partner's Interest.

8.2.1 Notwithstanding any other provision in this Article 8, no Transfer shall be valid or effective unless the Transferor gives the Partnership written notice

before making any Transfer, and, upon the request of the General Partner, provides an opinion of counsel to such Transferor addressed to the Partnership and satisfactory in form and substance to counsel for the Partnership that the proposed transaction:

(a) is exempt from registration under the Securities Act of 1933, as amended, and applicable state securities acts;

(b) will not result in a termination of the Partnership for Federal or state income tax purposes;

(c) will not result in the Partnership being treated as an association taxable as a corporation;

(d) will not result in the Partnership being subject to any additional regulatory requirements; and

(e) will not result in a violation of applicable law or this Agreement.

8.2.2 The Transferor, as a condition of any Transfer, shall assume all costs incurred by the Partnership in connection therewith, including, but not limited to, legal fees and costs of preparation and filing of any amendment to this Agreement if necessary or desirable in connection therewith, and shall execute, acknowledge and deliver to the Partnership such documents or instruments in form and substance satisfactory to the remaining Partners of the Partnership as such Partners shall deem necessary or desirable to effectuate such Transfer and to confirm the agreement of the Assignee to be bound by all of the terms and provisions of this Agreement as if originally a party hereto.

8.2.3 No Assignee shall become or have the right to become a Substitute Limited Partner until the following conditions are satisfied:

(a) the General Partner and a majority in interest of the Limited Partners shall have given their written consent regarding any such Transfer;

(b) the Assignee shall have indicated such intention of substitution in the instrument effecting the Transfer and the Assignee expressly agrees to be bound, to the same extent as the other Partners, by the provisions of this Agreement as if originally a party hereto, and any other documents required in connection therewith and to assume the obligations of the Transferor hereunder;

(c) the Transferor and the Assignee shall have executed or delivered such other instruments as the remaining Partners of the Partnership may deem necessary or desirable to effectuate such admission; and

(d) the Assignee shall have agreed to pay (to the extent the Transferor shall not have paid) such costs under Section 8.2.2, above, as the

remaining Partners may determine, all reasonable expenses and legal fees relating to the Transfer and its admission as a Substitute Limited Partner, including, but not limited to, the cost of any required counsel's opinion and the preparation, filing and/or publishing of any amendment to this Agreement necessary to effect such admission. Upon the admission of the Assignee as a Substitute Limited Partner, Exhibit "A" attached hereto shall be amended to reflect the name of such Substitute Limited Partner and to eliminate the name of the Transferor.

8.2.4 An Assignee who has not been admitted to the Partnership as a Substitute Limited Partner pursuant to Section 8.2.3, above, shall be entitled only to allocations and distributions with respect to the transferred interest in accordance with this Agreement, and 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 Limited Partner under the Act or this Agreement.

8.3 Substitute Limited Partner.

8.3.1 Any Person who acquires in any manner whatsoever all or any portion of a Partnership interest, irrespective of whether such Person has accepted and adopted in writing the terms and provisions of this Agreement, shall be deemed by the acceptance of the benefit of the acquisition thereof to have agreed to be subject to and bound by all the obligations of this Agreement as if originally a party hereto. Any Person acquiring all or any portion of a Partnership interest shall have only such rights, and shall be subject to all the obligations as are set forth in this Agreement; and, without limiting the generality of the foregoing such Person shall not have any right to have the value of its Partnership interest ascertained or receive the value of such Partnership interest or, in lieu thereof, profits attributable to any right in the Partnership, except as herein set forth.

8.3.2 Any Assignee of a Partnership interest pursuant to a Transfer satisfying the conditions of Section 8.2.3, above, shall have the right to receive the same share of the profits and losses and distributions of the Partnership to which the Transferor would have been entitled. If such Assignee desires to make a Transfer of its Partnership interest, it shall be subject to all the provisions of this Article 8 to the same extent and in the same manner as any Limited Partner desiring to make a Transfer.

8.3.3 Any Limited Partner who shall Transfer all of its Partnership interest shall cease to be a Limited Partner and shall no longer have any rights or privileges of a Limited Partner except that, unless and until its Assignee is admitted to the Partnership as a Substitute Limited Partner in accordance with Section 8.2.3, above, such Transferor shall retain all rights and be subject to all obligations under the Act and this Agreement.

8.3.4 In the event that a Transfer shall be made, there shall be filed with the Partnership a duly executed and acknowledged counterpart of the instrument making such Transfer. Such instrument must evidence the written acceptance of the Assignee to all the terms and provisions of this Agreement. If such an instrument is not so filed, the Partnership need not recognize any such purported Transfer for any purpose. The

instrument so filed insofar as the Partnership is concerned shall be construed as the total contract between the Transferor and the Assignee, and the Partnership shall not be bound to recognize any terms not disclosed in the instrument so filed.

8.4 Indemnification and Terms of Admission. Each Transferor shall indemnify, defend and hold harmless the Partnership, the General Partner and every other Limited Partner who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of or arising from any actual or alleged misrepresentation or misstatement of facts or omission to state facts made, or omitted to be made, by such Transferor in connection with any Transfer of all or any part of an interest as a Partner in the Partnership, or the admission of a Substitute Limited Partner to the Partnership, against expenses for which the Partnership, the General Partner and any other Limited Partner has not otherwise been reimbursed (including attorneys' fees, judgments, fines, and amounts paid in settlement), actually and reasonably incurred by him in connection with such action, suit or proceeding.

8.5 Effective Date. The effective date of admission of a Substitute Limited Partner shall be the date designated by the General Partner in writing to the Substitute Limited Partner, but said date shall not be later than the first day of the fiscal quarter of the Partnership next following the date upon which the Partners have given their written consent to such substitution.

8.6 Optional Adjustment of Basis of Partnership Property. In the event of the Transfer of an interest of a Partner in the Partnership during the life of the Partner or upon the death of the Partner, the General Partner may, in its sole discretion, make an election on behalf of the Partnership as provided in Code Section 754 (if such election is not already in effect for the Partnership), and cause the Partnership to make the adjustments to the basis of the property of the Partnership (with regard to the transferee Partner only) as provided in Code Section 743.

8.7 Involuntary Assignment of Partnership Interest. In the event that a Limited Partner's Partnership interest is taken or disturbed by levy, foreclosure, charging order, execution or other similar proceeding, the Partnership shall not dissolve but the Assignee of said Partnership interest shall be entitled to no more than to receive allocations and distributions as provided by this Agreement attributable to such Partnership interest, and in no event shall said Assignee have the right to vote or participate in the management of the business, property and affairs of the Partnership or to exercise any rights of a Limited Partner except as may otherwise be provided herein.

8.8 Right of First Refusal.

8.8.1 Before any Transfer is permitted by any Limited Partner hereunder, the Transferor shall offer the interest in the Partnership to be transferred to the remaining Partners and the Partnership (collectively, the "Offerees") by giving the Offerees written notice of an intention to sell the Partnership interest proposed to be transferred by the Transferor (the "Subject Interest") pursuant to a bona fide third party offer. The notice shall contain full information concerning the proposed Transfer, including the name and address of the prospective purchaser, a copy of the written offer,

the purchase price, the proposed date for the transaction to be consummated, and all of the material terms of the offer. Such notice shall constitute an irrevocable offer to sell the Subject Interest of the Transferor to each of the Offerees on terms and conditions no less favorable than those stated in the notice.

8.8.2 Each of the remaining Partners shall have a period of sixty (60) days from the date of receipt of such notice within which to accept the offer, in such proportion as those Partners accepting the offer share in the Net Profits and Net Losses of the Partnership, by giving written notice thereof to the Transferor; provided, however, that the failure of any non-transferring Partner to timely give written notice of acceptance shall be deemed to be a rejection of the offer at the end of such period.

8.8.3 In the event the remaining Partners do not elect to purchase all of the Subject Interest, the Partnership shall, within ninety (90) days from the date of receipt of the notice described in Section 8.8.1, above, have the option to purchase the Subject Interest by giving written notice to such effect to the Transferor and the other Partners; provided, however, that the remaining Partners and the Partnership shall in combination be required to purchase all of the Subject Interest being transferred or none of such interest.

8.8.4 If the offer is accepted by the remaining Partners and/or the Partnership, the closing shall be held at the principal office of the Partnership on the date specified in the notice but in no event less than thirty (30) days after the date in which the last applicable notice of acceptance is given. At such closing, the accepting Offeree(s) shall receive from the Transferor such duly authorized and executed instruments of transfer of the interest being sold and such opinions of counsel, certificates or other documents relating to the sale, as the Offeree(s) may reasonably request, and the purchase price of the interest being sold shall be paid in accordance with the terms and conditions set forth in the notice described in Section 8.8.1, above.

8.8.5 If the entire Subject Interest is not purchased by the Offerees, the Transferor shall be free, for a period of sixty (60) days from the date or deemed date of such rejection, to make the proposed transfer to the third party on the same terms set forth in the notice to the Offerees. If such transaction is not consummated in accordance with the terms set forth in the notice to the Offerees within such 60-day period, the Subject Interest shall remain subject to all the restrictions contained in this Agreement, and any Transfer shall not be concluded thereafter except in accordance with this Section 8.8.

8.9 Death of a Limited Partner.

8.9.1 Partnership Option to Purchase. In the event a Limited Partner dies, the Partnership shall have the option to purchase all or any portion of the Partnership interest held by the legal representative of such deceased Limited Partner (the "Legal Representative"), and the Legal Representative shall be obligated to sell to the Partnership up to all of such interest. A notice of intention to purchase the deceased Limited Partner's Partnership interest shall be given by the Partnership no later than sixty (60) days after the date of death of the Limited Partner.

8.9.2 Remaining Partners Option to Purchase. In the event the Partnership does not exercise its option to purchase all of a deceased Limited Partner's Partnership interest pursuant to Section 8.9.1, above, the Partnership shall promptly notify the remaining Partners in writing within the time period to give the notice of intention to purchase the interest as set forth in Section 8.9.1, above. In such event, the remaining Partners shall have the option, upon written notice to be given within sixty (60) days after receipt of the notice required by the preceding sentence, to purchase and the Legal Representative shall be obligated to sell any or all of the Partnership interest not being purchased by the Partnership, in such proportion as the remaining Partner's share in the Net Profits and Net Losses of the Partnership, unless otherwise agreed; provided, however, that the remaining Partners and the Partnership shall in combination be required to purchase all of the deceased Limited Partner's Partnership interest or none of such interest.

8.9.3 Closing and Payment. Any closing and payment of the Purchase Price, as determined in accordance with Section 8.11, below, pursuant to this Section 8.9 shall occur in the manner specified in Section 8.12, below.

8.10 Bankruptcy of a Limited Partner.

8.10.1 Partnership Option to Purchase. In the event a Limited Partner becomes Bankrupt, the Partnership shall have the option to purchase all or any portion of such Bankrupt Limited Partner's Partnership interest, and the Bankrupt Limited Partner shall be obligated to sell to the Partnership up to all of such interest. A notice of intention to purchase the Bankrupt Limited Partner's Partnership interest shall be given by the Partnership no later than sixty (60) days after the date the Partnership receives notice that such Limited Partner has become Bankrupt.

8.10.2 Remaining Partners Option to Purchase. In the event the Partnership does not exercise its option to purchase all of the Bankrupt Limited Partner's Partnership interest pursuant to Section 8.10.1, above, the Partnership shall promptly notify the remaining Partners in writing within the time period to give the notice of intention to purchase the interest as set forth in Section 8.10.1, above. In such event, the remaining Partners shall have the option, upon written notice to be given within sixty (60) days after receipt of the notice required by the preceding sentence, to purchase any or all of the Partnership interest not being purchased by the Partnership, in such proportion as the remaining Partner's share in the Net Profits and Net Losses of the Partnership, unless otherwise agreed; provided, however, that the remaining Partners and the Partnership shall in combination be required to purchase all of the Bankrupt Limited Partner's Partnership interest or none of such interest.

8.10.3 Closing and Payment. Any closing and payment of the Purchase Price, as determined in accordance with Section 8.11, below, pursuant to this Section 8.10 shall occur in the manner specified in Section 8.12, below.

8.11 Determination of Purchase Price.

8.11.1 Agreed Price. The purchase price of all or any portion of a Partnership Interest to be purchased and sold in accordance with Sections 8.9 or 8.10 herein (the "Purchase Price"), shall be a price mutually agreed to by the parties involved in any such transaction. In the event the parties are unable to agree, either party may notify the other party in writing within a reasonable time of its election to have the price determined pursuant to Section 8.11.2, below.

8.11.2 Appraisal Value. The Purchase Price shall be the price determined as of the last day of the month immediately preceding the month in which the event giving rise to the option to purchase the Partnership interest occurs by an appraiser(s) acceptable to both parties to the purchase and sale of a Partnership interest transaction hereunder (the "Appraised Value"). If the parties to the purchase and sale of a Partnership interest transaction hereunder are unable to agree upon an appraiser within thirty (30) days following the date the event causing a purchase and sale of a Partnership interest hereunder occurs, each party shall name an appraiser. Once selected, the appraiser(s) shall have sixty (60) days to prepare a report determining the Appraised Value. If the lower of the two resulting Appraised Values is less than eighty-five percent (85%) of the higher price, the original appraisers shall jointly appoint a third appraiser. The Appraised Values determined by the three appraisers shall be added together and divided by three to determine the fair market value of the Partnership interest. However, if the low Appraised Value and/or the high Appraised Value are/is more than fifteen percent (15%) lower and/or higher than the middle Appraised Value, then the low Appraised Value and/or the high Appraised Value shall be disregarded and the remaining Appraised Value(s) shall be added together and divided by the number of appraisals to be implemented to determine the Appraised Value of the Partnership interest. Otherwise, the Purchase Price shall be the mean between the two Appraised Values originally determined. The parties to a purchase and sale of a Partnership interest transaction hereunder shall share equally the fees and expenses of the appraiser jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by such party. Each party shall bear his or her own expenses in presenting evidence to the appraiser(s).

8.11.3 Appraisal. In determining the Purchase Price, the appraiser(s) appointed under this Agreement shall consider all relevant evidence submitted to them by the parties, or otherwise obtained by them, and shall set forth their determination in writing together with their opinions and the considerations on which the opinions are based, with a signed counterpart to be delivered to each party, within ninety (90) days of commencing such appraisal. In determining the Purchase Price, the parties hereto agree that the appraiser(s) appointed hereunder shall take into account such factors as lack of control and lack of marketability, if applicable, in order to appropriately adjust the valuation of the subject Partnership interest. The Purchase Price determined pursuant to this Section 8.11 shall be binding and conclusive as to all the parties hereto and their successors in interest. Any closing and payment of the Purchase Price shall occur as specified in Section 8.12, below.

8.12 Closing and Payment of Purchase Price.

8.12.1 The closing of the purchase of a limited Partnership interest in accordance with Sections 8.9 or 8.10 herein shall take place at the office of the Partnership on a date and at a time which shall be selected by the Partnership (the "Closing"). At the Closing, the selling Partner or the selling Partner's Legal Representative, as the case may be, shall execute and deliver all documents and instruments deemed necessary by the Partnership in order to effectuate a Transfer of the subject Partnership interest, and such opinions of counsel, certificates or other documents relating to the sale, as the Partnership and/or the remaining Partners may reasonably request.

8.12.2 At the Closing, the Purchase Price shall be paid in cash or by check, or, at the sole option of the purchaser, not less than ten percent (10%) of the Purchase Price shall be paid in cash or by check, and the purchaser shall execute and deliver a promissory note for the balance of the Purchase Price. The promissory note shall provide for payment in sixty (60) consecutive monthly installments, consisting of equal amounts of principal, and of interest on the unpaid principal at an annual rate equal to the Applicable Federal Rate as determined under Section 1274 of the Internal Revenue Code of 1986, as amended, on the date such promissory note is issued. The first such installment shall be due and payable one (1) month after the Closing and the remaining installments shall be due and payable monthly thereafter. Such note shall provide that the purchaser shall have the privilege of prepaying all or any part thereof at any time without premium or penalty.

8.12.3 The Partners hereby agree and acknowledge that, except as specifically provided herein, any Partner required to sell its interest in the Partnership pursuant to this Article 8 (the "Terminated Partner") shall, as of the date of the Closing, have no interest in the Partnership of any kind whatsoever, except for the Terminated Partner's interest in its Capital Account, if positive, as of the date of the Closing. Accordingly, in furtherance of the foregoing sentence, each Partner hereby covenants and agrees that, upon becoming a Terminated Partner, such Partner shall execute and deliver all documents and instruments deemed necessary by the Partnership in order to effectuate a Transfer of the subject Partnership interest as of the date of the Closing, regardless of whether such Terminated Partner might assert that it has an interest in the Partnership, whether based upon any equitable or legal principle or upon any statute or case law.

ARTICLE IX

TRANSFERABILITY OF GENERAL PARTNERSHIP INTEREST

9.1 Limitation on Transfer of General Partner's Interest. Except as otherwise provided in this Agreement, a General Partner may not Transfer its interest in the Partnership except with the consent of a majority in interest of the Limited Partners, which consent may be withheld in their sole and absolute discretion, with or without cause. Despite the foregoing restriction on Transfer of a General Partner's interest, the General Partner may assign or pledge for security purposes, or assign outright, any portion of the General Partner's interest in and right to receive distributions and right to receive allocations of Net Profits and Net Losses, provided

that the General Partner remains as a General Partner of this Partnership and does not relinquish any of its duties or obligations as General Partner.

9.2 Permitted Assignments. If a majority in interest of the Limited Partners consent to the Transfer, the interest of a General Partner may only be sold to the proposed transferee within the time period approved by the Limited Partners, or within ninety (90) days of such consent, if later. All costs incurred by the Partnership in connection with the Transfer by the General Partner, including reasonable attorneys' fees, if any, shall be borne by the transferring General Partner. Any Transfer of a General Partner's interest as provided in this Agreement shall be made only pursuant to the terms and conditions contained in this Article 9. Any such Transfer shall be by a written instrument, the terms of which are not in contravention of any of the provisions of this Agreement, and which has duly been executed by the Transferor of such General Partner's interest and accepted in writing by a majority in interest of the Limited Partners. The parties to the Transfer shall execute, acknowledge and deliver such other instruments as the Limited Partners may deem necessary or desirable to effect such Transfer, which may include an opinion of counsel regarding the effect and legality of any such proposed Transfer, and which shall include the written acceptance and adoption by the transferee of this provisions of this Agreement.

9.3 Substitute General Partner. Any transferee of an interest of a General Partner in compliance with the provisions of this Article 9 shall be substituted as a General Partner, and shall have the management powers and authority of a General Partner.

9.4 Transfer in Violation of Agreement. Any Transfer of an interest of a General Partner in contravention of the provisions of this Article 9 shall be void and ineffectual and shall not bind or be recognized by the Partnership.

ARTICLE X

RESIGNATION, REMOVAL, WITHDRAWAL, BANKRUPTCY OR DISSOLUTION OF A GENERAL PARTNER

10.1 Resignation of a General Partner. A General Partner shall not resign as a General Partner or do any act that would require its resignation without the prior consent of a majority in interest of the Limited Partners.

10.2 Removal of a General Partner. A General Partner may not be removed by the Partners at any time during the term of the Partnership.

10.3 Withdrawal of a General Partner. A General Partner may voluntarily withdraw from the Partnership upon ninety (90) days' written notice to the Limited Partners. Such notice requirement may be shortened or waived by the Limited Partners in their sole discretion. Upon the effective date of a General Partner's withdrawal, the General Partner shall cease being a general partner of the Partnership and shall be indemnified and held harmless by the Partnership from and against any action, claim or liability arising out of or with respect to those debts, obligations and liabilities incurred by the Partnership from and after the time such withdrawal becomes effective; provided, however, that the General Partner shall be and remain liable for all debts, obligations or liabilities incurred by it as General Partner prior to the time

such withdrawal becomes effective. The Partnership, or the Persons continuing the business of the Partnership if the Partnership has dissolved, shall use its best efforts to procure and execute an agreement from the Partnership's creditors discharging the withdrawing General Partner from liability to creditors as of the effective date of the withdrawal.

10.4 Bankruptcy or Dissolution of a General Partner. In the event of the Bankruptcy or dissolution of a General Partner, the General Partner shall immediately cease to be the General Partner; provided, however, that such cessation shall not affect any right or liability of the General Partner that matured prior to such event.

10.5 Conversion of General Partnership Interest. Upon the death, Bankruptcy, dissolution, resignation or withdrawal of a General Partner, and thereafter, upon the continuation of the Partnership (either because there is another General Partner or the Limited Partners have voted to continue the business of the Partnership), such General Partner's interest, including all rights in and to the Net Profits, Net Losses and distributions of the Partnership associated with such General Partner's interest, shall be converted into and shall thereafter be a Limited Partner's interest.

10.6 Substitute General Partner. If the General Partner shall for any reason cease to be a General Partner hereunder, it shall promptly notify the Limited Partners, and thereafter, the Limited Partners may elect to continue the Partnership and appoint a substitute general partner pursuant to the provisions of Section 11.1, below, to be effective as of the date of such cessation, or else the Partnership business shall be terminated and wound up in accordance with Section 11.2, below.

ARTICLE XI

DISSOLUTION AND WINDING UP

11.1 Dissolution. The Partnership shall be dissolved and terminated on the earlier of (i) December 31, 2097; (ii) the unanimous consent of all the Partners; (iii) the entry of a decree of judicial dissolution under Section 17-802 of the Act; or (iv) the dissolution, death, incompetency, Bankruptcy, resignation or withdrawal of the General Partner, unless (A) at least one other General Partner remains who does continue the Partnership's business, or (B) if at the time there is no remaining General Partner, a majority in interest of the Limited Partners agree in writing, within six (6) months after the last remaining General Partner ceased to be a General Partner, to continue the business of the Partnership and to elect from among the then existing Limited Partners one or more General Partners; provided, however, that the dissolution, death, incompetency, Bankruptcy, resignation or withdrawal of any Limited Partner shall not cause a dissolution of the Partnership. Upon the occurrence of an event causing the dissolution of the Partnership, the Limited Partners may, upon the affirmative vote of a majority in interest of the Limited Partners, vote to continue the business of the Partnership in a new limited partnership on the same terms as provided in this Agreement and with a new General Partner, if none is then in existence, elected by a majority in interest of the Limited Partners from the then existing Limited Partners.

11.2 Winding Up.

11.2.1 Upon the Liquidation of the Partnership caused by the termination of the Partnership under Code Section 708(b)(1)(B), the Partnership shall continue and the assets of the Partnership shall be deemed to be distributed and immediately thereafter contributed to the capital of the Partnership. The Capital Accounts of the Partners shall be adjusted to take into account the unrealized gain and/or loss inherent in property (that has not been previously reflected in the Capital Accounts of the Partners) distributed in kind to one or more of the Partners associated with the deemed distribution/contribution in accordance with the provisions of Regulations Section 1.704-1(b).

11.2.2 Upon a dissolution of the Partnership, the General Partner shall take full account of the Partnership's liabilities and property and shall proceed to wind up the affairs of the Partnership. During such winding up process, Available Cash shall continue to be shared by the Partners in accordance with this Agreement. The General Partner shall liquidate the Partnership's property as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed on or before the end of the taxable year of dissolution or, if later, within ninety (90) days after dissolution in the following order:

- (a) First, to the payment and discharge of all the Partnership's debts and liabilities (including loans made to the Partnership by the Partners), including the establishment of any necessary reserves;
- (b) Second, to each Partner in accordance with such Partner's positive Capital Account balance; and
- (c) Thereafter, the balance, if any, to each Partner in proportion to their respective Percentage Interests.

11.2.3 If any assets of the Partnership are to be distributed in kind, they shall be distributed on the basis of gross fair market value and allocated for tax purposes to the Partners in accordance with the applicable provisions of the Code and Regulations promulgated thereunder.

11.3 Rights of Limited Partners. Except as otherwise provided in this Agreement, each Limited Partner shall look solely to the assets of the Partnership for the return of its Capital Contribution and shall have no right or power to demand or receive property other than cash from the Partnership. Except as otherwise provided in this Agreement, no Limited Partner shall have priority over any other Limited Partner as to the return of his Capital Contributions, distributions or allocations.

11.4 No Release. No dissolution of the Partnership shall release or relieve any Partner from its obligations under this Agreement.

ARTICLE XII MISCELLANEOUS

12.1 Waiver of Right to Partition/Terminate. For so long as the Partnership continues, no Partner will have the unilateral right to maintain any action for partition with respect to any property held by the Partnership. In addition, no Partner shall have the unilateral right to compel a dissolution of the Partnership. To the greatest extent permitted by Delaware law, any act or omission to act, not having the approval or consent of all the Partners, which is or may be construed to be a termination or dissolution of the Partnership, shall nonetheless be construed as an intended reconstitution and continuation of the Partnership without the requirement of liquidation and winding up.

12.2 Notices. All notices, requests, demands, consents and other communications (collectively, "notices") under this Agreement shall be in writing, and may be sent by facsimile transmission, overnight courier service, or hand-delivered, or may be given by depositing the same in the United States mail, addressed to the party to be notified, postage-prepaid and registered or certified with a return receipt requested, addressed, if to a Partner, to such Partner's address shown on Exhibit "A" attached hereto, or to such other address as may last appear on the Partnership's books for such Partner, and if to the Partnership, to the mailing address as set forth in Section 2.4, above. Each notice given by registered or certified mail shall be deemed delivered and effective on the date of delivery as shown on the return receipt or the refusal to accept, and each notice delivered in any other manner shall be deemed to be effective as of the time of actual delivery thereof. Each party to this Agreement may change its address for notice by giving notice thereof in the manner provided above.

12.3 Parties in Interest. Except as otherwise expressly provided herein, this Agreement shall be binding upon and shall inure to the benefit of the Partners and their respective permitted heirs, legatees, devisees, executors, trustees, personal representatives, successors and assigns.

12.4 Entire Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements, arrangements and understandings of the parties in connection herewith.

12.5 Waiver. The failure of any Partner or the Partnership to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

12.6 Headings. The headings used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.

12.7 Remedies. Except as otherwise provided in this Agreement, the rights and remedies provided herein are cumulative and the use of any one right or remedy by any Partner shall not preclude or waive its right to use any other or all other remedies. The rights and remedies specified in this Agreement are in addition to any of the rights the Partners may have

by law, statute, ordinance or otherwise, subject to any provision for exclusive remedies in this Agreement.

12.8 No Termination. The dissolution or withdrawal of any Partner shall not terminate the Partnership except as otherwise provided in this Agreement or as provided under applicable law.

12.9 Attorneys' Fees. In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and costs incurred in litigating or otherwise settling or resolving such dispute whether an action is brought or prosecuted to judgment.

12.10 Additional Documents. The Partners agree to execute any and all other documents which may be required to carry out the purposes of this Agreement.

12.11 Severability. If any provision of this Agreement or the application thereof to any Person or circumstances shall be invalid, illegal or unenforceable to any extent in any jurisdiction, the remaining provisions of this Agreement and the application of such provisions to other Persons or circumstances shall continue to be valid and enforceable in all jurisdictions and such provision shall continue to be valid and enforceable in each other jurisdiction.

12.12 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflict of law principles.

12.13 Amendment. The General Partner may amend this Agreement in any manner as it in its sole and absolute discretion deems appropriate without the consent of any of the Limited Partners; provided, however, that this Agreement may not be amended without first obtaining the written consent of a majority in interest of the Limited Partners so as to (i) convert the Partnership interest of a Limited Partner into a General Partner's interest; (ii) modify the limited liability of a Limited Partner; (iii) alter the Percentage Interest of a Partner, the allocation of Net Profits and Net Losses, or the distribution of Available Cash as determined pursuant to Article 4, except (A) with the consent of such Partner, or (B) as a result of a Transfer of Partnership interests permitted by this Agreement; (iv) change the voting rights of Partners required to consent to any action hereunder; (v) cause the Partnership for Federal income tax purposes to be treated as an association taxable as a corporation; or (vi) effect any amendment or modification to this Section 12.13.

12.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

12.15 Construction. This Agreement has been drafted with the joint participation of the parties hereto and shall be construed to be neither against nor in favor of any party hereto in accordance with the fair meaning thereof.

12.16 Special Power of Attorney.

12.16.1 Each of the Limited Partners, including each Substituted Limited Partner, by becoming a Limited Partner or Substituted Limited Partner in the Partnership, hereby irrevocably constitutes and appoints the General Partner as such Partner's true and lawful attorney-in-fact empowered to act for and in the name, place and stead of such Partner to make, execute, acknowledge, verify, publish, deliver, file, record, consent and make oath or swear as to all certificates, instruments, and documents that are not materially inconsistent with the provisions of this Agreement, including, without limitation: (i) Certificates(s) of Limited Partnership and any amendments thereto or cancellations thereof that may now or hereafter are required to be filed by law; (ii) all counterparts of this Agreement, and any amendment or restatement of this Agreement, including any certificate, instrument or document which may be required or the deemed advisable by the General Partner in connection with this Agreement or the operation of the Partnership; (iii) all amendments to this Agreement adopted in accordance with the terms hereof and all instruments that the General Partner deems appropriate to reflect a change or modification of the Agreement in accordance with the terms hereof; (iv) any documents or instruments that the General Partner deems appropriate to reflect the admission of a Limited Partner (including a Substituted Limited Partner) in accordance with this Agreement, the dissolution or termination of the Partnership, sales or transfers of Partnership interests or assets, the continuation of the Partnership, the reduction in a Partner's Capital Account or adjustment to a Partner's Percentage Interest; and (v) any other documents or instruments deemed advisable by the General Partner.

12.16.2 Each of the Limited Partners (i) agrees to be bound by any agreements and representations made by any Person acting as attorney-in-fact pursuant to the power of attorney set forth in this Section 12.16 in accordance with this Agreement; (ii) waives any and all defenses that may be available to contest, negate or disaffirm any action of such Person so acting; and (iii) shall execute and deliver to the General Partner within fifteen (15) days after request therefor by the General partner all such further designations, powers of attorney, and other instruments as the General Partner deems necessary to effectuate this Agreement and the business or purposes of the Partnership.

12.16.3 The power of attorney granted by this provision (i) is a special power of attorney coupled with an interest, is irrevocable, shall survive and shall not be affected by the death, incompetency, dissolution, disability, incapacity, Bankruptcy, insolvency or termination of the granting Partner, and shall extend to the heirs, legatees, devisees, executors, trustees, personal representatives, successors and assigns of each of such granting Persons; (ii) may be exercised by the General Partner acting as attorney-in-fact for any one or more or all of them; and (iii) shall survive an assignment by a Partner of all or any portion of such Partner's interest in the Partnership and shall extend to the heirs, legatees, devisees, executors, trustees, personal representatives, successors and assigns of each of such Persons.

12.17 Arbitration. The exclusive method for resolving any controversy, dispute or claim arising between the Partners in connection with this Agreement, any decision to be made concerning the management of the Partnership's business, or otherwise in regard to the

relationship of the Partners by virtue of the terms in this Agreement, including the construction and scope of this Agreement, shall be upon the initiation of any Partner by a written notice to the other Partners demanding arbitration and specifying the controversy, dispute or claim to be arbitrated. Such arbitration shall be held in Orange County, California, in accordance with Commercial Arbitration rules and regulations of the American Arbitration Association ("Association") then in effect.

Within five (5) business days after a demand has been made to arbitrate any controversy, dispute or claim, the General Partner shall select an arbitrator from the commercial panel of the Association (the "Arbitrator"). The Arbitrator shall apply the laws of the State of Delaware, without regard to the conflicts of law principles of such State. Judgment upon an arbitration may be entered in any court having competent jurisdiction thereof, and shall be binding, final and non-appealable. The Arbitrator shall have the power to award any and all remedies and relief whatsoever that is deemed appropriate under the circumstances, including, but not limited to, money damages and injunctive relief.

This arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after the expiration or termination of this Agreement. In the event any party fails to appear at any arbitration proceeding, an award may be entered against such party by default or otherwise notwithstanding said failure to appear. The Partners hereby consent to arbitration to be held within Orange County, California, and irrevocably agree that all actions or proceedings relating to this Agreement shall take place in Orange County, California, and waive any objections that they may have based on improper venue or forum non conveniens. The Arbitrator's fees in connection with any such arbitration proceeding shall be shared equally among the parties.

[remainder of page intentionally left blank; signatures follow]