##

EVERYONE'S PARTNERSHIP BOOK

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PARTNERSHIPS

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INTRODUCTION

When people wish to conduct business together they have three options available for the form in which their business will take. They may operate as a corporation, a limited liability company or as a partnership. This book discusses partnerships, both limited and general partnerships. Once the decision is made to do business as a partnership, the next decision to be made is whether they intend a general or limited partnership. Partnership law is quite different in its application on general partnerships as opposed to limited partnerships. This book explains those differences.

Limited partnerships, in particular, have resulted in a great deal of litigation over the propriety of the actions taken by the general partners. To illustrate, recently, limited partners sued for an accounting against the general partners of a limited partnership which operates a public golf course. The general partners has entered into a special operating agreement with the golf course and received substantial benefits from the relationship which had not been disclosed to the limited partners. After discovering the existence of this special operating agreement, the limited partners brought a lawsuit alleging that the arrangement violated the fiduciary duties of good faith and fair dealing which the general partners owed to them. The case was complicated simply because neither the general nor the limited partners fully understood the rights and obligations imposed upon them under both California partnership law and the partnership agreement itself.

It is very important that anyone considering forming a partnership understand the rights and obligations that arise from the partnership arrangement. This book is one in a series that have been written to help the reader cut through legal jargon and understand his or her rights. Other books of this series are:

1. A two-volume set of ESTATE PLANNING. Volume one pertains to Will, Durable Powers of Attorney and Living Will Declarations. Volume Two deals with the use of Revocable Trusts as estate planning tools.
2. INCORPORATING A SMALL BUSINESS
3. LIMITED LIABILITY COMPANIES
4. BANKRUPTCY CHAPTER SEVEN
5. BANKRUPTCY CHAPTER THIRTEEN
6. SMALL CLAIMS COURTS
7. FINANCIAL PLANNING ONE
8. FINANCIAL PLANNING TWO
9. POWERS OF ATTORNEY
10. NONPROFIT CORPORATIONS
11. NAFTA (NORTH AMERICAN FREE TRADE AGREEMENT)

These books are different from other legal self-help books. While they explain the pertinent law, they move beyond the basics. This series is written in a very practical mode, explaining to the user how to accomplish the desired results while providing detailed forms, examples and instructions. This series offers the most user-friendly and complete books of their type on the market.

COMMON QUESTIONS REGARDING PARTNERSHIPS

Experience has shown that people learn the most by asking questions. Next to that, people learn the most by listening to the answers to questions asked by other persons. The purpose of this book is to both teach and explain how people can create their partnerships as cheaply as possible and usually without an attorney. To accomplish these twin goals, this book is divided into easy to understand and use chapters. This chapter contains the most common questions that persons have regarding partnerships. The answers contained herein are shortened versions of the greater explanations given throughout the book.

Hopefully, all readers will read the entire book before creating their partnership agreements. As a practical matter, however, many people will skip chapters and go directly to the forms in the book after reading this chapter. For that reason, the information contained in this chapter is presented in as in-depth a manner as possible. By doing so, it is the intention that anyone skipping the succeeding chapters will still have been exposed to the basic information which they will need to understand and create their partnership. The use of chapters devoted just to answering common questions on a topic is unique among self-help legal books, yet it is a common fixture in most of legal books in this series.

1. WHAT IS A PARTNERSHIP?

A partnership, in its simplest form, is two or more persons or entities working together as co-owners to run a business for profit. The Internal Revenue Code defines a partnership in Section 761(a) as:

> "a syndicate, pool , joint venture or other unincorporated organization through which...any business is carried on.,. and is not a corporation trust or an estate (meaning sole proprietorship)

The National Conference of Commissioners on Uniform State Laws wrote the Uniform Partnership Act (UPA). The Act has been adopted by every state except Louisiana. The UPA provides the rules on how a partnership is to operate when the partnership agreement does not spell it out. In short, the UPA fills in the blanks in a partnership agreement. The partners can agree not to use the UPA provisions. They can write their own replacement provisions if they elect to so.

A partnership may be formed by a written agreement or it may be formed by an oral agreement of the parties. The determining factors as to whether a partnership exists are:

1. whether the parties intended to form a partnership; and
2. whether they intended to make a profit from the activities.

Once the foundational elements of a partnership are met, the partnership is formed and governed either by the terms of the written agreement, the UPA or in the case of Louisiana, its own state partnership law. Chapters 4 and 5 contain basic forms for a general partnership and a joint venture agreement. Because of the basic similarity between both general partnerships and joint ventures, many of the clauses contained in the joint venture agreement are contained in most general partnership agreements.

2. WHAT IS A JOINT VENTURE?

A joint venture is a partnership that was created to accomplish a very narrow purpose. Most partnerships exist to make a profit while engaging in a particular type of business. A joint venture seeks to make a profit usually on a one time basis. When the purpose of the partnership is completed the joint venture automatically terminates.

An example of a regular partnership is where two persons form a cement paving company. An example of a joint venture is where two persons agree to work together to pave just one job. Joint ventures, as with regular partnerships, are governed by the partnership law of the state where it was formed. Like any partnership, the agreement should be in writing or otherwise have its provisions set by its states' Uniform Partnership Act. Except for the limited purpose of the joint venture, it has the same issues, problems and elements of a regular partnership.

3. HOW ARE PARTNERSHIPS TREATED FOP TAX PURPOSES?

Partnerships are treated for federal tax purposes as "pass through vehicles. All profits and losses of the partnership "pass through" the partnership and are attributed to the partners. The effect of this "pass through" of profits and losses is that the partnership itself is not taxed. Partnership income is not subject to double taxation as is the income of a regular C corporation. To achieve this same tax benefit for small corporations, Congress created the S Corporation.

Under the 1986 Tax Reform Act, profits and losses passing through to partners retains the same character that they had in the partnership. A passive profit or loss to the partnership remains a passive profit or loss to the partner. The same treatment exists for an active profit or loss. A partner, who materially participates in the partnership business, will have all of the attributed profits and losses considered to be active in nature. A partner, who does not actively participate in the partnership business, likewise, will have all of that partner's share of profit and losses considered to be passive in nature.

Even though income from a partnership is not taxed at the federal level, an annual tax return, the U.S. Partnership Tax Return (Form 1165) must be filed. The Form 1165 must be filed within 3 months and 15 days of the end of the partnership's tax year. The Form 1165 is an informational return which the IRS requires to be filed so as to assure that the partners are actually reporting their share of the partnership income. The IRS puts out a pamphlet, Publication 541, "Tax Information on Partnerships" to assist partnerships in their tax filing.

4. WHAT LIABILITY DO PARTNERS HAVE FOR PARTNERSHIP DEBTS?

The main drawback to any general partnership is the fact that the partners are personally liable for the debts of the partnership. In short, the partners have agreed, by forming a partnership, to guaranty payment of any debts or judgments taken against the partnership. Partners are not liable for the personal non-partnership related debts of the other partners. Under the Uniform Partnership Act, the partnership (and thus the partners) are liable for "any wrongful act or omission of any partner in the ordinary course of the business of the partnership. Where loss or injury is caused to any person by the partnership, the partners are individually liable for payment of the damages. In addition, the partners are liable for the money damages that arise for the actions of any partnership employee or the other partners during the course of their work for the partnership. For example, if a partner gets into a car accident and kills two people while engaging in partnership work, all of the other partners will be liable to pay the damage award that the heirs of victims receive in wrongful death action against the partnership. If the award is $1,000,000 and the partnership only has assets of $200,000, then a personal judgment will be taken against each partner for $800,000.

If at the time of termination, the partnership is insolvent and does not have enough assets to pay all of its debts and liabilities, then the partners must themselves pay the remaining balance. In a California case, a person owned a five percent general interest in a hazardous waste disposal well. The well sprung a leak flooded the surface with hazardous waste and needed to be cleaned up. The clean up costs exceeded two and a half million dollars. Several of the partners were corporations which declared bankruptcy. The sole individual partner was left on the hook for the full two and half million dollars of clean up. Under the law, an individual can not declare bankruptcy in order to avoid hazardous waste clean up costs so he was basically ruined financially even though he had only contributed a small amount of services to acquire his interest.

The unlimited liability of partners for all of the partnership debts is the main drawback of the partnership. The general rule of thumb is that if a partnership is formed and it has employees, the partners should either carry a sufficient amount of insurance, or form a limited liability company or incorporate to limit their personal liability.

5. WHAT ISSUES SHOULD BE CONSIDERED IN FORMING A PARTNERSHIP?

In deciding to form a partnerships, the future partners should consider whether any of the following issues should be addressed in the partnership agreement:

1. The name of the partnership,
2. The term of the partnership,
3. The purpose of the partnership,
4. whether a joint venture is being created,
5. how the partnership will be funded,
6. how profit and losses will be allowed and distributed,
7. admission of new partners,
8. exclusion of old partners,

9. withdrawals of contributed assets,
10. expense accounts,
11. salaries and draws of income by partners,
12. responsibilities of the partners,
13. dissolution of the partnership,
14. staffing and management.

This list is not exhaustive. Every partnership is different because each is composed of different people with different viewpoints. What must be remembered is that anything not covered in the partnership agreement will be dealt with in accordance with the state's Uniform Partnership Act. If the partners do want the UPA to apply on a particular point, then they must expressly create their alternative provision.

6. HOW LONG DOES A PARTNERSHIP LAST?

Unlike a corporation, a partnership does not have perpetual existence. This means that one day the partnership will terminate. Both state law and the partnership agreement states the conditions under which a partnership will be terminated. Generally, a partnership agreement will contain one or more of the following clauses stating the circumstances under which the partnership will terminate, such as:

1. when the partnership purpose is accomplished (in a joint venture),
2. as of a certain date,
3. if a partner become insolvent or bankrupt,
4. if a partner dies or becomes disabled,

5. if any partner withdraws from the partnership.

Without a clause in the partnership agreement stating otherwise, the Uniform Partnership Act states that a partnership terminates automatically on the death of a partner or upon a partner 's resignation. In addition, under the UPA, when a partner files for personal bankruptcy, the partnership is automatically terminated even though the business may itself be solvent. The reason for the dissolution is that when a partner goes bankrupt the relationship with the partnership and the other partners greatly changes. By filing for bankruptcy protection, the filing partner is no longer liable for the partnership debts. The liability for payment of partnership debts remain with the partners who did not file bankruptcy, It is this general release of liability for the partner filing bankruptcy that gives rise to the termination of the partnership. The partners can agree not to have the partnership dissolved automatically upon the bankruptcy of a partner by a provision in the partnership agreement. Unless the partnership agreement states otherwise, the UPA will apply and the partnership will be terminated upon the bankruptcy of a partner.

Once the decision has been made that partnership will terminate, the partnership will cease doing business except to the extent necessary to wind down its affairs. Under the Uniform Partnership Act, each partner remains liable for the debts of the partnership incurred during the winding down of the partnership affairs. The final cessation of business, the payment of creditors, taxes and final distribution to the partners takes place. Depending on the complexity of the partnership business, termination may be quick or it may be a long and involved process. Until the partnership is fully terminated, the individual liability of the partners continues.

Even if a partnership agreement states otherwise, a court will always have the power to order the dissolution of a partnership. The court has this authority under its equitable jurisdiction, which means it authority to render justice. In addition, under the Uniform Partnership Act, a court is given specific statutory authority to order dissolution of a partnership for the following reasons regardless of specific clauses in the partnership agreement stating otherwise:

1. A partner has been found insane by a court;
2. A partner is incapable of performing his duties under the partnership agreement.
3. A partner's conduct has prejudicially affected the ability of the partnership to carry on its business;
4. A partner has repeatedly breached the partnership agreement;
5. The partnership can only do business at a loss.

Any partner can file a complaint with a court seeking dissolution on any of the above grounds. A trial will then be heard of the facts. If the allegations in the complaint are found true, then the court will order the partnership terminated. In such a lawsuit, if the court orders the dissolution of the partnership, it will order the partnership to pay the legal fees of the partner who brought the suit.

8. HOW ARE THE PROCEEDS FROM A DISSOLUTION DISTRIBUTED?

The proceeds from the dissolution of a partnership are governed by state law. An order of payments is established by state law. At the beginning of the list is government taxes and at the end are the partners themselves. The distribution is made as follows to the extent of partnership assets:

1. all federal and state taxes are paid,
2. all employee wages and benefits are paid,
3. all secured liabilities are paid,
4. all unsecured liabilities are paid,
5. the remaining funds, if any, are divided among the partners in accordance with their percentage of ownership interest in the partnership.

The proceeds received by a partner in the dissolution of a partnership is a return of the partner's investment. Any gain or loss in the dissolution is treated as a capital gain or loss. For example, if the partner had paid $4,000 for the partnership interest and got back $3,000, then the partner had a $1,000 capital loss. Likewise if the partner got back $6,000, the partner would have to recognize a $2,000 capital gain.

9. HOW ARE PROFITS AND LOSSES OF THE PARTNERSHIP DIVIDED?

A partnership is formed to make money for the partners. As such, probably the most important issues in any partnership relate to how the profits and losses are divided. It is important to know how the accounting of the partnership's profits and losses will take place. Under the Uniform Partnership Act, all profits and losses of a partnership are divided equally among the partners unless the partnership agreement states otherwise. The equal division of profits and losses occurs even if the partners own an unequal interests in the partnership or have contributed unequal amounts of work or property to it. The partners can agree to an unequal division of profits and losses such as based on partnership ownership interest or contributions. Any agreement for an unequal division of profits and losses should obviously be spelled out with particular clarity in order to make clear that the UPA does not apply. Even if the partnership agreement states that the division of profits and losses is not in accordance with the partner's ownership interest, the Internal Revenue Service may have a different view. Under the Internal Revenue Code, profits and losses are to be divided, for tax purposes, in accordance to the respective interests on the partner's unless the distribution is for a substantial economic effect. This means that the I.R.S. will allocate all profits and losses to the partners in accordance to their ownership interest unless there exists a valid business reason behind the unequal allocations. The purpose of this law is to prevent illegal income splitting, usually among family members.

10. HOW IS THE OWNERSHIP OF PARTNERSHIP PROPERTY TREATED?

Under the Uniform Partnership Act, property which is titled in the partnership name is owned by the partnership. A partner, who contributes property to a partnership, gives up ownership in the property. Likewise, property purchased with partnership funds is owned by the partnership. The property held by a partnership can be legally sold, transferred or conveyed only by the partnership. Since partnership property is owned by the partnership, it can not be directly attached to satisfy any court judgment taken against a partner. A partner's ownership interest in a partnership can be attached and sold by a creditor but not the underlying property in the partnership.

11. HOW IS PROPERTY CONTRIBUTED TO A PARTNERSHIP TREATED TAXWISE?

A partner who contributes property to a partnership does not recognize gain or loss on the transfer to the partnership. For example, a partner contributes real estate to the partnership which has a basis (cost) of $200,000. The property has a fair market value of $1,000,000. If the partner had sold the property, he would have had to pay capital gain on the $800,000 profit. By contributing the property instead, the partner does not realize any capital gain. The partnership will have the contributing partner's basis in any contributed property not its fair market value at the time of transfer. Thus when the partnership sells the property above for $1,000,000, there will be a capital gain to the partnership of $800,000 which will be passed
along to the partners

12. CAN NEW PARTNERS BE ADDED TO A PARTNERSHIP?

The Uniform Partnership Act requires unanimous consent of all partners before the admission of new partners. Unless the partnership agreement has a clause to the contrary, the UPA requirement controls and the admission of new partners requires unanimous consent, Requiring unanimous consent only makes sense. If unanimous consent is not required, then new partners could be added over the objections of partners who might not have formed the partnership had they known who their future new partners would be.

Under the Uniform Partnership Act, a new partner is only liable for the partnership debts incurred before becoming a partner, up to the amount of the new partner's contribution to the partnership. The partner is liable, as any partner, for all of the partnership debts incurred after becoming a partner. For example, George joins an existing partnership which owes $200,000 in debts. George contributes $50,000.00. After joining, the partnership racks up another $100,000 in debt. Of the total partnership debt, George is liable for $150,000 ($50,000 pre-existing debt and $100,000 debt after joining) and the other partners are each liable for the whole $300,000.

13. IS THE ACQUISITION OF A PARTNERSHIP INTEREST TAXABLE?

A tax consideration that all persons forming a partnership should bear in mind is the tax consequences of contributing services for the equity interest in the partnership. Under federal tax law, when a person purchases a partnership interest for either services rendered or to be rendered , then that partner has to recognize, as income, the value of the partnership interest received. In essence, a person can not acquire a partnership tax free by bartering services. For example, if George agrees to become a partner by working for it and the partnership interest acquired would be worth $10,000, then George would have to report the

$10,000 as income on his tax return.

14. IS A PARTNERSHIP INTEREST ASSIGNABLE?

Generally, a partner may freely sell or convey his or her interest in the partnership unless the partnership agreement says otherwise. However as a normal point of fact, if the other partners do not approve of the transfer, they can usually dissolve the partnership. Under the Uniform Partnership Act, the remaining partners do not have to dissolve the partnership if they object to the transfer. Instead, the remaining partners may continue partnership operations as before but not accord the new partner all of the rights of full partner. The new partner, in such a situation, would have the right to receive the selling partner's share of profits but would be prohibited from demanding an accounting or inspecting corporate books.

15. CAN A PARTNER BE EXPELLED FROM THE PARTNERSHIP?

Partnerships which have a large number of partners sometimes have a provision in the partnership agreement which permits the expulsion of a partner without the dissolution of the partnership. Expulsion clauses in partnership agreements are valid if they exist to protect the partnership from harm caused as a result of the expelled partner's breach of the partnership agreement or fiduciary duties owed under it. The procedure for the expulsion must be agreed upon in the partnership agreement. An expulsion is obviously against the wishes of the expelled partner. Therefore, the courts will narrowly construe an expulsion clause to determine if it violates state law or is otherwise against public policy.

16. WHAT IS A LIMITED PARTNERSHIP?

A limited partnership is a legal entity which is a cross between a corporation and a regular or general partnership. A limited partnership has two types of partners , the general partners, who run the partnership, and the limited partners who are the investors. As with a regular partnership, the general partners are liable for the debts and liabilities of the limited partnership. The limited partners are treated in a manner similar to shareholders of a corporation. The limited partner's liability for payment of partnership obligations extends only to the amount of their contributions. In other words, the most a limited partner could lose is the partner's investment in the limited partnership. Limited partnerships are specially created pursuant to each state's limited partnership laws.

The National Conference of Commissioners on Uniform State Laws wrote the Uniform Limited Partnership Act (ULPA). Also created was the Revised Uniform Limited Partnership Act (RULPA). The appendix lists every state which has adopt either the ULPA or the RULPA In addition the Uniform Partnership Act applies to limited partnership except where it is inconsistent with provisions of the ULPA or RULPA or state law, The ULPA and RULPA provide the rules on how a limited partnership is to operate in situations not covered in the limited partnership agreement. In short, the ULPA and RULPA fill in the blanks of a limited partnership agreement. The partners can agree not to use some of the ULPA provisions. However there are some ULPA and RULPA provisions, which can not be altered, amended or stricken from a limited partnership agreement. Chapter 5 contains a basic agreement for the creation of a limited partnership. Most of the provisions discussed in this chapter are contained therein and pertain to nearly all limited partnerships.

17. WHAT ARE THE REQUIREMENTS FOR LIMITED PARTNERSHIP?

To have a valid limited partnership, strict requirements must be met. If the requirements are not met , then the relationship between the parties becomes a general partnership not a limited partnership. Most states require, that at a minimum, a limited partnership contain the following:

1. A written limited partnership agreement;
2. At least one general partner;
3. A provision in the written partnership agreement stating that the limited partners will have no management or control over the daily operations of the partnership,
4. That a Certificate of Limited Partnership or Registration Statement be either filed with the Secretary of State or recorded in the County where the limited partnership does business in accordance with the requirement of state law,

These are the requirements for all limited partnership. Each state may have additional requirements that must be met in order for there to be a valid limited partnership.

18. WHAT DOES A GENERAL PARTNER DO IN A LIMITED PARTNERSHIP?

A general partner of a limited partnership is the manager of the partnership. A limited partner can not participate in the management and control of the daily operations of the limited partnership. It is because the limited partners give up all right to participate in the daily management and control of the limited partnership so that they will not incur any liability for the debts of the partnership beyond their initial contributions. The general partner on the other hand is totally liable for all of the debts and obligations of the partnership.

A general partner is also bound by a fiduciary duty to the limited partners to look out for their interests. There is a special degree of trust placed upon the general partners to protect the limited partners because the limited partners are not in a position to protect themselves. The general partner of a limited partnership is held to the standard of a care of a reasonable general partner. Likewise , a general partner is expected not to compete in business with the partnership. In short, a general partner is expected not to do anything that a normal reasonable person acting as a general partner would not also do.

A general partner can be sued by the limited partners for losses incurred by the general partner's breach of fiduciary duties. Generally, limited partners can recover damages from a general partner wherever the partnership suffered losses because of the general partner's unreasonable actions.

19. WHO CAN BE A LIMITED PARTNER?

There is no limitation on who can be a limited partner . Individuals, corporations, trusts, general partnerships and even other limited partnerships can all be limited partners in a limited partnership. For example, RODDY LIMITED PARTNERSHIP may be a limited partner along with STINEMEYER CORPORATION and JOHN DOE in the GABRIEL LIMITED PARTNERSHIP. In addition, a general partner may also be a limited partner in the same limited partnership. While a general partner may also be a limited partner, the general partner still remains fully liable for payment of allowf the partnership debts.

20. WHAT CAN LIMITED PARTNERS' DO?

Limited partners have virtually no authority to participate in the daily operation and management of the limited partnership. In order to be relieved of partnership liability, limited partners must agree to give up such right to participate in the daily business of the partnership. If limited partners violate the terms of the limited partnership law and participate in partnership business then their interest is changed automatically from that of a limited partnership interest into that of a general partnership interest. A partner's interest is not determined by what it is called but by the degree of management the partner has in the limited partnership.

Despite the general law that limited partners may not participate in the partnership business, limited partners are allowed to participate in the following limited partnership business without losing their protected status:

1. vote of the dissolution of the partnership,
2. vote of the election or removal of general partners,
3. vote of the admission of new limited partners.

A limited partner can, unlike a general partner, conduct a business in competition with the partnership unless prohibited by the partnership agreement.

21. WHEN DOES A LIMITED PARTNERSHIP TERMINATE?

As with a general partnership, a limited partnership does not have perpetual existence. A limited partnership terminates, by operation of law, upon the occurrence of any of the following events:

1. its term of existence, under the limited partnership agreement, has expired;
2. all of the partners vote to terminate the partnership;
3. by judicial decree;
4. by changing anything contained in the Registration Statement or Statement of Limited Partnership, whichever is used in a State, which then requires a new filing or recordation.

Unlike a general partnership, a limited partnership is not automatically dissolved upon the death, bankruptcy or withdrawal of a limited partner. However, the limited partnership is dissolved by operation of law upon the death, bankruptcy or withdrawal of a general partner unless the partnership agreement states otherwise.

Once a limited partnership has been terminated, the general partner must wind down the partnership. The assets of the partnership are sold, The general partner then pays all of the partnership liabilities. If the partnership lacks sufficient assets to pay its debts, the general partner must make up the difference. If there are sufficient assets to pays the debts, the general partner pays the debts and then splits the remaining assets among the partners in accordance to their capital interests in the partnership.

22. WHAT IS A REGISTRATION STATEMENT?

The ULPA and RULPA requires that a limited partnership file a Registration Statement with a governmental agency, usually the Secretary of State . Connecticut requires that the Registration Statement be filed both with the Secretary of State and the town clerk where the limited partnership does business. Some states, such as California, require a specific governmental form to be used whereas other states permit the registration statement to be typed.

The Registration Statement is usually required to contain the following information:

1, The partnership name;
2. The purpose of the partnership;
3. The location of the principal place of business;
4. The names and addresses of all general partners;
5. The names and addresses of all limited partners;
6. The term of the partnership;
7. The contributions of each partner;
8. Whether additional contributions can be demanded;
9. The right to continue the partnership upon the death, withdrawal or bankruptcy of a general partner;
10. Whether new limited partners can be admitted;

Under the ULPA and the RULPA, a valid limited partnership will be found to exist "if there had been substantial compliance in good faith." As such, if there are minor mistakes in the Registration Statement but it was filed in a good faith belief that it was true and correct, then the limited partnership is still validly formed.

In addition to the filing requirement, some states impose the another requirement that the Registration Statement be published in a newspaper. The purpose of the filing a Registration Statement is obviously to inform creditors of the existence of the limited partnership so that they would be in a better position to protect themselves. Also the filing requirement makes it easier for governmental agencies to inspect a limited partnership for fraud or violations of state law. Chapter 5 contains a copy of the Registration Statement used for California. The information contained in it must be provided by the limited partnership, in some fashion, in every state.

An amendment to the Registration Statement is required whenever any of the following acts occur:

1. The partnership name is changed;
2. The partnership business changes,
3. New limited partners are admitted or substituted in the limited partnership;
4. The term of the partnership is altered;
5. The limited partners receive voting rights on management of partnership business (care must be taken to assure rights given do not terminate the limited partnership interest);
6. The amount or character of limited partners' contributions changes.

Any amendment to a Registration Statement must be signed by all of the partners and not just the general partners. Failure to comply with the state law regarding the filing of an amendment to a Registration Statement may result in a limited partners losing their protected status and thereafter being held for the partnership debts as general partners.

23. HOW ARE PARTNERSHIPS TAXED?

Partnerships are subject to a different set of tax laws than individuals, corporations or trusts. All partnerships, be they general partnerships, joint ventures or limited partnerships, are subject to the same tax provisions. Most unincorporated associations and trusts that conduct business are taxed as though they were corporations. However, partnerships are treated differently. In a partnership, the income is attributed to the partners in accordance with their percentage of partnership interest. The partnership pays no income tax itself on the federal level. For example, if a partnership earns $1,000,000, it will pay no taxes, The partners will have to include the $1,000,000 on their tax returns. Assuming a 28% federal tax rate, the partners will pay $280,000 not the total $519,200 that a C corporation and its shareholders must pay.

24. WHAT ARE THE TAX DIFFERENCES BETWEEN A PARTNERSHIP AND A S CORPORATION?

Small corporations, which are those with only type of stock and less than 75 shareholders are permitted to make a special tax election under subchapter S of the Internal Revenue Code (hence the name S corporations) . Under this election, the corporation is treated for tax purposes the same as if it were a partnership. A S corporation has a significant advantage over a partnership in that even though it is being taxed as though it were a partnership, its shareholders do not have the unlimited liability for the corporation debts that partners share. In a few areas, partnerships provide more flexibility than S corporations such as:

1. partnerships may admit anyone as a partner and may have any number of partners whereas S corporations are limited to 75 members of special status, and
2. partnerships can divide profits and losses in a manner not the related to the partners ownership interest. By contrast, S corporations must divide profits and losses among the shareholders in accordance to their percentage of stock ownership.

In the most cases, these differences are not important because the S corporation usually does not want additional shareholders and does want profit and losses allocated according to shareholder investment . The most important difference between S corporations and partnerships is that there is no personal liability on the part of the shareholders for the corporation's debts. In comparison, the general partners, but not limited partners, have total and complete personal liability for the partnership debts.

25. DOES A PARTNERSHIP HAVE TO REGISTER WITH THE SECURITIES AND EXCHANGE COMMISSION BEFORE ANY INTEREST IN IT CAN BE SOLD? The sale of a general partnership interest is not a security under the Security and Exchanges Act and thus can be sold without having to be registered or exempted from registration with the Securities and Exchange Commission (SEC). Most states follow federal security law and also do not require registration or permits for the sale of general partnerships interests as

securities. There are, however, cases pending before the United States Supreme Court on the issue as to whether general partnerships interests could be treated as securities when there are large numbers of partners. In the cases before the Supreme Court, the general partnerships contains thousands of general partners. The state security commissioners take the position that when there are large number of partners there is no true partnership but rather more of a corporate existence.

For a limited partnership, the security law is quite different. The sale of a limited partnership interest is considered a security and therefore before it can be sold it must be registered with the Securities and Exchange Commission unless it qualifies for an exemption from registration. There are several exemptions from this registration requirement which most small limited partnerships meet. The exemptions are:

1. an intra-state exemption under section 3(a)(l) of the Security and Exchange Act. This is the most popular exemption for small companies. It is available where all the partners reside in the same state where the partnership is formed and doing business.
2. the sale of the partnership interest is a non-public offering under section 4(2) to sophisticated investors and no advertisement or solicitation was done.
3. the sale complied with the Regulation D requirements of the SEC. This exemption requires adherence to strict disclosure provisions to the investors.

Once an exemption is met, the partnership may sell its interests without interference by the SEC.

26. DOES A PARTNERSHIP NEED A STATE PERMIT TO SELL ITS INTEREST?

All states require that limited partnerships selling their interests in the state either have a permit to sell the partnership interest or that the sale fall into one of the state's statutory exemptions. All states have some type of exemption for registration for small private offerings. Usually, a partnership of less than 35 partners, as in California and Nevada, can simply sell the limited partnership interests and notify the Secretary of State or record a Certificate of Limited Partnership which give notice that such limited partnership interests have been sold. The partnership is not required, in most states to identify the 35 or less limited partners to whom it sold the partnership interests. For reference, contained in chapter 6 is a Notice of Transaction under Section 25102(f) of the California Corporations Code. This is the form that a partnership is required to file in California when it is seeking to sell partnership interests pursuant to the state exemption from registration (a public sale of partnership interests). Most states use similar forms that can be obtained from the particular Secretary of State's Office.

Most states follow federal law and hold that the sale of general partnership interests are not securities. However, California makes that determination on a case by case basis depending on the degree of control that the general partners actually exert over the partnership.

27. MUST A PARTNERSHIP FILE A FICTITIOUS NAME STATEMENT?

All states require a partnership doing business under a name other than that of all of its partners to file a fictitious business name statement. The purpose behind the filing of a fictitious name statement is to give notice to the world as to who actually is running the business. Usually the filing is in the county clerk 's office where the business is run under the fictitious name. If the partnership does business under a fictitious name in several counties then the filing must be in every county that it does business.

28. MUST THE PARTNERSHIP OBTAIN A FEDERAL IDENTIFICATION NUMBER?

All employers are required to have one. A sole proprietor, who had no employees, was not required to have an identification number because the owner's social security number was used instead. Once the partnership was formed , it needed an identification number because the partnership became an employer. A Federal I.D. number is obtained by filing Form SS-4 with the IRS. It should be filed as soon as possible after the partnership is formed, A sole proprietor who joined a new partnership will need a new I.D. numbers. The old numbers used by the sole proprietor in the previous business will not transfer over to the new partnership.

29. MUST EMPLOYEES FILL OUT NEW WITHHOLDING CERTIFICATES?

When a new partnership is formed, all of the partnerships' employees are required to fill out new W- 4 forms, Employee's Withholding Exemption Certificate. Everyone, except the partners, who receive compensation for work is an employee and required to fill out the W-4 form. Since the partners are owners of the partnership and have to make estimated payments every quarter on their earnings, they are not required to fill out W-4 forms.

As an employer, the partnership must withhold federal income tax and social security tax along with all mandated state withholding from the salaries of employees. These taxes are withheld and reported on a calendar year basis regardless of the tax year of the partnership. The returns for the tax withholding and the deposits are submitted to the IRS on a quarterly or more frequent basis. The amount withheld from an employee's paycheck by the partnership is based upon the employee's wage level, marital status and the number of allowances claimed on the W-4. The I.R.S. will provide the partnership with information and assistance in calculating the proper amounts to be withheld.

A partnership is required to file and pay its taxes using federal withholding return (Form 941) on a quarterly basis. The return is required to show the income and social security taxes withheld from the employees' wages as well as the matching social security contributions by the partnership. The partnership is required to deposit the federal income and social security taxes on a monthly basis in an approved commercial or federal reserve bank.

A partnership is required to furnish an annual Wage and Tax Statement (Form W-2) to every employee prior to January 31 of each year for the previous calendar year. The W-2 must show the total wages paid and the amounts deducted for income and social security taxes. The partnership must submit the original of each employee's previous W-2 and the annual Transmittal of Income and Tax Statement (Form W-3) to the Social Security Administration no later than the last day of February for the previous calendar year, For example for the tax year 1992, the forms must be provided by the end of February 1993.

Partners are not considered employees. For this reason partners are denied many of the tax advantages available to normal employees. The deductions for fringe benefits furnished employees are not available for fringe benefits which are provided to the partners. Since partners are not considered employees, there is no withholding from the partners' draws or salaries for payroll, social security and other taxes.

30. WHAT IS THE PARTNERSHIP'S TAX YEAR?

A tax year is the year period for which a partnership calculates its tax liability. The Internal Revenue Code requires the partnership to use as its tax year the tax year adopted by the principal partners. Principal partners are defined under the Internal Revenue Code as anyone owning over a five percent (5%) interest in the partnership.

31. WHAT IS FEDERAL UNEMPLOYMENT TAX?

A partnership, as with any other business, may be required to pay the Federal Unemployment Tax (FUTA) if:

1. the partnership paid wages over $1,500 during any calendar quarter, or
2. had one or more employees at least one day of 20 weeks. The

weeks do not have to be consecutive.

FUTA taxes are paid entirely by the partnership. There is no withholding from the employee's wages. The partnership receives a credit for any state employment taxes that it pays or for having been given a favorable experience rating by the state. Just as with withholding taxes, the partnership must deposit the tax with an authorized commercial or federal reserve bank within one month of the close of the quarter.

32. HOW ARE PARTNERS TAXED?

The partnership does not pay any taxes on the income from the partnership that is the hallmark of a partnership. Even though a partnership does not taxes on its income, the partners are required to pay income taxes on their respective shares of the partnership income. By the very nature of partnerships, all partnership profit and losses are passed through to the partners. The partnership files its Form 1165 partnership return and its K-l forms so as to inform the IRS as to how the profits and losses are being allocated to each partner. Under the Internal Revenue Code, each partner is treated for tax purposes as a self-employed individual. As such, every partner is required to estimate what his or her share of the partnership income will be and to make estimated quarterly payments to the IRS based upon that income.

33. MUST A PARTNERSHIP PAY STATE TAXES?

A partnership must comply with all of the laws of every state in which it does business. All states recognize partnerships as pass through vehicles for partnership income. As such, unless a partnership does business in a state which has no income tax (of which there are very few and getting fewer), the partnership will have state tax laws with which to comply. State tax laws view partnerships the same as under federal law, i.e. as pass through vehicles for the partnership. All profits and losses of the partnership "pass through" which means they are attributed to the individual partners according to their ownership interests in the partnership. The effect of this "pass through" of profits and losses is that the partnership is not taxed and there is no double taxation of the partnership income as there is with a regular corporation's income. The net effect of this is that if a partnership does business in a state which has a personal income tax, the partners will be required to file a state tax return and pay taxes for their share of partnership income. If the partners reside in the state where the partnership does business the partner will pay taxes on the entire share of partnership interest allocated to the partner, If the partner is a non-resident of the state where the partnership is doing the business, the partner will file a nonresident tax return and pay taxes on only that portion of partnership income actually derived from the partnership activities in that state.

CHAPTER 2

COMMON CHARACTERISTICS OF ALL TYPES OF PARTNERSHIPS

All partnerships, whether general partnerships, joint ventures or limited partnerships, will contain many of the same clauses. The reason for this is that all partnerships share certain basic characteristics. This chapter discusses those common similarities of all partnerships. By doing so, separate, unnecessary repetitive discussions in succeeding chapters for general partnerships, joint ventures and limited partnerships can be avoided. Those chapters can instead focus on explaining the differences between the various forms of partnerships.

THE UNIFORM PARTNERSHIP ACT

The National Conference of Commissioners on Uniform State Laws wrote the Uniform Partnership Act (UPA). The Act has been adopted by every state except Louisiana. The UPA provides the rules on how a partnership is to operate when the partnership agreement does not give necessary details: the UPA fills in the blanks in a partnership agreement. Partners can agree not to use the UPA provisions. They can write their own replacement provisions if they elect to do so. The UPA, as adopted by California, is set forth in this book.

DEFINITION

A partnership is two or more persons or entities working together as co-owners to run a business for profit. The Internal Revenue Code defines a partnership in Section 761(a) as: "a syndicate, pool, joint venture or other unincorporated organization through which. . .any business is carried on. . .and is not a corporation, trust or an estate (meaning sole proprietorship)."

A partnership may be formed by a written agreement or by an oral agreement of the parties. The determining factors as to whether a partnership exists are:

a. Whether the parties intend to form a partnership, and

b. Whether they intend to make a profit from the activities.

Once these foundation elements are met, the partnership is formed and is, ipso facto, governed thereafter either by the terms of the written agreement, the UPA or in the case of Louisiana its own unique partnership law.

This book contains basic forms for a general partnership and for a joint venture agreement. Many of the clauses contained in the joint venture agreement are also contained to all general partnerships because general partnerships and joint ventures are similar in structure.

A joint venture is a partnership created to accomplish a narrow purpose. Most partnerships exist to make a profit while engaging in a particular type of business. A joint venture usually seeks to make a profit on a one-time basis. When the purpose of a joint venture is completed the joint venture partnership automatically terminates.

An example of a regular partnership would be where people join together to form a cement paving company. An example of a joint Venture would be people agreeing to work together to pave just one job. A joint venture is also governed by the partnership laws of the state where it is formed. Like any partnership, the agreement should be in writing or otherwise have its provisions set by its states' Uniform Partnership Act. Except for the limited purpose of the joint venture, it has the same issues, problems and elements of a regular partnership.

TAX TREATMENT

Partnerships are treated for federal tax purposes as pass-through vehicles. All profits and losses of the partnership pass through the partnership and are attributed to the partners. The effect of this "pass through" of profits and losses is the partnership itself is not taxed. Partnership income is not subject to double taxation as is the income generated from a regular C corporation.

Regular C corporation income is first taxed when earned by the corporation and is then taxed again when paid as dividends to the shareholders. To achieve this same benefit for small corporations, Congress created the Subchapter S corporation more commonly referred to simply as a S corporation. The income from a S corporation is taxed only once as straight shareholder income.

The partnership does not pay any taxes on the income from the partnership. All partnership profit and loss is passed to the partners. The partnership files a Form 1165 partnership return and its K-1 so as to inform the IRS how the profits and losses are being allocated to each partner. Each partner is treated for tax purposes as a self-employed individual. Each partner is required to estimate the partner's quarterly share of partnership profits and thereafter to make quarterly payments to the IRS.

Under the 1986 Tax Reform Act, profits and losses passing through to partners retain the same character they had in the partnership. A passive profit or loss to the partnership remains a passive profit or loss to the partner. The same treatment exists for an active profit or loss. A partner who materially participates in the partnership business will have all of the attributed profits and losses considered active. The profits and losses of another partner who does not actively participate in the partnership business will be considered passive in nature.

Generally a joint venture is treated the same as a partnership for tax purposes. Still, there are certain differences or elections that pertain only to joint ventures:

1. A joint venture must, like a partnership, file an informational return (except for certain real estate-joint ventures).
2. A joint venture makes tax elections for computation of its taxable income.
3. A joint venture can adopt its own tax year, but it must have I.R.S. permission to use a tax year different from

any principal partner.

4. The Internal Revenue Code allows a joint venturer (one of the partners in the joint venture) to enter into a business transaction with the joint venture and be treated as an outsider for tax purposes.
5. If the joint venture is basically a passive investment, members of a joint venture may elect to be excluded from some or all of IRC subchapter K (which defines how partnerships are taxed).

The above tax aspects of joint ventures give them a degree of flexibility regular general purpose partnerships do not have.

PARTNERS' LIABILITY FOR PARTNERSHIP DEBTS

The main drawback to any general partnership is the fact that the partners are personally liable for the debts of the partnership. By forming a partnership the partners have impliedly agreed to guarantee payment of any debts or judgements taken against the partnership. Partners are not liable for the personal non-partnership related debts of the other partners.

Under the Uniform Partnership Act, the partnership (and thus the partners) are liable for any wrongful act or omission of any partner in the ordinary course of the business of the partnership. Where loss or injury is caused to any person by the partnership, the partners are individually liable for payment of the damages. In addition, the partners are liable for the money damages that arise from the actions of any partnership employee or partner during the course of their work for the partnership. For example, if a partner is involved in a car accident which results in the death of two people while engaging in partnership work, all of the other partners will be liable to pay the damage award that the heirs of the victims receive in a wrongful death action against the partnership. If the award is $1,000,000 and the partnership only has assets of $200,000, a personal judgment will be taken against each partner for $800,000.

This is the main drawback of the partnership. The general rule of thumb is if a partnership is formed and it has employees, the partners should either carry a great deal of insurance or incorporate or form an limited liabilityy company to limit their individual personal liability for the partnership's debts.

FIDUCIARY DUTY OF ALL PARTNERS

By law every partner, both general and limited, is the agent of the partnership. Each partner has a fiduciary duty to the partnership and to the other partners to act in their best interests. Some of the things that partners cannot do are:

1. A partner may not usurp a partnership benefit. A partner must give the partnership the right of first refusal on any business opportunity that the partner finds which may be of benefit to the partnership. For example, if the partnership is in the paving business and a partner finds out that a school is intending to repave its parking lot, the partner cannot bid on the job for himself without

first informing the partnership of the job and giving the partnership the choice to bid the job. In addition, the partner usually cannot bid in competition against the partnership.

2. A partner may not divert partnership assets for the partner's own personal use. Such conduct is a breach of trust and could expose the partner to criminal liability.
3. A partner must fully disclose all material facts which affect the partnership and its affairs to the other partners.

A partner, who breaches any of these duties, may be sued by the other partners for their lost profits or other damages suffered as a result of the partner's misconduct. Where a partner usurped a partnership benefit, the partner may be ordered to pay all of the profits realized from the transaction to the partnership. The reason for this is the theory that the partnership would have made that profit itself had not the partner usurped the deal.

AUTHORITY TO ACT FOR THE PARTNERSHIP

In a general partnership each partner has full authority to act on the partnership's behalf in the normal course of its business. Each general partner can bind both the partnership and the other partners to contracts even if the other partners never authorized or approved the contracts. This unlimited power on the part of one general partner to bind the partnership and the other partners is the biggest concern of most investors. The partners may agree to limit their authority to bind the partnership or act on its behalf.

People dealing with a partnership are entitled to assume, unless informed otherwise, that any general partner has the right and power to act for the partnership in the normal course of its business. Even though a general partner may actually have only limited authority to act for the partnership, the apparent authority of the partner may nevertheless bind the partnership to contracts with third parties. Contracts entered with people, who did not actually know that the partner lacked the authority to bind the partnership, are binding on the partnership.

There are some acts, however, that a partner can never do unless the authority is specifically granted in a partnership agreement. Anyone dealing with a partner is presumed to know that unless the partnership agreement gives the partner specific authority to act in certain special areas, a valid contract in those areas cannot be executed. The Uniform Partnership Act states the following acts are invalid and not binding on the partnership unless the partnership agreement expressly states a partner can do them:

1. Transfer of a partner's interest to another.
2. Conveyance of partnership property.
3. Mortgaging of partnership property.
4. Confession of a judgment against the partnership.
5. Submission of a partnership claim to arbitration.

6. Any act that would make it impossible to carry on the business of the partnership.

Anyone dealing with a partnership should ask to review the partnership agreement to assure himself that the partner executing the contract does indeed have the authority to do so.

CONSIDERATIONS BEFORE DECIDING TO FORM A PARTNERSHIP

Before forming a partnership, the potential partners should consider the following issues and decide for themselves how they should be addressed:

a. The name of the partnership.

b. The term of the partnership.

c. The purpose of the partnership.

d. Whether a joint venture is being created.

e. How the partnership will be funded.

f. How profits and losses will be allowed and distributed.

g. Admission of new partners.

h. Expulsion of old partners.

i. Withdrawals of contributed assets.

j. Expense accounts.

k. Salaries and draws of income by partners.

l. Responsibilities of partners.

m. Dissolution of the partnership.

n. Staffing and management.

o. Comparison with forming a corporation or limited liability company instead.

p. The potential for personal liability in doing business in the partnership form.

These are important considerations but not the only ones. Each partnership is different because each is composed of different people with different viewpoints. What must be remembered is that anything not covered in the partnership agreement will be handled in accordance with the state's Uniform Partnership Act. If the partners do not want the UPA to apply on a particular point, they must expressly create their alternative provision.

RIGHTS OF THE PARTNERS

All partners have certain basic rights in a general partnership:

1. The right to insist on a partnership accounting. Along with this right is the right to have the books examined by an outside accountant.
2. The right to dissolve the partnership in accordance with the terms of the partnership agreement or the Uniform Partnership Act of the state.
3. The right to seek to restrain the partnership from performing acts prohibited under the partnership agreement.
4. The right to bring a legal action for breach of the partnership agreement.

These are implied rights in any partnership agreement. Provisions in partnership agreements that waive such rights are invalid and against public policy.

PROFITS AND LOSSES

One of the most important issues in any partnership is how profits and losses are divided. After all, the partners formed the partnership in order to conduct a business to make money. Therefore, it is important to know how the accounting of the partnership's profits and losses will take place.

Under the Uniform Partnership Act, all profits and losses of a partnership are divided equally among the partners unless the partnership agreement states otherwise. The equal division of profits and losses occurs even if the partners contribute unequal amounts of work or property to it. Partners can agree to an unequal division of profits and losses, such as one based on partnership ownership interests or contributions. Any agreement for an unequal division of profits and losses should obviously be spelled out with particular clarity in the partnership agreement in order to make that the UPA does not apply.

PARTNERSHIP PROPERTY

Under the Uniform Partnership Act, property which is titled in the partnership name is owned by the partnership. A partner who contributes property to a partnership loses his ownership in the property. Property purchased with partnership funds is owned by the partnership. The property held by a partnership can be legally sold, transferred or conveyed only by the partnership. Since partnership property is owned by the partnership, it cannot be directly attached to satisfy any court judgment taken against a partner. A partner's ownership interest in a partnership can be attached and sold by a creditor but the creditor cannot reach the underlying property in the partnership.

ADDITION OF NEW PARTNERS

The Uniform Partnership Act requires unanimous consent of all partners before the admission of new partners. Unless the partnership agreement has a clause to the contrary, the UPA requirement controls, and the admission of new partners requires unanimous consent. Requiring unanimous consent makes good sense. If unanimous consent is not required, then new partners can be added over the objections of partners who might not have even formed the partnership had they known who their future new partners would be.

Under the Uniform Partnership Act, a new partner is liable only for partnership debts incurred before becoming a partner, and only to the amount of his contribution to the partnership. The partner is liable, as any partner, for all of the partnership debts incurred after becoming a partner. For example, George joins an existing partnership which owes $200,000 in debts. George contributes $50,000. After joining, the partnership racks up another $100,000 in debt. Of the total partnership debt, George is liable for $150,000 ($50,000 pre-existing debt and $100,000 debt after joining), and the other partners are each liable for the whole $300,000.

TAX EFFECT OF CONTRIBUTING SERVICES TO A PARTNERSHIP

A tax consideration that all persons forming a partnership should bear in mind is the tax consequence of contributing services for an equity interest in the partnership. Under federal tax law, when a person purchases a partnership interest for either services rendered or to be rendered, that partner has to recognize the value of the partnership interest received as income. A person cannot acquire a partnership interest tax free by bartering services. For example, if George agrees to become a partner by working for it, and the partnership interest acquired would be worth $10,000, George would have to report the $10,000 as income on his tax return.

The tax consequence of acquiring a partnership interest for services may result in the business not becoming commercially viable. It simply may not be worthwhile to work for an interest. A complicating factor is that there is often an undercurrent of resentment from the partner who contributed services against the partner who just contributed money. In a successful partnership it is common for a partner who contributes most of the work to feel slighted when a partner who contributes the start-up capital receives a bigger share of the partnership.

TRANSFERABILITY OF THE PARTNERSHIP INTEREST

Generally, a partner may freely sell or convey his interest in the partnership unless the partnership agreement says otherwise. As a point of fact, however, if the other partners do not approve of the transfer, they can usually dissolve the partnership. On the other hand, the remaining partners do not have to dissolve the partnership if they object to the transfer. Instead, the remaining partners may continue partnership operations as before but not accord the new partner all of the rights of a full partner. The new partner, for example, might have the right to receive the selling partner's share of profits but be prohibited from an accounting or inspecting the partnership books.

EXPULSION OF A PARTNER

Partnerships which have a large number of partners sometimes have a provision in the partnership agreement which permits the expulsion of a partner without the dissolution of the partnership. Expulsion clauses in partnership agreements are usually valid. A valid expulsion clause exists to protect the partnership from harm that may be caused as a result of the expelled partner's breach of the partnership agreement or fiduciary duties owed under it.

The procedure for the expulsion must be detailed in the partnership agreement. An expulsion is obviously against the wishes of the expelled partner. Therefore, the courts will narrowly construe an expulsion clause to determine if it violates state law or is otherwise against public policy.

TERMINATION OF A PARTNERSHIP

Termination means that business is no longer being continued by the partnership except to the extent necessary to discharge its affairs. A partnership will one day end. It is not like a corporation that has perpetual existence. The partnership agreement usually lists the conditions under which a partnership will terminate. A partnership agreement may have a clause in it stating that the partnership will terminate:

a. When the partnership purpose is accomplished (in a joint venture).
b. On a certain date stated in the partnership agreement.
c. If a partner becomes insolvent or bankrupt.
d. If a partner dies or becomes disabled.
e. If a partner withdraws from the partnership or resigns.

Without a clause in the partnership agreement stating otherwise, the Uniform Partnership Act states that a partnership terminates automatically on the death of a partner or upon a partner's resignation. In addition the UPA requires the partnership to terminate automatically when a partner files for personal bankruptcy even if the business is solvent.

The reason for the dissolution: the relationship with the partnership and the other partners changes when a partner goes bankrupt. By filing for bankruptcy protection, the filing partner is no longer liable for partnership debts. The liability for payment of partnership debts remains with the partners who did not file bankruptcy. It is this general release of liability for the partner filing bankruptcy that gives rise to the termination of the partnership. The partners can agree not to have the partnership dissolved automatically upon the bankruptcy of a partner by a provision in the partnership agreement. Unless the partnership agreement states otherwise, the UPA will apply and the partnership will be terminated upon the bankruptcy of a partner.

Under the Uniform Partnership Act, a court may order dissolution of a partnership for the following reasons regardless of specific clauses in the partnership agreement stating otherwise.

a. A partner has been found insane by a court.
b. A partner is incapable of performing his duties under the partnership agreement.
c. A partner's conduct has prejudicially affected the ability of the partnership to carry on its business.
d. A partner has repeatedly breached the partnership agreement.
e. The partnership can only do business at a loss.
f. Equitable reasons support dissolution.

A lawsuit seeking termination on any of these grounds will be difficult and costly to prove. An alternative is for the partnership agreement to have an expulsion provision permitting expulsion of a partner for any of the above reasons.

Termination of a partnership is accomplished in three steps:

1. The decision to terminate is made either by the partners or by law through the application of the provisions of the Uniform Partnership Act.
2. The existing business of the partnership is discharged in an orderly manner. Under the Uniform Partnership Act each partner remains liable for the debts of the partnership incurred during discharge of partnership affairs.
3. The final cessation of business, the payment of creditors, taxes and final division and distribution of the remaining assets to the partners.

After a partnership has been dissolved and its assets liquidated, the distribution is made as follows to the extent of partnership assets:

1. All federal and state taxes are paid.
2. All employee wages and benefits are paid.
3. All secured liabilities are paid.
4. All unsecured liabilities are paid.
5. Any remaining funds are divided among the partners in accordance with their percentage of ownership interest in the partnership.

The proceeds received by a partner in the dissolution of a partnership are a return of the partner's investment. Any gain or loss in the dissolution is treated as a capital gain or loss. Example: If the partner had paid $4,000 for the stock and got back $3,000, the partner had a $1,000 capital loss. If the partner got back $6,000, he would have a $2,000 capital gain.

Depending on the complexity of the partnership business, termination may be quick, or it may be a long and involved process. Until the partnership is fully terminated, the individual liability of the partners continues. If the partnership does not have enough assets to pay all of its debts and liabilities, the partners must themselves pay the remaining balance at the time of termination. The Uniform Partnership Act requires the remaining solvent partners to pay all of the outstanding debts and liabilities if the partnership and some of the partners are insolvent. Example: If the partnership owes $2,000,000 with assets of only $1,000,000 and three of the four partners are insolvent, the remaining partner (who may only own ten percent of the partnership) must pay the entire $1,000,000 outstanding debt of the partnership. In an effort to sidetrack creation of such a disaster, the UPA requires a partnership to be dissolved when a partner files for bankruptcy protection.

Under the Uniform Partnership Act a partnership does not pay interest on a partner's share of proceeds under a dissolution except for time "after the date when repayment should have been made": the partnership must pay interest for the time of the delay if it is late in making a distribution after the dissolution. As with most provisions of the UPA, the partners can make an agreement not to have this provision apply. Likewise, the partners may agree in the partnership agreement to have the partnership pay interest on a partner's distributed share from the date the dissolution plan is adopted rather than the date the distribution could be made.

TAX TREATMENT OF CONTRIBUTING PARTY

A partner who contributes property to a partnership does not recognize gain or loss on the transfer to the partnership. For example assume that a partner contributes real estate to the partnership which has a basis (cost) of $200,000. The property has a fair market value of $1,000,000. If the partner had sold the property, he would have had to pay capital gain on the $800,000 profit. By contributing the property to the partnership, the partner does not realize any capital gain. The partnership will have the contributing partner's basis in any contributed property, not its fair market value at the time of transfer. Thus, when the partnership sells this property for $1,000,000, there will be a capital gain to the partnership of $800,000, which will be passed to the partners.

COMPARISON WITH A SUBCHAPTER S CORPORATION

A partnership is subject to its own peculiar tax treatment under federal tax law. Most unincorporated associations and trusts that conduct business are taxed as though they were corporations. However partnerships are treated differently. For partnerships, the income is attributed to the partners in accordance with their percentage of partnership interest. The partnership itself pays no income tax on the federal level. For example, if a partnership earns $1,000,000 it will pay no taxes. The partners will have to include the $1,000,000 on their tax returns. Assuming a 28% federal tax rate, the partners will pay $280,000, not the total $519,200 that a C corporation and its shareholders must pay.

An S corporation is a corporation, which like a partnership, permits the pass through of income to the shareholders. The major differences between a partnership and a S Corporation are as follows:

a. Partnerships may admit anyone as a partner and may have any number of partners whereas S corporations are limited to 75 members of special status.

b. Partnerships can divide profits and losses in a manner not related to partner ownership interest. By contrast S corporations must divide profits and losses among the shareholders in accordance with their percentage of stock ownership. In most cases these differences are not important because the S corporation usually does not want additional shareholders and does want profit and losses allocated according to shareholder investment.

c. The most important aspect of a S corporation is that there is no personal liability on the part of the shareholders for the corporation's debts. In comparison, general partners, but not limited partners, have such personal liability for the partnership debts.

Persons considering doing business as a partnership should weigh the relative merits of both a partnership and an S corporation before deciding which business entity to use.

FICTITIOUS NAME

Most states require a partnership to file a fictitious business name if they are doing business with the public. All states require a partnership doing business under a name other than that of all of its partners to file a fictitious business statement. The purpose of filing a fictitious name statement is to give notice of the true identity if the business owners to the world. Usually the filing is in the county clerk's office in the county where the business is conducted under the fictitious name. If the partnership does business under a fictitious name in several counties, the filing must be in every county in which it does business.

A FEDERAL IDENTIFICATION NUMBER

Any employer is familiar with the Federal Identification Number. All employers are required to have one. A sole proprietor, who has no employees, is not required to have an identification number because the owner's social security number is used instead. Once a partnership is formed, it needs an identification number because the partnership is now a separate legal entity. A Federal I.D. number is obtained by filing Form SS-4 with the IRS. It should be filed immediately after the partnership is formed. A sole proprietor who forms a new partnership with one or more new partners will need to get a new I.D. number for the new business. The old number used by the sole proprietor in the previous business will not transfer over to the new partnership.

TAX WITHHOLDING

When a new partnership is formed, all of the partnership employees are required to complete new W-4 forms (Employee's Withholding Exemption Certificates). Everyone (except the partners) who receives compensation for work is an employee and is required to complete the W-4 form. Since the partners are owners of the partnership and have to make estimated payments every quarter on their earnings, they are not required to complete W-4 forms.

As an employer, the partnership must withhold federal income tax and social security tax from the salaries of employees along with all mandated state tax withholdings. These taxes are withheld and reported on a calendar year basis regardless of the tax year of the partnership. The returns for the tax withholding and the deposits are submitted to the IRS on a quarterly or more frequent basis. The amount withheld from an employees paycheck by the partnership is based upon the employee's wage level, marital status and the number of allowances claimed on the W-4. The I.R.S. will provide the partnership with information and assistance in calculating the proper amounts to be withheld.

A partnership is required to file and pay its federal withholding return (Form 941) quarterly. The return is required to show the income and social security taxes withheld from the employee's wages as well as the matching social security contributions by the partnership. The partnership is required to deposit the federal income and social security taxes on a monthly basis in an approved commercial or federal reserve bank.

A partnership is required to furnish an annual Wage and Tax Statement (Form W-2) to every employee prior to January 31 of each year for the previous calendar year. The W-2 must show the total wages paid and the amounts deducted for income and social security taxes. The partnerships must submit the original of each employee's W-2 and the annual Transmittal of Income and Tax Statement (Form W-3) to the Social Security Administration no later than the last day of February for the previous calendar year. For example, for the tax year 1994, the forms must be provided by the end of February 1995.

Partners are not considered employees. For this reason partners are denied many of the tax advantages available to normal employees. The deductions for fringe benefits furnished employees are not available to the partners for fringe benefits. Since partners are not considered employees, there is no withholding from the partner's draws or salaries for payroll, social security and other taxes.

PARTNERSHIP TAX RETURNS

A partnership is treated differently than a regular C corporation. Profits and losses of a partnership are passed to the partners, and the partnership is not taxed by the federal government. Even though income from a partnership is not taxed at the federal level, an annual tax return (U.S. Partnership Tax Return Form 1165) must be filed. Form 1165 must be filed within 3 months and 15 days of the end of the partnership's tax year. Form 1165 is an information return which the IRS requires to be filed to assure that the partners are actually reporting their share of the partnership income. The IRS puts out a pamphlet (Publication 541, "Tax Information on Partnerships") to assist partnerships in their tax filing.

A tax year is the year period for which a partnership calculates its tax liability. The Internal Revenue Code requires the partnership to use as its tax year the tax year adopted by the principal partners. Principal partners are defined under the Internal Revenue Code as anyone owning over a five percent (5%) interest in the partnership.

A partnership is required to file and pay its federal withholding return (Form 941) quarterly. The return is required to show the income and social security taxes withheld from the employee's wages as well as the matching social security contributions by the partnership. The partnership is required to deposit the federal income and social security taxes on a monthly basis in an approved commercial or federal reserve bank.

A partnership is required to furnish an annual Wage and Tax Statement (Form W-2) for the previous calendar year. The W-2 must show the total wages paid and the amounts deducted for income and social security taxes. The partnership must submit the original for the previous year of each employee's W-2 and a Transmittal Income and Tax Statement (Form W-3) to the Social Security Administration no later than the last day of February. For example, for the tax year 1995, the W-3 must be filed by the end of February 1996.

WHAT IS FEDERAL UNEMPLOYMENT TAX

A partnership, as with any other business, may be required to pay another tax in the form of the Federal Unemployment Tax (FUTA) if the partnership:

a. Paid wages over $1,500 during any calendar quarter, or

b. Had one or more employees at least one day in each of 20 weeks. The weeks do not have to be consecutive.

FUTA taxes are paid entirely by the partnership. There is no withholding from the employee's wages. The partnership receives a credit (or is given favorable experience rating by the state) for any state employment taxes that it pays. Just as with withholding taxes, the partnership must deposit the tax with an authorized commercial or federal reserve bank within one month of the close of the quarter.

STATE TAXES

Unless a partnership does business in a state which has no income tax (of which there are very few and getting fewer), it will have state tax laws with which to comply. Partnerships are treated by the state tax codes in very nearly the same manner as they are viewed by the Internal revenue Code. Partnerships, under state tax laws, are viewed the same as under Federal law, i.e. as "pass through" vehicles for the partners. All profits and losses of the partnership "pass through" that means that they are attributed to the individual partners according to their ownership interests in the partnership.

The effect of the "pass through" of profits and losses is that the partnership is not taxed and there is no double taxation of the partnership income as there is with a regular corporation's income. Individual state laws vary from the federal tax law on specific items but generally they are quite similar in concept.

CHAPTER 3

GENERAL PARTNERSHIPS

NATURE

By simplest definition, a general partnership is two or more persons engaged in a common enterprise for profit. The test as to whether a partnership is created was stated concisely in the 1953 case Watson vs. Watson, 108 N.E. 2nd 893 which held:

> "In determining whether there is a partnership, it is the substance and not the name of the arrangement between the parties which determines their legal relation toward each other, and if from a consideration of all facts and circumstances it appears that parties intended between themselves that there should be a community of interest of both property and profits of a common business or venture, the law treats as their intention to become partners in absence of other controlling facts."

In the Watson case, the court merely restated the enduring rule followed by all states that a partnership is created both by intent and common enterprise. The mere fact that persons may own property together does not create a partnership or common intent to engage in an enterprise to operate the property together. This position has been stated repeatedly throughout the United States. For instance, in Mullins vs. Evans, 308 S.W. 2d 494, the Tennessee Court of Appeals held that:

> "Joint ownership of property or the sharing of gross returns, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived, does not of itself establish a partnership."

The significance of the intent of the parties to form a partnership is critical. Without the intent, a partnership is not formed. Whether or not a partnership exists is important because it determines whether, as Illinois law states, a mutual agency between the parties exists. Since every partner is held to be the agent of every other partner, then the acts of one partner bind all of the other partners if a partnership exists.

In a general partnership all of the partners are individually liable for the debts of the partnership. Therefore, any contract validly executed or debt properly incurred by any partner immediately becomes an obligation to be fulfilled or paid by all of the partners.

FORMATION

A partnership need not be in writing to be effective. The only requirement is that there be facts evidencing an intent to engage in a common enterprise for profit. Nebraska confirmed this principle in Lewis vs. Gallemore, 113 N.W.2d 54, wherein the court held:

> "Existence and scope of a partnership may be evidenced by written or oral agreement or implied by conduct of parties and what was done by them."

Even though a partnership can be created orally, its terms and conditions should be reflected in a written agreement. It is clearly prudent to have a partnership reduced to writing. A written agreement avoids many problems and misconceptions by having the rights and responsibilities of all of the partners clearly delineated. A partnership agreement should be drafted to be as complete as possible. Any detail not covered in a partnership agreement would be supplied by the law of the state in which the partnership was formed. Thus, before forming a partnership all of the potential partners should consider what major terms and conditions should be contained in the agreement. Among the most important considerations which should be discussed are:

1. The name of the partnership.
2. The term of the partnership.
3. The purpose of the partnership.
4. How the partnership will be funded.
5. How profits and losses will be allowed and distributed.
6. Admission of new partners.
7. Expulsion of old partners.
8. Withdrawals of contributed assets.
9. Expense accounts.
10. Salaries and draws of income by partners.
11. Responsibilities of partners.
12. Dissolution of the partnership.
13. Staffing and management.

Many of these considerations are reflected in optional provisions in the uniform general partnership agreement at the end of this chapter. Since it is impossible to foresee every clause or provision that the parties might wish to include in their partnership agreement, space is left at the end to add additional clauses. If the space provided is not large enough, additional pages can be attached to the agreement. The additional pages should have the heading "Additional Clauses to the Partnership Agreement Dated _______________." The clauses should be individually numbered, and all of the partners should sign each page to signify the approval of the additional clauses. Any matter not covered in the partnership agreement will be determined in accordance with state law or established judicial precedent in the event of a major dispute.

PARTNERSHIP DEBTS

The Uniform Partnership Act makes the individual partners jointly and severally liable for all of the debts of the partnership. This is the major concern of anyone considering forming or joining a partnership. For this reason anyone considering joining or forming a partnership must choose his partners and employees very well. No one wants to be responsible for acts committed by other persons. That, however, is the very nature of a partnership.

This unlimited partner liability for partnership debts is the main drawback of any partnership. The general rule of thumb is that if a partnership is formed and it has employees, the partners should either carry a great deal of insurance or consider incorporation to limit their individual personal liability for the partnership's debts.

CAPITAL CONTRIBUTIONS

A person acquires an interest in a partnership through a capital contribution. Capital is defined for partnership purposes as "a property or services of value." Usually a person contributes only money to the partnership to acquire his partnership interest. Occasionally property instead of money is contributed. In some cases a partnership interest is acquired by providing services in place of cash or property. The value of all capital contributions is that partner's capital account.

In some partnerships a partner's vote is based upon the proportionate share of that partner's capital account to that of the other partners. Example: George has a capital account of $43,000, Abner's capital account is $27,000 and Bill's capital account is $30,000. Their respective voting interests are George 43%, Abner 27% and Bill 30%.

Capital accounts are adjusted upward by a partner's share in the partnership's profits and reduced by any draws or distributions paid to the partner.

OWNERSHIP OF PARTNERSHIP PROPERTY

The Uniform Partnership Act requires that all property in which a partnership has an interest is owned by the partnership. This is an important concept. It means that once property is contributed to a partnership, the contributing partner no longer owns the property. In such an instance, the partner will not have the right of return of the same property upon the termination of the partnership. In addition, once property is contributed to a partnership, the partner who contributed it cannot demand that it be returned to him. Only if no other partner objects can contributed property be returned to the partner who contributed it.

Partnership property comprises not only property contributed by the partner but also property purchased or otherwise acquired by the partnership: if partnership funds purchase the property, the partnership owns it, not the individual partners. Partnership property cannot be attached by creditors of a partner who contributed (if done prior to the creditor obtaining a judgment against the partner).

PROFESSIONAL PARTNERSHIPS

Professional persons (people who must be licensed to engage in a profession) can join together to form a partnership. Professional partnerships are usually limited by law to those persons licensed in that profession: the state does not want fees for professional services paid to non-professionals. The belief is that non-professionals would exert undue influence on the professionals in a mixed partnership. States are concerned that non-professional partners would confuse the confidential relationship arrangements that exist between client and professional.

FAMILY PARTNERSHIPS

In the past few years, a tax avoidance scheme has developed through the use of family partnerships. Anyone wishing to create a partnership among family members should discuss it with a tax professional if the purpose for forming the partnership is solely for any alleged tax advantage and not actually to run a business. Special tax laws have been implemented to prevent income splitting among family members. There are many disreputable tax scams. These schemes center around con artists who claim that they can form a family partnership for their clients, place all their assets in the partnership, draw a salary from the partnership and through innovative practices avoid taxes. That simply is not true.

Another instance of misuse of family partnership exists in an attempt to freeze the value of an estate. Children form a partnership which purchases the parent's estate for a note. Often the parent is also a partner whose interest is reduced by the payments. Under federal tax law the entire value of the parent's property at the date of death (not the date of the alleged sale) is nonetheless placed in the parent's estate upon death.

Under the tax law on family partnerships a family member is treated as a partner if he owns a capital interest in the partnership and his capital contribution is the material income-producing asset. This is true whether he is listed in the partnership agreement or not. The family member is a partner regardless of whether or not he purchased the interest. When a family partnership is formed as a result of contributed capital which is not a material income-producing asset, the partnership may be invalidated as an improper attempt to assign income. Moreover, if all the partnership income is derived from the personal efforts of a family member (as his contribution to the partnership) , all of the income will be taxed to that family member. In a family partnership the distributions to the partners must be in proportion to their capital accounts. Unlike ordinary partnerships, a family partnership cannot have disproportionate distributions.

A family limited partnership can be created for estate planning purposes. In that instance, a parent creates the limited partnership with the children. The parent contributes most, if not all of the property. The children generally serve as general partners with the parent. The parent also has the limited partnership interest which is most of the value of the limited partnership. The success of a limited partnership depends on placing significant restrictions on the sale of the limited partnership interests which reduce the value of the limited partnership interest. Upon the death of the parent, the parent's limited partnership is valued at less than the value of the property which was originally contributed to the partnership. As a result, the children receive the parent's partnership interest at significantly below cost. As a result, the estate taxes to be paid as a result of the parent's death are calculated on the fair market value of the partnership interest with all of its restrictions and not on the value of the contributed property. The tax savings can be immense. Use of a family limited partnership for estate planning purposes should only be done through the use of a tax professional to assure receiving the desired tax benefits.

TERMINATIONS

A partnership does not last forever and lacks the perpetual existence of a corporation. The Uniform Partnership Act (UPA) states that unless the partnership agreement states otherwise a partnership terminates upon the death, resignation or bankruptcy of any partner. This termination is founded in the exposure to unlimited liability of the partners for the partnership debts. The UPA recognizes that the partnership relationship imposes basic fiduciary duties on all of the partners in addition to the obligation to pay all of the partnership debts. When a partner becomes unable to fulfill those obligations, it becomes unfair and inequitable to force the remaining partners to continue in a partnership with him unless the partnership agreement states otherwise.

Another reason for the automatic termination is that creditors of the partnership do business with it because they expect all of the partners to guarantee the partnership debts. Fraud may occur when the partnership obtains credit or incurs liability without disclosing the fact that some of the partners are dead, in bankruptcy or insolvent. The creditors are not in possession of the full set of facts needed to make informed decisions as to whether to deal with the partnership. To avoid this scenario the UPA requires automatic termination upon the foregoing occurrences unless the partnership agreement states otherwise.

Termination is discussed in full detail in this book and a termination agreement is included and appropriate tax consequences are also discussed.

SALARIES TO PARTNERS

A partnership may pay a salary to a partner for services rendered. Under the tax law, salaries to partners are called guaranteed payments. Salaries are different from draws which are advances against a partner's anticipated share of the partnership's profits. Guaranteed payments are considered by the tax law as part of the partner's distributive share of the partnership's ordinary income. Guaranteed payments are deductible by the partnership to the extent that they are ordinary and necessary business expenses and are not capital expenditures.

A partner who receives a salary is not considered an employee of the partnership: he is not subject to withholding for income or social security even though it appears a salary is paid the same as to a non-partner employee. The guaranteed payment (salary) is included in the partner's self-employment income along with the partner's ordinary share of partnership income or loss which are used to determine the partner's self-employment tax.

A PARTNERSHIP INTEREST AS A SECURITY

The general rule is that the formation of a general partnership does not involve the sale or transfer of a security. As such, at this time, there usually is no requirement to register a partnership with the Securities and Exchange Commission (SEC) or with a state in order to sell the partnership interests. General partnerships are not considered securities because by their very nature all of the partners are considered responsible for the management and control of the partnership. One of the definitions of a security is that it is an investment contract. An investment contract is an interest in a business enterprise where the profit is derived solely through the efforts of others. Since partners are considered as participating in the derivation of partnership profits, a partnership interest does not constitute an investment contract or a security.

The above view may be changing or at least be limited. The North American Securities Administrators Association (NASAA), which is composed of the state commissioners of all of the states, have filed amicus briefs in several cases pending before the United States Supreme Court on the issues of general partnership interests as securities. The NASAA has urged the Supreme Court to adopt a rule that the partnership must register with the SEC before it can sell any interests when there are large numbers of general partners. Regardless, there is no federal problem if the partnership does not sell its interest by public advertising and does not sell it out-of-state. Moreover, since nearly all states follow the federal law, if there is no federal requirement to register, there is no state registration requirement. The security issue is discussed in full in this book.

(SAMPLE GENERAL PARTNERSHIP)

AGREEMENT OF GENERAL PARTNERSHIP

OF

YOUNGSTOWN MOTEL PARTNERSHIP

THIS AGREEMENT is made by and between RICHARD MULLIGAN, HORACE TAYLOR and HENRY SALLITOR, all of whom are collectively hereinafter called "Partners."

The parties having herein joined together for the specific purpose of forming and creating a GENERAL PARTNERSHIP (the "Partnership") pursuant to the laws of the State of OHIO, hereby form a partnership and agree as follows:

1. NAME OF THE PARTNERSHIP. The name of the partnership is YOUNGSTOWN MOTEL PARTNERSHIP.

2. PRINCIPAL OFFICE. The principal office of the Partnership shall be located at 3336 LOVELAND ROAD, YOUNGSTOWN, OHIO. The Partners may change their designation of the site of the Partnership's principal office.

3. TERM OF THE PARTNERSHIP. The partnership shall terminate on AUGUST 15, 2015. The Partnership may terminate or be dissolved earlier in accordance with the terms of this Partnership Agreement.

4. PARTNERSHIP PURPOSE AND BUSINESS. The purpose and business of the Partnership shall be to purchase and operate a motel in Youngstown, Ohio and to engage in any other profit-making activity that the partners may agree upon.

No Partner shall have the authority, either express or implied, to engage in any business, execute any contracts or commit the partnership in any fashion or in any way that exceeds the scope and purpose of the partnership as stated herein.

5. OPERATION OF THE PARTNERSHIP.

5.01 (OPTIONAL) UNANIMOUS VOTE. Any major act or decision of the Partnership can only be undertaken or implemented with the unanimous decision of all of the Partners. Minor business decisions or actions for the Partnership may be undertaken by any Partner.

This provision is REJECTED _______________.

This provision is ADOPTED X.

5.02 (OPTIONAL) MAJORITY VOTE. Any major act or decision of the Partnership can only be undertaken after an affirmative majority vote of the Partners. Each Partner's vote shall be proportionate to that Partner's percentage interest in the Partnership capital as determined by the Partner's capital account.

This provision is REJECTED _______________ .

This provision is ADOPTED X .

6. CAPITAL CONTRIBUTION AND PARTNERSHIP INTERESTS.

6.01. HORACE TAYLOR shall contribute no cash but will contribute management expertise and services equal to FIFTY THOUSAND ($50,000) dollars. If such expertise and services are not fully granted the acquired interest in the Partnership shall be reduced to reflect the true value of such management expertise and services actually provided.

6.02. ____

________________________________ shall contribute no cash but will contribute management expertise and services equal to ___________ ________________________ dollars. If such expertise and services are not fully granted then the acquired interest in the Partnership shall be reduced to reflect the true value of such management expertise and services actually provided.

6.03. RICHARD MULLIGAN shall contribute __________$50,000__ in cash or the following property none ________________________________

____

____ to the Partnership.

6.04. ___HENRY SALLITOR___ shall contribute _______$50,000__ in cash or the following property: a one hundred percent (100%) interest in the motel located at 430 Lockwood, Youngstown, Ohio to the Partnership.

6.05. ____

____

shall contribute ______________________________________ in cash or the following property____

____

____

_____________to the Partnership.

6.06. ____

__________________________shall contribute _______________________ ______________ in cash or the following property __________________

____

____

____________________________________to the Partnership.

6.07. ____

______________________ shall contribute ____________________

______________ in cash or the following property ______________

____

____

______________________________________to the Partnership.

6.08. ____

__________________________ shall contribute ___________________

_________________ in cash or the following property ____________

____

____

____to the Partnership.

7. ACCOUNTING, ALLOCATIONS AND DISTRIBUTIONS

7.01 ACCOUNTING YEAR AND METHOD. The Partnership hereby adopts the calendar year ending December 31 as both its accounting and tax year. The books of the Partnership shall be kept using standard accounting practices and shall employ the cash basis method of accounting unless changed by the Partners.

7.02 CAPITAL ACCOUNT. The Partnership shall maintain a capital account for each Partner. Upon becoming a Partner, the capital account of that Partner shall be that Partner's proportionate share of the total capital contributions. Afterwards, the capital account of each Partner:

(a) Shall be increased at the end of each taxable year in the amount of the Partnership's income and gain allocated to the Partner for the taxable year;

(b) Shall be decreased at the end of each taxable year in the amount of the Partnership's deductions and losses allocated to the Partner for that taxable year; and

(c) Shall be decreased at the time of any distributions in the amount of that distribution.

7.03 DETERMINATION OF PROFITS AND LOSSES. The Partnership shall employ standard accounting practices and principles in determining the profits and losses of the Partnership.

7.04 ALLOCATION OF PROFITS AND LOSSES. The Partnership shall employ and use standard accounting practices and principles in accordance with federal tax law to allocate its profits and losses among the Partners. All of the profits and losses of the Partnership and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated each taxable year among and be borne by the Partners as follows:

(a) HORACE TAYLOR shall be allocated THIRTY-THREE AND ONE-THIRD percent (33-1/3%) of the Partnership's profits and losses for each taxable year.

(b) HENRY SALLITOR shall be allocated THIRTY-THREE AND ONE-THIRD percent (33-1/3%) of the Partnership's profits and losses for each taxable year.

(c) RICHARD MULLIGAN shall

be allocated THIRTY-THREE AND ONE-THIRD percent (33-1/3%) of the Partnership's profits and losses for each taxable year.

(d) ____

________ shall be allocated ______________________________

percent (   ) of the Partnership's profits and losses for each taxable year.

(e) ____

_________ shall be allocated _____________________________

percent (   ) of the Partnership's profits and losses for each taxable year.

(f) ____

________ shall be allocated ______________________________

percent (   ) of the Partnership's profits and losses for each taxable year.

(g) ____

________ shall be allocated ______________________________

percent (   ) of the Partnership's profits and losses for each taxable year.

(h) ____

_________ shall be allocated _____________________________

percent (   ) of the Partnership's profits and losses for each taxable year.

Profits and losses and each item of income, gain, loss and deduction or credit entering into the computation thereof shall be allocated among the Partners on the last day of each accounting year of the Partnership.

7.05 FEDERAL INCOME TAX TREATMENT. The items of income, gain, loss, deduction or credit hereinabove allocated among the Partners shall, for federal income tax purposes, be deemed to retain their character as ordinary income, short-term or long-term capital gain or loss, depreciation or otherwise and shall be entitled to tax-free treatment in the same proportion as each Partner's proportionate share.

7.06 FEDERAL INCOME TAX ELECTIONS. It is the agreement of the Partners that a federal tax election is hereby made to treat as an expense all amounts incurred for taxes, interest and expenses. Included as expenses are all other fees, charges and expenses to the extent that such expenditures qualify as deductible expenses in accordance with applicable laws and regulations. The Partners intend for the Partnership to be covered under the provisions of Subchapter K, Chapter 1 of the Internal Revenue Code. Therefore, the Partners agree no election will be made by any Partner under Section 761 of the Internal Revenue Code of 1954, as amended, to exclude the Partnership from coverage under Subchapter K.

7.07 BOOKS AND RECORDS. The Partnership shall keep complete and accurate books and records in accordance with good business practices of the Partnership's operations and financial condition. The Partnership shall provide annual financial statements to all of the Partners within sixty (60) days following the close of the Partnership's taxable year. The annual financial statement may consist of a copy of the Partnership's federal income tax return for that year and schedule K-1 setting forth such Partner's distributions and allocations.

7.08 MEETINGS. The partnership shall hold an annual meeting of the partners within 60 days of the close of the fiscal year at an address set by the partners.

8. DISTRIBUTIONS. The Partnership shall distribute to each Partner, at least annually, enough of the net profits from that Partner's account to cover the Partner's tax liabilities from his participation in the Partnership.

8.01(a) (OPTIONAL) SALARIES. No salary will be paid to any partner. Salaries may be paid in the future only on the unanimous consent of all partners.

This provision is ADOPTED ____X____.

This provision is REJECTED __________.

8.01(a) (OPTIONAL) SALARIES. Only reasonable salaries shall be paid to the Partners as set by unanimous vote of the Partners. The initial salaries of the Partners shall be:

____

____

____

____

____

This provision is ADOPTED __________.

This provision is REJECTED ____X_____.

8.02(a) (OPTIONAL) DRAWS. No Partner shall be permitted to take any draw against the profits of the Partnership prior to distribution to all of the Partners.

This provision is ADOPTED __________.

This provision is REJECTED ____X_____.

8.02(b) (OPTIONAL) DRAWS. Partners are entitled to draws against Partnership profits. The amount of the draws will be determined by unanimous vote of the Partners. To the extent that any draw exceeds a Partner's actual share of profits, it will be treated as a loan payable ___30____ days after the close of the Partnership's fiscal year.

This provision is ADOPTED ____X_____ .

This provision is REJECTED __________ .

9. DUTIES AND POWERS OF PARTNERS.

(CHOOSE ONE OF THE OPTIONS)

9.01 (OPTIONAL) INDEPENDENT ACTIVITIES. All Partners may, notwithstanding the existence of this Agreement, engage in whatever activities they choose, whether the same be competitive with the Partnership or otherwise, without having or incurring any obligation to offer any interest in such activities to any party hereto. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Partner from so doing or from engaging in other activities of any nature by itself or jointly with others, or as any part of any other association to which a Partner is or may be a party in any locale or in fields or areas of operation which the Partnership may likewise be active. No Partner is required to permit the Partnership or any other Partner to participate in any of the foregoing. Each Partner hereby waives, relinquishes and renounces any such right or claim of participation.

This provision is ADOPTED and made a part of this Partnership Agreement _____X______.

This provision is REJECTED and not made a part of this Partnership Agreement ____________.

(OPTIONAL) No Partner shall engage in activities that directly compete with the activities in which the Partnership engages. Any Partner who engages in such competing activities shall be liable to the Partnership for all profits derived therefrom.

This provision is ADOPTED and made a part of this Partnership Agreement ____________.

This provision is REJECTED and not made a part of this Partnership Agreement _____X______.

9.02 PRESERVATION OF TAX STATUS. It is the agreement of the Partners that the Partnership shall be classified for federal income tax purposes at all times as a Partnership and not as an association taxable as a corporation. The Partners agree that they will not do any act to jeopardize that classification and will act as necessary to preserve that classification.

9.03 INDEMNIFICATION OF PARTNERS. The Partnership shall indemnify and hold harmless any Partner for an act performed by the Partner within the scope of authority under this Agreement or the laws of the State of ____OHIO____, except for acts of fraud, bad faith or gross negligence.

10. TERMINATION AND DISSOLUTION.

10.01 DISSOLUTION OF THE PARTNERSHIP. a. (OPTIONAL) The Partnership shall not be dissolved by reason of death, dissolution, withdrawal or expulsion of a Partner or by the admission of a new Partner.

This provision is ADOPTED and made a part of this Partnership Agreement _____X______ .

This provision is REJECTED and not made a part of this Partnership Agreement ____________.

(b) The Partnership shall immediately be dissolved, and thereafter the Partnership business shall be closed in an orderly manner and the Partnership terminated upon the occurrence of any of the following events:

(i) Expiration of the term of the Partnership in paragraph 3, above,

(ii) Affirmative vote to terminate by Partners possessing majority interest (over fifty percent, 50%) in the Partnership,

(iii) Occurrence of any event which makes it unlawful for Partnership business to be continued,

(iv) Sale or disposition of all or substantially all of Partnership assets, or

(v) Partnership is no longer able to or fails to engage in the purpose for which the Partnership was created.

(vi) (OPTIONAL) The partnership shall dissolve upon the bankruptcy or insolvency of any Partner.

This provision is ADOPTED _____X______.

This provision is REJECTED ____________.

10.02 LIMITATION OF VOLUNTARY DISSOLUTION. It is specifically agreed among the Partners that there will be no voluntary dissolution of the Partnership without the written approval of the mortgagee, lien holder or secured party if any Partnership property is encumbered by a mortgage, lien or security interest.

10.03 EFFECT OF DISSOLUTION ON PARTNERSHIP CONTRACTS. Dissolution of the Partnership shall not affect the validity of contracts entered in good faith prior to the dissolution. Included is any deed of trust, mortgage, security agreement or other obligation entered by or on behalf of the Partnership.

10.04 DISTRIBUTION UPON TERMINATION. The proceeds resulting from the liquidation of all Partnership assets shall be applied under appropriate state law in the following order of priority:

(a) To payment of debts and liabilities of the Partnership except for loans or debts owed to the Partners;

(b) To a reserve account established by the Partnership for the payment of future anticipated claims against the Partnership. Included in such anticipated claims are contingent, unmatured or unforeseen liabilities. When such claims have been paid the account will be distributed as described in (c) and (d) of this clause.

(c) To the loans and debts owed the Partners. If the Partnership lacks sufficient funds to pay all such liabilities, funds available shall be paid pro rata among the Partners.

(d) To each Partner pro rata in proportion to that Partner's respective capital account.

10.05 RETURN OF CONTRIBUTION. Partners shall look solely to the assets of the Partnership for the return of their capital contribution and not to the return of any specific contributed property.

11. (OPTIONAL) EXPULSION OF A PARTNER. A Partner may be expelled from the Partnership upon a vote of the other Partners holding at least 66% of the capital of the Partnership. Upon expulsion the expelled Partner shall be entitled to receive the fair market value of his interest in the Partnership. The fair market value of the Partnership shall be set by an appraisal of two independent accountants: one chosen by the expelled Partner and one by the remaining Partners. If the accountants cannot reach an agreement, the court of the Partnership's domicile shall appoint an accountant to make the valuation and that accountant's valuation shall be final.

This provision is ADOPTED _____X______ .

This provision is REJECTED ____________.

12. (OPTIONAL) ARBITRATION. It is agreed by the Partners that in the event of a dispute over the terms and conditions of this Partnership Agreement, the Partners will have the matter decided in arbitration by the American Arbitration Association or an arbitrator appointed by the court where the Partnership is located.

This provision is ADOPTED _____X______.

This provision is REJECTED ____________.

13. (OPTIONAL) LIABILITY OF NEW PARTNERS. A new Partner who becomes a Partner by contributing capital shall not be responsible for nor assume personal liability for any Partnership debt incurred prior to becoming a Partner. The Partners agree to indemnify such new Partner for any such liability that might be incurred under state law.

This provision is ADOPTED _____X______.

This provision is REJECTED ____________.

A new Partner who becomes a Partner by purchasing the interest of another Partner assumes the full personal liability of the Partner from whom the interest was purchased.

This provision is ADOPTED _____X______.

This provision is REJECTED ____________.

14. MISCELLANEOUS.

14.01 SURVIVAL OF REPRESENTATIONS. All of the terms and conditions, including covenants and representations, as set forth in this Agreement shall survive the execution of this Agreement. Such representations shall continue in effect following the formation of the Partnership and bind the Partners and their heirs and assigns.

14.02 COMPLIANCE WITH THE LAW. The partnership shall conduct all operations on the property in compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations.

14.03 ATTORNEY FEES. If legal action is commenced over the terms of this Partnership Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

14.04 GOVERNING LAW. It is agreed among the parties that the Partnership Agreement shall be governed and interpreted in accordance with the laws of the State of _______________________.

14.05 SUCCESSOR IN INTEREST. The provisions of this Partnership Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective heirs, executors, administrators, personal representatives, assigns and successors in interest of the Partners.

14.06 CONSTRUCTION. None of the provisions of this Partnership Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

14.07 FURTHER ASSURANCES. The Partners hereby agree they will execute and deliver any and all instruments and do such further acts and things as may be required or useful to complete the intents and purposes of this Agreement that are not inconsistent with the terms hereof.

14.08 NO GUARANTY OF SUCCESS. No Partner hereto has relied upon any warranty or guarantee of success and no such warranties or guarantees have been made. The Parties acknowledge that the obtaining of profit through the pursuit of the Partnership's stated purpose is speculative in nature and not always successful.

14.09 ENTIRE AGREEMENT AND AMENDMENT. This Agreement incorporates the entire agreement and understanding among the Partners with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Partners.

14.10 ADDITIONAL CLAUSES. ________________________________
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IN WITNESS WHEREOF, this Partnership Agreement has been duly executed this ____________ day of _________________, ________.

____
HENRY SALLITOR

____
RICHARD MULLIGAN

____
HORACE TAYLOR

AGREEMENT OF GENERAL PARTNERSHIP

OF

____

THIS AGREEMENT is made by and between ______________________ ____, all of whom are collectively hereinafter called "Partners."

The parties having herein joined together for the specific purpose of forming and creating a GENERAL PARTNERSHIP (the "Partnership") pursuant to the laws of the State of __________ , hereby form a partnership and agree as follows:

1. NAME OF THE PARTNERSHIP. The name of the partnership is ____ .

2. PRINCIPAL OFFICE. The principal office of the Partnership shall be located at _________________________________ ____. The Partners may change their designation of the site of the Partnership's principal office.

3. TERM OF THE PARTNERSHIP. The partnership shall terminate on ________________________. The Partnership may terminate or be dissolved earlier in accordance with the terms of this Partnership Agreement.

4. PARTNERSHIP PURPOSE AND BUSINESS. The purpose and business of the Partnership shall be to _________________________

____

____

No Partner shall have the authority, either express or implied, to engage in any business, execute any contracts or commit the partnership in any fashion or in any way that exceeds the scope and purpose of the partnership as stated herein.

5. OPERATION OF THE PARTNERSHIP.

5.01 (OPTIONAL) UNANIMOUS VOTE. Any major act or decision of the Partnership can only be undertaken or implemented with the unanimous decision of all of the Partners. Minor business decisions or actions for the Partnership may be undertaken by any Partner.

This provision is REJECTED _______________.

This provision is ADOPTED _______________.

5.02 (OPTIONAL) MAJORITY VOTE. Any major act or decision of the Partnership can only be undertaken after an affirmative majority vote of the Partners. Each Partner's vote shall be proportionate to that Partner's percentage interest in the Partnership capital as determined by the Partner's capital account.

This provision is REJECTED _______________ .

This provision is ADOPTED _______________ .

6. CAPITAL CONTRIBUTION AND PARTNERSHIP INTERESTS.

6.01. _______________________ shall contribute no cash but will contribute management expertise and services equal to ______ _________________________________ dollars. If such expertise and services are not fully granted the acquired interest in the

Partnership shall be reduced to reflect the true value of such management expertise and services actually provided.

6.02. ____ ______________________________ shall contribute no cash but will contribute management expertise and services equal to __________ ______________________ dollars. If such expertise and services are not fully granted then the acquired interest in the Partnership shall be reduced to reflect the true value of such management expertise and services actually provided.

6.03. ___________________________ shall contribute ________ ______________________________ in cash or the following property ____ ____ ____ to the Partnership.

6.04. ___________________________ shall contribute ________ ______________________________ in cash or the following property ____ ____ ____ to the Partnership.

6.05. ____ ____ ____ shall contribute _____________________________________ in cash or the following property____ ____ ____

____to the Partnership.

6.06. ____

____________________________shall contribute __________________

_________________ in cash or the following property _____________

____

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____to the Partnership.

6.07. ____

___________________________ shall contribute __________________

___________________ in cash or the following property ___________

____

____

____to the Partnership.

6.08. ____

___________________________ shall contribute ____________________

__________________ in cash or the following property ____________

____

____

____to the Partnership.

7. ACCOUNTING, ALLOCATIONS AND DISTRIBUTIONS

7.01 ACCOUNTING YEAR AND METHOD. The Partnership hereby adopts the calendar year ending December 31 as both its accounting and tax year. The books of the Partnership shall be kept using standard accounting practices and shall employ the cash basis method of accounting unless changed by the Partners.

7.02 CAPITAL ACCOUNT. The Partnership shall maintain a capital account for each Partner. Upon becoming a Partner, the capital account of that Partner shall be that Partner's proportionate share of the total capital contributions. Afterwards, the capital account of each Partner:

(a) Shall be increased at the end of each taxable year in the amount of the Partnership's income and gain allocated to the Partner for the taxable year;

(b) Shall be decreased at the end of each taxable year in the amount of the Partnership's deductions and losses allocated to the Partner for that taxable year; and

(c) Shall be decreased at the time of any distributions in the amount of that distribution.

7.03 DETERMINATION OF PROFITS AND LOSSES. The Partnership shall employ standard accounting practices and principles in determining the profits and losses of the Partnership.

7.04 ALLOCATION OF PROFITS AND LOSSES. The Partnership shall employ and use standard accounting practices and principles in accordance with federal tax law to allocate its profits and losses among the Partners. All of the profits and losses of the Partnership and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated each taxable year among and be borne by the Partners as follows:

(a) ____

shall be allocated _________________________ percent (   ) of the Partnership's profits and losses for each taxable year.

(b) ____ shall be allocated __________________________ percent (   ) of the Partnership's profits and losses for each taxable year.

(c) ____

shall be allocated __________________________ percent (   ) of the Partnership's profits and losses for each taxable year.

(d) ____

shall be allocated ___________________________percent (   ) of the Partnership's profits and losses for each taxable year.

(e) ____

shall be allocated ___________________________ percent (   ) of the Partnership's profits and losses for each taxable year.

(f) ____

shall be allocated ___________________________ percent (   ) of the Partnership's profits and losses for each taxable year.

(g) ____

shall be allocated _______________________________ percent (   ) of the Partnership's profits and losses for each taxable year.

(h) ____

shall be allocated _______________________________ percent (   ) of the Partnership's profits and losses for each taxable year.

Profits and losses and each item of income, gain, loss and deduction or credit entering into the computation thereof shall be allocated among the Partners on the last day of each accounting year of the Partnership.

7.05 FEDERAL INCOME TAX TREATMENT. The items of income, gain, loss, deduction or credit hereinabove allocated among the

Partners shall, for federal income tax purposes, be deemed to retain their character as ordinary income, short-term or long-term capital gain or loss, depreciation or otherwise and shall be entitled to tax-free treatment in the same proportion as each Partner's proportionate share.

7.06 FEDERAL INCOME TAX ELECTIONS. It is the agreement of the Partners that a federal tax election is hereby made to treat as an expense all amounts incurred for taxes, interest and expenses. Included as expenses are all other fees, charges and expenses to the extent that such expenditures qualify as deductible expenses in accordance with applicable laws and regulations. The Partners intend for the Partnership to be covered under the provisions of Subchapter K, Chapter 1 of the Internal Revenue Code. Therefore, the Partners agree no election will be made by any Partner under Section 761 of the Internal Revenue Code of 1954, as amended, to exclude the Partnership from coverage under Subchapter K.

7.07 BOOKS AND RECORDS. The Partnership shall keep complete and accurate books and records in accordance with good business practices of the Partnership's operations and financial condition. The Partnership shall provide annual financial statements to all of the Partners within sixty (60) days following the close of the Partnership's taxable year. The annual financial statement may consist of a copy of the Partnership's federal income tax return for that year and schedule K-1 setting forth such Partner's distributions and allocations.

7.08 MEETINGS. The partnership shall hold an annual meeting of the partners within 60 days of the close of the fiscal year at an address set by the partners.

8. DISTRIBUTIONS. The Partnership shall distribute to each Partner, at least annually, enough of the net profits from that Partner's account to cover the Partner's tax liabilities from his participation in the Partnership.

8.01(a) (OPTIONAL) SALARIES. No salary will be paid to any partner. Salaries may be paid in the future only on the unanimous consent of all partners.

This provision is ADOPTED __________.

This provision is REJECTED __________.

8.01(a) (OPTIONAL) SALARIES. Only reasonable salaries shall be paid to the Partners as set by unanimous vote of the Partners. The initial salaries of the Partners shall be:

____

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This provision is ADOPTED __________.

This provision is REJECTED __________.

8.02(a) (OPTIONAL) DRAWS. No Partner shall be permitted to take any draw against the profits of the Partnership prior to distribution to all of the Partners.

This provision is ADOPTED __________.

This provision is REJECTED __________.

8.02(b) (OPTIONAL) DRAWS. Partners are entitled to draws against Partnership profits. The amount of the draws will be determined by unanimous vote of the Partners. To the extent that any draw exceeds a Partner's actual share of profits, it will be treated as a loan payable _________ days after the close of the Partnership's fiscal year.

This provision is ADOPTED __________ .

This provision is REJECTED __________ .

9. DUTIES AND POWERS OF PARTNERS.

(CHOOSE ONE OF THE OPTIONS)

9.01 (OPTIONAL) INDEPENDENT ACTIVITIES. All Partners may, notwithstanding the existence of this Agreement, engage in whatever activities they choose, whether the same be competitive with the Partnership or otherwise, without having or incurring any obligation to offer any interest in such activities to any party hereto. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Partner from so doing or from engaging in other activities of any nature by itself or jointly with others, or as any part of any other association to which a Partner is or may be a party in any locale or in fields or areas of operation which the Partnership may likewise be active. No Partner is required to permit the Partnership or any other Partner to participate in any of the foregoing. Each Partner hereby waives, relinquishes and renounces any such right or claim of participation.

This provision is ADOPTED and made a part of this Partnership

Agreement ____________.

This provision is REJECTED and not made a part of this Partnership Agreement ____________.

(OPTIONAL) No Partner shall engage in activities that directly compete with the activities in which the Partnership engages. Any Partner who engages in such competing activities shall be liable to the Partnership for all profits derived therefrom.

This provision is ADOPTED and made a part of this Partnership Agreement ____________.

This provision is REJECTED and not made a part of this Partnership Agreement ___________.

9.02 PRESERVATION OF TAX STATUS. It is the agreement of the Partners that the Partnership shall be classified for federal income tax purposes at all times as a Partnership and not as an association taxable as a corporation. The Partners agree that they will not do any act to jeopardize that classification and will act as necessary to preserve that classification.

9.03 INDEMNIFICATION OF PARTNERS. The Partnership shall indemnify and hold harmless any Partner for an act performed by the Partner within the scope of authority under this Agreement or the laws of the State of _______________, except for acts of fraud, bad faith or gross negligence.

10. TERMINATION AND DISSOLUTION.

10.01 DISSOLUTION OF THE PARTNERSHIP. a. (OPTIONAL) The Partnership shall not be dissolved by reason of death, dissolution, withdrawal or expulsion of a Partner or by the admission of a new Partner.

This provision is ADOPTED and made a part of this Partnership Agreement ____________ .

This provision is REJECTED and not made a part of this Partnership Agreement ____________.

(b) The Partnership shall immediately be dissolved, and thereafter the Partnership business shall be closed in an orderly manner and the Partnership terminated upon the occurrence of any of the following events:

(i) Expiration of the term of the Partnership in paragraph 3, above,

(ii) Affirmative vote to terminate by Partners possessing majority interest (over fifty percent, 50%) in the Partnership,

(iii) Occurrence of any event which makes it unlawful for Partnership business to be continued,

(iv) Sale or disposition of all or substantially all of Partnership assets, or

(v) Partnership is no longer able to or fails to engage in the purpose for which the Partnership was created.

(vi) (OPTIONAL) The partnership shall dissolve upon the bankruptcy or insolvency of any Partner.

This provision is ADOPTED ____________.

This provision is REJECTED ____________.

10.02 LIMITATION OF VOLUNTARY DISSOLUTION. It is specifically agreed among the Partners that there will be no voluntary dissolution of the Partnership without the written approval of the mortgagee, lien holder or secured party if any Partnership property is encumbered by a mortgage, lien or security interest.

10.03 EFFECT OF DISSOLUTION ON PARTNERSHIP CONTRACTS. Dissolution of the Partnership shall not affect the validity of contracts entered in good faith prior to the dissolution. Included is any deed of trust, mortgage, security agreement or other obligation entered by or on behalf of the Partnership.

10.04 DISTRIBUTION UPON TERMINATION. The proceeds resulting from the liquidation of all Partnership assets shall be applied under appropriate state law in the following order of priority:

(a) To payment of debts and liabilities of the Partnership except for loans or debts owed to the Partners;

(b) To a reserve account established by the Partnership for the payment of future anticipated claims against the Partnership. Included in such anticipated claims are contingent, unmatured or unforeseen liabilities. When such claims have been paid the account will be distributed as described in (c) and (d) of this clause.

(c) To the loans and debts owed the Partners. If the Partnership lacks sufficient funds to pay all such liabilities, funds available shall be paid pro rata among the Partners.

(d) To each Partner pro rata in proportion to that Partner's respective capital account.

10.05 RETURN OF CONTRIBUTION. Partners shall look solely to the assets of the Partnership for the return of their capital contribution and not to the return of any specific contributed property.

11. (OPTIONAL) EXPULSION OF A PARTNER. A Partner may be expelled from the Partnership upon a vote of the other Partners holding at least 66% of the capital of the Partnership. Upon expulsion the expelled Partner shall be entitled to receive the fair market value of his interest in the Partnership. The fair market value of the Partnership shall be set by an appraisal of two independent accountants: one chosen by the expelled Partner and one by the remaining Partners. If the accountants cannot reach an agreement, the court of the Partnership's domicile shall appoint an accountant to make the valuation and that accountant's valuation shall be final.

This provision is ADOPTED ____________ .

This provision is REJECTED ____________.

12. (OPTIONAL) ARBITRATION. It is agreed by the Partners that in the event of a dispute over the terms and conditions of this Partnership Agreement, the Partners will have the matter decided in arbitration by the American Arbitration Association or an arbitrator appointed by the court where the Partnership is located.

This provision is ADOPTED ____________.

This provision is REJECTED ____________.

13. (OPTIONAL) LIABILITY OF NEW PARTNERS. A new Partner who becomes a Partner by contributing capital shall not be responsible

for nor assume personal liability for any Partnership debt incurred prior to becoming a Partner. The Partners agree to indemnify such new Partner for any such liability that might be incurred under state law.

This provision is ADOPTED ____________.

This provision is REJECTED ____________.

A new Partner who becomes a Partner by purchasing the interest of another Partner assumes the full personal liability of the Partner from whom the interest was purchased.

This provision is ADOPTED ____________.

This provision is REJECTED ____________.

14. MISCELLANEOUS.

14.01 SURVIVAL OF REPRESENTATIONS. All of the terms and conditions, including covenants and representations, as set forth in this Agreement shall survive the execution of this Agreement. Such representations shall continue in effect following the formation of the Partnership and bind the Partners and their heirs and assigns.

14.02 COMPLIANCE WITH THE LAW. The partnership shall conduct all operations on the property in compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations.

14.03 ATTORNEY FEES. If legal action is commenced over the terms of this Partnership Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

14.04 GOVERNING LAW. It is agreed among the parties that the Partnership Agreement shall be governed and interpreted in accordance with the laws of the State of _______________________.

14.05 SUCCESSOR IN INTEREST. The provisions of this Partnership Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective heirs, executors, administrators, personal representatives, assigns and successors in interest of the Partners.

14.06 CONSTRUCTION. None of the provisions of this Partnership Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

14.07 FURTHER ASSURANCES. The Partners hereby agree they will execute and deliver any and all instruments and do such further acts and things as may be required or useful to complete the intents and purposes of this Agreement that are not inconsistent with the terms hereof.

14.08 NO GUARANTY OF SUCCESS. No Partner hereto has relied upon any warranty or guarantee of success and no such warranties or guarantees have been made. The Parties acknowledge that the obtaining of profit through the pursuit of the Partnership's stated purpose is speculative in nature and not always successful.

14.09 ENTIRE AGREEMENT AND AMENDMENT. This Agreement incorporates the entire agreement and understanding among the Partners with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Partners.

14.10 ADDITIONAL CLAUSES. ______________________________________

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IN WITNESS WHEREOF, this Partnership Agreement has been duly executed this ____________ day of ____________, ________.

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CHAPTER 4

JOINT VENTURES

This chapter is directed towards an explanation of what a joint venture actually is and a description of its attributes. A joint venture is a general partnership that is formed for a limited purpose. Care must be taken not to confuse it with a limited partnership. This is discussed more fully in this book's limited partnership chapter. A joint venture is a partnership formed for a limited purpose and composed of two or more persons or entities working together as co-owners to run a business for profit. The Internal Revenue Code Section 761(a) specifically extends partnership tax treatment to joint ventures. A joint venture in its simplest form is a partnership that was created to accomplish a very narrow purpose. A joint venture seeks to make a profit either on a one-time basis or from the operation of just one particular business. The joint venture automatically terminates when the purpose is completed.

A comparison between a general partnership and a joint venture is highlighted below by example. A general partnership is established when the partners form an investment company to invest money in one or more profitable businesses. In contrast, most joint venturers agree to work together to invest in just one company. The inability of the joint venturers to invest in more than the stated company highlights the difference between general partnerships and joint ventures. Joint ventures are quite common in the world of high finance. There, joint ventures are often called consortiums or cartels. Whatever the name, the basics are the same.

Joint ventures are governed by the partnership laws of the state where they were formed. A joint venture agreement does not have to be in writing but may instead be formed by an oral agreement of the parties. Though not required, the joint venture agreement should be in writing otherwise its operations will be governed entirely by the state's partnership laws. Except for its limited purpose, a joint venture has many of the same issues, problems and elements of a regular partnership.

Joint ventures have a place in the business world. One reason is they provide a greater degree of flexibility than S corporations in certain aspects. An S corporation is a special type of corporation on which no corporate income tax is imposed. Instead, the income of the corporation is passed to the shareholders who must pay the tax. This avoids a double taxation (first on the income as earned by the corporation and then again when received by the shareholder as a dividend). An S corporation is treated as partnership. A joint venture has the following tax advantages over a S corporation:

1. Joint ventures may admit anyone as a joint venturer and may have any number of joint venturers. S corporations are limited to 75 members of special status.
2. Joint ventures can divide profits and losses in a manner not related to the joint venturers' ownership interests. By contrast, S corporations must divide profits andlosses

> among the shareholders in accordance with their percentage of stock ownership.

In most cases, these differences are not important because the S corporation usually does not want additional shareholders and does want profit and losses allocated according to shareholder investment. The most important difference between S corporations and joint ventures is there is no personal liability on the part of the shareholders for the corporation's debts; whereas joint ventures have unlimited personal liability for all of the joint venture debts.

The most common difficulties that arise regarding a joint venture concern its actual existence and the extent of authority the joint venturers (the partners) have in conducting the business of the joint venture. These issues arise when third parties have dealt with a person claiming to represent a joint venture, and one of the alleged joint venturers claims (1) the joint venture does not exist or (2) the person did not have the authority to act in that fashion for the joint venture. For example, two persons had an oral agreement to operate an oil and gas lease in Bakersfield, California. One person had extraordinary work done on the lease without the knowledge of the other person. When he was unable to pay for the work, both parties were sued for the value. The issue was whether the person ordering the work had the authority, either express or implied, to bind the other party. It was this question over the existence of the joint venture and its scope that was the center of the dispute.

In determining the existence of a joint venture and its scope of authority, a court looks at:

1. Whether the parties intended to form a joint venture.
2. What the purpose of the venture would be.
3. Whether the parties intend to make a profit.
4. What authority was being granted to each party to accomplish the stated purpose.

Once the elements of a joint venture are complete, the joint venture is formed. Thereafter it is governed either by the terms of the written agreement, the Uniform Partnership Law, or Louisiana state partnership law in Louisiana.

FORMATION

Thought and careful attention to detail should be the hallmark behind the creation of any joint venture. Since any detail not covered in a joint venture agreement will be supplied by the state law of the joint venture, it is important that the joint agreement be complete. Before executing a joint venture agreement, the parties should consider the following items and whether they are important enough to be addressed in the joint venture agreement:

1. The name of the joint venture.
2. The term of the joint venture.
3. The purpose of the joint venture.
4. Whether a joint venture is being created.
5. How the joint venture will be funded.
6. How the profits and losses will be allocated and distributed.
7. Admission of new joint venturers.
8. Expulsion of old joint venturers.
9. Withdrawals of contributed assets.

10. Expense accounts.
11. Salaries and draws of income by joint venturers.
12. Responsibilities of the joint venturers.
13. Dissolution of the joint venture.
14. Staffing and management.

While the above considerations are important, the list is far from complete. It is impossible to list every possible detail that should be considered. The uses for which a joint venture could be formed are virtually limitless and the list of all individual considerations is endless. Every joint venture is different because each is composed of different people with different viewpoints. Care must be taken in writing a joint venture agreement to avoid misconceptions. The most important fact to remember in drafting a joint venture agreement is that anything not covered in the joint venture agreement will be determined by law, usually a version of the Uniform Partnership Act. Should it be decided among the joint venturers that state law is not to apply of a particular point, they must expressly create and incorporate an alternative provision in the joint venture agreement.

TERM OF THE JOINT VENTURE

A joint venture has a finite existence and will one day end. The joint venture agreement usually lists the conditions on which it will terminate. A joint venture agreement may have a clause stating that the joint venture will terminate:

1. When the joint venture purpose is accomplished (in a joint venture).
2. On a certain date.

3. Upon insolvency or bankruptcy of a joint venturer.
4. Upon death or disability of a joint venturer.
5. Upon withdrawal of any joint venturer from the joint venture.

Without a termination clause in the joint venture agreement stating when a joint venture terminates, state law will control. Unless a written agreement expresses a contrary intent, a joint venture terminates on the death of a joint venturer or upon a joint venturer's resignation. In fact, many states have provisions that void a contrary statement in a joint venture agreement. A joint venture also will terminate on the bankruptcy of a joint venturer. A few states require the automatic termination upon the insolvency of a joint venturer unless the joint venture agreement states otherwise. The state's provision of automatic termination unless the joint venture expresses a contrary intent considers that the other joint venturers remain jointly and liable for the debts of the joint venture. It would be unfair to allow the remaining joint venturers to continue to guarantee the full debt of the joint venture without their consent.

JOINT VENTURERS

Joint venturers have certain rights which cannot be denied them or surrendered in a joint venture agreement. Any attempt to limit such rights are usually found to be invalid and against a state's public policy. These inalienable rights of joint venturers are:

1. The right to insist on an accounting for the business

affairs and property of the joint venture. Implicit with this right is the right to have the books examined by an outside accountant.

2. The right to dissolve the joint venture in accordance with the terms of the joint venture agreement or, if none, in accordance with applicable state law.
3. The right to seek to restrain the joint venture from performing acts prohibited under the joint venture agreement or state law.
4. The right to bring a legal action for breach of the joint venture agreement.

These are implied rights in any joint venture agreement. Provisions in joint venture agreements that waive such rights are usually found to be invalid and against public policy.

DISSOLUTION

In all states, a court may order dissolution of a joint venture for the following reasons regardless of specific clauses in the joint venture agreement stating otherwise.

1. A joint venturer has been found insane by a court.
2. A joint venturer is incapable of performing his duties under the joint venture agreement.
3. A joint venturer's conduct has prejudicially affected the ability of the joint venture to continue its business. This usually is interpreted to mean that the joint venturer is no longer participating in the business of the joint venture or is making continuous and poor business decisions.
4. A joint venturer has repeatedly breached the joint venture agreement to the detriment of the joint venture.
5. The joint venture can only do business at a loss.
6. Equitable reasons support the dissolution.

A lawsuit seeking termination on any of the above listed grounds will be difficult and costly to prove. A preventative alternative is to include in the joint venture agreement an expulsion provision permitting expulsion of a joint venturer for any of the above reasons.

After a joint venture has been dissolved and its assets liquidated, the distribution of its assets is made in the following order:

1. All federal and state taxes are paid.
2. All employee wages and benefits are paid.
3. All secured liabilities are paid.
4. All unsecured liabilities are paid.
5. Any remaining funds are divided among the joint venturers in accordance with their percentage of ownership interest in the joint venture.

The proceeds received by a joint venturer in the dissolution of a joint venture are a return of the joint venturer's investment. Any gain or loss in the dissolution is treated as a capital gain or loss. Example: The joint venturer had paid $8,000 for his interest in the venture and made a loan to the joint venture in the amount of $2,000. He received $3,000. The joint venturer had a $7,000 capital loss. Likewise, if the joint venturer got back $13,000, he would have to recognize a $3,000 capital gain.

If the joint venture lacks the necessary assets to pay all of its debts, each of the joint venturers remain totally responsible to pay all of the unpaid debt. Any joint venturer who pays more than his proportionate share of the joint venture debt may sue the other joint venturers for indemnification. Example: The joint venture fails. The debts owed are $41,000. There are four joint venturers who own the following interests: George 15%, Ed 25%, Bill 40% and Herbert 20%. The joint venture has $21,000 after selling its assets; therefore, the debt which the joint venturers must pay is $20,000. George and Ed each filed bankruptcy and had their debts discharged, Bill paid the full $20,000 debt. Bill can then sue Herbert for his share of the debt: $6,667. (Bill owns twice as much of the joint venture as Herbert; so he pays twice as much the amount of the debt).

TAXATION

A joint venture is, in essence, a general partnership for limited purposes. As such, it is treated the same as a general partnership tax wise. There are, however, certain elections that pertain only to joint ventures which affect how they file a return or pay taxes. The differences are:

1. A joint venture, like a general partnership, must file an informational return except for certain real estate joint ventures.
2. The joint venture makes the tax elections for computation of its taxable income.
3. The joint venture can adopt its own tax year, but it must have I.R.S. permission to use a tax year different from that of any principal joint venturer.
4. Under the Internal Revenue Code, one of the joint venturers may enter a business transaction with the joint venture and be treated as an outsider for tax purposes.
5. If the joint venture is a passive investment, the members of the joint venture may elect to be excluded from some or all of subchapter K of the Internal Revenue Code which

defines how partnerships are taxed.

The above tax aspects of joint ventures give them a slightly better degree of flexibility than regular general purpose partnerships.

JOINT VENTURE INTERESTS AS A SECURITY

The sale of a general partnership interest is not a security under the Security and Exchanges Act. It can be sold without having to be registered or exempted from registration with the Securities and Exchange Commission (SEC). Most states follow federal security law and also do not require registration or permits for the sale of general partnership interests as securities. A joint venture as defined above is basically a general partnership for a limited purpose and currently does not constitute a security under the federal law.

There are, however, several cases pending before the United States Supreme Court concerning treatment of general partnership interests as securities where there are large numbers of general partners. In the cases before the Supreme Court, the general partnerships contain thousands of general partners. State security commissioners contend that there is no general partnership where there are such large numbers of general partners. They argue a business relationship more akin to that of a corporation is created. The argument is that merely calling a person a general joint venturer does not really bestow upon him the ability to manage and control his investment. Therefore, he must rely upon the management expertise of the other partners. This reliance upon others for the creation of profit, it is argued, turns the partnership interest into a security. For the present, however, the law remains firm: if the joint venture interest is not sold out-of-state and all of the joint venturers participate in the management of the joint venture, there will be no federal or state registration requirement regardless of how the Supreme Court decides the matter. The security issue is discussed fully in the security laws chapter of this book.

Following is a uniform joint venture agreement. This agreement with modifications will suffice for virtually any type of joint venture. Add clauses as needed by simply attaching additional pages with the heading, "AMENDMENT TO JOINT VENTURE AGREEMENT DATED _____________________." The amendment must be signed and dated at the bottom by all of the joint venturers.

SAMPLE JOINT VENTURE

AGREEMENT OF JOINT VENTURE

OF

TINKER APARTMENTS

THIS AGREEMENT is made by and between MARTIN HOWARD, WILLIAM TABLE and PETER DELISH, all of whom are collectively hereinafter called "Joint Venturers."

The parties hereto, intending to be legally bound for the purpose of forming a JOINT VENTURE (the "Joint Venture") pursuant to the laws of the State of VIRGINIA, hereby form a joint venture and agree as follows:

1. NAME OF THE JOINT VENTURE. The name of the Joint Venture is TINKER APARTMENTS.

2. PRINCIPAL OFFICE. The principal office and place of business of the Joint Venture shall be located at 15 Shandy Lane in Fort Stockton, Texas. The Joint Venturers may change their designation of the Joint Venture's principal office.

3. TERM OF THE JOINT VENTURE. The Joint Venture shall terminate on 31 December 2010. The Joint Venture may terminate or be dissolved earlier in accordance with the terms of this Agreement.

4. JOINT VENTURE PURPOSE AND BUSINESS. The purpose and business of the Joint Venture shall be limited to the sole and only

purpose of THE PURCHASE AND OPERATION OF THE APARTMENT HOUSE AT 135 TINKER STREET, FAIRFLAW, VIRGINIA. No Joint Venturer shall have the authority, either express or implied, to engage in any business, execute any contracts or commit the Joint Venture in any fashion or in any way that exceeds the scope and purpose of the Joint Venture as stated herein.

5. OPERATION OF THE JOINT VENTURE. Each Joint Venturer shall have the full authority to act on behalf of the Joint Venture within the scope of the Joint Venture's stated purpose and business.

6. CAPITAL CONTRIBUTION AND JOINT VENTURE INTERESTS.

6.01. MARTIN HOWARD shall contribute no cash but will contribute management expertise and services equal to Two Hundred Thousand ($200,000) dollars. If such expertise and services are not fully granted, the acquired interest in the Joint Venture shall be reduced to reflect the true value of the management expertise and services actually provided.

6.02. ______________________________ shall contribute no cash but will contribute management expertise and services equal to ______________________________ dollars. If such expertise and services are not fully granted, the acquired interest in the Joint Venture shall be reduced to reflect the true value of the management expertise and services actually provided.

6.03. PETER DELISH shall contribute

to the Joint Venture ________Four Hundred Thousand ($400,000)_ dollars in cash or the following property: ______a fifty percent interest of the apartment house at 135 Tinker Street, Fairflaw, Virginia.__.

6.04. ______WILLIAM TABLE___________ shall contribute to the Joint Venture _____Four Hundred Thousand ($400,000) dollars_____ ~~in cash~~ or the following property: ______________________________
_______________________NONE_______________________

6.05. ______________________________ shall contribute to the Joint Venture ______________________________ in cash or the following property: ______________________________
____

6.06. ______________________________ shall contribute to the Joint Venture ______________________________ in cash or the following property: ______________________________
____

6.07. ______________________________ shall contribute to the Joint Venture ______________________________ in cash or the following property: ______________________________
____

6.08. ______________________________ shall contribute to the Joint Venture ______________________________ in cash or the following property: ______________________________
____

7. ACCOUNTING, ALLOCATIONS AND DISTRIBUTIONS.

7.01 ACCOUNTING YEAR AND METHOD. The Joint Venture hereby adopts the calendar year ending December 31 as both its accounting and taxable year. The books of the Joint Venture shall be kept using standard accounting practices and shall employ the cash-basis method of accounting unless changed by the Joint Venturers.

7.02 CAPITAL ACCOUNT. The Joint Venture shall maintain a capital account for each Joint Venturer. Upon becoming a Joint Venturer, the capital account for that Joint Venturer will be his proportionate share of the total capital contributions. The capital account of each Joint Venturer:

(a) Shall be increased of the end of each taxable year by the amount of the Joint Venturer's income and gain allocated to the Joint Venturer for the taxable year,

(b) Shall be decreased as of the end of each taxable year by the amount of the Joint Venturer's deductions and losses allocated to the Joint Venturer for that taxable year, and

(c) Shall be decreased at the time of any distributions in the amount of that distribution.

7.03 DETERMINATION OF PROFITS AND LOSSES. The Joint Venture shall employ standard accounting practices and procedures in determining the profits and losses of the Joint Venture.

7.04 ALLOCATION OF PROFITS AND LOSSES. The Joint Venture shall employ standard accounting procedures and practices in accordance with federal tax law to allocate its profits and losses among the Joint Venturers. All of the profits and losses and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated each taxable year among and be borne by the Joint Venturers as follows:

(a) MARTIN HOWARD shall be allocated TWENTY percent (20%) of the Joint Venture's profits and losses for each taxable year.

(b) WILLIAM TABLE shall be allocated FORTY percent (25%) of the Joint Venture's profits and losses for each taxable year.

(c) PETER DELISH shall be allocated FORTY percent (25%) of the Joint Venture's profits and losses for each taxable year.

(d) ______________________ shall be allocated ________________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(e) ______________________ shall be allocated ________________ percent (%) of the Joint Venture's profits and losses for each taxable year.

(f) ______________________ shall be allocated ________________ percent (%) of the Joint Venture's profits and losses for each taxable year.

(g) ______________________ shall be allocated ________________ percent (%) of the Joint Venture's profits and losses for each taxable year.

(h) ______________________ shall be allocated ________________ percent (%) of the Joint Venture's profits and losses for each taxable year.

Profits and losses and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated among the Joint Venturers effective the last day of each accounting year of the Joint Venture.

7.05 FEDERAL INCOME TAX TREATMENT. It is the agreement of the Joint Venturers as herein expressed that all allocations made to them, including income, gain, loss, deductions or credits shall retain their character as ordinary income, short-term or long-term capital gain or loss, depreciation, or otherwise and shall be entitled to tax-free treatment in the Joint Venture in the proportion of each Joint Venturer's proportionate share.

7.06 FEDERAL INCOME TAX ELECTIONS. It is the agreement of the Joint Venturers that a federal tax election is hereby made to treat as an expense all amounts incurred for taxes and interest. Also included as expenses are all other fees, charges and expenses to the extent that such expenditures qualify as deductible expenses in accordance with applicable laws and regulations. The Joint Venturers intend for the Joint Venture to be covered under the provisions of Subchapter K, Chapter 1 of the Internal Revenue Code. Therefore, the Joint Venturers agree that no election shall be made under Section 761 of the Internal Revenue Code of 1954, as amended, to exclude the Joint Venture from the coverage of Subchapter K.

7.07 BOOKS AND RECORDS. The Joint Venture shall keep complete and accurate books and records in accordance with good business practices of the Joint Venture's operations and financial condition. The Joint Venture shall provide an annual financial statement to all Joint Venturers within sixty (60) days following the close of the Joint Venture's taxable year. The annual financial report may consist of a copy of the Joint Venture's federal income tax return for that year and schedule K-1 setting forth such Joint Venturer's distributions and allocations.

8. DISTRIBUTIONS. The Joint Venture shall distribute to each Joint Venturer at least annually enough of the net profits from that Joint Venturer's account to cover the Joint Venturer's tax liabilities accruing from his participation in the Joint Venture.

8.01(a) (OPTIONAL) SALARIES. No salary shall be paid to any Joint Venturer. Salaries may be paid in the future only by the unanimous consent of all parties.

This provision is ADOPTED _____X____.

This provision is REJECTED __________.

8.01(a) (OPTIONAL) SALARIES. Only reasonable salaries shall be paid to the Joint Venturers as set by unanimous vote of the Joint Venturers. The initial salaries of the Joint Venturers shall be:

____

____

____

This provision is ADOPTED __________.

This provision is REJECTED ______X____.

8.02(a) (OPTIONAL) DRAWS. No Joint Venturer shall be permitted to take any draw against the profits of the Joint Venture prior to distribution to all of the parties.

This provision is ADOPTED ______X____.

This provision is REJECTED __________.

8.02(b) (OPTIONAL) DRAWS. The Joint Venturers are entitled to a draw against the expected Joint Venture profits. The amount of the draws will be determined by unanimous vote of the Joint Venturers. To the extent that any draw exceeds a Joint Venturer's actual share of the profits, it will be treated as a loan payable _______ days after the close of the Joint Venture's fiscal year.

This provision is ADOPTED __________ .

This provision is REJECTED _____X_____ .

9. DUTIES AND POWERS OF JOINT VENTURERS.

9.01 (OPTIONAL) INDEPENDENT ACTIVITIES. All Joint Venturers may, notwithstanding the existence of this Agreement, engage in whatever activities they choose, whether the same be competitive with the Joint Venture or otherwise, without having or incurring any obligation to offer any interest in such activities to any party hereto. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Joint Venturer from so doing or from engaging in other activities of any nature by himself or jointly with others, or as any part of any other association to which a Joint Venturer is or may be a party in any locale or in fields or areas of operation where the Joint Venture may likewise be active. No Joint Venturer is required to permit the Joint Venture or any other Joint Venturer to participate in any of the foregoing. Each Joint Venturer hereby waives, relinquishes and renounces any such right or claim of participation.

This provision is ADOPTED and made a part of this Joint Venture Agreement ________X____.

This provision is REJECTED and not made a part of this Joint Venture Agreement ____________.

(OPTIONAL) No Joint Venturer shall engage in activities that directly compete with the activities in which the Joint Venture engages. Any Joint Venturer who engages in such competing activities shall be liable to the Joint Venture for all profits derived therefrom.

This provision is ADOPTED and made a part of this Joint Venture Agreement _______X_____.

This provision is REJECTED and not made a part of this Joint Venture Agreement ____________.

9.02 PRESERVATION OF TAX STATUS. It is intended by the agreement of the Joint Venturers that the Joint Venture shall be classified for federal income tax purposes at all times as a Joint Venture and not as an association taxable as a corporation. The Joint Venturers further agree not to do any act to jeopardize that classification and agree to act as necessary to preserve that classification.

9.03 INDEMNIFICATION OF JOINT VENTURERS. The Joint Venture shall indemnify and hold harmless any Joint Venturer for any act performed by the Joint Venturer within the scope of his authority under this Agreement and the laws of the State of VIRGINIA, except for acts of fraud, bad faith or gross negligence.

10. TERMINATION AND DISSOLUTION.

10.01 DISSOLUTION OF THE JOINT VENTURE.

(a) (OPTIONAL) The Joint Venture shall not be dissolved by reason of death, dissolution, withdrawal or expulsion of a Joint Venturer or by the admission of a new Joint Venturer.

This provision is ADOPTED and made a part of this Joint Venture Agreement ____________ .

This provision is REJECTED and not made a part of this Joint Venture Agreement X.

(b) The Joint Venture shall immediately be dissolved, and thereafter the Joint Venture business shall be discharged in an orderly manner, and the Joint Venture terminated upon the occurrence of any of the following events:

(i) The expiration of the term of the Joint Venture in paragraph 3, above,

(ii) The affirmative vote to terminate by Joint Venturers possessing majority interest (over fifty percent [50%]) in the Joint Venture,

(iii) The occurrence of any event which makes it unlawful for the Joint Venture business to be continued,

(iv) The sale or disposition of all or substantially all of the Joint Venture assets,

(v) The joint venture no longer being able to or not engaging in the purpose for which the Joint Venture was created, or

(vi) (OPTIONAL) The filing of a bankruptcy petition making an assignment for creditors or insolvency in some other way of a Joint Venturer.

This provision is ADOPTED ____________.

This provision is REJECTED _______X_____.

10.02 LIMITATION ON VOLUNTARY DISSOLUTION. It is specifically agreed among the Joint Venturers that there shall be no voluntary dissolution of the Joint Venture without the written approval of the mortgagee, lienholder or secured party if any Joint Venture property is encumbered by a mortgage, lien or security interest.

10.03 LIMITATION ON EFFECT OF DISSOLUTION. Dissolution of the Joint Venture shall not affect the validity of contracts entered in good faith prior to the dissolution. Included hereunder is any deed of trust, mortgage, security agreement or other obligation entered by or on behalf of the Joint Venture.

10.04 DISTRIBUTION UPON TERMINATION. The proceeds resulting from the liquidation of the Joint Venture assets shall be applied, under state law, in the following order of priority:

(a) To payment of debts and liabilities of the Joint Venture except for loans or debts to Joint Venturers.

(b) To a reserve trust account established by the Joint Venture to pay future anticipated claims against the Joint Venture. Included in such anticipated claims are contingent, unmatured or unforeseen liabilities. When such claims have been paid, the account will be distributed as set forth below.

(c) To the Joint Venturers for loans and debts owed them. If the Joint Venture lacks sufficient funds to pay such liabilities, the funds available shall be paid pro rata among the Joint Venturers.

(d) To each Joint Venturer in an amount equal to the Joint Venturer's capital account.

(e) To the Joint Venturers according to their interest in the Joint Venture.

10.05 RETURN OF CONTRIBUTION. Upon dissolution, the Joint Venturers shall look solely to the assets of the Joint Venture for the return of their capital contribution and not to the return of any specific contributed property.

11. (OPTIONAL) ARBITRATION. It is agreed by the Joint Venturers that in the event of a dispute over the terms and conditions of this Joint Venture Agreement the Joint Venturers will have the matter decided in arbitration by the American Arbitration Association or an arbitrator appointed by the court where the Joint

Venture is located.

This provision is ADOPTED ______X____.

This provision is REJECTED ____________.

12. (OPTIONAL) LIABILITY OF NEW JOINT VENTURERS. A new Joint Venturer who becomes a Joint Venturer by contributing capital shall not be responsible for, nor assume personal liability for any Joint Venture debt incurred prior to becoming a Joint Venturer. The Joint Venturers agree to indemnify such new Joint Venturer for any such liability that might be incurred under state law.

This provision is ADOPTED ______X_____.

This provision is REJECTED ____________.

A new Joint Venturer who becomes a Joint Venturer by purchasing the interest of another Joint Venturer assumes the full personal liability of the Joint Venturer from whom the interest was purchased.

This provision is ADOPTED ____________.

This provision is REJECTED ______X_____.

13 MISCELLANEOUS

13.01 SURVIVAL OF REPRESENTATIONS. All of the terms and conditions, including covenants and representations, as set forth in this Agreement shall survive the execution of this Agreement. Such representations shall continue in effect following the formation of the Joint Venture and bind the Joint Venturers along with their heirs and assigns.

13.02 COMPLIANCE WITH THE LAW. The Joint Venture shall conduct all operations in compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations.

13.03 ATTORNEY FEES. If legal action is commenced over the terms of this Joint Venture Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

13.04 GOVERNING LAW. It is agreed among the parties that the Joint Venture Agreement shall be governed and interpreted in accordance with the laws of the State of __________VIRGINIA_____.

13.05 SUCCESSOR IN INTEREST. The provisions of this Joint Venture Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective heirs, executors, administrators, personal representatives, assigns and successors in interest of the Joint Venturers.

13.06 CONSTRUCTION. None of the provisions of this Joint Venture Agreement shall be for the benefit of or enforceable by any creditors of the Joint Venture.

13.07 FURTHER ASSURANCES. The Joint Venturers hereby agree they will execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement.

13.08 NO GUARANTY OF SUCCESS. None of the Joint Venturers has made or relied on any warranty or guarantee of success. The Parties acknowledge that the obtaining of profit through the pursuit of the Joint Venture's stated purpose is speculative in nature and not always successful.

13.09 ENTIRE AGREEMENT AND AMENDMENT. This Agreement incorporates the entire agreement and understanding among the parties with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Joint Venturers.

13.10 ADDITIONAL PROVISIONS. ______________________________
____
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IN WITNESS WHEREOF, this Joint Venture Agreement has been duly executed as of this _______________ day of ______________________, ____________________.

____
MARTIN HOWARD

____
PETER DELISH

____
WILLIAM TABLE

AGREEMENT OF JOINT VENTURE

OF

____

THIS AGREEMENT is made by and between ________________________ ____,

all of whom are collectively hereinafter called "Joint Venturers."

The parties hereto, intending to be legally bound for the purpose of forming a JOINT VENTURE (the "Joint Venture") pursuant to the laws of the State of _________________, hereby form a joint venture and agree as follows:

1. NAME OF THE JOINT VENTURE. The name of the Joint Venture is ____.

2. PRINCIPAL OFFICE. The principal office and place of business of the Joint Venture shall be located at ________________ ____. The Joint Venturers may change their designation of the Joint Venture's principal office.

3. TERM OF THE JOINT VENTURE. The Joint Venture shall terminate on _______________________________. The Joint Venture may terminate or be dissolved earlier in accordance with the terms of this Agreement.

4. JOINT VENTURE PURPOSE AND BUSINESS. The purpose and business of the Joint Venture shall be limited to the sole and only purpose of ____ ____.

No Joint Venturer shall have the authority, either express or implied, to engage in any business, execute any contracts or commit the Joint Venture in any fashion or in any way that exceeds the scope and purpose of the Joint Venture as stated herein.

5. OPERATION OF THE JOINT VENTURE. Each Joint Venturer shall have the full authority to act on behalf of the Joint Venture within the scope of the Joint Venture's stated purpose and business.

6. CAPITAL CONTRIBUTION AND JOINT VENTURE INTERESTS.

6.01. ______________________________________ shall contribute no cash but will contribute management expertise and services equal to ____dollars. If such expertise and services are not fully granted, the acquired interest in the Joint Venture shall be reduced to reflect the true value of the management expertise and services actually provided.

6.02. ____ shall contribute no cash but will contribute management expertise and services equal to ____ dollars. If such expertise and services are not fully granted, the acquired interest in the Joint Venture shall be reduced to reflect the true value of the management expertise and services actually provided.

6.03. ______________________________________ shall contribute to the Joint Venture ____ dollars in cash or the following property: ______________________

____.

6.04. ______________________________ shall contribute to the Joint Venture ____ ~~in cash~~ or the following property: _______________________________

____

6.05. ______________________________ shall contribute to the Joint Venture ____ in cash or the following property: ________________________________

____

6.06. ______________________________ shall contribute to the Joint Venture ____ in cash or the following property: ________________________________

____

6.07. ______________________________ shall contribute to the Joint Venture ____ in cash or the following property: ________________________________

____

6.08. ______________________________ shall contribute to the Joint Venture ____ in cash or the following property: ________________________________

____

7. ACCOUNTING, ALLOCATIONS AND DISTRIBUTIONS.

7.01 ACCOUNTING YEAR AND METHOD. The Joint Venture hereby adopts the calendar year ending December 31 as both its accounting and taxable year. The books of the Joint Venture shall be kept using standard accounting practices and shall employ the cash-basis method of accounting unless changed by the Joint Venturers.

7.02 CAPITAL ACCOUNT. The Joint Venture shall maintain a capital account for each Joint Venturer. Upon becoming a Joint Venturer, the capital account for that Joint Venturer will be his proportionate share of the total capital contributions. The capital account of each Joint Venturer:

(a) Shall be increased of the end of each taxable year by the amount of the Joint Venturer's income and gain allocated to the Joint Venturer for the taxable year,

(b) Shall be decreased as of the end of each taxable year by the amount of the Joint Venturer's deductions and losses allocated to the Joint Venturer for that taxable year, and

(c) Shall be decreased at the time of any distributions in the amount of that distribution.

7.03 DETERMINATION OF PROFITS AND LOSSES. The Joint Venture shall employ standard accounting practices and procedures in determining the profits and losses of the Joint Venture.

7.04 ALLOCATION OF PROFITS AND LOSSES. The Joint Venture shall employ standard accounting procedures and practices in accordance with federal tax law to allocate its profits and losses among the Joint Venturers. All of the profits and losses and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated each taxable year among and be borne by the Joint Venturers as follows:

(a) _________________________ shall be allocated _____________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(b) _______________________ shall be allocated _______________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(c) _____________________ shall be allocated _________________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(d) ______________________ shall be allocated ________________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(e) _______________________ shall be allocated ________________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(f) ______________________ shall be allocated _________________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(g) ______________________ shall be allocated _________________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

(h) ______________________ shall be allocated _________________ percent (   ) of the Joint Venture's profits and losses for each taxable year.

Profits and losses and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated among the Joint Venturers effective the last day of each accounting year of the Joint Venture.

7.05 FEDERAL INCOME TAX TREATMENT. It is the agreement of the Joint Venturers as herein expressed that all allocations made to them, including income, gain, loss, deductions or credits shall retain their character as ordinary income, short-term or long-term capital gain or loss, depreciation, or otherwise and shall be entitled to tax-free treatment in the Joint Venture in the proportion of each Joint Venturer's proportionate share.

7.06 FEDERAL INCOME TAX ELECTIONS. It is the agreement of the Joint Venturers that a federal tax election is hereby made to treat as an expense all amounts incurred for taxes and interest. Also included as expenses are all other fees, charges and expenses to the extent that such expenditures qualify as deductible expenses in accordance with applicable laws and regulations. The Joint Venturers intend for the Joint Venture to be covered under the provisions of Subchapter K, Chapter 1 of the Internal Revenue Code. Therefore, the Joint Venturers agree that no election shall be made under Section 761 of the Internal Revenue Code of 1954, as amended, to exclude the Joint Venture from the coverage of Subchapter K.

7.07 BOOKS AND RECORDS. The Joint Venture shall keep complete and accurate books and records in accordance with good business practices of the Joint Venture's operations and financial condition. The Joint Venture shall provide an annual financial statement to all Joint Venturers within sixty (60) days following the close of the Joint Venture's taxable year. The annual financial report may consist of a copy of the Joint Venture's federal income tax return for that year and schedule K-1 setting forth such Joint Venturer's distributions and allocations.

8. DISTRIBUTIONS. The Joint Venture shall distribute to each Joint Venturer at least annually enough of the net profits from that Joint Venturer's account to cover the Joint Venturer's tax liabilities accruing from his participation in the Joint Venture.

8.01(a) (OPTIONAL) SALARIES. No salary shall be paid to any Joint Venturer. Salaries may be paid in the future only by the unanimous consent of all parties.

This provision is ADOPTED __________.

This provision is REJECTED __________.

8.01(a) (OPTIONAL) SALARIES. Only reasonable salaries shall be paid to the Joint Venturers as set by unanimous vote of the Joint Venturers. The initial salaries of the Joint Venturers shall be:

____

____

____

____

This provision is ADOPTED __________.

This provision is REJECTED __________.

8.02(a) (OPTIONAL) DRAWS. No Joint Venturer shall be permitted to take any draw against the profits of the Joint Venture prior to distribution to all of the parties.

This provision is ADOPTED __________.

This provision is REJECTED __________.

8.02(b) (OPTIONAL) DRAWS. The Joint Venturers are entitled to a draw against the expected Joint Venture profits. The amount of the draws will be determined by unanimous vote of the Joint Venturers. To the extent that any draw exceeds a Joint Venturer's actual share of the profits, it will be treated as a loan payable _______ days after the close of the Joint Venture's fiscal year.

This provision is ADOPTED __________ .

This provision is REJECTED __________ .

9. DUTIES AND POWERS OF JOINT VENTURERS.

9.01 (OPTIONAL) INDEPENDENT ACTIVITIES. All Joint Venturers may, notwithstanding the existence of this Agreement, engage in whatever activities they choose, whether the same be competitive with the Joint Venture or otherwise, without having or incurring any obligation to offer any interest in such activities to any party hereto. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Joint Venturer from so doing or from engaging in other activities of any nature by himself or jointly with others, or as any part of any other association to which a Joint Venturer is or may be a party in any locale or in fields or areas of operation where the Joint Venture may likewise be active. No Joint Venturer is required to permit the Joint Venture or any other Joint Venturer to participate in any of the foregoing. Each Joint Venturer hereby waives, relinquishes and renounces any such right or claim of participation.

This provision is ADOPTED and made a part of this Joint Venture Agreement ____________.

This provision is REJECTED and not made a part of this Joint Venture Agreement ____________.

(OPTIONAL) No Joint Venturer shall engage in activities that directly compete with the activities in which the Joint Venture engages. Any Joint Venturer who engages in such competing activities shall be liable to the Joint Venture for all profits derived therefrom.

This provision is ADOPTED and made a part of this Joint Venture Agreement ____________.

This provision is REJECTED and not made a part of this Joint Venture Agreement ____________.

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9.03 INDEMNIFICATION OF JOINT VENTURERS. The Joint Venture shall indemnify and hold harmless any Joint Venturer for any act performed by the Joint Venturer within the scope of his authority under this Agreement and the laws of the State of ______________, except for acts of fraud, bad faith or gross negligence.

10. TERMINATION AND DISSOLUTION.

10.01 DISSOLUTION OF THE JOINT VENTURE.

(a)(OPTIONAL) The Joint Venture shall not be dissolved by reason of death, dissolution, withdrawal or expulsion of a Joint Venturer or by the admission of a new Joint Venturer.

This provision is ADOPTED and made a part of this Joint Venture Agreement ____________ .

This provision is REJECTED and not made a part of this Joint Venture Agreement ____________.

(b) The Joint Venture shall immediately be dissolved, and thereafter the Joint Venture business shall be discharged in an orderly manner, and the Joint Venture terminated upon the occurrence of any of the following events:

(i) The expiration of the term of the Joint Venture in paragraph 3, above,

(ii) The affirmative vote to terminate by Joint Venturers possessing majority interest (over fifty percent [50%]) in the Joint Venture,

(iii) The occurrence of any event which makes it unlawful for the Joint Venture business to be continued,

(iv) The sale or disposition of all or substantially all of the Joint Venture assets,

(v) The joint venture no longer being able to or not engaging in the purpose for which the Joint Venture was created, or

(vi) (OPTIONAL) The filing of a bankruptcy petition making an assignment for creditors or insolvency in some other way of a Joint Venturer.

This provision is ADOPTED ____________.

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10.03 LIMITATION ON EFFECT OF DISSOLUTION. Dissolution of the Joint Venture shall not affect the validity of contracts entered in good faith prior to the dissolution. Included hereunder is any deed of trust, mortgage, security agreement or other obligation entered by or on behalf of the Joint Venture.

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(a) To payment of debts and liabilities of the Joint Venture except for loans or debts to Joint Venturers.

(b) To a reserve trust account established by the Joint Venture to pay future anticipated claims against the Joint Venture. Included in such anticipated claims are contingent, unmatured or unforeseen liabilities. When such claims have been paid, the account will be distributed as set forth below.

(c) To the Joint Venturers for loans and debts owed them. If the Joint Venture lacks sufficient funds to pay such liabilities, the funds available shall be paid pro rata among the Joint Venturers.

(d) To each Joint Venturer in an amount equal to the Joint Venturer's capital account.

(e) To the Joint Venturers according to their interest in the Joint Venture.

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11. (OPTIONAL) ARBITRATION. It is agreed by the Joint Venturers that in the event of a dispute over the terms and conditions of this Joint Venture Agreement the Joint Venturers will have the matter decided in arbitration by the American Arbitration Association or an arbitrator appointed by the court where the Joint Venture is located.

This provision is ADOPTED ____________.

This provision is REJECTED ____________.

12. (OPTIONAL) LIABILITY OF NEW JOINT VENTURERS. A new Joint Venturer who becomes a Joint Venturer by contributing capital shall not be responsible for, nor assume personal liability for any Joint Venture debt incurred prior to becoming a Joint Venturer. The Joint Venturers agree to indemnify such new Joint Venturer for any such liability that might be incurred under state law.

This provision is ADOPTED ____________.

This provision is REJECTED ____________.

A new Joint Venturer who becomes a Joint Venturer by purchasing the interest of another Joint Venturer assumes the full personal liability of the Joint Venturer from whom the interest was purchased.

This provision is ADOPTED ____________.

This provision is REJECTED ____________.

13 MISCELLANEOUS

13.01 SURVIVAL OF REPRESENTATIONS. All of the terms and conditions, including covenants and representations, as set forth in this Agreement shall survive the execution of this Agreement. Such representations shall continue in effect following the formation of the Joint Venture and bind the Joint Venturers along with their heirs and assigns.

13.02 COMPLIANCE WITH THE LAW. The Joint Venture shall conduct all operations in compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations.

13.03 ATTORNEY FEES. If legal action is commenced over the terms of this Joint Venture Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

13.04 GOVERNING LAW. It is agreed among the parties that the Joint Venture Agreement shall be governed and interpreted in accordance with the laws of the State of _______________________.

13.05 SUCCESSOR IN INTEREST. The provisions of this Joint Venture Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective heirs, executors, administrators, personal representatives, assigns and successors in interest of the Joint Venturers.

13.06 CONSTRUCTION. None of the provisions of this Joint Venture Agreement shall be for the benefit of or enforceable by any creditors of the Joint Venture.

13.07 FURTHER ASSURANCES. The Joint Venturers hereby agree they will execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement.

13.08 NO GUARANTY OF SUCCESS. None of the Joint Venturers has made or relied on any warranty or guarantee of success. The Parties acknowledge that the obtaining of profit through the pursuit of the Joint Venture's stated purpose is speculative in nature and not always successful.

13.09 ENTIRE AGREEMENT AND AMENDMENT. This Agreement incorporates the entire agreement and understanding among the parties with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Joint Venturers.

13.10 ADDITIONAL PROVISIONS. ______________________________

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____

IN WITNESS WHEREOF, this Joint Venture Agreement has been duly executed as of this _______________ day of _____________________, ____________________.

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CHAPTER 5

LIMITED PARTNERSHIPS

Limited partnerships are one of the most popular forms of investments. A limited partnership shares some of the characteristics of both a general partnership and a corporation. However, because a limited partnership is neither a general partnership nor corporation it also has certain drawbacks for an investor that do not exist in a general partnership or a corporation. An attorney should be consulted if a limited partnership is being created.

A limited partnership interest is a security, and its sale is regulated under both federal and state law. The limited partnership agreement in this book can be used throughout the United States. Before raising any money for a limited partnership, an attorney should be consulted to assure that state and federal securities laws have been met.

Investments in limited partnerships have resulted in considerable litigation over the propriety of the actions taken by the general partners. For example, in a case in California the limited partners brought a lawsuit for an accounting against the general partners of a limited partnership which operated a public golf course. The general partners had entered a special operating agreement with the golf course and received substantial benefits without disclosing that fact to the limited partners. After discovering the existence of the special operating agreement, the limited partners brought their lawsuit alleging that the arrangement violated the fiduciary duties of good faith and fair dealing which was owed to them by the general partners. This was a complicated case that should not have occurred. It occurred because neither the general nor limited partners fully understood their respective rights and obligations under California partnership law or the partnership agreement.

This chapter is dedicated to providing the basic information of what limited partnerships are, how they operate and the role which a limited partner plays in the scheme of things. People invest in limited partnerships to make money while not taking needless risks with their investments. This chapter explains how limited partnerships are formed and discusses the most important areas of concern. Also in this chapter is a limited partnership agreement which can be adapted for use by anyone wishing to establish a limited partnership. The limited partnership in this book is flexible and yet comprehensive enough to protect the investors while allowing the limited partnership to conduct its business.

Before any sale of limited partnership interest is made the entire matter should be reviewed by an attorney because a Limited Partnership interest is a security. Moreover, to satisfy Internal Revenue Service regulations for having a limited partnership taxed as a partnership rather than a corporation, the total of the limited partnership interests of the partnership should not exceed

80% of the total interests of the partnership. In addition, under Rev. Proc. 92-88 a sole corporate general partner should have a personal net worth that is at least equal to 10% of the total contributions to the partnership. A sole individual general partner should have a personal net worth of at least the lesser of either 10% of the total contributions or $1,000,000.

Please note that this book does not deal with the creation of family limited partnerships. The limited partnership in this book pertains to a limited partnership formed between partners who are not family members as specified in the Internal Revenue Code provisions governing family partnerships. A family limited partnership is a specific type of limited partnership used primarily for estate planning purposes for large estates. Congress has enacted special taxation provisions regarding family limited partnerships in sections 2701 through 2704 of the IRC. The reader should consult with a tax professional if he is interested in a family limited partnership because of the tax complexities.

THE UNIFORM LIMITED PARTNERSHIP ACT

The National Conference of Commissioners on Uniform State Laws wrote the Uniform Limited Partnership Act (ULPA). The revised Uniform Partnership Act (RULPA) was also created. One of these acts has been adopted by every state except Louisiana. In addition, the Uniform Partnership Act applies to limited partnerships except where it is inconsistent with provisions of the ULPA or RULPA or state law.

The ULPA and RULPA provide the rules to operate a limited partnership in situations not covered in the limited partnership agreement. The partners can agree not to use some of the ULPA provisions. There are, however, some ULPA and RULPA provisions which cannot be altered or stricken from a limited partnership agreement.

WHAT IS A LIMITED PARTNERSHIP

A partnership, whether it is a general or limited partnership, is two or more persons or entities working together as co-owners to run a business for profit. The Internal Revenue Code defines a partnership in Section 761(a) as: " a syndicate, pool, joint venture or other unincorporated organization through which. . .any business is carried on . . .and is not a corporation, trust or an estate" (meaning sole proprietorship).

A partnership may be formed by a written agreement or by an oral agreement of the parties. The determining factors as to whether a partnership exists are:

1. Whether the parties intend to form a partnership, and
2. Whether they intend to make a profit from the activities.

Once these foundation elements are met, the partnership is formed and is, ipso facto, governed thereafter either by the terms of the written agreement, the UPA or in the case of Louisiana its own unique partnership law.

Partnerships are treated for federal tax purposes as pass-through vehicles. All profits and losses of the partnership pass through the partnership and are attributed to the partners. The effect of this pass through of profits and losses is the partnership itself is not taxed. Partnership income is not subject to double taxation. Regular C corporation income is taxed, and then dividends paid to shareholders from the remaining income is taxed as shareholder income. Congress created the S Corporation specifically to allow a small corporation (an S corporation) to "pass through" its income to its shareholders. There it is taxed only once as shareholder income.

Under the 1986 Tax Reform Act, profits and losses passing through to partners retain the same character they had in the partnership. A passive profit or loss to the partnership remains a passive profit or loss to the partner. The same treatment exists for an active profit or loss. A partner who materially participates in the partnership business will have all of the attributed profits and losses considered active. The profits and losses of another partner who does not actively participate in the partnership business will be considered passive in nature.

A limited partnership is a legal entity which is a cross between a corporation and a regular (general) partnership. A limited partnership has two types of partners: general partners who run the partnership, and limited partners who are the investors. As with a regular partnership, general partners are liable for the debts and liabilities of the limited partnership. The limited partners are treated in a manner similar to shareholders of a corporation. The limited partners' liability for payment of partnership obligations extends only to the amount of their contributions. The maximum a limited partner could lose is equal to his investment in the limited partnership. Limited partnerships are specially created pursuant to each state's limited partnership laws. Every limited partnership must have, at a minimum, the following.

1. A written limited partnership agreement.
2. At least one general partner.
3. A provision in the written partnership agreement stating that the limited partners will have no management or control over the daily operations of the partnership.
4. A certificate of limited partnership or registration statement filed either with the secretary of state or recorded in the county where the limited partnership does business in accordance with the requirement of state law.

These are the requirements for all limited partnerships. Each state may have additional requirements that must be met in order for there to be a valid limited partnership.

PARTNERSHIP PROPERTY

Under the Uniform Partnership Act, property which is titled in the partnership name is owned by the partnership. A partner who contributes property to a partnership loses his ownership in the property. Property purchased with partnership funds is owned by the partnership. The property held by a partnership can be legally sold, transferred or conveyed only by the partnership. Since partnership property is owned by the partnership, it cannot be directly attached to satisfy any court judgment taken against a partner. A partner's ownership interest in a partnership can be attached and sold by a creditor, but the creditor cannot reach the underlying property in the partnership.

An important aspect of partnership law is that an investor loses all individual rights in property contributed to a limited partnership. Example: A limited partner contributes a farm to the limited partnership worth one million dollars. Upon termination the partner is to receive $1,000,000 back. The partner has no legal right to request the return of the farm instead. In the same vein, creditors of the limited partner cannot sue the partnership for return of the farm. The rights of creditors of a limited partner against the partnership are limited to an attachment and sale of the partner's interest in the partnership, not a recovery of property contributed to the partnership. This means that partnership interests are treated like stock in a corporation. The value of the stock is determined by the percentage value of the entire business and not by the value of the property that an individual person contributed to buy the stock or partnership interest.

THE POWERS OF GENERAL PARTNER IN A LIMITED PARTNERSHIP

Under both the ULPA and the RULPA a general partner of a limited partnership has all of the powers of a partner in a regular general partnership. All partners have certain basic rights in a general partnership:

1. The right to insist on a partnership accounting. Along with this right is the right to have the books examined by an outside accountant.
2. The right to dissolve the partnership in accordance with the terms of the partnership agreement or the Uniform

Partnership Act of the state.

3. The right to seek to restrain the partnership from performing acts prohibited under the partnership agreement.
4. The right to bring a legal action for breach of the partnership agreement.

These are implied rights in any partnership agreement. Provisions in partnership agreements that waive such rights are invalid and against a state's public policy.

In addition to the regular partnership powers, a general partner is also has a fiduciary duty to the limited partners to look out for their interests. There is a special degree of trust placed upon the general partners to protect the limited partners because the limited partners are not in a position to protect themselves. The general partner of a limited partnership is held to the standard of care of a "reasonable general partner." A general partner is expected not to compete in business with the partnership. A general partner is expected not to do anything that a normal reasonable person acting as a general partner would not also do.

A general partner can be sued by the limited partners for losses incurred by the general partner's breach of fiduciary duties. Generally, limited partners can recover damages from a general partner whenever the partnership suffers losses because of the general partner's unreasonable actions.

In a limited partnership, only a general partner has full authority to act on the partnership's behalf in the normal course of its business. Only a general partner can bind both the partnership and the other general partners to contracts even if the other general partners never authorized or approved the contracts. This unlimited power on the part of one general partner to bind the partnership and the other general partners is the biggest concern of most investors. The partners may agree to limit a general partner's authority to bind the partnership or act on its behalf. In a limited partnership, the limited partners may not participate in the daily business operations of the partnership. This non-participation by limited partners in the partnership is the main characteristic of a limited partnership.

People dealing with a limited partnership are entitled to assume, unless informed otherwise, that any general partner has the right and power to act for the partnership in the normal course of its business. Even though a general partner may only have a limited authority to act for the partnership, the apparent authority of the general partner may nevertheless bind the partnership to contracts with third parties. Contracts entered with people who did not actually know that the general partner lacked the authority to bind the partnership are binding on the partnership.

In addition to the above restrictions, there are still some acts, however, that a partner can never do unless the authority is specifically granted in a partnership agreement. Anyone dealing with a partner is presumed to know that unless the partnership agreement gives the partner specific authority to act in certain special areas, a valid contract in those areas cannot be executed.

THE POWERS OF THE LIMITED PARTNERS IN A LIMITED PARTNERSHIP

Limited partners have few powers in a limited partnership. In exchange for not being personally liable for the partnership debts, limited partners agree not to participate in the normal management of the partnership. Therefore, the limited partners are unable to protect themselves effectively from mismanagement. For that reason, there are certain fixed fiduciary duties of trust imposed upon the general partner. Should a limited partner participate in the partnership's daily business, he would lose the protected status of a limited partner and have his partnership interest immediately changed into a general partnership interest. Such a limited partner immediately becomes personally liable for all of the partnership debts the same as any other general partner.

There are a few areas in which most states, however, permit limited partners to participate without losing their protected status. A limited partner is entitled to:

1. Vote on the dissolution of the partnership.
2. Vote on the election or removal of general partners.
3. Vote on the admission of new limited partners.
4. Unlike a general partner, a limited partner can conduct a business in competition with the partnership unless prohibited by the partnership agreement.

FIDUCIARY DUTY OF ALL PARTNERS

By law every partner, both general and limited, is the agent of the partnership. Each partner has a fiduciary duty to the partnership and to the other partners to act in their best interests. Some of the things that partners cannot do are:

1. A partner may not usurp a partnership benefit. A partner must give the partnership the right of first refusal on any business opportunity that the partner comes across which may be of benefit to the partnership. Example: If the partnership is in the paving business and a partner finds out that a school is intending to repave its parking lot, the partner cannot bid on the job for himself without first informing the partnership of the job and giving the partnership the choice to bid the job. In addition, the partner cannot bid in competition against the partnership.
2. A partner may not divert partnership assets for the partner's own personal use. Such conduct is a breach of trust and could expose the partner to criminal liability.
3. A partner must fully disclose all material facts which affect the partnership and its affairs to the other partners.

A partner who breaches any of these duties may be sued by the other partners for their lost profits or other damages suffered as a result of the partner's misconduct. Should a partner usurp a partnership benefit, he may be ordered to pay all of the profits he realized from the transaction to the partnership.

TERMINATION OF A LIMITED PARTNERSHIP

A limited partnership terminates:

1. By expiration of its term of existence under the limited partnership agreement.
2. By vote of all of the partners to terminate the partnership.
3. By judicial decree.
4. By changing anything contained in the registration

statement or statement of limited partnership (whichever is used in the state) which then requires a new filing or recordation.

Unlike a general partnership, a limited partnership is not automatically dissolved upon the death, bankruptcy or withdrawal of a general partner unless the partnership agreement states otherwise. After a partnership has been dissolved and its assets liquidated, the priority of distribution of assets is:

1. All federal and state taxes are paid.
2. All employee wages and benefits are paid.
3. All secured liabilities are paid.
4. All unsecured liabilities are paid.
5. Any remaining funds are divided among the partners in accordance with their percentage of ownership interest in the partnership.

The proceeds received by a partner in the dissolution of a partnership are a return of the partner's investment. Any gain or loss in the dissolution is treated as a capital gain or loss. Example: If the partner had paid $4,000 for the stock and got back $3,000, he had a $1,000 capital loss. Likewise, if the partner got back $6,000, he would have a $2,000 capital gain.

THE REQUIREMENT OF FILING A REGISTRATION STATEMENT

The ULPA and RULPA require a limited partnership to file a registration statement sometimes called a Certificate of Limited Partnership. with a government agency, usually the secretary of state. Connecticut requires that the registration statement be filed both with the secretary of state and the town clerk where the

limited partnership does business. Some states, such as California, require a specific government form to be used, whereas other states permit the registration statement to be typed.
If a mandated official form is required, it can be obtained from the Secretary of State or other agency with which the filing is to be made. If a specific official form is not required, then the Certificate of Limited Partnership in this book is usually sufficient. To be ascertain the requirements, it is necessary to review the state law.

In addition to the filing requirement some states also require that the registration statement be published in a newspaper.

The purpose of filing a registration statement is to inform creditors of the existence of the limited partnership. Creditors are then in a better position to protect themselves. The filing requirement also makes it easier for governmental agencies to inspect a limited partnership for fraud or violations of state law. The information contained in it must be provided by the limited partnership in every state. All states require most of the information below be provided in a registration statement for a limited partnership:

1. The partnership name.
2. The purpose of the partnership.
3. The location of the principal place of business.
4. The names and addresses of all general partners.
5. The names and addresses of all limited partners.
6. The term of the partnership.
7. The contributions of each partner.

8. Whether additional contributions can be demanded.
9. The right to continue the partnership upon death, withdrawal or bankruptcy of a general partner.
10. Whether new limited partners can be admitted.

Under the ULPA and the RULPA, a valid limited partnership will be found to exist "if there has been substantial compliance in good faith." If there are minor mistakes in the registration statement but it was filed in a good faith belief that it was accurate, the limited partnership is still valid.

Every investor must verify that the registration statement is filed. If it is not filed, the limited partnership is not properly filed, and the investors will be treated as general partners for the purposes of sharing liability for partnership debts.

An amendment to the registration statement is required whenever any of the following acts occur:

1. The partnership name is changed.
2. The partnership business changes.
3. New limited partners are admitted or substituted in the limited partnership.
4. The term of the partnership is altered.
5. The limited partners receive voting rights on management of partnership business (care must be taken to assure rights given do not terminate the limited partnership interest).
6. The amount or character of limited partners' contributions changes.

Any amendment to a registration statement must be signed by all of the partners, not just the general partners. A copy of the Texas Certificate of Limited Partnership is included in this chapter.

LIMITED PARTNERS

Anyone can be a limited partner. Individuals, corporations, trusts, general partnerships, and limited partnerships can all be limited partners in a limited partnership. Example: Abel Limited Partnership may be a limited partner along with Boxer Corporation and George Investor in the Ajax Limited Partnership. Furthermore, a general partner may also be a limited partner in the same limited partnership. The general partner is still liable for the partnership debts, but the limited partnership share of the general partner's investment is treated as a limited partnership contribution.

TAXATION

A partnership is subject to its own peculiar tax treatment under federal tax law. Most unincorporated associations and trusts that conduct business are taxed as though they were corporations. Partnerships, however , are treated differently. In a partnership, the income is attributed to the partners in accordance with their percentage of partnership interest. The partnership pays no federal income tax itself. Example: If a partnership earns $1,000,000, it will pay no taxes. The partners will have to include the $1,000,000 on their tax returns. Assuming a 28% federal tax rate, the partners will pay $280,000. Were the partnership a C corporation, $519,200 would go to the federal government in taxes on income.

The partnership does not pay any taxes on the income from the partnership. That is the hallmark of a partnership. Even though a partnership does not pay taxes on its income, the partners pay income taxes on their respective shares of the partnership income. All partnership profits and losses are passed to the partners. The partnership files a Form 1165 partnership return and its K-1 forms, informing the IRS how the profits and losses are being allocated to each partner. Under the Internal Revenue Code, each partner is treated for tax purposes as a self-employed individual. Every partner is required to estimate his share of the partnership income and make estimated quarterly payments to the IRS for that income.

Unless a limited partnership does business in a state which has no income tax (there are very few), it will have state tax laws with which to comply. Limited partnerships are treated by the state tax codes in nearly the same manner as they are treated by the Internal Revenue Code. Limited partnerships under state tax laws are viewed the same as under federal law: pass-through vehicles for the partnership. All profits and losses of the partnership pass through. They are attributed to the individual partners according to their ownership interests in the partnership.

The effect of this pass through of profits and losses is the partnership is not taxed. There is no double taxation of the partnership income as in regular C corporation income. Individual state laws can vary from the federal tax law on specific items, but overall they are quite similar.

CERTIFICATE OF LIMITED PARTNERSHIP

OF

LANDTECH, LIMITED PARTNERSHIP

We, the undersigned, desiring to form a limited partnership pursuant to the provisions of the limited partnership law of the State of NEW MEXICO, do hereby severally certify as follows:

1. NAME: The name of the Partnership is:

LANDTECH, a limited partnership

2. CHARACTER OF THE BUSINESS: The character of the business of the Partnership is to invent and market new equipment for land development as provided in the Partnership Agreement.

3. PLACE OF BUSINESS: The location of the principal place of business of the Partnership shall be: 325 CHESTER, TAYLOR, NEW MEXICO.

4. GENERAL AND LIMITED PARTNERS: The names of the Partners, their places of residence, and their designation as General or Limited Partners are indicated in Exhibit "A" attached hereto and made a part hereof.

5. TERM: The term for which the Partnership is to exist is until the close of business on 31 December 2020, unless sooner terminated as provided in the Partnership Agreement.

6. LIMITED PARTNERS' CONTRIBUTIONS: The Limited Partners shall contribute the amounts of money in the form of cash as

specified in the Partnership Agreement.

7. FURTHER CONTRIBUTIONS BY LIMITED PARTNERS: The Limited Partners have not agreed to make any additional capital contributions to the Partnership.

8. SHARE OF PROFITS OR OTHER COMPENSATION RECEIVABLE BY LIMITED PARTNER: The Limited Partners are allocated a share of the profits from the partnership in the respective percentages as indicated in Exhibit "A" and as provided in the Partnership Agreement in proportion to their respective shares and other compensation as may be provided in the Partnership Agreement.

9. ADMISSION OF ADDITIONAL LIMITED PARTNERS: The General Partner is not given the right to admit additional Limited Partners except as provided by the Partnership Agreement.

IN WITNESS WHEREOF, the undersigned have set their hand and seals as of the __________ day of ________________________, ______.

GENERAL PARTNER

By: ____

LIMITED PARTNERS

By: ____
as Attorney-in-Fact for each of the Limited Partners as indicated in EXHIBIT "A"

EXHIBIT A

Attached to and made a part of that certain Certificate of Limited Partnership of ____

____

____,

dated the _______ day of _________________________, ________.

	CONTRIBUTION TO CAPITAL	OWNERSHIP INTEREST
GENERAL PARTNER		
___________________________	__________________	_____________________
___________________________	__________________	_____________________
LIMITED PARTNERS		
___________________________	__________________	_____________________
___________________________	__________________	_____________________
___________________________	__________________	_____________________

STATE OF ________________________

COUNTY OF ______________________

On ____________________ before me _________________________, a Notary Public in and for said County and State, personally appeared ____, 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 sale 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.

____

(Seal)

Office of the Secretary of State
Corporations Section
P.O. Box 13697
Austin, Texas 78711-3697

CERTIFICATE OF LIMITED PARTNERSHIP

1. **The name of the limited partnership is** ____

   ____

2. **The street address of its proposed registered office in Texas is (a P.O. Box is not sufficient) and the name of its proposed registered agent in Texas at such address is**

   ____

   ____

3. **The address of the principal office in the United States where records of the partnership are to be kept or made available is** ____

   ____

4. **The name, the mailing address, and the street address of the business or residence of each general partner is as follows:**

NAME	MAILING ADDRESS (include city, state, zip code)	STREET ADDRESS (include city, state, zip code)
____________________	______________________	_______________________
____________________	______________________	_______________________
____________________	______________________	_______________________

Date Signed: _______________

____
General Partner(s)

The Texas Revised Limited Partnership Act, Tex. Rev. Civ. Stat. Ann. Art.6132a-1 governs the formation of a limited partnership in Texas. A limited partnership is defined by the Act as a "partnership formed by two or more persons under the laws of Texas and having one or more general partners and one or more limited partners." "Person" includes a partnership, limited partnership, foreign limited partnership, trust, estate, corporation, person acting as a trustee or executor, or other entity. One person may not form a limited partnership by showing only himself or herself as both limited and general partner. The Act provides that in order to form a limited partnership, the partners must enter into a partnership agreement and one or more partners, including all of the general partners, must execute a certificate of limited partnership and file that certificate with the secretary of state.

The foregoing form promulgated by the secretary of state is designed to meet minimum statutory filing requirements and no warranty is made regarding the suitability of this form for any particular purpose. This form and the information provided are not substitutes for the advice of an attorney and it is recommended that the services of an attorney be obtained before preparation of the certificate of limited partnership.

Name: Section 1.03 of the Act provides that the name of a limited partnership must contain the words "Limited Partnership," or "Limited," or the abbreviation "L.P.," or "Ltd." as the last words or letters of its name and may not contain the name of a limited partner unless that name is also the name of a general partner, or the business of the partnership had been carried on under that name before the admission of that limited partner. The name also may not contain a word or phrase indicating or implying that it is a corporation or that it is organized other than for a purpose stated in its partnership agreement. Further, the name of the limited partnership may not be the same as, or deceptively similar to the name of an existing corporation, limited partnership, limited liability company, or a name that has been reserved or registered, except that a written consent may be obtained as appropriate under the secretary of state's name availability rules for names that are deemed similar requiring a letter of consent. Whether the name chosen is available for use in Texas may be determined by telephone at (512) 463-5555 or by e-mail to corpinfo@sos.state.tx.us/ This is only a preliminary clearance. The final decision on the name will be made when the document is submitted for filing.

Submission & Fee: The certificate must be signed by all of the general partners of the partnership. Submit the certificate along with a $750.00 filing fee to: Secretary of State, Statutory Filings Division, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. The delivery address is: Secretary of State, Statutory Filings Division, Corporations Section, James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. Personal checks and MasterCard®, Visa®, and Discover~) are accepted in payment of the filing fee. Checks should be made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized processing cost of 2.1% of the total fees.

The telephone number is (512) 463-5555, TDD: (800) 735-2989, FAX: (512) 463-5709.

Form No. 207 Revised 8/99

AGREEMENT OF LIMITED PARTNERSHIP
OF
LANDTECH

THIS AGREEMENT is made by and between JOHN BELL, ROBERT LEE and NATHAN FORREST hereinafter called collectively the "General Partner" and JOHN BELL, ROBERT LEE and NATHAN FORREST, signing this Agreement as attorney in fact for the Limited Partners (the "Limited Partner"), all of whom are collectively hereinafter called "Partner."

The parties hereto, intending to be legally bound for the purpose of forming a limited partnership (the "Partnership") pursuant to the laws of the State of NEW MEXICO, hereby form a partnership and agree as follows:

1. NAME OF THE PARTNERSHIP. The name of the partnership is LANDTECH, LIMITED PARTNERSHIP.

2. PRINCIPAL OFFICE. The principal office and place of business of the Partnership shall be located at 325 CHESTER, TAYLOR, NEW MEXICO or such other place as the Partners may from time to time designate.

3. TERM OF THE PARTNERSHIP. The partnership shall terminate on DECEMBER 30, 2020. The Partnership may terminate or be dissolved earlier in accordance with the terms of this Agreement.

4. PARTNERSHIP PURPOSE AND BUSINESS. The purpose and business of the Partnership shall be to invent, develop and market new land development technology

____

5. OPERATION OF THE PARTNERSHIP: The General Partner shall be responsible for the day-to-day management of the business of the Partnership in accordance with the limited partnership law of the State of ____NEW MEXICO______.

6. CAPITAL CONTRIBUTION AND PARTNERSHIP INTERESTS:

6.01. Capital Contribution of the General Partners.

a. ________JOHN BELL___________ as General Partner shall contribute cash in the amount of Five Thousand ($5,000) dollars, the following described property: ________________________none__________

____

____

____

in the value of _____________none_____________ ($_____) and management expertise and services in the value of _______Five Thousand ($5,000) dollars. If the value of the property, services and expertise that is furnished to the partnership is not as indicated, his specific interest in the Partnership shall be reduced proportionally to reflect the true value of the capital contribution.

b. __________ROBERT LEE_________________ as General Partner shall contribute cash in the amount of Five Thousand ($5,000) dollars, the following described property: ______________________

______________________________NONE_______________________________

____

in the value of _________________________ ($_______) and management expertise and services in the value of _____Five Thousand ($5,000) dollars. If the value of the property, services and expertise that is furnished to the partnership is not as indicated, his specific interest in the Partnership shall be reduced proportionally to reflect the true value of the capital contribution.

c. ___NATHAN FORREST___ as General Partner shall contribute cash in the amount of Five Thousand ($5,000) dollars, the following described property: ______________________________

___NONE___

____

____

in the value of ______________________ ($________) and management expertise and services in the value of ___Five Thousand ($5,000) dollars. If the value of the property, services and expertise that is furnished to the partnership is not as indicated, his specific interest in the Partnership shall be reduced proportionally to reflect the true value of the capital contribution.

6.02. CAPITAL CONTRIBUTIONS OF THE LIMITED PARTNERS. The Limited Partners shall, in the aggregate, contribute ___FIVE HUNDRED THOUSAND ($500,000)___ dollars in cash to the Partnership.

6.03. GENERAL PARTNERS' SHARE OF THE PARTNERSHIP. The General Partners shall, as an aggregate, have a ___THIRTY___ percent (30%) interest in the profits and losses of the Partnership.

6.03.a. ___JOHN BELL___ shall have a share as General Partner equal to _ten_ percent (10%).

6.03.b. ___ROBERT LEE___ shall have a share as General Partner equal to ___ten___ percent (10%).

6.03.c. ___NATHAN FORREST___ shall have a share as General Partner equal to ___ten___ percent (10%).

6.04. LIMITED PARTNERS' SHARE OF THE PARTNERSHIP. The Limited

Partners shall, in the aggregate, have an SEVENTY percent (70%) interest in the profits and losses of the Partnership.

6.05. LIABILITY OF LIMITED PARTNERS. It is hereby understood that the personal liability of any Limited Partner arising out of the activities of the Partnership shall be limited solely to and shall not exceed that Limited Partner's Capital Contribution. It is further understood that no Limited Partner shall be required to make additional contributions to the Partnership or to make loans to the Partnership or to guarantee any performance of the Partnership.

No Limited Partner shall be liable for the actions or obligations incurred by any General Partner or any other Limited Partner.

No Limited Partner shall participate in the management of the Partnership except to the extent permitted under state law for Limited Partners.

No Limited Partner shall have the power to sign contracts for the Partnership or bind the Partnership in any way.

No Limited Partner shall have any right to a return of capital or other property contributed to the Partnership except in the event distributions other than from Partnership profits are made to the Limited Partner pursuant to this Agreement. No interest shall be paid by the Partnership on any Limited Partner's capital contribution.

6.06. ADDITIONAL CAPITAL CONTRIBUTIONS FROM PARTNERS. All of the Partners may agree to make additional capital contributions to the Partnership. In such an event, an Amended Certificate of Limited Partnership must be prepared and filed to state correctly the respective interests of the Partners and their capital contributions.

7. BORROWING NEEDED CAPITAL. Authority is hereby given the General Partner to borrow funds with reasonable interest from any lending institution or person, including a Limited Partner, for any legitimate Partnership purpose. When such funds cannot be obtained through these sources, the General Partner may lend to the Partnership the funds sought with reasonable terms of interest (prevailing rates or better). No lender to which an application for a loan is made by the Partnership shall be required to inquire into the purpose for which the loan is sought. The Partners hereby agree that loans obtained by the General Partner for the Partnership shall be presumed to be intended for Partnership use and purposes.

8. ACCOUNTING, ALLOCATIONS AND DISTRIBUTIONS.

8.01. ACCOUNTING YEAR AND METHOD. The Partnership hereby adopts the calendar year ending December 31 as both its accounting and tax year. The books of the Partnership shall be kept using standard accounting practices and shall employ the cash method of accounting unless changed by the General Partner.

8.02 CAPITAL ACCOUNT. The Partnership shall maintain a capital account for each Partner. The initial balance of the capital account of each Partner shall be that Partner's Proportionate Share of the total Capital Contributions. Afterwards, the capital account of each Partner:

(a) Shall be increased by that partner's share of the Partnership's income and gain which are allocated to the Partner for the Taxable Year.

(b) Shall be decreased as of the end of each taxable year in the amount of the Partnership's deductions and losses allocated to the Partner for that taxable year, and

(c) Shall be decreased effectively at the time of any distributions in the amount of that distribution.

8.03 DETERMINATION OF PROFITS AND LOSSES. The Partnership shall employ and use standard accounting practices and principles in determining the profits and losses of the Partnership for federal tax purposes.

8.04 ALLOCATION OF PROFITS AND LOSSES. The Partnership shall employ and use standard accounting practices and principles in accordance with federal tax law to allocate its profits and losses among the Partners. All profits and losses of the Partnership including each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be allocated among and borne by the Partners as follows:

(a) The General Partners shall, as an aggregate, receive ___ thirty ___ percent (30 %) of the net profit of the Partnership to be divided as follows: JOHN BELL ________ receives ___TEN_____ percent (10%) ________________________ NATHAN FORREST ___________ receives ____TEN__ percent(10%) ROBERT LEE _______ receives ___TEN___ percent (10%).

(b) The limited Partners shall receive in the aggregate seventy___ percent (70%) of the net profit of the Partnership.

(c) All allocations from income, gains, losses, deductions and credits of the Partnership shall be divided among the Partners as follows:

(i) An aggregate of ___seventy____ percent (70%) to the Limited Partners in accordance to their respective Capital Accounts.

(ii) An aggregate of _____thirty_______ percent (30%) to the General Partners in accordance to their percentage of interest in the Partnership.

Profits and losses and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated among the Partners on the last day of each accounting year of the Partnership.

8.05 FEDERAL INCOME TAX TREATMENT. It is the agreement of the Partners as herein expressed that all allocations made to them, including income, gain, loss, deductions or credits, shall retain their character as ordinary income, short-term or long-term capital gain or loss, depreciation, or otherwise and shall be entitled to tax-free treatment in the proportion of each Partner's Capital Account.

8.06 FEDERAL INCOME TAX ELECTIONS. The Partnership shall elect to treat as an expense for federal tax purposes all amounts incurred for taxes, interest, and other fees, charges and expenses to the extent that such expenditures are permitted or required to be currently deductible expenses in accordance with applicable laws and regulations. The Partners intend for this Limited Partnership to be covered under the provisions of Subchapter K, Chapter 1 of the Internal Revenue Code. Therefore, the Partners agree that no election shall be made by any Partner under Section 761 of the Internal Revenue Code of 1954, as amended, to exclude this Partnership from coverage under Subchapter K.

8.07 BOOKS AND RECORDS. The Partnership shall keep or cause to be kept complete and accurate books and records with respect to the Partnership's operations and financial condition. The Partnership shall provide an annual financial statement to all of the Partners within sixty (60) days following the close of the Partnership's taxable year. This obligation may be satisfied by delivering to each Partner a copy of the Partnership's federal income tax return for that year and Schedule K-1 setting forth such Partner's distributions and allocations.

8.08 MEETINGS. The Partnership shall hold an annual meeting of the General Partners within sixty (60) days of the close of the fiscal year at an address set by the Partners. Limited Partners may attend but not vote.

9. DISTRIBUTIONS.

9.01 ANNUAL DISTRIBUTIONS. The Partnership shall distribute to each Partner at least annually enough of the net profits from that Partner's account to cover the Partner's tax liabilities from his participation in the Partnership.

9.02 EXCESS DISTRIBUTIONS. The General Partner shall have the authority to make cash distributions to any Limited Partner in excess of the amount permitted to be distributed under all of the provisions of this Agreement.

9.03 LIMITS ON DISTRIBUTIONS. Notwithstanding paragraph 9.02, the General Partner shall not make any distributions to any Partner when the fair market value of the Partnership assets do not exceed the Partnership liabilities. Nor shall any distributions be made when doing so would reduce the fair market value of the Partnership assets to below that of the Partnership liabilities. No distribution of Partnership capital shall be made if there will remain insufficient Partnership capital to pay the Partnership liabilities. The capital accounts of the Partners shall not be considered a Partnership liability for the purposes of this section.

10. DUTIES AND POWERS OF PARTNERS.

10.01. AUTHORITY IN GENERAL It is understood and agreed that the General Partner will be responsible for the daily business decisions of the Partnership. Specifically, the General Partner is authorized to execute and deliver for the Partnership all deeds, leases, assignments, contracts, notes, security agreements, mortgages, and deeds of trust as required to carry out the Partnership operations. In addition, the General Partner shall make the cash distributions for the Partnership. The General Partner shall possess all of the rights and powers of General Partner as stated under the limited partnership law of the State of New Mexico.

The Limited Partners shall not participate in the daily management and control of the Partnership. The Limited Partners shall not transact any business on behalf of the Partnership nor shall any Limited Partner have the power to bind the Partnership in any way, shape or form.

10.02 POWER OF ATTORNEY. The Limited Partners hereby appoint the General Partner as their true and lawful attorney-in-fact with the specific authority to undertake the following actions for the Limited Partners:

(a) Prepare, sign and file a Certificate of Limited Partnership for the Limited Partners,

(b) Prepare, sign and file any amendment or revocation of the Certificate of Limited Partnership for the Limited Partners, and

(c) Execute such other documents for the Limited Partners as may be required for the conduct of the Partnership business or for the dissolution and termination of the Partnership.

10.03 LIMITS ON GENERAL PARTNER AUTHORITY. The General Partner is specifically not granted the authority to do the following acts without the prior written consent of all the Limited Partners:

(a) Violate in any way any term, condition or provision of this Partnership Agreement.

(b) Commit any act or undertake any course of conduct which would make the continuation of the ordinary business of the Partnership impossible.

(c) Admit a new Limited Partner in violation of the terms of this Agreement.

(d) Admit a new General Partner in violation of this Partnership Agreement.

10.04 (OPTIONAL) INDEPENDENT ACTIVITIES. All Partners may, notwithstanding the existence of this Agreement, engage in whatever activities they choose, whether the same be competitive with the Partnership or otherwise, without having or incurring any obligation to offer any interest in such activities to any party hereto. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Partner from so doing or from engaging in other activities of any nature by itself or jointly with others or as any part of any other association to which a Partner is or may be a party in any locale or in fields or areas of operation which the Partnership may likewise be active. No Partner is required to permit the Partnership or any other Partner to participate in any of the foregoing. Each Partner hereby waives, relinquishes and renounces any such right or claim of participation.

This provision is ADOPTED and made a part of this Partnership Agreement ____________.

This provision is REJECTED and not made a part of this Partnership Agreement _____X_______.

10.05 PRESERVATION OF TAX STATUS. It is intended by all parties that the Partnership shall be classified for federal income tax purposes at all times during its existence as a Partnership and not as an association taxable as a corporation. The Partners agree they will not do any act to jeopardize this classification and will act as necessary to preserve that classification.

10.06 ASSIGNMENT OR TRANSFER OF GENERAL PARTNER'S INTEREST. The General Partner may not sell, assign, give or otherwise convey or dispose of his general partnership interest if such action will either result in the Partnership being terminated or in the Partnership becoming taxable as a corporation.

10.07 ASSIGNMENT OR TRANSFER OF LIMITED PARTNER'S INTEREST. Assignments or transfers of a Limited Partner's interest in the Partnership shall be governed solely by the following provisions:

(a) No Limited Partner may sell, give, convey or otherwise dispose of any part of the Limited Partner's interest in the Partnership without the prior written consent of the General Partner. Such consent of the General Partner shall not be unreasonably withheld but will not be granted if the transfer results in the Partnership being terminated or if the Partnership becomes taxable as a corporation.

(b) If the General Partner consents to the transfer, the person or entity acquiring the interest will become a

Substituted Limited Partner only if all of the following requirements are met:

(i) The interest transferred constitutes the entire interest of the transferring Limited Partner in the Partnership,

(ii) The person or entity receiving the interest consents in writing to be bound by all of the terms and conditions of this Limited Partnership Agreement, and

(iii) No transfer will be effective until all of the appropriate documentation and Amended Certificates of Limited Partnership and all requirements under the law of every state where the Partnership does business have been met.

10.08 INDEMNIFICATION OF THE GENERAL PARTNER. The Partnership shall indemnify and hold harmless the General Partner for any act performed by the General Partner within the scope of authority under this Agreement or the laws of the State of New Mexico except for the acts of fraud, bad faith or gross negligence. Such indemnity shall be satisfied only out of the Partnership assets, and no Limited Partner shall have any personal liability on the account thereof.

10.09 COMPENSATION OF THE GENERAL PARTNER. Except for the distributions which the General Partner is entitled to receive under the terms of this Agreement, the General Partner shall not be paid or otherwise entitled to receive any compensation or pay for the services provided as a General Partner of the Partnership. The General Partner shall be reimbursed for all expenses incurred on behalf of the Partnership.

11. TERMINATION AND DISSOLUTION.

11.01 CONDITIONS OF TERMINATION AND DISSOLUTION.

(a) The Partnership shall not be dissolved by reason of death, dissolution, withdrawal or expulsion of a partner or by the admission of a new partner.

(b) The Partnership shall immediately be dissolved and thereafter the Partnership business shall be discharged in an orderly manner and the Partnership terminated upon the occurrence of any of the following events:

(i) Expiration of the term of the Partnership in paragraph 3, above.

(ii) Affirmative vote to terminate by all of the Limited Partners.

(iii) Withdrawal, bankruptcy or dissolution of the General Partner.

(iv) Termination by the Limited Partners of all of their interests in the Partnership.

(v) Occurrence of any event which makes it unlawful for the Partnership business to be continued.

(vi) Sale or disposition of all or substantially all of the Partnership assets.

(vii) Cessation by the Partnership or inability of the Partnership to continue in the business which was its stated purpose.

11.02 LIMITATION ON VOLUNTARY DISSOLUTION. Any other provisions of this Agreement notwithstanding, so long as any property is encumbered by a mortgage owned or held by a lender, there shall be no voluntary dissolution of the Partnership without the prior written approval of such mortgagee or lender.

11.03 LIMITATION ON EFFECT OF DISSOLUTION. No act or event (including the passage of time) causing dissolution of the Partnership shall in any way affect the validity of, or shorten the term of, any time charter, deed of trust, mortgage, contract or other obligation entered by or on behalf of the Partnership or acquired by the Partnership.

11.04 "WINDING-UP." Upon dissolution of the Partnership, the General or (if the General Partner is unable or unwilling to act) the designee of a majority in interest of the Limited Partners shall proceed diligently to discharge the affairs of the Partnership.

11.05 DISTRIBUTION UPON TERMINATION. The net proceeds resulting from the liquidation of the partnership assets shall be distributed and applied under appropriate state law in the following order of priority:

(a) To payment of debts and liabilities of the Partnership other than debts and liabilities to the Partners.

(b) To a reserve account established by the Partnership for the payment of anticipated claims against the Partnership. included in such anticipated claims are contingent, unmatured or unforeseen liabilities. When such claims have been paid the account will be distributed in accordance with (c), (d) and (e) of this clause.

(c) To loans and debts owed to the Partners. If the Partnership lacks sufficient funds to pay all such liabilities, funds available shall be distributed pro rata among the Partners.

(d) To each Limited Partner equal to that Partner's respective Capital Account.

(e) To the General Partner in the amount reflected in the General Partner's Capital Account.

(f) To all Partners in accordance with their Proportionate Partnership interest.

11.06 RETURN OF CONTRIBUTION. Upon dissolution, the Partners shall look solely to the assets of the Partnership for the return of their capital contribution. If the Partnership property remaining after the payment or discharge of the debts and liabilities of the Partnership is insufficient to return the Capital Contribution of the Limited partner, such Limited partner shall have no recourse against the General Partner.

11.07 ELIMINATION OF DEFICIT IN CAPITAL ACCOUNTS. If after completion of the matters discussed in paragraph 11.04 and subparagraphs 11.05(a) through (c), a deficit still remains in the General Partners' capital accounts, then the General Partners will be required to contribute from personal funds to the Partnership in order to eliminate the deficit in the capital accounts. Except as required under the law of the State of ____NEW MEXICO____, the Limited Partners shall not be called upon or required, in any way, to contribute any funds to the Partnership or to return any funds to the Partnership which had previously been distributed to the Limited Partners.

12. MISCELLANEOUS

12.01 SURVIVAL OF REPRESENTATIONS. The covenants, representations, warranties and other written statements set forth in this Agreement or in any exhibit hereto shall survive the execution and delivery hereof and formation of the partnership. All of the same shall be deemed to be independently material and to have been relied upon by the party to whom made.

12.02 COMPLIANCE WITH THE LAW. The partnership shall conduct all operations in compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations.

12.03 ATTORNEY FEES. If legal action is commenced over the terms of this Partnership Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

12.04 GOVERNING LAW. It is agreed among the parties that the Partnership Agreement shall be governed and interpreted in accordance with the laws of the State of _____NEW MEXICO_____.

12.05 SUCCESSOR IN INTEREST. Except as otherwise provided herein, all provisions of this Partnership Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective heirs, executors, administrators, personal representatives, assigns and successors in interest of the parties.

12.06 CONSTRUCTION. None of the provisions of this Partnership Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

12.07 FURTHER ASSURANCES. Each of the Partners shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement which are not inconsistent with the terms hereof.

12.08 NO GUARANTY OF SUCCESS. No party to this Agreement has relied upon any warranty or guarantee of success and no such warranties or guarantees have been made. The Parties acknowledge that the obtaining of profit through the pursuit of the Partnership's stated purpose is speculative in nature and not always successful.

12.09 ENTIRE AGREEMENT AND AMENDMENT. This Agreement incorporates the entire agreement and understanding among the parties with respect to the subject matter. This Agreement may not be modified or amended without the written consent of all Partners.

12.10 NOTICES. Any notice or other communication that is required to be given from one Partner to another under the terms of this Partnership Agreement shall be in writing and mailed in the United States by first class mail with postage prepaid or sent by paid telegram to the address set forth below:

GENERAL PARTNER

____

____

____

LIMITED PARTNERS

____

____

____

Any Partner may change his address for the purpose of receiving notice under this provision by giving such new address in writing to each Partner.

IN WITNESS WHEREOF this Partnership Agreement has been duly executed as of this _____ day of ____________________, _______.

GENERAL PARTNER

____

JOHN BELL

____

NATHAN FORREST

____

ROBERT LEE

LIMITED PARTNERS

CERTIFICATE OF LIMITED PARTNERSHIP

OF

____

We, the undersigned, desiring to form a limited partnership pursuant to the provisions of the limited partnership law of the State of ________________, do hereby severally certify as follows:

1. NAME: The name of the Partnership is:

____

2. CHARACTER OF THE BUSINESS: The character of the business of the Partnership is ____ ____as provided in the Partnership Agreement.

3. PLACE OF BUSINESS: The location of the principal place of business of the Partnership shall be: _________________________________ ____.

4. GENERAL AND LIMITED PARTNERS: The names of the Partners, their places of residence, and their designation as General or Limited Partners are indicated in Exhibit "A" attached hereto and made a part hereof.

5. TERM: The term for which the Partnership is to exist is until the close of business on _______________________________, unless sooner terminated as provided in the Partnership Agreement.

6. LIMITED PARTNERS' CONTRIBUTIONS: The Limited Partners shall contribute the amounts of money in the form of cash as specified in

the Partnership Agreement.

7. FURTHER CONTRIBUTIONS BY LIMITED PARTNERS: The Limited Partners have not agreed to make any additional capital contributions to the Partnership.

8. SHARE OF PROFITS OR OTHER COMPENSATION RECEIVABLE BY LIMITED PARTNER: The Limited Partners are allocated a share of the profits from the partnership in the respective percentages as indicated in Exhibit "A" and as provided in the Partnership Agreement in proportion to their respective shares and other compensation as may be provided in the Partnership Agreement.

9. ADMISSION OF ADDITIONAL LIMITED PARTNERS: The General Partner is not given the right to admit additional Limited Partners except as provided by the Partnership Agreement.

IN WITNESS WHEREOF, the undersigned have set their hand and seals as of the __________ day of ________________________, ______.

GENERAL PARTNER

By: ____

LIMITED PARTNERS

By: ____
as Attorney-in-Fact for each of the Limited Partners as indicated in EXHIBIT "A"

EXHIBIT A

Attached to and made a part of that certain Certificate of Limited Partnership of ______________________________________ ____ ____,
dated the ______ day of _____________________, _______.

	CONTRIBUTION TO CAPITAL	OWNERSHIP INTEREST
GENERAL PARTNER		
______________________	______________	__________________
______________________	______________	__________________
LIMITED PARTNERS		
______________________	______________	__________________
______________________	______________	__________________
______________________	______________	__________________

STATE OF ___________________________

COUNTY OF _________________________

On ______________________ before me _____________________________, a Notary Public in and for said County and State, personally appeared ____, 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 sale 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.

____

AGREEMENT OF LIMITED PARTNERSHIP

OF

____

THIS AGREEMENT is made by and between _________________________ ____ hereinafter called collectively the "General Partner" and __________ ____ ________________________, signing this Agreement as attorney in fact for the Limited Partners (the "Limited Partner"), all of whom are collectively hereinafter called "Partner."

The parties hereto, intending to be legally bound for the purpose of forming a limited partnership (the "Partnership") pursuant to the laws of the State of ____________________, hereby form a partnership and agree as follows:

1. NAME OF THE PARTNERSHIP. The name of the partnership is ____.

2. PRINCIPAL OFFICE. The principal office and place of business of the Partnership shall be located at ____________________ ____or such other place as the Partners may from time to time designate.

3. TERM OF THE PARTNERSHIP. The partnership shall terminate on _____________________________. The Partnership may terminate or be dissolved earlier in accordance with the terms of this Agreement.

4. PARTNERSHIP PURPOSE AND BUSINESS. The purpose and business of the Partnership shall be ____

____

____

5. OPERATION OF THE PARTNERSHIP: The General Partner shall be responsible for the day-to-day management of the business of the Partnership in accordance with the limited partnership law of the State of ____________________.

6. CAPITAL CONTRIBUTION AND PARTNERSHIP INTERESTS:

6.01. Capital Contribution of the General Partners.

a. ______________________________ as General Partner shall contribute cash in the amount of _______________ (   ) dollars, the following described property: ____

____

____

____

in the value of ___________________________ ($) and management expertise and services in the value of _________________________________ _______ dollars. If the value of the property, services and expertise that is furnished to the partnership is not as indicated, his specific interest in the Partnership shall be reduced proportionally to reflect the true value of the capital contribution.

b. _______________________________________ as General Partner shall contribute cash in the amount of ________________________________ ______ dollars (   ), the following described property:

____

____

____

in the value of _________________________ ($) and management expertise and services in the value of _____________________________ dollars. If the value of the property, services and expertise that is furnished to the partnership is not as indicated, his specific interest in the Partnership shall be reduced proportionally to reflect the true value of the capital contribution.

c. ____ as General Partner shall contribute cash in the amount of _____________________________ _______________, the following described property: ___________

____

____

____

in the value of _________________________ ($) and management expertise and services in the value of ____________________________ dollars. If the value of the property, services and expertise that is furnished to the partnership is not as indicated, his specific interest in the Partnership shall be reduced proportionally to reflect the true value of the capital contribution.

6.02. CAPITAL CONTRIBUTIONS OF THE LIMITED PARTNERS. The Limited Partners shall, in the aggregate, contribute ________________________ _________________ dollars in cash to the Partnership.

6.03. GENERAL PARTNERS' SHARE OF THE PARTNERSHIP. The General Partners shall, as an aggregate, have a __________________ percent (   ) interest in the profits and losses of the Partnership.

6.03.a. ________________________________ shall have a share as General Partner equal to ______ percent (   ).

6.03.b. ________________________________ shall have a share as General Partner equal to _____________ percent (   ).

6.03.c. ________________________________ shall have a share as General Partner equal to _____________ percent (   ).

6.04. LIMITED PARTNERS' SHARE OF THE PARTNERSHIP. The Limited Partners shall, in the aggregate, have an ________________ percent (   ) interest in the profits and losses of the Partnership.

6.05. LIABILITY OF LIMITED PARTNERS. It is hereby understood that the personal liability of any Limited Partner arising out of the activities of the Partnership shall be limited solely to and shall not exceed that Limited Partner's Capital Contribution. It is further understood that no Limited Partner shall be required to make additional contributions to the Partnership or to make loans to the Partnership or to guarantee any performance of the Partnership.

No Limited Partner shall be liable for the actions or obligations incurred by any General Partner or any other Limited Partner.

No Limited Partner shall participate in the management of the Partnership except to the extent permitted under state law for Limited Partners.

No Limited Partner shall have the power to sign contracts for the Partnership or bind the Partnership in any way.

No Limited Partner shall have any right to a return of capital or other property contributed to the Partnership except in the event distributions other than from Partnership profits are made to the Limited Partner pursuant to this Agreement. No interest shall be paid by the Partnership on any Limited Partner's capital contribution.

6.06. ADDITIONAL CAPITAL CONTRIBUTIONS FROM PARTNERS. All of the Partners may agree to make additional capital contributions to the Partnership. In such an event, an Amended Certificate of Limited Partnership must be prepared and filed to state correctly the respective interests of the Partners and their capital contributions.

7. BORROWING NEEDED CAPITAL. Authority is hereby given the General Partner to borrow funds with reasonable interest from any lending institution or person, including a Limited Partner, for any legitimate Partnership purpose. When such funds cannot be obtained through these sources, the General Partner may lend to the Partnership the funds sought with reasonable terms of interest (prevailing rates or better). No lender to which an application for a loan is made by the Partnership shall be required to inquire into the purpose for which the loan is sought. The Partners hereby agree that loans obtained by the General Partner for the Partnership shall be presumed to be intended for Partnership use and purposes.

8. ACCOUNTING, ALLOCATIONS AND DISTRIBUTIONS.

8.01. ACCOUNTING YEAR AND METHOD. The Partnership hereby adopts the calendar year ending December 31 as both its accounting and tax year. The books of the Partnership shall be kept using standard accounting practices and shall employ the cash method of accounting unless changed by the General Partner.

8.02 CAPITAL ACCOUNT. The Partnership shall maintain a capital account for each Partner. The initial balance of the capital account of each Partner shall be that Partner's Proportionate Share of the total Capital Contributions. Afterwards, the capital account of each Partner:

(a) Shall be increased by that partner's share of the Partnership's income and gain which are allocated to the Partner for the Taxable Year.

(b) Shall be decreased as of the end of each taxable year in the amount of the Partnership's deductions and losses allocated to the Partner for that taxable year, and

(c) Shall be decreased effectively at the time of any distributions in the amount of that distribution.

8.03 DETERMINATION OF PROFITS AND LOSSES. The Partnership shall employ and use standard accounting practices and principles in determining the profits and losses of the Partnership for federal tax purposes.

8.04 ALLOCATION OF PROFITS AND LOSSES. The Partnership shall employ and use standard accounting practices and principles in accordance with federal tax law to allocate its profits and losses among the Partners. All profits and losses of the Partnership including each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be allocated among and borne by the Partners as follows:

(a) The General Partners shall, as an aggregate, receive ____________ percent (   ) of the net profit of the Partnership to be divided as follows:

_______________________ receives ______ percent (   )

_____________________ receives ______ percent (   )

________________________ receives _______ percent (   ).

(b) The limited Partners shall receive in the aggregate ______ percent (   ) of the net profit of the Partnership.

(c) All allocations from income, gains, losses, deductions and credits of the Partnership shall be divided among the Partners as follows:

(i) An aggregate of _________________ percent (   ) to the Limited Partners in accordance to their respective Capital Accounts.

(ii) An aggregate of _________________ percent (   ) to the General Partners in accordance to their percentage of interest in the Partnership.

Profits and losses and each item of income, gain, loss, deduction or credit entering into the computation thereof shall be allocated among the Partners on the last day of each accounting year of the Partnership.

8.05 FEDERAL INCOME TAX TREATMENT. It is the agreement of the Partners as herein expressed that all allocations made to them, including income, gain, loss, deductions or credits, shall retain their character as ordinary income, short-term or long-term capital gain or loss, depreciation, or otherwise and shall be entitled to tax-free treatment in the proportion of each Partner's Capital Account.

8.06 FEDERAL INCOME TAX ELECTIONS. The Partnership shall elect to treat as an expense for federal tax purposes all amounts incurred for taxes, interest, and other fees, charges and expenses to the extent that such expenditures are permitted or required to be currently deductible expenses in accordance with applicable laws and regulations. The Partners intend for this Limited Partnership to be covered under the provisions of Subchapter K, Chapter 1 of the Internal Revenue Code. Therefore, the Partners agree that no election shall be made by any Partner under Section 761 of the Internal Revenue Code of 1954, as amended, to exclude this Partnership from coverage under Subchapter K.

8.07 BOOKS AND RECORDS. The Partnership shall keep or cause to be kept complete and accurate books and records with respect to the Partnership's operations and financial condition. The Partnership shall provide an annual financial statement to all of the Partners within sixty (60) days following the close of the Partnership's taxable year. This obligation may be satisfied by delivering to each Partner a copy of the Partnership's federal income tax return for that year and Schedule K-1 setting forth such Partner's distributions and allocations.

8.08 MEETINGS. The Partnership shall hold an annual meeting of the General Partners within sixty (60) days of the close of the fiscal year at an address set by the Partners. Limited Partners may attend but not vote.

9. DISTRIBUTIONS.

9.01 ANNUAL DISTRIBUTIONS. The Partnership shall distribute to each Partner at least annually enough of the net profits from that Partner's account to cover the Partner's tax liabilities from his participation in the Partnership.

9.02 EXCESS DISTRIBUTIONS. The General Partner shall have the authority to make cash distributions to any Limited Partner in excess of the amount permitted to be distributed under all of the provisions of this Agreement.

9.03 LIMITS ON DISTRIBUTIONS. Notwithstanding paragraph 9.02, the General Partner shall not make any distributions to any Partner when the fair market value of the Partnership assets do not exceed the Partnership liabilities. Nor shall any distributions be made when doing so would reduce the fair market value of the Partnership assets to below that of the Partnership liabilities. No distribution of Partnership capital shall be made if there will remain insufficient Partnership capital to pay the Partnership liabilities. The capital accounts of the Partners shall not be considered a Partnership liability for the purposes of this section.

10. DUTIES AND POWERS OF PARTNERS.

10.01. AUTHORITY IN GENERAL It is understood and agreed that the General Partner will be responsible for the daily business decisions of the Partnership. Specifically, the General Partner is authorized to execute and deliver for the Partnership all deeds, leases, assignments, contracts, notes, security agreements, mortgages, and deeds of trust as required to carry out the Partnership operations. In addition, the General Partner shall make the cash distributions for the Partnership. The General Partner shall possess all of the rights and powers of General Partner as stated under the limited partnership law of the State of _______________.

The Limited Partners shall not participate in the daily management and control of the Partnership. The Limited Partners shall not transact any business on behalf of the Partnership nor shall any Limited Partner have the power to bind the Partnership in any way, shape or form.

10.02 POWER OF ATTORNEY. The Limited Partners hereby appoint the General Partner as their true and lawful attorney-in-fact with the specific authority to undertake the following actions for the Limited Partners:

(a) Prepare, sign and file a Certificate of Limited Partnership for the Limited Partners,

(b) Prepare, sign and file any amendment or revocation of the Certificate of Limited Partnership for the Limited Partners, and

(c) Execute such other documents for the Limited Partners as may be required for the conduct of the Partnership business or for the dissolution and termination of the Partnership.

10.03 LIMITS ON GENERAL PARTNER AUTHORITY. The General Partner is specifically not granted the authority to do the following acts without the prior written consent of all the Limited Partners:

(a) Violate in any way any term, condition or provision of this Partnership Agreement.

(b) Commit any act or undertake any course of conduct which would make the continuation of the ordinary business of the Partnership impossible.

(c) Admit a new Limited Partner in violation of the terms of this Agreement.

(d) Admit a new General Partner in violation of this Partnership Agreement.

10.04 (OPTIONAL) INDEPENDENT ACTIVITIES. All Partners may, notwithstanding the existence of this Agreement, engage in whatever activities they choose, whether the same be competitive with the Partnership or otherwise, without having or incurring any obligation to offer any interest in such activities to any party hereto. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Partner from so doing or from engaging in other activities of any nature by itself or jointly with others or as any part of any other association to which a Partner is or may be a party in any locale or in fields or areas of operation which the Partnership may likewise be active. No Partner is required to permit the Partnership or any other Partner to participate in any of the foregoing. Each Partner hereby waives, relinquishes and renounces any such right or claim of participation.

This provision is ADOPTED and made a part of this Partnership Agreement ____________.

This provision is REJECTED and not made a part of this Partnership Agreement _____________.

10.05 PRESERVATION OF TAX STATUS. It is intended by all parties that the Partnership shall be classified for federal income tax purposes at all times during its existence as a Partnership and not as an association taxable as a corporation. The Partners agree they will not do any act to jeopardize this classification and will act as necessary to preserve that classification.

10.06 ASSIGNMENT OR TRANSFER OF GENERAL PARTNER'S INTEREST. The General Partner may not sell, assign, give or otherwise convey or dispose of his general partnership interest if such action will either result in the Partnership being terminated or in the Partnership becoming taxable as a corporation.

10.07 ASSIGNMENT OR TRANSFER OF LIMITED PARTNER'S INTEREST. Assignments or transfers of a Limited Partner's interest in the Partnership shall be governed solely by the following provisions:

(a) No Limited Partner may sell, give, convey or otherwise dispose of any part of the Limited Partner's interest in the Partnership without the prior written consent of the General Partner. Such consent of the General Partner shall not be unreasonably withheld but will not be granted if the transfer results in the Partnership being terminated or if the Partnership becomes taxable as a corporation.

(b) If the General Partner consents to the transfer, the person or entity acquiring the interest will become a Substituted Limited Partner only if all of the following requirements are met:

(i) The interest transferred constitutes the entire interest of the transferring Limited Partner in the Partnership,

(ii) The person or entity receiving the interest consents in writing to be bound by all of the terms and conditions of this Limited Partnership Agreement, and

(iii) No transfer will be effective until all of the appropriate documentation and Amended Certificates of Limited Partnership andall requirements under the law of every state where the Partnership does business have been met.

10.08 INDEMNIFICATION OF THE GENERAL PARTNER. The Partnership shall indemnify and hold harmless the General Partner for any act performed by the General Partner within the scope of authority under this Agreement or the laws of the State of___________________ except for the acts of fraud, bad faith or gross negligence. Such indemnity shall be satisfied only out of the Partnership assets, and no Limited Partner shall have any personal liability on the account thereof.

10.09 COMPENSATION OF THE GENERAL PARTNER. Except for the distributions which the General Partner is entitled to receive under the terms of this Agreement, the General Partner shall not be paid or otherwise entitled to receive any compensation or pay for the services provided as a General Partner of the Partnership. The General Partner shall be reimbursed for all expenses incurred on behalf of the Partnership.

11. TERMINATION AND DISSOLUTION.

11.01 CONDITIONS OF TERMINATION AND DISSOLUTION.

(a) The Partnership shall not be dissolved by reason of death, dissolution, withdrawal or expulsion of a partner or by the admission of a new partner.

(b) The Partnership shall immediately be dissolved and thereafter the Partnership business shall be discharged in an orderly manner and the Partnership terminated upon the occurrence of any of the following events:

(i) Expiration of the term of the Partnership in paragraph 3, above.

(ii) Affirmative vote to terminate by all of the Limited Partners.

(iii) Withdrawal, bankruptcy or dissolution of the General Partner.

(iv) Termination by the Limited Partners of all of their interests in the Partnership.

(v) Occurrence of any event which makes it unlawful for the Partnership business to be continued.

(vi) Sale or disposition of all or substantially all of the Partnership assets.

(vii) Cessation by the Partnership or inability of the Partnership to continue in the business which was its stated purpose.

11.02 LIMITATION ON VOLUNTARY DISSOLUTION. Any other provisions of this Agreement notwithstanding, so long as any property is encumbered by a mortgage owned or held by a lender, there shall be no voluntary dissolution of the Partnership without the prior written approval of such mortgagee or lender.

11.03 LIMITATION ON EFFECT OF DISSOLUTION. No act or event (including the passage of time) causing dissolution of the Partnership shall in any way affect the validity of, or shorten the term of, any time charter, deed of trust, mortgage, contract or other obligation entered by or on behalf of the Partnership or acquired by the Partnership.

11.04 "WINDING-UP." Upon dissolution of the Partnership, the General or (if the General Partner is unable or unwilling to act) the designee of a majority in interest of the Limited Partners shall proceed diligently to discharge the affairs of the Partnership.

11.05 DISTRIBUTION UPON TERMINATION. The net proceeds resulting from the liquidation of the partnership assets shall be distributed and applied under appropriate state law in the following order of priority:

(a) To payment of debts and liabilities of the Partnership other than debts and liabilities to the Partners.

(b) To a reserve account established by the Partnership for the payment of anticipated claims against the Partnership. Included in such anticipated claims are contingent, unmatured or unforeseen liabilities. When such claims have been paid the account will be distributed in accordance with (c), (d) and (e) of this clause.

(c) To loans and debts owed to the Partners. If the Partnership lacks sufficient funds to pay all such liabilities, funds available shall be distributed pro rata among the Partners.

(d) To each Limited Partner equal to that Partner's respective Capital Account.

(e) To the General Partner in the amount reflected in the General Partner's Capital Account.

(f) To all Partners in accordance with their Proportionate Partnership interest.

11.06 RETURN OF CONTRIBUTION. Upon dissolution, the Partners shall look solely to the assets of the Partnership for the return of their capital contribution. If the Partnership property remaining after the payment or discharge of the debts and liabilities of the Partnership is insufficient to return the Capital Contribution of the Limited partner, such Limited partner shall have no recourse against the General Partner.

11.07 ELIMINATION OF DEFICIT IN CAPITAL ACCOUNTS. If after completion of the matters discussed in paragraph 11.04 and subparagraphs 11.05(a) through (c), a deficit still remains in the General Partners' capital accounts, then the General Partners will be required to contribute from personal funds to the Partnership in order to eliminate the deficit in the capital accounts. Except as required under the law of the State of __________________, the Limited Partners shall not be called upon or required, in any way, to contribute any funds to the Partnership or to return any funds to the Partnership which had previously been distributed to the Limited Partners.

12. MISCELLANEOUS

12.01 SURVIVAL OF REPRESENTATIONS. The covenants, representations, warranties and other written statements set forth in this Agreement or in any exhibit hereto shall survive the execution and delivery hereof and formation of the partnership. All of the same shall be deemed to be independently material and to have been relied upon by the party to whom made.

12.02 COMPLIANCE WITH THE LAW. The partnership shall conduct all operations in compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations.

12.03 ATTORNEY FEES. If legal action is commenced over the terms of this Partnership Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

12.04 GOVERNING LAW. It is agreed among the parties that the Partnership Agreement shall be governed and interpreted in accordance with the laws of the State of ____________________.

12.05 SUCCESSOR IN INTEREST. Except as otherwise provided herein, all provisions of this Partnership Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective heirs, executors, administrators, personal representatives, assigns and successors in interest of the parties.

12.06 CONSTRUCTION. None of the provisions of this Partnership Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

12.07 FURTHER ASSURANCES. Each of the Partners shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement which are not inconsistent with the terms hereof.

12.08 NO GUARANTY OF SUCCESS. No party to this Agreement has relied upon any warranty or guarantee of success and no such warranties or guarantees have been made. The Parties acknowledge that the obtaining of profit through the pursuit of the Partnership's stated purpose is speculative in nature and not always successful.

12.09 ENTIRE AGREEMENT AND AMENDMENT. This Agreement incorporates the entire agreement and understanding among the parties with respect to the subject matter. This Agreement may not be modified or amended without the written consent of all Partners.

12.10 NOTICES. Any notice or other communication that is required to be given from one Partner to another under the terms of this Partnership Agreement shall be in writing and mailed in the United States by first class mail with postage prepaid or sent by paid telegram to the address set forth below:

GENERAL PARTNER

____
____
____

LIMITED PARTNERS

____
____
____

Any Partner may change his address for the purpose of receiving notice under this provision by giving such new address in writing to each Partner.

IN WITNESS WHEREOF this Partnership Agreement has been duly executed as of this _____ day of ____________________, _______.

GENERAL PARTNER

____
____
____

LIMITED PARTNERS

____
____
____

CHAPTER 6
SECURITY LAWS AND COMPLIANCE

Some partnership interests are considered by law to be securities. Before any sale of a security can legally take place, that security must either be registered for sale with the state and federal regulatory agencies or be exempt from such registration. The costs (including attorney fees) for registering a security under federal law is normally a minimum of forty thousand dollars ($40,000) and takes upward to a year to complete.

Both state and federal security laws provide exemptions from registration for certain kinds of securities. These exemptions are available only to partnerships that have not attempted to sell their securities through public offerings which is defined to mean by public advertisements or solicitation of strangers. Usually the offering is made to persons with whom the person making the offering for the entity is personally acquainted or has had a prior business relationship.

Anyone intending to raise capital through a public offering (sales to strangers) should consult with a securities attorney.

Even though a partnership may be exempt from the registration requirement for securities, a limited partnership is still governed by the anti-fraud provisions of the Security and Exchange Act. These anti-fraud provisions may also be extended to general partnerships in the future.

GENERAL PARTNERSHIP INTERESTS

The general presumption is that the formation of a general partnership does not involve the sale or transfer of a security. The United States Courts of Appeal for the Eighth, Ninth and Tenth Circuits each have held that general partnerships or joint ventures are not securities if the contractual agreement bestows upon all the participants the right to participate in the management and control of the entity, regardless of whether or not they exercise that right.

Consequently, there is no requirement to register a general partnership with the Securities and Exchange Commission (SEC) or with a state in order to sell partnership interests. General partnerships are not considered securities because all of the partners are considered responsible for the management and control of the partnership. One of the definitions of a security is that it is an investment contract. An investment contract is an interest in a business enterprise where the profit is derived solely through the efforts of others. Since partners are considered as participating in the derivation of partnership profits, a partnership interest has been held not to constitute an investment contract or security.

The above view may be changing. In the federal case **WILLIAMSON vs. TUCKER**, 645 F.2d 404, the Fifth Circuit Court of Appeal recognized that general partnership interests are usually not securities and stated that the plaintiffs "have an extremely difficult burden if they are to establish that the (general) partnership they purchased are securities." The court, however, went on to develop a three-part test to determine whether a particular general partnership interest is in reality a security. The court test stated:

> "A general partnership or joint venture interest can be designated a security if the investor can establish for example that (1) an agreement among the parties leaves so little power in the hands of the partner or venturer that the arrangement in fact distributes power as would a limited partnership, or (2) the partner or venturer is so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers, or (3) the partner or venturer is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers."

The North American Securities Administrators Association (NASAA) is composed of the state commissioners for all of the states. NASAA has filed amicus briefs in several cases pending before the United States Supreme Court urging national adoption of the Williamson test. NASAA has repeatedly urged the court to adopt a rule that when there are large numbers of general partners the partnership must register with the SEC before it can sell any interests.

A general partnership presently is not required to be registered with either the SEC or the state's securities commissioner. It is predicted that eventually the Supreme Court will rule that interests in those general partnerships which have large number of partners yet restrict their management to only a few general partners (managing partners) will be treated as securities. It is almost certain that the Supreme Court will not require general partnership interests be listed as securities when partners actively participate in the business. The majority of general partnerships will not be affected by the Supreme Court's ultimate decision because most partners all participate in management and control. Only interests in those general partnership with large numbers of partners and which restrict management to a few partners will be considered securities. The general partnership and joint venture agreements in this book are designed for use by partnerships and joint venture in which all of the partners participate in the partnerships' management and control. The interests in such partnerships are not securities and nor will they become securities under the anticipated Supreme Court decision on the subject.

LIMITED PARTNERSHIP INTERESTS

Limited partnership interests are securities. Therefore, the sale of a limited partnership interest must either be registered with the Securities and Exchange Commission or exempt under federal law. The sale of a limited partnership interest must also be registered under state law or otherwise exempt from registration.

The following discussion applies to exemptions from security registration available to limited partnerships. These exemptions would also be available to general partnership interests if the Supreme Court elects to extend the security law to them (this extension of security law will most likely be limited to general partnerships in which only a few partners actively participate in the management and control of the partnership).

EXEMPTION FROM REGISTRATION UNDER FEDERAL LAW

The Securities and Exchange Act of 1933 specifies that the sale in the United States of any security (including stocks of a corporation) must be registered with the Securities and Exchange Commission unless the security is exempt. The Securities and Exchange Act (the Act) lists several exemptions that are available for small businesses and small private offerings.

A. Intrastate Offering Exemption

Section 3(a)(11) of the Securities Act is generally known as the "intrastate offering exemption." This exemption facilitates the financing of local business operations. To qualify for the intrastate offering exemption, the company must: be incorporated in the state where it is offering the securities; carry out a significant amount of its business in that state; and make offers and sales only to residents of that state.

There is no fixed limit on the size of the offering or the number of purchasers. The company must determine the residence of each purchaser. If any of the securities are offered or sold to even one out-of-state person, the exemption may be lost. Without the exemption, the company could be in violation of the Securities Act registration requirements. If a purchaser resells any of the securities to a person who resides outside the state within a short period of time after the company's offering is complete (the usual test is nine months), the entire transaction, including the original sales, might violate the Securities Act. Since secondary markets for these securities rarely develop, companies often must sell securities in these offerings at a discount.

It could be difficult for for a company to rely on the intrastate exemption unless its officers know the purchasers and the sale is directly negotiated with them. If the company holds some of its assets outside the state, or derives a substantial portion of its revenues outside the state where it proposes to offer its securities, it will probably have a difficult time qualifying for the exemption.

The company may follow Rule 147, a "safe harbor" rule, to ensure that it meets the requirements for this exemption. It is possible, however, that transactions not meeting all requirements of Rule 147 may still qualify for the exemption.

This is the most commonly used exemption from federal registration. Usually a company is established to change the legal form of operation for an existing business or to begin a new business with family shareholders or close friends. Normally, all of the shareholders will reside in the same state and qualify for the intrastate exemption. If not, the exemption is not available for the corporation; however, other exemptions from registration for the sale of the stocks may still be available.

B. Private Offering Exemption

Section 4(2) of the Securities Act exempts from registration "transactions by an issuer not involving any public offering." To qualify for this exemption, purchasers of the securities must: have enough knowledge and experience in finance and business matters to evaluate the risks and merits of the investment (the "sophisticated investor"), or be able to bear the investment's economic risk; have access to the type of information normally provided in a prospectus; and agree not to resell or distribute the securities to the public.

In addition, the corporation may not use any form of public solicitation or general advertising in connection with the offering.

The precise limits of this private offering exemption are uncertain. As the number of purchasers increases and their relationship to the company and its management becomes more remote, it is more difficult to show that the transaction qualifies for the exemption. The corporation should know that if it offers securities to even one person who does not meet the necessary conditions, the entire offering may be in violation of the Securities Act.

Rule 506, another "safe harbor" rule, provides objective standards that a company can rely on to meet the requirements of this exemption. Rule 506 is a part of Regulation D, discussed below

C. Regulation A

Section 3(b) of the Securities Act authorizes the SEC to exempt from registration small securities offerings. By this authority, the SEC created Regulation A, an exemption for public offerings not exceeding $5 million in any 12-month period. If the company chooses to rely on this exemption, it must file an offering statement, consisting of a notification, offering circular, and exhibits, with the SEC for review.

Regulation A offerings share many characteristics with registered offerings. For example, the company must provide purchasers with an offering circular that is similar in content to a prospectus. Like registered offerings, the securities can be offered publicly and are not "restricted," meaning they are freely tradeable in the secondary market after the offering. The principal advantages of Regulation A offerings, as opposed to full registration, are:

1. The financial statements are simpler and don't need to be audited;
2. There are no Exchange Act reporting obligations after the offering unless the company has more than $10 million in total assets and more than 500 shareholders;
3. Companies may choose among three formats to prepare the offering circular, one of which is a simplified question-and-answer document; and
4. The company may "test the waters" to determine if there is adequate interest in its securities before going through the expense of filing with the SEC.

All types of companies which do not report under the Exchange Act may use Regulation A, except "blank check" companies, those with an unspecified business, and investment companies registered or required to be registered under the Investment Company Act of 1940. In most cases, shareholders may use Regulation A to resell up to $1.5 million of securities.

If the company chooses to "test the waters," it can use general solicitation and advertising prior to filing an offering statement with the SEC, giving it the advantage of determining whether there is enough market interest in its securities before it incurs the full range of legal, accounting, and other costs associated with filing an offering statement. The company may not, however, solicit or accept money until the SEC staff completes its review of the filed offering statement and the company delivers prescribed offering materials to investors.

D. Regulation D

Regulation D establishes three exemptions from Securities Act registration, Rule 504, Rule 505 and Rule 506 which shall be discussed separately as follows:

Rule 504

Rule 504 provides an exemption for the offer and sale of up to $1,000,000 of securities in a 12-month period. The company may use this exemption so long as it is not a blank check company and is not subject to Exchange Act reporting requirements. Like the other Regulation D exemptions, in general the company may not use public solicitation or advertising to market the securities and purchasers receive "restricted" securities, meaning that they may not sell the securities without registration or an applicable exemption.

However, the company can use this exemption for a public offering of its securities and investors will receive freely tradable securities under the following circumstances:

1. The company registers the offering exclusively in one or more states that require a publicly filed registration statement and delivery of a substantive disclosure document to investors;
2. The companys registers and sells in a state that requires registration and disclosure delivery and also sell in a state without those requirements, so long as the company delivers the disclosure documents mandated by the state in which the company registered to all purchasers; or,
3. The company sells exclusively according to state law exemptions that permit general solicitation and advertising, so long as the company sells only to "accredited investors," a term we describe in more detail below in connection with Rule 505 and Rule 506

offerings.

Even if the company makes a private sale where there are no specific disclosure delivery requirements, care should be taken to provide sufficient information to investors to avoid violating the antifraud provisions of the securities laws. This means that any information the company provides to investors must be free from false or misleading statements. Similarly, the company should not exclude any information if the omission makes what it provides investors false or misleading.

Rule 505

Rule 505 provides an exemption for offers and sales of securities totaling up to $5 million in any 12-month period. Under this exemption, the company may sell to an unlimited number of "accredited investors" and up to 35 other persons who do not need to satisfy the sophistication or wealth standards associated with other exemptions. Purchasers must buy for investment only, and not for resale. The issued securities are "restricted."

Consequently, the company must inform investors that they may not sell for at least a year without registering the transaction. The company may not use general solicitation or advertising to sell the securities.

An "accredited investor" is: a bank, insurance company, registered investment company, businessdevelopment company, or small business investment company;an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of $5 million; a charitable organization, corporation or partnership with assets exceeding $5 million; a director, executive officer, or

general partner of the company selling the securities; a business in which all the equity owners are accredited investors;
a natural person with a net worth of at least $1 million; a natural person with income exceeding $200,000 in each of the two most recent years or joint income with a spouse exceeding $300,000 for those years and a reasonable expectation of the same income level in the current year; or a trust with assets of at least $5 million, not formed to acquire the securities offered, and whose purchases are directed by a sophisticated person.

It is up to the company to decide what information to give to accredited investors, so long as it does not violate the antifraud prohibitions. But the company must give non-accredited investors disclosure documents that generally are the same as those used in registered offerings. If the company provides information to accredited investors, it must make this information available to the non-accredited investors as well. The company must also be available to answer questions by prospective purchasers.

Here are some specifics about the financial statement requirements applicable to this type of offering:

1. Financial statements need to be certified by an independent public accountant;
2. If a company other than a limited partnership cannot obtain audited financial statements without unreasonable effort or expense, only the company's balance sheet, to be dated within 120 days of the start of the offering, must be audited; and
3. Limited partnerships unable to obtain required financial statements without unreasonable effort or expense may furnish audited financial statements

prepared under the federal income tax laws.

Rule 506

As discussed earlier, Rule 506 is a "safe harbor" for the private offering exemption. If the company satisfies the following standards, it can be assured that the offeringis within the Section 4(2) exemption:

1. The company can raise an unlimited amount of capital;
2. The company cannot use general solicitation or advertising to market the securities;
3. The company can sell securities to an unlimited number of accredited investor (the same group identified in the Rule 505 discussion above) and up to 35 other purchasers.
4. Unlike Rule 505, all non-accredited investors, either alone or with a purchaser representative, must be sophisticated - that is, they must have sufficient knowledge and experience in financial and business matters to make them capable ofevaluating the merits and risks of the prospective investment;
5. It is up to the company to decide what information it will give to accredited investors, so long as it does not violate the antifraud prohibitions. But it must give non-accredited investors disclosure documents that generally are the same as those used in registered offerings. If the company provides information to accredited investors, it must make this information available to the non-accredited investors as well;
6. The company must be available to answer questions by prospective purchasers;
7. Financial statement requirements are the same as for Rule 505; and
8. Purchasers receive "restricted" securities. Consequently, purchasers may not freely trade the

securities in the secondary market after the offering.

E. Accredited Investor Exemption - Section 4(6)

Section 4(6) of the Securities Act exempts from registration offers and sales of securities to accredited investors when the total offering price is less than $5 million.

The definition of accredited investors is the same as that used in Regulation D. Like the exemptions in Rule 505 and 506, this exemption does not permit any form of advertising or public solicitation. There are no document delivery requirements. Of course, all transactions are subject to the antifraud provisions of the securities laws.

F. California Limited Offering Exemption - Rule 1001

SEC Rule 1001 provides an exemption from the registration requirements of the Securities Act for offers and sales of securities, in amounts of up to $5million, that satisfy the conditions of §25102(n) of the CaliforniaCorporations Code. This California law exempts from California state law registration offerings made by California companies to "qualified purchasers" whose characteristics are similar to, but not the same as, accredited investors under Regulation D. This exemption allows some methods of general solicitation prior to sales.

G. Exemption for Sales of Securities through Employee Benefit Plans - Rule 701

The SEC's Rule 701 exempts sales of securities if made to compensate employees. This exemption is available only to companies that are not subject to Exchange Act reporting requirements. The company can sell at least $1,000,000 of securities under this exemption, no matter how small the company is. The company can sell even more if it satisfies certain formulas based on the company's assets or on the number of its outstanding securities. If the company sells more than $5 million in securities in a 12-month period, it will need to provide limited disclosure documents to its employees. Employees receive "restricted securities" in these transactions and may not freely offer or sell them to the public.

CONCLUSION

This chapter has an example of a Partner's Subscription Certificate that should be executed and filed with the Partnership books for each sale of a Partnership interest. This certificate is sufficient to satisfy the requirement that the investor is sophisticated and accredited. This subscription agreement should be used by every partnership to protect against allegations of fraud. Generally, when a business fails the partners try to get their money back. it is not uncommon in such situations for disgruntled investors to claim that they were innocent dupes and tricked into investing in the business. Using a subscription certificate is evidence, though not dispositive, that the shareholder was given all of the available necessary to make an informed decision. Use of the form limits the success of suit for security fraud by upset partners.

When substantial amounts of capital are sought to be raised through the sale of partnership interests that are exempt under Rules 504, 505 or 506, the partnership should consult an attorney.

Although qualified offerings are exempt under Rules 504, 505 or 506, the partnership must nonetheless file a Form D with the Securities and Exchange if interest are sold to out of state shareholders. It is envisioned that the partnership to be formed using this book will use the intrastate exemption instead and not be required to file the Form D.

This book assumes that the partnership will be a small business with less than 35 partners (for exemption from federal registration) who will be intimately associated with the day-to-day operations of the company. Consequently, the exemptions will apply. If substantial amounts of capital are to be raised through the sale of partnership interest that are exempt under Rules 504, 505 or 506, the partnership should consult an attorney. Although qualified offerings are exempt under Rules 504, 505 or 506, the partnership must nonetheless file a Form D with the SEC.

This book is written for partnership's where:

(1) The partners will participate in the daily management of the business or reserve sufficient review powers in the partnership agreement to be able to oversee effectively the conduct of the managing partners.

(2) The partnership is not selling its interests to the generaL public raise money.

It is envisioned that the partnership to be formed using this book will use the intrastate exemption and will not be required to file Form D.

EXEMPTIONS UNDER STATE LAW

As with federal law, nearly all states require that any partnership wishing to sell limited partnership interests in the state either obtain a permit to sell the limited partnership interests or the limited partnership interests be exempt from registration. Most states have similar offering exemptions that permit a limited partnership to sell a limited partnership interest in the state without obtaining a permit. Most states also have laws which exempt from registration any security where the limited partnership has either registered the security with the SEC or has filed Form D for a federal exemption under Rule 504, 505 or 506.

In addition to an exemption based upon a federal filing, all states have limited offering exemptions: limited partnerships not engaged in a public offering may sell limited partnership interest without a permit.

Even though the sale of the limited partnership interest is exempt, many states require that the partnership file some type of notice with the secretary of state or security commissioner and pay a small fee. Although notice is for tax purposes, it also serves other informational needs.

Most states do not require a limited partnership issuing exempt limited partnership interests to file any notification documents. To determine if a notice requirement exists, the person forming the limited partnership can ask the state's department of corporations (or equivalent agency) if there is any state requirement that a form be filed when a newly formed partnership makes a limited exempt offering. If there is a requirement, the agency will supply the necessary form on request. This information can also be obtained from the attorney the limited partnership is consulting. The laws governing the limited offering exemptions for each state are:

ALABAMA

Section 8-6-11. Sales of the securities are exempt if sold to less than 10 persons within twelve months, no commissions are paid on the sales and no public solicitations or public offerings are employed.

ALASKA

Section 45-55-140. Sales of securities are exempt if sold to less than 10 persons within 12 months, the sales do not exceed $100,000, no commissions are paid on the sales and no public solicitation is employed.

ARKANSAS

Section 23-42-504. Sales of securities are exempt if sold to less than 25 persons within a year, no commissions are paid on the sales and no public solicitation is presented. Proof of the exempt nature of the transaction must be filed with the Secretary of State. The state has also adopted the Uniform Federal-State Limited Offering Exemption 14(b) (14) which basically provides for a state exemption if the issuer received a federal exemption by filing a Form D.

ARIZONA

Section 44-1844. Sales of securities are exempt if sold to less than 10 persons within 24 months, no commissions are paid on the sales and no public solicitations or public offerings are employed.

CALIFORNIA

Corporation Code section 25102(f). Sales to no more than 35 persons are exempt if no commissions are paid on the sales and no public solicitation or public offering is employed. The corporation is required to file a Notice of Transaction with the Corporations Commissioner. The Notice is to be filed within 15 days of the sale. The fee for filing the Notice is usually about $25.00. This book has a copy of the notice form. As can be seen from the form, there is no requirement that the identity of the shareholders be revealed. Failure to file the Notice does not invalidate the exemption.

California has also enacted a new intra-state offering exemption under Section 25102(n). Under this exemption, if the offeror satisfies the same requirements as necessary for a Federal Regulation D exemption, the offeror can sell to an unlimited number of people in California and can engage in limited advertising in a newspaper. The advantage of this offering is that the offeror, if the sales are limited only to California, can advertise in a limited fashion which it can not do in a Federal Regulation D offering if the sales are made in other states. The costs for a Regulation D or 25102(n) offering is around $20,000 when an experienced security law firm is utilized. Most offerings in California rely on the 25102(f) exemption is used because it extremely cheap and fast even though the number of sales is limited to 35 persons.

COLORADO

Section 11-51-308. Sales of securities are exempt if sold to less than 25 persons prior to formation and afterward if the offer of sales is not made to more than 20 persons and the actual sales are made to not more than 10 persons per 12-month period, no commissions are paid on the sales and no public solicitation or public offering is employed.

CONNECTICUT

Section 36-490(B). Sales of securities are exempt if sold to less than 10 persons within 12 months, no commissions are paid on the sales and no public solicitation or public offerings are employed.

DELAWARE

Section 6-7309(b). Sales of securities are exempt if sold to less than 25 persons within the first year and no more than 35 persons in total, no commissions are paid on the sales and no public solicitations or public offerings are employed.

DISTRICT OF COLUMBIA

Section 2-2601(6) lists as exempt transactions as follows:

(E) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons in the District during any 12 consecutive months whether or not the offeror or any of the offerees is then present in the District if the Seller reasonably believes that all of the buyers in the District are purchasing for investment.

(F) Any offer or sale of a preorganization certificate or subscription if:

(i) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscribers;

(ii) The number of subscribers does not exceed 25; and

(iii) No payment is made to the subscriber.

FLORIDA

Section 517.061. Sales of securities are exempt if sold to less than 35 persons within a year, no commissions are paid on the sales and no public solicitations or public offerings are employed. Proof of the exempt nature of the transaction must be filed with the Secretary of State.

GEORGIA

Section 10-5-9. Sales of securities are exempt if sold to less than 35 persons within a year, no commissions are paid on the sales and no public solicitations or public offerings are employed.

HAWAII

Section 485-6. Sales of securities are exempt if sold to less than 25 persons within 12 months, no commissions are paid on the sales and no public solicitations of public offerings are employed.

IDAHO

Section 30-1435. Sales of securities are exempt if sold to less than 10 persons within 12 months, no commissions are paid on the sales and no public solicitations or public offerings are employed.

ILLINOIS

Section 815 ILCS 5/4. Sales of securities are exempt if less than $100,000 is raised or if sold to less than 35 persons within a year, no commissions are paid on the sales and no public solicitations or public offerings are employed.

INDIANA

Section 23-2-1-2. Sales of securities are exempt and no filing is necessary if each purchaser is either an accredited investor or will participate in the management of the business and either (1) there are no more than 15 purchasers in the state or (2) there are no more than 25 shareholders in total and the offering raises less than $500,000.

IOWA

Section 502.203(9). Sales of securities are exempt if sold to less than 35 persons within a year, no commissions are paid on the sales and no public solicitations or public offerings are employed. The exemption does not apply for offerings involving oil, gas or mining.

KANSAS

Section 17-1262. Sales of securities are exempt if sold to less than 15 persons within 12 months, no commissions are paid on the sales and no public solicitations or public offerings are employed.

KENTUCKY

Section 292.410. Sales of securities are exempt if sold to less than 25 persons, no commissions are paid on the sales and no public solicitations or public offerings are employed.

LOUISIANA

Title 51, section 709. Sales of securities are exempt if sold to less than 20 persons within 12 months, no commissions are paid on the sales and no public solicitations or public offerings are employed.

MAINE

Title 32, section 10502. Offers and sales of securities to no more than 10 persons are exempt. Sales from 10 to 25 persons are exempt if the issuer files a Notice of Exemption.

MARYLAND

Section 71-402(b)11. General transactional exemption for any offer or sales to no more than 35 Maryland residents in any 12-month period provided no public advertisement or general solicitation or public offering is employed. The issuer is required to give each purchaser a disclosure statement called a Form MD-2. There is no filing requirement unless more than $100,000 is raised in a 12-month period. The Form MD-1 must be filed with the Maryland Department of Securities no later than 15 days after the first sales.

MASSACHUSETTS

Section 110A-402(b)(9). Sales of securities are exempt if sold to less than 25 persons within a year and if no commissions are paid on the sales and no public solicitations are employed. If a commission is paid, a notice must be filed with the Securities Division within five days. Offerings exempt from Federal Regulation under Rule 505 or 506 of Regulation D must have a Form D filed with the Securities Division within 15 days of the first sale. Again, if a corporation is raising so much capital that it must seek an exemption under Regulation D it should consult an attorney.

MICHIGAN

Section 451-802. A limited offering exemption. The offering requires that the security not be resold without compliance with state and federal securities laws, that there by no general advertisement or solicitation or public offerings and that no commissions be paid except to Michigan brokers. There can be sales to no more than 15 persons during a 12-month period. Under section 402(b)(9)(D)(3), of the Michigan Securities Act, sales to no more than 35 Michigan residents within a year can be exempt if the issuer files an application for an exemption along with an offering circular.

MINNESOTA

Section 80A.15. Sales of securities are exempt if sold to less than 25 persons, no commissions are paid on the sales and no public solicitations or public offerings are employed.

MISSISSIPPI

Section 75-71-203(9). Sales of securities are exempt if sold to less than 10 persons, no commissions are paid on the sales and no public solicitations or public offerings are employed.

MISSOURI

Section 409.402(b)(10). Sales of securities are exempt if sold to less than 15 persons within 12 months (with a total of no more than 25 shareholders), no commissions are paid on the sales and no public solicitations or public offerings are employed.

MONTANA

Section 30-10-105. Sales of securities are exempt if sold to less than 25 persons prior to formation and to no more than 10 persons per 12 months afterwards, no commissions or payments are paid on the sales and no public solicitations or public offerings are employed.

NEBRASKA

Section 8-1111(9). Sales of securities are exempt if sold to no more than 10 persons, no commissions or payments are made on the sales, and no public solicitations or public offerings are employed.

NEVADA

Section 90.530. Sales of securities are exempt if sold to no more than 25 persons within a year, no commissions or payments are paid and no public solicitations or public offerings are employed.

NEW HAMPSHIRE

Section 421 B:17. Sales of securities are exempt if sold to no more than five persons within a year, no commissions or payments are paid and no public solicitations or public offerings are employed.

NEW JERSEY

Section 49:30-50. Sales of securities are exempt if sold to no more than 10 persons within a year, no commissions or payments are paid and no public solicitations or public offerings are employed. The number of purchasers can be increased up to 35 with a filing of a notice.

NEW MEXICO

Section 58-13B-27(L). Sales of securities are exempt if sold to no more than 10 persons within a year, no commissions or payments are paid and no public solicitations or public offerings are employed.

NEW YORK

General Business Code Section 359(f)(2). Sales of securities are exempt if sold to no more than 40 persons under a limited offering exemption. This means no public solicitations of public offerings and no commissions or payments.

NORTH CAROLINA

Section 78A-17. Sales of securities are exempt if sold to no more than 25 persons within a year, no commissions or payments are paid and no public solicitations or public offerings are employed.

The filing fee for the notice filing is $150.

NORTH DAKOTA

Section 10-04-6. Sales of securities are exempt if sold to no more than 25 persons within a year, no commissions or payments are paid and no public solicitations or public offerings are employed. The filing fee for the notice filing is $100.

OHIO

Section 1707.06. Sales of securities are exempt if sold to no more than 35 persons within a year, no commissions or payments are paid and no public solicitations or public offerings are employed. A notice application is required to be filed. Section 1707.03(Q) of the Ohio Blue Sky Law provides a limited exemption if the securities are sold free of federal registration under Section 4(2) of the Securities and Exchange Act (an offering under Rule 506). A sales report Form 3(Q) must be filed by the corporation within 60 days of the first sale. Under Section 1707.03 (O) there is an isolated exemption for a corporation selling its shareholders to no more than 10 Ohio residents within a 12-month period. A Form 3(O) must be filed with the Division of Securities. If the required forms are not filed the claim of exemption is ineffective.

OKLAHOMA

Section 401(b)(9). Sales of securities are exempt if sold to no more than 25 persons within 12 months, no commissions or payments are paid and no public solicitations or public offerings are employed.

OREGON

Section 59.035. Sales of securities are exempt if sold to no more than 10 persons per year, no commissions or payments are paid and no public solicitations or public offerings are employed.

PENNSYLVANIA

Section 70 P.S. section 1-203(d). Sales of securities are exempt if sold to no more than 25 persons within 12 months, no commissions or payments are paid and no public solicitations or public offerings are employed. A notice of exemption Form 203(D) is required to be filed with the Pennsylvania Securities Commission no later than the date the first sale takes place.

RHODE ISLAND

Section 7-11-402. Sales of securities are exempt if sold to less than 25 persons within 12 months, no commissions or payments are paid and no public solicitations or public offerings are employed.

SOUTH CAROLINA

Section 35-1-320. Sales of securities are exempt if sold to less than 25 persons within 12 months, no commissions or payments are paid and no public solicitations or public offerings are employed.

SOUTH DAKOTA

Section 47.31A-402(b)(13). Sales of securities are exempt if sold to less than 25 persons within 12 months, no commissions or payments are paid and no public solicitations or public offerings are employed.

TENNESSEE

Section 48-2-103. Sales of securities are exempt if sold to less than 15 persons per year, no commissions or payments are paid and no public solicitations or public offerings are employed. Under section 48-2-103(b)(4) of the Tennessee Securities Act, there is an exemption for a corporation selling its stock if it is sold to no more than 15 Tennessee residents within a 12-month period and the purchasers have the intent to hold for investment (presumed if they hold it two years).

An isolated exemption also exists for a corporation to sell not more than $100,000 of stock within any 12-month period under section 48-16-103(b)(6).

TEXAS

Section 581-51. Exemption from registration without having to file any notice documents. The exemption requires that the sales be made to no more than 15 Texas residents within a 12-month period. The sales are to persons who are sophisticated (the investment does not exceed 20% of the investor's net worth) and well-informed (either an officer or director or given offering material to evaluate). In addition, for the exemption there can be no more than a total of 35 purchasers of the securities after the sales.

UTAH

Section 61-1-14 et seq. Sales of securities are exempt if sold to less than 15 persons within 12 months, if less than $500,000 is raised, no commissions or payments are paid on the sales and no public solicitations or public offerings are employed.

VERMONT

Section 9-4204(a)(9). Sales of securities are exempt if sold to less than 25 persons per year, no commissions or payments had been made and no public solicitations or public offerings are employed. Vermont requires that a Certificate of Issuance of Shares be signed and filed by two officers with the Secretary of State within 30 days of the issuance of stock.

VIRGINIA

Section 13.1-514. Sales of securities are exempt if sold to less than 35 persons, no commissions or payments are paid and no public solicitations or public offerings are employed.

WASHINGTON

Section 21.20.320(10). Sales of securities are exempt if sold to less than 10 persons, no commissions or payments are paid and no public solicitations or public offerings are employed.

WEST VIRGINIA

Section 32-4-402. Sales of securities are exempt if sold to less than 10 persons within 12 months, no commissions or payments are paid on the sales, and no public solicitations or public offerings are employed.

WISCONSIN

Section 551.23(8). Sales of securities are exempt if sold to less than 10 persons, no commissions or payments are made for the sales, and no public solicitations or public offerings are employed.

WYOMING

Section 17-4-101. Sales of securities are exempt if sold to less than 15 persons within 12 months, no commissions or payments are paid on the sales, and no public solicitations or public offerings are employed. Upon payment of $200, an issuer may apply for permission to sell to more than 15 persons without having to obtain a permit.

CONCLUSION

The issuance of the limited partnership interest is a security which must either be registered or be exempt from registration. The person forming the limited partnership should contact the state's department of corporations or securities and ask if there is a notice form to be used by a new partnership issuing limited partnership interests under a limited exemption (not necessary in California because the form is included in this book). For many states, such as Texas, there is no such requirement. If such a form is required to be filed after the limited partnership interest is issued, the person forming the limited partnership should request a blank form from the state's secretary of state, corporate division.

The person forming the limited partnership should review those state laws pertaining to securities to be sure that they have not recently been changed. Any questions regarding procedure can be answered by reviewing the state codes or by consulting an attorney.

Notification of the issuance of limited partnership interests should not pose a problem because the purpose behind the issuance is to make sure the partnership does not defraud the partners. Where the partnership is simply a family affair or one involving a few close friends, the fraud possibility is remote. All states have limited offering exemptions to avoid forcing small limited partnerships to comply with the onerous registration requirements of a major Fortune 500 company.

PARTNER'S SUBSCRIPTION CERTIFICATE
FOR
WHIPPLE OIL COMPANY

This certificate is for use with security offerings exempt from registration under SEC Rules 504, 505 or 506. This certificate must be used for the sale of a limited partnership interest and it is recommended for sale of a general partnership interest.

The statements contained herein are made and given by the undersigned hereinafter referred to as "the Subscriber" to WHIPPLE OIL COMPANY, a (General/Limited) Partnership duly formed and existing under the laws of the State of TEXAS hereinafter referred to as "the Partnership" as a condition for the purchase of TWENTY PERCENT (20%) of the partnership hereinafter referred to as "the Securities."

I. NAME AND ADDRESS OF THE SUBSCRIBER.

Name: TIMOTHY TIMMONS

Social Security Number: 444-333-2222

Residence Address: 555 Eagle Rock
Houston Texas

Business Address: same

II. SUBSCRIBER'S REPRESENTATIONS AND UNDERSTANDING.

A. PURCHASE FOR OWN ACCOUNT.

The Subscriber hereby expressly represents, warrants and covenants with the (General/Limited) Partnership that the Securities are being purchased in the Subscriber's own name and account or for a trust account in which the Subscriber is trustee, and no other person has any interest or right with respect to the Securities.

B. FOR INVESTMENT PURPOSES ONLY.

The Subscriber expressly states that the Subscriber is acquiring the Securities for investment and not with a view for sale in connection with any distribution of Securities. The Subscriber hereby acknowledges and understands the following:

1. The Securities have not been registered under the Federal Securities Act of 1933 or qualified under any state law, that any

disposition of the Securities is subject to restrictions imposed by federal and state law and that the certificates representing the Securities will bear a restrictive legend.

2. That the Securities may not be sold, conveyed or transferred without registration and qualification, and that no undertaking has been made with regard to registering or qualifying the securities in the future. The Subscriber understands that no public market exists with respect to the Securities and no representation has been made to me that such a public market will exist at a future date. In addition, it is also understood that the Corporations Commissioner for the State of TEXAS has made no finding or determination relating to the fairness for investment of the Securities offered by the company and that the Commissioner has not and will not recommend or endorse the securities.

3. That it is not contemplated by the (General/Limited) Partnership that the Securities will be subsequently registered with the Securities Exchange Act of 1934 to permit public resales of the Securities under the Securities Act Rule 144.

III. NO PUBLIC OFFERING WAS MADE REGARDING THE OFFERING.

The Subscriber expressly states that the Subscriber has not seen nor received any advertisement nor general solicitation with respect to the sale of the Securities ("the Offering").

IV. CONSIDERATION FOR THE SECURITIES.

The total consideration that the Subscriber shall pay for the Securities both in cash and other property shall be:

Consideration Amount: $200,000

Other Property: none

V. SUBSCRIBER'S KNOWLEDGE AND EXPERIENCE.

The Subscriber represents and warrants as follows:

1. That the Subscriber possesses sufficient knowledge and experience in financial and business matters to evaluate the risk factors involved.
2. That the Subscriber has evaluated the risk factors and tax considerations involved in any purchase of the Securities.

3. That the Subscriber has had the following personal or business relationship with the Partnership and its officers, directors and controlling partners:

I HAVE INVESTED IN THE OIL BUSINESS IN THE PAST

I HAVE KNOWN THE GENERAL PARTNERS FOR MANY YEARS

I HAVE REVIEWED THE OIL LEASE OWNED BY THE COMPANY AND I BELIEVE THEM TO BE VALUABLE

The subscriber's business or financial experience is as follows (if none, state None): I HAVE WORKED IN THE OIL BUSINESS FOR TWENTY THREE YEARS

VI. FINANCIAL ADVISORS.

The Subscriber represents and warrants that the Subscriber has consulted with such financial advisors as are listed below and that each is capable of evaluating the merits and risks of the investment, that each such person has had access to the Partnership's records, has had an opportunity to verify the accuracy of all information obtained and is satisfied that sufficient information necessary to make an informed decision has been received. By reason of the business or financial experience of my professional advisor named below, the Subscriber is capable of evaluating the merits and risks of this investment and/or protecting his own interest in connection with this investment.

NAME OF FINANCIAL ADVISOR (IF NONE, STATE NONE): ________ ____________________________none____________________________________

FINANCIAL ADVISOR'S OCCUPATION: ___________none___________

FINANCIAL ADVISOR'S ADDRESS: _____________none_________

____

FINANCIAL ADVISOR'S BUSINESS OR FINANCIAL EXPERIENCE: ____none______

NAME OF FINANCIAL ADVISOR (IF NONE , STATE NONE): ____none______

FINANCIAL ADVISOR'S OCCUPATION: ___________none___________

____

FINANCIAL ADVISOR'S ADDRESS: ____________________________

____

FINANCIAL ADVISOR'S BUSINESS OR FINANCIAL EXPERIENCE:

NONE

VII. ACKNOWLEDGMENT OF RECEIPT OF INFORMATION.

The Subscriber acknowledges receipt during the course of this transaction and before purchasing the Securities of financial and other written information about the Partnership and the terms and conditions of the offering. The Subscriber received information regarding:

1. The risks of the offering including the speculative nature of the offering,
2. The financial hazards involved in the offering,
3. The lack of liquidity,
4. The restrictions on the transferability of the securities,
5. The tax consequences of the investment,
6. A written description of any written information concerning the offering that had been provided by the company to any "accredited investor" as defined in 17 CFR Section 230.501(a), and
7. Such other information deemed necessary and desirable to evaluate the Partnership and the Securities offered.

Dated: ______________________

____
Subscriber

PARTNER'S SUBSCRIPTION CERTIFICATE

FOR

____

This certificate is for use with security offerings exempt from registration under SEC Rules 504, 505 or 506. This certificate must be used for the sale of a limited partnership interest and it is recommended for sale of a general partnership interest.

The statements contained herein are made and given by the undersigned hereinafter referred to as "the Subscriber" to _________ ___________________, a (General/Limited) Partnership duly formed and existing under the laws of the State of ______________ hereinafter referred to as "the Partnership" as a condition for the purchase of _________________________ the partnership hereinafter referred to as "the Securities."

I. NAME AND ADDRESS OF THE SUBSCRIBER.

Name: ____

Social Security Number: ___________________________________

Residence Address: ____

____

Business Address: ____

____

II. SUBSCRIBER'S REPRESENTATIONS AND UNDERSTANDING.

A. PURCHASE FOR OWN ACCOUNT.

The Subscriber hereby expressly represents, warrants and covenants with the (General/Limited) Partnership that the Securities are being purchased in the Subscriber's own name and account or for a trust account in which the Subscriber is trustee, and no other person has any interest or right with respect to the Securities.

B. FOR INVESTMENT PURPOSES ONLY.

The Subscriber expressly states that the Subscriber is acquiring the Securities for investment and not with a view for sale in connection with any distribution of Securities. The Subscriber hereby acknowledges and understands the following:

1. The Securities have not been registered under the Federal

Securities Act of 1933 or qualified under any state law, that any disposition of the Securities is subject to restrictions imposed by federal and state law and that the certificates representing the Securities will bear a restrictive legend.

2. That the Securities may not be sold, conveyed or transferred without registration and qualification, and that no undertaking has been made with regard to registering or qualifying the securities in the future. The Subscriber understands that no public market exists with respect to the Securities and no representation has been made to me that such a public market will exist at a future date. In addition, it is also understood that the Corporations Commissioner for the State of __________________
has made no finding or determination relating to the fairness for investment of the Securities offered by the company and that the Commissioner has not and will not recommend or endorse the securities.

3. That it is not contemplated by the (General/Limited) Partnership that the Securities will be subsequently registered with the Securities Exchange Act of 1934 to permit public resales of the Securities under the Securities Act Rule 144.

III. NO PUBLIC OFFERING WAS MADE REGARDING THE OFFERING.

The Subscriber expressly states that the Subscriber has not seen nor received any advertisement nor general solicitation with respect to the sale of the Securities ("the Offering").

IV. CONSIDERATION FOR THE SECURITIES.

The total consideration that the Subscriber shall pay for the Securities both in cash and other property shall be:

Consideration Amount: ______________________________________

Other Property: ____

V. SUBSCRIBER'S KNOWLEDGE AND EXPERIENCE.

The Subscriber represents and warrants as follows:

1. That the Subscriber possesses sufficient knowledge and experience in financial and business matters to evaluate the risk factors involved.
2. That the Subscriber has evaluated the risk factors and tax

considerations involved in any purchase of the Securities.

3. That the Subscriber has had the following personal or business relationship with the Partnership and its officers, directors and controlling partners:

____

____

The subscriber's business or financial experience is as follows (if none, state None): ____

____

VI. FINANCIAL ADVISORS.

The Subscriber represents and warrants that the Subscriber has consulted with such financial advisors as are listed below and that each is capable of evaluating the merits and risks of the investment, that each such person has had access to the Partnership's records, has had an opportunity to verify the accuracy of all information obtained and is satisfied that sufficient information necessary to make an informed decision has been received. By reason of the business or financial experience of my professional advisor named below, the Subscriber is capable of evaluating the merits and risks of this investment and/or protecting his own interest in connection with this investment.

NAME OF FINANCIAL ADVISOR (IF NONE, STATE NONE): ___________

____

FINANCIAL ADVISOR'S OCCUPATION: ______________________________

FINANCIAL ADVISOR'S ADDRESS: _________________________________

____

FINANCIAL ADVISOR'S BUSINESS OR FINANCIAL EXPERIENCE:

____

NAME OF FINANCIAL ADVISOR (IF NONE , STATE NONE): _________

____

FINANCIAL ADVISOR'S OCCUPATION: ______________________________

____

FINANCIAL ADVISOR'S ADDRESS: ______________________________

____

FINANCIAL ADVISOR'S BUSINESS OR FINANCIAL EXPERIENCE:

____

VII. ACKNOWLEDGMENT OF RECEIPT OF INFORMATION.

The Subscriber acknowledges receipt during the course of this transaction and before purchasing the Securities of financial and other written information about the Partnership and the terms and conditions of the offering. The Subscriber received information regarding:

1. The risks of the offering including the speculative nature of the offering,
2. The financial hazards involved in the offering,
3. The lack of liquidity,
4. The restrictions on the transferability of the securities,
5. The tax consequences of the investment,
6. A written description of any written information concerning the offering that had been provided by the company to any "accredited investor" as defined in 17 CFR Section 230.501(a), and
7. Such other information deemed necessary and desirable to evaluate the Partnership and the Securities offered.

Dated: ____________________

____
Subscriber

(Department of Corporations Use Only)
Fee Paid $_________________________
Receipt No. _______________________

Department of Corporations File No., if any
____
(Insert File Number(s) of Previous Filings before the Department, if any)

FEE: $25.00 $35.00 $50.00 $150.00 $300.00
(Circle the appropriate amount of fee.
See Corp. Code Section 25608(c))

COMMISSIONER OF CORPORATIONS
STATE OF CALIFORNIA

NOTICE OF TRANSACTION PURSUANT TO CORPORATIONS CODE SECTION 25102(f)

A: Check one: Transaction under ( ) Section 25102(f) or ( ) Rule 260.103.
1. Name of Issuer: ______________________________
2. Address of Issuer: ______________________________
Street City State ZIP
Mailing Address: ______________________________
Street City State ZIP
3. Area Code and Telephone Number: ______________________________
4. Issuer's state (or other jurisdiction) of incorporation or organization:
____
5. Title of class or classes of securities sold in transaction:
____
6. The value of the securities sold or proposed to be sold in the transaction, determined in accordance with Corp. Code Sec. 25608(g) in connection with the fee required upon filing this notice, is (fee based on amount shown in line (iii) under "Total Offering"):

	California	Total Offering
(a)(i) in money	$ ________	$ ________
(ii) in consideration other than money	$ ________	$ ________
(iii) total of (I) and (ii)	$ ________	$ ________

(b) ( ) Change in rights, preferences, privileges or restrictions of or on outstanding securities. ($25.00 fee.) (See Rule 260.103.)

7. Type of filing under Securities Act of 1933, if applicable: ______________________________
____
8. Date of Notice: ____________________ ______________________________
Issuer

( ) Check if issuer already has a consent to service of process on file with the Commissioner.

____
Authorized Signature on behalf of Issuer
behalf of issuer

____
Print name & title of signatory

Name, Address and Phone number of contact person:
____
____
____

Instructions: Each issuer (other than a California corporation) filing a notice under Section 25102(f) must file a consent to service of process (Form 260.165), unless it already has a consent to service on file with the Commissioner.

INSTRUCTIONS

1. This notice is to provide information on transactions conducted under the Section 25102(f) exemption from the qualification

requirements of Section 25110 of the Corporate Securities Law of 1968 and under the Rule 260.103 exemption from the qualification requirements of Section 25120 of that Law. The form is not designed to indicate whether or not the transaction complies with the requirements of those exemptions but only to provide notice to the commissioner that the exemption is being relied on.

2. When to File Notice. The Notice must be filed with, or mailed to, the Commissioner within 15 calendar days after the first sale of a security in the transaction in this state, or, if the issuer has failed to file a notice, within 15 business days after demand by the Commissioner. The first sale in this state occurs when the issuer has obtained a contractual commitment in this state to purchase one or more of the securities the issuer intends to sell in connection with the transaction. No notice is required if none of the securities offered are purchased in this state. No subsequent notices are required for sales in connection with the same transaction. The information required by the form is to relate to the entire transaction, not just the first sale or sales in this state.

3. The Notice may be filed in person or by mail at any office of the Department.

The heading. If the issuer has previously qualified securities with the Department, insert the file number of the qualification in the upper right hand corner of the form in the space provided. Circle the appropriate fee for filing this Notice. The fee is based on the value of all securities sold or intended to be sold in the entire transaction as follows (see Item 6 for valuing securities):

Value of Securities	Filing Fee
$25,000 or less	$ 25
$25,001-$100,000	$ 35
$100,001-$500,000	$ 50
$500,001-$1,000,000	$150
$Over $1,000,000	$300

Item A. Check appropriate box for exemption being relied on.

Item 1. Give the issuer's legal name.

Item 2. Give the street address, and the mailing address if different, of the issuer's principal place of business.

Item 3. Give the telephone number of issuer's principal place of business.

Item 4. Give the name of the state or other jurisdiction under whose laws the issuer is incorporated or organized. If the issuer is not incorporated or organized under the laws of any jurisdiction, provide the name of the jurisdiction where issuer is domiciled and include parenthetical "(domicile)".

Item 5.Set forth the name or title of each class or type of security tobe sold in the transaction. Item 6.See Corp. Code Sec. 25608(g). Generally, the value of the securities shall be the price at which the issuer proposes to sell the securities, as alleged in the notice, or the actual value of the consideration (if other than money) to be received in exchange for the securities. See Sec. 25608(g) for valuing voting trust certificates, warrants, rights, and share dividends.

Item 7.If the transaction was registered under the Securities Act of 1933, insert "registered". If conducted pursuant to an exemption from registration under that Act which requires a filing with the Securities and Exchange Commission, indicate the number of the rule pursuant to which such filing was made. If no such filing was required, insert 'none".

Item 8.Date and Signature. The notice should be signed by an authorized officer, director, general partner or trustee of the issuer (or a person occupying a position with the issuer of equivalent responsibility) or by the authorized at torney of the issuer. If the person the Department is to contactin the event of questions concerning the transaction or the notice is different than the signer, insert the contact person's name, telephone number and correspondence address in the space provided. Otherwise, provide this information with respect to the signer.

Filing Fee. Each notice, whether under 25102(f) or Rule 260.103, must be accompanied by the filing fee required by Section 25608(c) of the Code.

Corporations Code Section 25165 requires each issuer, other than a California corporation, to file a consent to service of process with the notice filed pursuant to Section 25102(f) unless it already has a consent to service on file with the Commissioner. Use Form 260.165 (see Rule 260.165, Title 10, California Administrative Code).

CHAPTER 7

PARTNER AGREEMENTS

This chapter contains three of the most common types of partner agreements. The first agreement is a buy-sell agreement. The second agreement is for the adoption of a medical plan. The third is an agreement for the purchase of life insurance on the partners. The agreements contained herein are addressed separately and apart from the partnership agreement. It is possible to include the terms and provisions in the actual partnership agreement. On the other hand, the incorporation of these provisions into the partnership agreement would make it longer and more cumbersome. Another advantage in having the enclosed agreements separate from the partnership agreement is that it allows the partnership flexibility of adopting the agreement at a later date.

A. BUY-SELL AGREEMENT

A frequent concern among partners is what is to happen to the partnership in the event a partner should die or the partner should transfer the partnership interest. The result is obvious. The partnership may then have new partners. The remaining original partners may find themselves having to do business with people they do not like and with whom they do not wish to associate.

The common resolution to this dilemma is for the partners to enter into a partners agreement. The general form of this type of agreement gives surviving partners first right of refusal to purchase the shares of the partnership from the estate of the deceased partner, usually at book value. In the same vein, a partner wishing to sell his partnership interest must first offer it to the other partners for the price that it would be sold to a third party. The selling partner can then sell his interest for the price offered to the partners if the remaining partners do not elect to buy the interest sought to be sold.

Following this chapter is a simple buy-sell agreement governing these situations. The buy-sell agreement can be as complicated as the parties wish, including voting trusts, tax allocations and any other agreement the partners wish to solidify. In the event of violation of the terms of a buy-sell agreement, the non-violating and non-breaching partners can purchase the breaching partner's partnership interest at book value as calculated under the agreement.

Buy-sell agreements provide for continuity of the partnership. They add a degree of stability. Many partnerships are family affairs with a father and one or more children working in it. Often bad feelings arise when a parent dies and the parent's interest in the business is inherited by children who have not participated in the business. The children who have participated in the business with other non-family partners may not want to share the benefits of their work with the new partners. Some partnerships have dissolved because the partnership could not integrate the new partners. The buy-sell agreement in this chapter is a skeletal form that the parties may use to fashion their own contract regarding this sensitive area.

PARTNERS' BUY-SELL AGREEMENT

Agreement made this first day of _____________________ by and between ____

____

____ being the partners of ____ a partnership created and existing under the laws of the State of ____________________________ with its principal place of business at ____

____

(hereinafter referred to as the Partnership).

WHEREAS the parties hereto believe that the maintenance of harmonious management is in the best interest of the Partnership and the Partners, and

WHEREAS it is the purpose of this Agreement (1) to require that a living Partner who desires to dispose of any of his capital partnership interest in the Partnership offer his interest first to the other Partners and (2) to provide for purchase by the surviving Partners of the partnership interest of a deceased Partner.

NOW THEREFORE in pursuance of this purpose and in consideration of the mutual agreements and covenants contained herein it is hereby mutually agreed as follows:

ARTICLE 1

Purchase During Life

No Partner during his lifetime shall in any way transfer or dispose of any portion of his capital partnership interest whether by sale or otherwise unless the Partner shall first offer to sell such partnership interest to the other Partners. Such offer shall be in writing, and a copy of said offer shall be sent to all of the Partners. If such other Partners elect to purchase any or all of such shares, the purchase shall be at a price determined in accordance with the provisions of ARTICLE 3. In the event the other Partners reject said offer in whole or in part either by written rejection or failure to purchase all of said partnership interest within thirty (30) days after receipt of the Partner's offer to sell, the offering Partner shall be entitled to sell to any person all or any portion of his remaining partnership interest so offered.

ARTICLE 2

Purchase at Death

Upon death of a Partner the Partner's estate or the Partner's successor-in-interest shall sell and the surviving Partners of the Partnership shall buy all of the Partner's interest in the Partnership at a price determined in accordance with the provisions of ARTICLE 3.

ARTICLE 3

Purchase Price of Partnership Interest

The price to be paid for the purchase of a partner's interest in the Partnership as provided in ARTICLES 1 and 2 shall be determined periodically by mutual agreement of the Partners. The initial purchase price of the partnership interest is hereby agreed to be

______________________ DOLLARS ($________) for each percent of ownership in the partnership as determined by the represented share of the partners' capital accounts. This price shall be redetermined within thirty (30) days following the close of each fiscal year of the Partnership and shall be based upon the net book value of the Partnership. Until such redetermination the prior value shall continue in effect. If the Partners have not agreed to a redetermination within a period of eighteen (18) months prior to the death of a Partner the price shall be fixed by arbitration in the following manner: one arbitrator shall be named by the surviving Partners and one by the representative of the decedent's estate within thirty (30) days after qualification of the executor or administrator of the estate of the deceased Partner; if the two arbitrators cannot agree upon the price of each share within thirty (30) days after their appointment, the Probate Court shall appoint a third arbitrator and the decision of the majority shall be made within thirty (30) days thereafter and shall be final on this issue.

ARTICLE 4

Termination of Agreement

This Agreement shall terminate upon the dissolution, receivership, insolvency, or bankruptcy of the partnership.

ARTICLE 5

Persons Bound by this Agreement

All provisions of this Buy-Sell Agreement shall be binding upon, inure to the benefits of and be enforceable by and against the respective heirs, administrators, personal representatives, executors, assigns and successors in interest of the Partners.

ARTICLE 6

Miscellaneous

6.A. SURVIVAL OF REPRESENTATIONS. The covenants, warranties, representations and other written statements set forth in this Agreement or in any exhibit hereto shall survive the execution and delivery hereof and formation of the partnership. All of the same shall be deemed to be independent material and the party to whom made is deemed to have relied upon it.

6.B. ATTORNEY FEES. If legal action is commenced over the terms of this Buy-Sell Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

6.C. GOVERNING LAW. This Agreement and all of its terms and conditions shall be governed in accordance with the laws of the State of ____________________.

6.D. CONSTRUCTION. None of the provisions of this Buy-Sell Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.E. FURTHER ASSURANCES. Each of the Partners hereto shall execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement which are not inconsistent with the terms hereof.

6.F. ENTIRE AGREEMENT AND AMENDMENT. This Buy-Sell Agreement incorporates the entire agreement and understanding among the Partners with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Partners.

6.G. SEVERABILITY. If any part of this Agreement is void or otherwise invalid and hence unenforceable, such invalid or void portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect as though said void and invalid portions or provisions had never been part of the Agreement.

6.H. PARAGRAPH HEADINGS. The heading of each paragraph of this Agreement is solely for convenience and is not a part of this Agreement and is not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

6.I. INTERPRETATION. This Agreement is to be deemed to have been prepared equally by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but shall be interpreted according to the application of rules of interpretation of contracts.

6.J. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute one and the same agreement.

6.K. ASSIGNMENT PROHIBITED. This Agreement may not be assigned by any Partner without the prior written consent of all the remaining Partners. Any assignment made in violation of this paragraph shall be void.

6.L. WAIVER OF RIGHTS. Failure of any Partner to insist on compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such rights or powers at any other time.

6.M. CUMULATIVE REMEDIES. No right or remedy herein conferred or reserved to any party is intended to be exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy given herein or existing at law or in equity or by statute.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this first day of ______________, _____ in the County of ___________________, State of ____________.

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B. ADOPTION OF A MEDICAL PLAN

The delivery and payment of health care is changing. Addressing inadequacies in the health care system has been of national importance since the 1992 Congressional elections. Various national plans have been proposed all of which share the requirement that all businesses to carry health insurance for employees. If the partnership has employees, it may be required to furnish them with health coverage. The issue is unclear. Under the law, partners are not considered employees. Therefore, whether a partnership may be required to furnish health coverage for its partners remains to be clarified. Given the avowed purpose of the proposed health plans to provide coverage for everyone, partnerships may be required to provide coverage at the very least for those partners who participate in the daily management and control of the partnership.

The value of medical insurance is attributed to the partner as a distribution of income. It usually is not much benefit for the partners to adopt a medical plan unless they can get group rates or it is necessary to provide coverage for non-partner employees. Many states are also considering requiring employers to provide medical insurance for their employees.

Following this chapter is a basic medical expense payment and reimbursement plan. The partnership need not use this plan and may instead adopt its own plan. The important thing to remember is that the plan may not discriminate between the coverage for highly paid and lower paid workers.

PARTNERS' MEDICAL PLAN AGREEMENT

Agreement made this first day of _______________, ______ by and between ____ ___________________________ being the Partners of ______________________ ____ ___________________________, a Partnership created and existing under the laws of the State of _______________________ with its principal place of business at ____ ____ (hereinafter referred to as the Partnership).

WHEREAS the parties hereto believe that the maintenance of harmonious management is in the best interest of the Partnership and the Partners, and

WHEREAS in order to maximize employee efficiency and productivity and improve employee health, welfare and morale, the parties hereto find it in the best interests of the partnership for the partnership to adopt a Medical Expense Payment and Reimbursement Plan, hereinafter called Plan, created pursuant to Section 105(b) of the Internal Revenue Code of 1986, as amended.

NOW THEREFORE in pursuance of this purpose and in consideration of the mutual agreements and covenants contained herein it is hereby mutually agreed:

ARTICLE 1

ADOPTION OF A MEDICAL PLAN

The Plan adopted herein shall reimburse qualified employees for medical expenses incurred by them. Coverage under the Plan shall also extend to a qualified employee's spouse, children and dependents as defined in Section 152 of the Internal Revenue Code, provided those persons are members of the employee's household at the time any such medical or dental expenses are incurred.

There shall be two types of benefits payable under the Plan. These benefits are:

(a) Elective Plan Benefits, which are defined as being those benefits paid with respect to preventive or non-life threatening medical services such as dental, vision, psychological, orthodontia and other elective services including cosmetic surgery.

(b) Basic Plan Benefits, which are defined under the Plan as those benefits that are not for elective services.

ARTICLE 2

Coverage

Coverage shall extend to the partners and all qualified employees. Qualified employees shall include all of the employees of the partnership with the exception of those employees who fall within any of the following excluded classes:

1. Those employees who were less than eighteen (18) years of age at any time during the Plan year are not covered.
2. Employees who are members of a union, employee association or other unit of employees covered by a collective bargaining agreement for which the benefits under the

agreement were the subject of good faith bargaining are not covered by this Plan.

3. Those employees having less than one (1) year of service for elective benefits, but such employees must be covered by the Plan on the first day of the first month beginning after completion of such service.

4. Those employees having less than six (6) months of service for basic benefits, but such employees must be covered on the first day of the first month beginning after completion of such service.

5. Those employees working less than 17-1/2 hours per week are not covered.

6. Those employees working less than six (6) months during the Plan year are not covered.

7. Non-resident aliens who are employees are not covered if they receive no earned income from the Partnership within the meaning of IRC Section 911(d)(2), which constitutes income from sources within the United States as defined by Section 861 (a)(3).

ARTICLE 3

Notification of Coverage

The partnership intends for payments of Plan benefits to comply and be made in accordance with Sections 89 and 105(b) of the Internal Revenue Code. The Partners are hereby directed to inform all current employees and new employees of Plan provisions. All questions concerning the administration and interpretation of the Plan shall be determined by the Partners. Any questions concerning payments or reimbursements are to be directed to the Partners.

ARTICLE 4

Payments under the Plan

Payments of Plan benefits shall be governed by the dollar limitations set herein. The medical expense payments or reimbursements for which qualified employees shall be eligible shall consist of all medical and dental expenses incurred by such employees or their dependents to the extent allowable under and as defined in Section 213 of the Internal Revenue Code that are in excess of such payment or reimbursements said employee may be entitled to receive from any group health and accident insurance coverage provided employees of this partnership by this partnership or any other employer thereof or any other health and accident or medical insurance under which employees may be covered under any Medicare or other federal or state health and accident benefit program.

It is specifically stated herein that notwithstanding anything to the contrary in these resolutions the partnership hereby limits and will not pay or reimburse any eligible employee for any medical or dental expenses under the Plan, whether for basic or elective benefits, for a total aggregate amount greater than ____________________________ ($___________) that are incurred by the employee in any fiscal year. There shall be no discrimination or difference in any way by or between the maximum amounts which can be reimbursed or paid to highly compensated and non-highly compensated employees.

Any qualified employee applying for reimbursement or payment under the Plan will be required to submit to the president or board all medical and dental bills, as incurred, for which reimbursement or payment is claimed. Any premium notices for accident or health insurance and any verification of the appropriateness thereof for payment or reimbursement under the Plan are also to be included. The Partnership may, at its option, deny coverage and terminate the employee's right to such payment or reimbursement for any qualified employee failing to comply with the above requirements for coverage.

ARTICLE 5

Amendments of the Plan

The partnership reserves the right to alter, amend or terminate the Plan at any time. Any such alteration, amendment or termination of the Plan shall not affect the right of any qualified employee to receive payment or reimbursement for medical or dental expenses incurred prior to the Plan's alteration, amendment or termination by the Board.

ARTICLE 6

Termination of Agreement

This Agreement shall terminate upon dissolution, receivership, insolvency, or bankruptcy of the partnership.

ARTICLE 7

Persons Bound by this Agreement

All provisions of this Medical Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the respective heirs, administrators, personal representatives, executors, assigns and successors in interest of the Partners.

ARTICLE 8

Miscellaneous

8.A. SURVIVAL OF REPRESENTATIONS. The covenants, representations, warranties and other written statements set forth in this Agreement or in any Exhibit hereto shall survive the execution and delivery hereof and formation of the partnership. All of the same shall be deemed to be independently material and to have been relied upon by the party to whom made.

8.B. ATTORNEY FEES. If legal action is commenced over the terms of this Medical Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

8.C. GOVERNING LAW. It is agreed among the parties that the Partnership Agreement shall be governed and interpreted in accordance with the laws of the State of ______________________.

8.D. CONSTRUCTION. None of the provisions of this Medical Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

8.E. FURTHER ASSURANCES. Each of the Partners shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement which are not inconsistent with the terms hereof.

8.F. ENTIRE AGREEMENT AND AMENDMENT. This Medical Agreement incorporates the entire agreement and understanding among the Partners with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Partners.

8.G. SEVERABILITY. If any part of this Agreement is void or otherwise invalid, and, hence, unenforceable, such invalid or void portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though said void and invalid portions or provisions had never been part of the Agreement.

8.H PARAGRAPH HEADINGS. The heading of each paragraph of this Agreement is solely for convenience and it is not a part of this Agreement and is not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

8.I. INTERPRETATION. This Agreement is to be deemed to have been prepared equally by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party, but according to the application of rules and interpretation of contracts.

8.J. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute one and the same agreement.

8.K. ASSIGNMENT PROHIBITED. This Agreement may not be assigned by any Partner without the prior written consent of all the remaining Partners. Any assignment made in violation of this Paragraph shall be void.

8.L. WAIVER OF RIGHTS. Failure of any Partner to insist on compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such rights or powers at any other time or times.

8.M. CUMULATIVE REMEDIES. No right or remedy herein conferred on or reserved to any party is intended to be exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of ________________,______ in the County of ________________ , State of ____________.

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C. LIFE INSURANCE AGREEMENT

Common among small businesses is the use of what is known as key-man life insurance: a life insurance policy on key shareholders or partners of a small business. The reason behind such insurance is quite sound. A business is bereft of the abilities of a key person when he dies. Many small companies will fail upon the loss of their key personnel.

In most small companies only one or two people actually run the management details of the company. The entire company changes when this person is removed. An illustration of this occurred in a small water disposal company in Los Angeles. The owner of the company was a respected and personable individual who doted on his customers. Upon his death the company was inherited by his son. Unfortunately the son lacked his father's business acumen. The business subsequently declined and had to be sold within a year of the father's death. If the company had taken out key man insurance, it would have had a source of funds on which to draw while the business was being restructured.

Another reason for having such insurance is to provide the funds necessary to purchase the partnership interest from a deceased partner's estate. If the partners had executed a buy-sell agreement, the partnership or individual partners would need to find with a sizeable amount of cash upon the death of a partner to purchase the deceased partner's share in the partnership. Insurance can provide that source of funds without having to borrow money or sell partnership assets.

Internal Revenue Code section 264 states that the premiums paid for life insurance on a key person are not deductible where the payor of the premium (the partnership) is directly or indirectly the beneficiary of the policy. Since the proceeds of the insurance policy will be used to purchase the partnership interest of the deceased partner, the partnership is thereby benefited. For that reason, the partnership is not permitted to deduct the insurance payments as an ordinary and necessary business expense.

PARTNERS' LIFE INSURANCE AGREEMENT

Agreement made this first day of ________________, ____ by and between ____ ____________________________ being the Partners of ____________________ ____________________________________ a Partnership created and existing under the laws of the State of ________________ with its principal place of business at:

____

____

(hereinafter referred to as the Partnership).

WHEREAS the parties hereto believe that the maintenance of harmonious management has a value and is in the best interest of the Partnership and the Partners, and

WHEREAS the Partnership should be compensated for the sudden loss of life of a Key Partner and therefore requires key-man insurance on the lives of all Partners,

NOW THEREFORE in pursuance of this purpose and in consideration of the mutual agreements and covenants contained herein it is hereby mutually agreed as follows:

ARTICLE 1

Life Insurance

Each Partner shall apply to ______________________________________ _______________________________ for the issuance of the following life insurance policies for the following amounts:

Insured Amount

The partnership is to be named as the owner of the policies and the partnership shall pay all of the premiums for the life insurance policies. Additional policies may be purchased upon agreement of the partners.

ARTICLE 2

Right of Insured to Assignment

If any partner sells or transfers his interest in the Partnership, he may request assignment to him of the life insurance policy carried on his life. The life insurance policy upon the life of said former partner shall be assigned upon receipt by the Partnership of any cash value of the policy from the former partner.

ARTICLE 3

Termination of Agreement

This Agreement shall terminate upon the dissolution, receivership. insolvency, or bankruptcy of the partnership.

ARTICLE 4

Persons Bound by this Agreement

All provisions of this Life Insurance Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the respective heirs, administrators, personal representatives, executors, assigns and successors in interest of the Partners.

ARTICLE 5

Miscellaneous

5.A. SURVIVAL OF REPRESENTATIONS. The covenants, representations, warranties and other written statements set forth in this Agreement or in any exhibit hereto shall survive the execution and delivery hereof and formation of the partnership. All of the same shall be deemed to be independently material and to have been relied upon by the party to whom made.

5.B. ATTORNEY FEES. If legal action is commenced over the terms of this Medical Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

5.C. GOVERNING LAW. This Agreement and all of its terms and conditions shall be governed in accordance with the laws of the State of ______________________.

5.D. CONSTRUCTION. None of the provisions of this Life Insurance Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

5.E. FURTHER ASSURANCES. Each of the Partners shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement which are not inconsistent with the terms hereof.

5.F. ENTIRE AGREEMENT AND AMENDMENT. This Life Insurance Agreement incorporates the entire agreement and understanding among the Partners with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Partners.

5.G. SEVERABILITY. If any part of this Agreement is void or otherwise invalid, and, hence, unenforceable, such invalid or void portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though said void and invalid portions or provisions had never been part of the Agreement.

5.H. PARAGRAPH HEADINGS. The heading of each paragraph of this Agreement is solely for convenience and it is not a part of this Agreement and is not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

5.I. INTERPRETATION. This Agreement shall be deemed to have been prepared equally by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party, but according to the application of rules and interpretation of contracts.

5.J. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute one and the same agreement.

5.K. ASSIGNMENT PROHIBITED. This Agreement may not be assigned be any Partner without the prior written consent of all the remaining Partners. Any assignment made in violation of this Paragraph shall be void.

5.L. WAIVER OF RIGHTS. Failure of any Partner to insist on compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such rights or powers at any other time or times.

5.M. CUMULATIVE REMEDIES. No right or remedy herein conferred on or reserved to any party is intended to be exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of ______________, _____ in the County of ___________________, State of __________.

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CHAPTER 8

AFTERWARDS: POST-FORMATION ACTS

This chapter is an information chapter to remind the partners of the various acts that may be required to be performed after the formation of the partnership is completed. The partners will be familiar with these acts if they have previously operated a business. This chapter provides a summary of the general requirements most often encountered by a newly formed business. There is no way that this chapter will be able to cover each item in detail. As such, appropriate code sections are referenced. Many of the post-formation acts pertain to tax filings. Partners should, therefore, work closely with the partnership's tax advisor to establish the appropriate accounting procedures for the partnership. Some matters can be handled by the partnership's accountant or bookkeeper; others must be done by the officers. An understanding of what is expected and by whom is of great importance for the smooth operation of the business.

STATE LICENSES

A state may require a license in order to do a certain type of business regardless of whether the business is conducted as a partnership or not. For example, a state may require anyone disposing of hazardous waste to have a state license or permit to do so. The fact that the company doing the hauling may or may not be a partnership is irrelevant. Therefore, it is important that the partnership obtain all the necessary licenses and permits for the operation of its business in the state.

State permits are not transferable. If a partnership which has the necessary permits and licenses to do business should incorporate, the new business entity would have to apply for new state licenses and permits in its own name. A partnership is a legal entity in its own right, and it is treated separate and apart from the partners and any business in which they might have previously been engaged.

LOCAL BUSINESS LICENSES

Many states, usually those that have imposed business taxes, permit their counties, parishes, cities and other governmental entities to raise revenue by taxing businesses in their jurisdictional area. The taxing usually takes one of two forms. The first is a straight license fee for a permit to do business. The second (and more insidious) is a business income tax (such as in California) that a city and county may charge in order to grant a business license. The partnership should always consider whether there is a city or county business license required in order to operate. Such licenses would be required regardless of whether the business is operated as a corporation, sole proprietorship or partnership.

EMPLOYER IDENTIFICATION NUMBER

A partnership with employees is required to obtain from the IRS a federal employer's identification number (EIN). The application for an Employer Identification Number is Form SS-4. Form SS-4 must be filed within seven (7) days after the first payment of earnings to an employee. There is no filing fee for the form. The IRS will give the partnership an identification number upon filing. This identification number will be used on all tax returns. The Form SS-4 is in the Abode version of this book and can be obtained from the IRS office by calling 1(800) TAX-FORMS.

ESTIMATED TAX

While partnerships do not pay taxes on its income, the partners do. A partnership is a "pass-through" vehicle in which the income is passed to the partners in accordance with their individual interest in the partnership. A partnership, even though it does not have to paid taxes, is nevertheless required to file an information tax return Form 1165 even though it does not have to pay taxes. This partnership tax return serves to inform the Internal Revenue Service of the amount of partnership income which is being passed to the partners. The partnership must provide all of the partners with a tax form K-1 which shows the amount of income and loss being allocated and passed through to the individual partners. The partners then incorporate their share of the profits or losses of the partnership in their own individual tax returns as self-employment income or loss. Under federal law all partners are required to make estimated quarterly payments on their estimated share of partnership income.

A partner must comply with the tax law of his home state. A partner residing in a state which imposes an individual income tax is also required to make estimated payments on the state tax liability deriving from the partnership income. For example, Nevada has no personal income tax while California has one of the highest state income taxes on individuals (11%). California may be forced to raised it tax rates even higher to lower its huge state deficit. As a result of their differing tax structure, a Nevada resident will not have to pay taxes, estimated or otherwise, in Nevada for income derived from the partnership whereas a California resident must pay such taxes. If a partnership does business in several states, the partners will have to pay state income on the partnership income derived from each state. For example, each California resident must pay income taxes on the share of income derived from a partnership regardless of whether it does business in California. In addition, if a Nevada partnership does business in California, each of the partners will have to pay California tax on that portion of the partnership income derived from the partnership's California operations even though they will not have to pay a Nevada income tax.

California, along with all of the other states that impose individual income taxes, requires the partners of a partnership doing business in the state to pay estimated income taxes. Therefore, it is important for partners to know whether a state in which the partnership is doing business requires the payment of estimated tax and to comply.

PERSONAL PROPERTY TAXES

Many states, such as California, impose a tax on the personal property of a partnership located within the state. This personal property tax on business assets has resulted in businesses along the border storing their inventory or parking their movable assets across state lines when the neighboring state imposes a lower personal property tax on assets. To illustrate, many of the airlines doing business in California actually fly to Las Vegas or Reno at night to park the aircraft so they will not be taxed in California. A partnership should be aware of the personal property tax that a state may charge for partnership assets located in the state. The same tax rate is normally imposed for the personal property whether it belongs to a corporation, partnership or sole proprietorship.

SALES AND USE TAXES

If the partnership expects to engage in the business of selling tangible personal property, it must determine if it needs to obtain a sales and use tax permit. Those states that have sales taxes presume that all gross receipts from the sale of personal property are subject to the sales tax. As with personal property taxes, it makes no difference as to the form of the business. As long as goods subject to the tax are sold, sales tax must be charged.

EMPLOYEE CONCERNS

1. PAYROLL WITHHOLDING

A partnership, as with any other employer, must withhold from all of its employees' salary income tax and social security tax. Instructions for federal withholding are in IRS Circular E, "Employer's Tax Guide." The partnership must have each employee annually complete an Employee's Withholding Allowance Certificate W-4.

The withheld income and social security taxes are deposited in an authorized commercial bank depository or a Federal Reserve Bank with a Federal Deposit Form 8109. A Form 941, "Employer's Quarterly Federal Tax Return," (Form 941) is required to be filed by the partnership before the end of the month following each quarter. If the taxes are not withheld or paid, any person whose duty it is to make the payments will be 100% liable for the taxes plus interest. Although this can work a manifest injustice, it remains the law. In states that have income taxes, such as California, there must be state payroll withholding as well. It is important that the partnership understand its tax obligations for each state in which it will operate.

2. FEDERAL UNEMPLOYMENT TAX

Any partnership that has an employee at least part of one day every week during the current or preceding calendar year or has paid wages of at least $1,500 during any calendar year is subject to Federal Unemployment Tax (FUTA). The partnership may receive credit against FUTA for taxes paid into a state's unemployment fund. The taxes are deposited in an authorized commercial bank depository or a Federal Reserve Bank along with a Federal Deposit Form 8109, "Employers Annual Federal Unemployment Tax Return." Form 940 must be filed by the partnership by January 31 of each year. More information can be obtained from the I.R.S.'s "Employer's Tax Guide."

3. UNEMPLOYMENT COMPENSATION INSURANCE

Many states, such as California, require that employers provide unemployment and disability insurance for employees. For unemployment insurance the employers must make annual contributions to a state fund based on a percentage of the employee's annual payroll. The disability coverage premium is paid by withholdings from the employee's wages. Some states, like California, permit the employer to elect private disability insurance coverage under a state approved voluntary disability program. The employees are not required to pay disability taxes to the state under such election.

4. WORKER'S COMPENSATION

All states have enacted Worker's Compensation Laws that hold an employer liable for any injuries to a worker on the job regardless of any negligence of either the employer or the employee. The employee, however, cannot sue the employer for punitive damages regardless of how egregious the employer's conduct was in causing the injury. The employer must either carry workers compensation insurance from a state fund or carry it from an approved private insurance carrier. In some states the employer may be permitted to be self-insured provided it is considered large enough and stable enough to do so. Failure to carry the insurance could be disastrous for a partnership. It could mean that an injured employee could sue the partnership for punitive damages whereas the insurance denies the employee the ability to sue.

FICTITIOUS NAME FILINGS

If the partnership is going to do business in a state, it should note the state's requirements for filing a fictitious name statement. Most states require any person or entity, even a partnership, to file a fictitious name statement with the county clerk if it does business in a name other than its own. A fictitious name statement should be filed whenever a partnership does business in a name other than that of all the partners. The purpose of such a filing is to provide the public a means to identify the owner of the business in the event of litigation or any other need to contact the owner. For example, George, Herbert and Bill may operate a restaurant named Guido's. In the event a patron suffers food poisoning, the patron could check the fictitious name filings and find the names of the owners: George, Herbert and Bill. The fictitious name statement is usually obtained at the County Clerk's office or, at most business and a stationary stores.

A fictitious name statement usually is filed with the county clerk and then published in a local paper of general circulation. The fictitious name statement gives notice to the world at large that the individuals are working together as a partnership. It is important that requirements for the fictitious name statement be met both from the standpoint of the creditors and from that of the partners. To avoid confusion, a partnership cannot use a name similar to that of another business.

COMPLIANCE WITH BULK SALES ACT

When a person transfers an existing business into a partnership, he must comply with the state's bulk sales law. Virtually all states have adopted a bulk sales act in some fashion, which deals with giving notice to creditors of a bulk transfer of assets of a business. The bulk sales law is intended to prevent business owners from attempting to defraud or avoid creditors by transferring all or substantially all (the bulk) of the assets of the business to another person or entity. The law also seeks to prevent the situation wherein the business sells its assets in a bargain or sweetheart sale (below fair market value) and the owner of the business still retains some degree of control (for example sale of business assets to another business which the owner also controls).

For most newly formed partnerships there is no desire or plan to defraud creditors. The purpose is simply to change the form of the business, not an attempt to disassociate themselves from the debts of the previous business from which the assets are transferred. The compliance with any bulk sales law is merely a formality. The partnership will be responsible for the debts of the old business transferring the assets to the extent of the value of the assets transferred.

The real concern arises in the situation where the business transferring all of its assets to the partnership will have debts that the partnership will not assume. The partnership should consult an attorney to assure that it will not become liable for such debts if it takes the assets from the other business. The bulk sales law was enacted to help settle such disputes.

In the situation where a partnership is receiving property transferred to it by a business with outstanding debts which the partnership will not assume, the Bulk Sales Act of the Uniform

Commercial Code requires the partnership to do the following acts before it can safely issue its stock:

1. The partnership must prepare a Notice to Creditors of Bulk Transfer. The Notice is then published in a paper of general circulation for the judicial district, usually a county, in which the property being transferred to the partnership is located. The Notice must also be published in the judicial district or county where the principal executive office of the prior business is located. The publication must be completed at least twelve (12) business days prior to the date of transfer of the property.

2. The partnership is also required to file copies of the Notice of Bulk Transfer with the County Recorder and the County Tax Collector in each judicial district or county that the property is located and where the prior business had its principal executive office at least twelve (12) business days before the transfer.

After the Notice is given to the Creditors, if the creditors do not object to the transfer, then the partnership can take possession and title to the assets free from all creditor claims.

If, however, creditors for the prior business present claims against the property then special rules apply. Basically, if the partnership wants the property of a prior business in exchange for its partnership interest and creditors are asserting their rights, then the partnership must either pay the creditors (which amounts to paying twice for the property) or deposit the partnership interest with the court and let the court decide who owns it. In such an instance, partnership may find itself with entirely unexpected partners with whom some of the other partners cannot work. **FOR THESE REASONS, IN THE EVENT OF A BULK TRANSFER DISPUTE, THE PARTNERSHIP MUST SEEK LEGAL ADVICE BEFORE PROCEEDING ONWARD WITH THIS TRANSACTION. A form for a basic Notice of Bulk Sale follows.**

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

____

Space above the line is for Recorder's use

NOTICE TO CREDITORS OF BULK TRANSFER

NOTICE is hereby given to the CREDITORS of _________________

_____________________________________ Transferor (s), whose business

address is ____,

County of ________________________, State of ___________________.

The property is described as general: **ALL STOCK IN TRADE, FIXTURES EQUIPMENT AND GOOD WILL OF THAT:** _______________________

TYPE OF BUSINESS

BUSINESS KNOWN AS ____

NAME OF BUSINESS

and located at ____,

County of ___________________________ State of _________________.

The Bulk Transfer will be consummated on or after the ______

day of _______________, 1999_____ at ______ _________________

OFFICE NAME

_______________________, ____

STREET ADDRESS

County of ___________________________ State of _________________.

So far as known to the Transferee(s), all business names and addresses, used by the Transferror(s) for the three years past are (same, put same, if none, put none, if any, list them).

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BUSINESS NAME	STREET ADDRESS
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COUNTY	STATE
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BUSINESS NAME	STREET ADDRESS
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COUNTY	STATE

Dated: ____________________

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TRANSFEREE

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TRANSFEREE

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF ________________

COUNTY OF _______________

On _________________ before me, ___________________________ personally appeared_______________________________________ 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 he instrument the person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

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CHAPTER 9

TAX CONSIDERATIONS

This chapter is dedicated to helping to explain some of the tax consequences faced in creating a partnership. These consequences are not, in themselves, neither good or bad, they merely exist. This chapter definitely will not replace the partnership's need for a tax professional. The purpose of this chapter is to give the reader a basic overview of most important aspects of partnership tax law.

Armed with the knowledge which this chapter provides, a partner will be better able to participate effectively with the partnership's tax professional in directing the partnership activities. Critical to the partnership's success is that it rely on a tax professional. Partnership tax law is highly complex and difficult. For an individual to expect to learn all of the tax aspects related to a partnership is unreasonable. So much time would be spent learning the law that little time would be left for running the business. Partnership tax law is in many instances the same as individual tax law. There are, however, significant differences in certain areas. It is toward those differences that this chapter is addressed.

I. TAXATION OF A PARTNERSHIP

A partnership is subject to its own peculiar tax treatment under federal tax law. Most unincorporated associations and trusts that conduct business are taxed as though they are corporations. Partnerships, however, are treated differently. In a partnership, the income is attributed to the partners in accordance with their percentage of partnership interest. The partnership pays no federal income tax itself. For example, even if a partnership earns $1,000,000, it will pay no taxes. The partners have to include the $1,000,000 on their tax returns. Assuming a 28% federal tax rate, the partners will pay $280,000. Were the partnership a C corporation, $519,200 of that $1,000,000 would go to the federal government in taxes on income. The partnership does not pay any taxes on the income from the partnership. That is the hallmark of a partnership. Even though a partnership does not pay taxes on its income, the partners pay income taxes on their respective shares of the partnership income. All partnership profits and losses are passed to the partners. The partnership files a Form 1165 partnership return and its K-1 forms, informing the IRS how the profits and losses are being allocated to each partner. Under the Internal Revenue Code, each partner is treated for tax purposes as a self-employed individual. Every partner is required to estimate his share of the partnership income and make estimated quarterly payments to the IRS for that income.

Partnerships are treated for federal tax purposes as "pass-through" vehicles. All profits and losses of the partnership "pass through" the partnership and are attributed to the partners. The effect of this "pass through" of profits and losses is the partnership itself is not taxed. Partnership income is not subject to double taxation. In a regular C corporation, income is taxed and then dividends paid to shareholders from the remaining income is taxed as shareholder income. Congress created the S Corporation specifically to allow a small corporation (an S corporation) to "pass through" its income to its shareholders. There it is taxed only once as shareholder income.

Under the 1986 Tax Reform Act, profits and losses passing through to partners retain the same character they had in the partnership. A passive profit or loss to the partnership remains a passive profit or loss to the partner. The same treatment exists for an active profit or loss. A partner who materially participates in the partnership business will have all of the attributed profits or losses considered to be active. The profit and losses of a partner who does not actively participate in the partnership business will be considered to be passive in nature.

One of the most important issues in any partnership is how the profits or losses are divided. The partners formed the partnership in order to conduct a business to make money. Therefore, it is important to know how the accounting of the partnership's profits or losses will take place. Under the Uniform Partnership Act, all profits or losses of a partnership are divided equally among the partners unless the partnership agreement states otherwise. The equal division of profits or losses occurs even if the partners own unequal interests in the partnership or have contributed unequal amounts of work or property to it. Partners can agree to an unequal division of profits and losses, such as one based on partnership ownership interests or contributions. Any agreement for an unequal division of profits and losses should be clarified in detail to ensure the UPA does not apply.

II. TAX TREATMENT FOR PARTNERSHIP PROPERTY

Under the Uniform Partnership Act, property which is titled in the partnership name is owned by the partnership. A partner who contributes property to a partnership loses his ownership in the property. Property purchased with partnership funds is owned by the partnership. The property held by a partnership can be legally sold, transferred or conveyed only by the partnership. Since partnership property is owned by the partnership, it cannot be directly attached to satisfy any court judgment taken against a partner. A partner's ownership interest in a partnership can be attached and sold by a creditor; however, the creditor cannot reach the underlying property in the partnership.

This is similar to a person purchasing stock in a corporation. A creditor of the shareholder cannot go to the corporation and demand the money or property paid for the stock. The creditor is limited to taking the stock, selling it and applying the proceeds from the stock to the shareholder's debt.

The partnership's basis on contributed property is the basis that the partner had before it was contributed. Example: George contributed a piece of real property in which he had a basis of $50,000 and which had a fair market value of $200,000. The partnership's basis in the property is $50,000. If the partnership sells the property for $200,000, there will be a $150,000 capital gain to be split among the partners according to their partnership interest.

III. THE PARTNERSHIP INTEREST

A tax consideration all persons forming a partnership should bear in mind is that of contributing services for an equity interest in the partnership. Under federal tax law, when a person purchases a partnership interest for either services rendered or to be rendered, that partner has to recognize as income the value of the partnership interest received. A person cannot acquire a partnership interest tax free by bartering services. For example, if George agrees to become a partner by providing services and the partnership interest acquired would be worth $10,000, George will have to report the $10,000 as income on his tax return.

A partner, who contributes property to a partnership, does not recognize gain or loss on the transfer to the partnership. For example, assume that a partner contributes real estate to the partnership which has a basis (cost) of $200,000. The property has a fair market value of $1,000,000. If the partner had sold the property, he would have had to pay capital gain on the $800,000 profit. By contributing the property to the partnership, the partner does not realize any capital gain.

The partnership will have the contributing partner's basis in any contributed property: not its fair market value at the time of transfer. Thus, when the partnership sells this property for $1,000,000, there will be a capital gain to the partnership of $800,000, which will be passed to all of the partners.

IV. PARTNERSHIP RENTAL INCOME

One of the most common reasons for forming a partnership is to allow several persons to pool their assets for investment in rental property. In fact, there are many real estate general partnerships whose interests are sold nationwide. It is the non-security status of such large general partnerships which is being challenged before the Supreme Court. Nonetheless, real estate remains the most frequent type of investment for small groups. Many other partnerships engage in the business of equipment rental. The tax laws for both real estate and equipment rental are very similar.

Rental income is defined as any payment received for the use of occupation of property. Generally, a lessor must include in gross income all amounts received as rent. Advance rent is any amount received before the period that it covers. Advance rent is included in the rental income for the year the partnership receives it. It is included in gross income of the year received regardless of the period it covers or the accounting method the partnership uses. Security deposits are not included in the rental income of the lessor if the partnership plans to return it to the tenant at the end of the lease. If during the year, however, the lessor keeps all or any part of the security deposit, that amount is treated as rental income and must be reported. If the lessor receives property or services in lieu of rent, the fair market value of said property or services is rental income and must be reported.

A partnership may not deduct losses from rental real estate activities. At-risk rules limit the amount of deductible losses from holding real property placed in service after 1986. A partner is allowed to deduct up to $25,000 of the losses from rental real estate in which the taxpayer participated during the tax year. This $25,000 is reduced to $12,500 if he is married and filing separately and has lived separate from his spouse the entire year. The partner is allowed this offset for otherwise unallowable losses from real estate activities from other income (nonpassive income). The $25,000 ($12,500) figure is reduced if the partner's adjusted gross income is more than $100,000.

V. PASSIVE ACTIVITY LOSSES

Congress has limited the deduction of certain business losses. These losses, called passive activity losses, can only be deducted under certain circumstances. Passive activity losses may not generally be deducted from nonpassive income (wages, interest, dividends). Similarly tax credits for passive activities are limited to the tax allocable to such activities only. Passive activity rules apply to individuals, estates, trusts and personal service corporations. Since they apply to individuals, they apply to his partnership pass-through income and losses.

A passive activity is one that involves the conduct of a trade or business in which the taxpayer does not materially participate. Any rental activity is a passive activity regardless of whether the taxpayer materially participates. An individual will be considered as materially participating in an activity if one of the following tests is met:

1. The taxpayer participates more than 500 hours.
2. The taxpayer's participation constitutes substantially all activity.
3. The taxpayer participates more than 100 hours and no one else participates more.
4. A fact and circumstances test shows that the taxpayer participated in the business on a regular, continuous and substantial basis.

Portfolio income such as interest, dividends, annuities and royalties is not passive income and the activities generating the income are not passive activities.

As a practical matter as long as a partner participates in the day-to-day operations of the partnership, he is an active participant, and the active-versus-passive activity rules do not apply. Losses from the partnership will be active losses and not subject to the passive activity loss rules.

VI. DEPRECIATION

Depreciation is the annual deduction a taxpayer may take to recover the cost of personal property which is used in business for more than one year. The main factors used to determine the amount of depreciation that may be deducted are:

1. The basis of the property.
2. The recovery period of the property.

There are three systems of depreciation involved in computing depreciation. These systems depend on when the property was placed into service. These systems are:

1. MACRS for property place in service after 1986.
2. ACRS for property placed in service after 1980 but before 1987.
3. Straight line depreciation or accelerated depreciation, if property was placed in service before 1981.

The most utilized system is MACRS (Modified Accelerated Cost Recovery System). All property is characterized by its recovery life. Each property is placed in one of the following classes:

1. 3-year property.
2. 5-year property.
3. 7-year property.
4. 10-year property.
5. 15-year property.
6. 20-year property.
7. Nonresidential real property.
8. Residential rental property.

The IRS has published tables for each class that give the percentage of depreciation for each year for property in each class. The taxpayer multiplies that percentage by the cost of the item to determine the depreciation for the year.

If property which has been depreciated through the use of an accelerated method is subsequently sold, there will be a recapture of the depreciation. The depreciation recapture usually will be the difference between straight line depreciation and the accelerated depreciation. Example: A partnership had a piece of equipment that would have had $40,000 of depreciation using a straight line method (yearly amount based upon cost divided by useful life), but instead used an accelerated method which resulted in depreciation of $60,000 at the time of sale. The partnership must recapture $20,000. The depreciation which is recaptured is treated as additional ordinary income to the partnership.

VII. TAXABILITY OF A NOT-FOR-PROFIT ACTIVITY

A partnership by definition is formed to make a profit; otherwise, it is an association. Occasionally a partnership engages in some type of activity which was not intended to generate a profit but, to the surprise of the partners, actually does generate some degree of profit. It should come as no surprise that the profit must be reported even though the activity was not intended to make a profit. Although the profit must be reported, deductions for activities not intended for profit are severely restricted. The deductions cannot exceed the income derived from the partnership activity and can only be taken by a partner if the partner itemizes his deductions.

The activity will be presumed to be for profit if it produces a profit three out of five consecutive years. When the activity in question involves the breeding of horses, the period for profitability is two years out of seven. If the activity has been carried on for less than three years, the taxpayer may postpone the determination that the activity is not-for-profit by filing Form 5213 Election to Postpone Determination.

VIII. CANCELING A DEBT

A canceled debt or a debt paid by another person is reportable income to the debtor. It should be reported on line 22 of Form 1040. This is a discharge of indebtedness that results in taxable income to the debtor. A discount offered by a financial institution for the prepayment of a mortgage loan is income from the cancellation of the debt. There is, however, no income on the cancellation of a debt if the cancellation was intended as a gift. If the debt is canceled in a title 11 bankruptcy or when the debtor is insolvent, the discharge of the debt is not income.

It is common for partners to borrow money at low interest rates from their partnerships. Such loans usually occur because the partner does not have a large enough capital account to request a distribution. Often the debts are forgiven. The partner must declare the cancellation as income on his tax return for the value of the forgiven loan. Another situation is where a partnership owes a business a debt which is either discharged or canceled. The partnership will have reportable income to the extent of the canceled debt. For example, ABC Partnership owes Hallton Construction $50,000. Hallton Construction agrees to take $30,000 as settlement. The partnership will have a $20,000 income from this canceled or forgiven debt.

IX. CAPITAL GAINS, LOSSES AND CARRYOVERS

The gain or loss from the sale or exchange of a capital asset is characterized as either long-term or short-term capital gain or loss. An asset held more than one year is a long-term capital asset. The net long-term capital gain or loss is added to the net short-term gain or loss to arrive at the net overall capital gain or loss. If capital gains exceed capital losses, the overall gain is included on the taxpayer's return and taxed at regular tax rates. If capital losses exceed capital gains, the overall losses are subject to deduction limitations. A partnership will allocate its capital gains and losses among its partners in accordance with their partnership interest. Example: ABC Partnership has four equal partners and $40,000 in capital gain. Each partner is allocated a $10,000 capital gain.

A capital asset is any property not used in a trade or business. It is property held by a taxpayer for personal purposes, pleasure or investment. A capital asset is not, for tax purposes, any of the following:

1. Property or inventory held mainly for sale to customers.
2. Depreciable property used in the taxpayer's trade or business.
3. Real property used in the taxpayer's trade or business.
4. A copyright, a literary, musical or artistic composition, a letter or memorandum or similar property that was created by the personal efforts of the taxpayer.
5. Accounts or notes receivable acquired in the normal course of a trade or business.

6. U.S. Government publications that the taxpayer received from the government.

The most common forms of capital assets held by partnerships are real estate or securities. Although capital gains rates are presently the same as an individual's tax rate, there is considerable debate about reducing them.

If a partner's capital losses, including the allocated partnership capital losses, exceed capital gains, the partner may deduct up to $3,000 of the excess for the tax year. The $3,000 is reduced to $1,500 if the partner is married and filing a single return. The unused capital loss may be carried over to succeeding years until it is depleted. Carried-over capital loss retains its initial character as long-term or short-term loss.

X. PARTNERSHIP BASIS IN ACQUIRED PROPERTY

Basis is a way of measuring the partnership's investment in property for tax purposes. Cost basis is the amount of cash or its equivalent that the partnership pays for the property. It includes fair market value of services and other property that is provided for the purchase. Cost basis also includes:

1. Sales tax charged for the purchase.
2. Freight charges for the property.
3. Installation and testing charges.

The cost-basis investment in the property is adjusted for changes in the property. As the basis increases, gain (profit) decreases and taxes due as a result of the sale of the property are reduced. As the basis decreases, gain (profit) increases and taxes due on the sale of the property likewise increase.

Improvements are adjustments to the basis of property where additional investments are made in the property. The value of the improvements is added to the cost basis.

Just as the cost basis may be increased, it also may be decreased. Items that represent a return of capital operate to reduce the cost basis. Some such items are depreciation, casualty losses and thefts, which when deducted operate to reduce the property's basis.

XI. LIKE-KIND EXCHANGES

Certain trades and exchanges of property are nontaxable. If a partnership exchanges qualified property, neither gain from the exchange is taxed nor can loss from the exchange be deducted. A like-kind exchange must meet the following six requirements:

1. The property must be business or investment property.
2. The property must not be property held for sale. It must be property held for investment or productive use in the partnership's trade or business.
3. There must be an exchange for like-kind property. The exchanged property must be similar in nature and function.
4. The property exchanged must be tangible property. A like kind exchange is not permitted for stocks, bonds, notes and other intangible interests.
5. The exchanged property must be identified within 45 days

of the exchange.

6. The exchange must be completed by the earlier of 180 days or the end of the tax year when the exchange occurred.

When a partnership engages in tax-free exchange, there is no tax effect to the partners. The newly acquired property takes the place of the exchanged property. The new property will take the original basis of the old property for which it was exchanged. For example, assume that a partnership exchanges an apartment house with a basis of $75,000 worth $300,000 for another one which has a basis of $45,000 and a fair market value of $300,000. The partnership's new basis in the acquired property is $75,000.

XII. CASUALTY LOSSES

A partnership, as with any person or entity, may suffer a casualty loss. For tax purposes a partnership casualty loss is treated the same as a casualty loss suffered by an individual, corporation or trust. A casualty loss is a loss suffered as a result of damage or destruction to property resulting from an identifiable event that is sudden, unexpected, or unusual. A sudden event is one that is swift, not gradual or progressive. An unexpected event is one that is ordinarily not anticipated and not intended. An unusual event is one that is not a day-to-day occurrence and that is not typical in the activity in which the partnership was engaged.

A casualty loss may also include a government-ordered demolition or relocation of a structure declared unsafe because of some disaster. Casualty losses may result from the following causes but are not limited to them:

1. Earthquakes.
2. Hurricanes.
3. Floods.
4. Volcanoes.
5. Shipwrecks.
6. Cave-ins.
7. Vandalism.

There is no casualty loss permitted for termite damage, disease to trees or shrubs, drought, or progressive deterioration due to age that a partnership may suffer on its rental or investment real estate.

XIII. THEFT LOSSES

One of the largest expenses that any retail business suffers is theft. Shoplifting, nationwide, costs retailers twenty billion dollars annually, which is more than the entire industry makes in one year. Besides shoplifting, burglary accounts for large losses in business. The costs of the thefts are passed to customers in the form of higher prices. Unfortunately, if the price rise to cover the theft is too high, the business will lose customers and may go out of business. To help offset this result, theft losses are deductible to a certain extent. This allows a business some discretion in raising prices.

Theft is the unlawful taking and removing of the property of another with the intent to deprive the owner of it permanently. Theft includes but is not limited to larceny, robbery, and embezzlement.

Funds taken by way of threats, extortion and blackmail are also theft losses. The partnership needs only to show that the property was taken illegally, where it occurred and that it was done with criminal intent.

The loss of property through normal negligence is not theft. The accidental disappearance, however, may qualify as a casualty if the loss occurs for an identifiable event that is sudden, unusual and unexpected. Example: A person accidentally tripped another causing that person to break a string of pearls and lose several of them. The loss of the pearls would be a casualty loss.

CHAPTER 10

TERMINATION OF A PARTNERSHIP

The ending of a partnership is generally referred to as its "termination" although it is sometimes called a dissolution or "winding down." Whatever the name, it is the process by which the partners cease to operate as a partnership. When a partnership is terminated, all business activities cease except to the extent necessary to complete partnership business that was instituted prior to the termination. A partnership, unlike a corporation, does not have perpetual existence. It is a fundamental precept of partnership law that one day it will end. The Uniform Partnership Act (UPA) requires a partnership to terminate automatically upon the death or bankruptcy of any partner. In addition, when the purpose of a joint venture is accomplished, it too terminates.

A partnership agreement is permitted to have clauses in it stating on what conditions the partnership will terminate. The most common partnership termination clauses are triggered:

a. When the partnership purpose is accomplished (in a joint venture). For example, a partnership to buy, refurbish and then sell an apartment house terminates upon its sale.

b. On a certain date.

c. If a partner becomes insolvent or bankrupt.

d. If a partner dies or becomes disabled.

e. If any partner withdraws from the partnership: resigns. Without a clause in the partnership agreement stating otherwise, the Uniform Partnership Act states that a partnership terminates automatically on the death of a partner or upon a partner's resignation. In addition, the UPA requires the partnership to terminate automatically when a partner files for personal bankruptcy even if the business is solvent.

The reason for the dissolution: the relationship with the partnership and the other partners changes when a partner goes bankrupt. By filing for bankruptcy protection, the filing partner is no longer liable for partnership debts. The liability for payment of partnership debts remains with the partners who did not file bankruptcy. It is this general release of liability for the partner filing bankruptcy that gives rise to the termination of the partnership. The partners can agree not to have the partnership dissolved automatically upon the bankruptcy of a partner by a provision in the partnership agreement. Unless the partnership agreement states otherwise, the UPA will apply, and the partnership will be terminated upon the bankruptcy of a partner.

Under the Uniform Partnership Act, a court may order dissolution of a partnership for the following reasons regardless of specific clauses in the partnership agreement stating otherwise:

a. A partner has been found insane by a court,

b. A partner is incapable of performing his duties under the partnership agreement,

c. A partner's conduct has prejudicially affected the ability of the partnership to carry on its business,

d. A partner has repeatedly breached the partnership agreement,

e. The partnership can only do business at a loss, or

f. Equitable reasons support dissolution.

A lawsuit seeking termination on any of these grounds will be difficult and costly to prove. An alternative is for the partnership agreement to have an expulsion provision permitting discharge of a partner for any of the above reasons.

PROCEDURE

The termination of a partnership begins in one of two ways. The termination is instituted either by a unanimous agreement of the partners or by operation of law. A partnership is terminated by operation of law for one of two reasons:

1. Its existence violates terms of the state's partnership law, such as being for an improper purpose.
2. The terms of the partnership agreement call upon the partnership to be terminated automatically upon the happening of certain events.

Once the partnership agreement has terminated, all business operations cease except to the extent necessary to complete outstanding business and the payment of partnership debts and fulfillment of outstanding partnership obligations. This discharge process is sometimes called the "winding down" of the partnership. During the period of time a partnership is being discharged, each partner remains liable for the debts the partnership incurred prior to termination. After the final cessation of business, the partnership will sell all of its assets and distribute the proceeds as follows:

a. All federal and state taxes are paid,

b. All employee wages and benefits are paid,

c. All secured liabilities are paid,

d. All unsecured liabilities are paid, and

e. Any remaining funds are divided among the partners in accordance with their percentage of ownership interest in the partnership.

The proceeds received by a partner in the dissolution of a partnership are a return of the partner's investment. Any gain or loss in the dissolution is treated as a capital gain or loss. For example, if a partner paid $4,000 for his stock and received $3,000 upon dissolution, he has realized a $1,000 capital loss. If he received $6,000, he has a $2,000 capital gain.

Depending on the complexity of the partnership business, termination may be quick or it may be a long and involved process. Until the partnership is fully terminated, the individual liability of the partners continues. If the partnership does not have enough assets to pay all of its debts and liabilities, the partners must themselves pay the remaining balance at the time of termination.

The Uniform Partnership Act requires the remaining solvent partners to pay all of the outstanding debts and liabilities if the partnership and some of the partners are insolvent. For example, if the partnership owes $2,000,000 with assets of only $1,000,000 and three of the four partners are insolvent, the remaining partner (who may only own ten percent of the partnership) must pay the entire $1,000,000 outstanding debt of the partnership. In an effort to side track such a disaster, the UPA requires a partnership to be dissolved when a partner files for bankruptcy protection.

Under the Uniform Partnership Act a partnership does not pay interest on a partner's share of proceeds under a dissolution except for time "after the date when repayment should have been made." The partnership must pay interest for the time of the delay if it is late in making a distribution after the dissolution. As with most provisions of the UPA, the partners can make an agreement not to have this provision apply. Likewise, the partners may agree in the partnership agreement to have the partnership pay interest on a partner's distributed share from the date the dissolution plan is adopted rather than the date the distribution could be made.

Once a partnership has been terminated, the partners should publish a notice in the newspaper of the termination of the partnership. The partners should also file a termination of the fictitious name statement. Both of these acts serve the important purpose of notifying the world of the termination of the partnership relationship. Under general agency law, if a partner fails to inform a person of the termination of the partnership and that person, while reasonably believing the partnership to still be in effect, deals with a former partner, the partnership relationship will still be found to exist. Publishing a notice of the termination of the partnership prevents such a third person from having a reasonable belief that the partnership is still in effect when dealing with a former partner.

Another reason for publishing the notice of termination of partnership is to insure creditors are given notice to come forward and present their claims. All partners remain liable for the debts of the partnership even after the partnership's termination. For example, assume that a creditor comes forward two years after the termination to present his claim. The partners will still have to pay. Unless the creditor's claim is barred because it has expired under the terms of a state's statute of limitations, the partners will have to pay it. If one or more of the partners are dead or insolvent at this time, the other partners will have to absorb that partner's share of the debt. It makes good sense to notify all of the creditors at the time of distribution when the money is most available to pay the partnership's creditors.

This chapter has a sample termination agreement for use when all of the partners agree to terminate the partnership. Without such an agreement, the Partnership will still terminate only now the termination will be governed by the state's partnership law not by the agreement of the partners.

PARTNER'S TERMINATION AGREEMENT

Agreement made this _________ day of ___________________ by and between ____ being the Partners of ____ a Partnership created and existing under the laws of the State of ______________________________ with its principal place of business at ____

(hereinafter referred to as the Partnership).

WHEREAS, it is the agreement of the parties that the Partnership as now in existence cannot and should not be continued in effect and should be terminated;

NOW, THEREFORE, in pursuance of this purpose and in consideration of the mutual agreements and covenants contained herein, it is hereby mutually agreed as follows:

ARTICLE 1

Termination of Partnership

The Partnership as formed between the parties in accordance with the terms of the original partnership agreement along with all subsequent amendments is by this agreement hereby terminated.

ARTICLE 2

Winding-Down of Partnership

All partnership business operations will cease except to the extent necessary to complete outstanding business and the payment of partnership debts and fulfillment of outstanding partnership obligations. This partnership will sell all of its assets and distribute the proceeds as follows:

1. All federal and state taxes are paid,
2. All employee wages and benefits are paid,
3. All secured liabilities are paid,
4. All unsecured liabilities are paid, and
5. The remaining funds, if any, are divided among the partners in accordance with their percentage of ownership interest in the partnership.

ARTICLE 4

Persons Bound by this Agreement

All provisions of this Termination Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the respective heirs, administrators, personal representatives, executors, assigns and successors in interest of the Partners.

ARTICLE 5

Miscellaneous

5.A. SURVIVAL OF REPRESENTATIONS. The covenants, warranties, representations and other written statements set forth in this Agreement or in any exhibit hereto shall survive the execution and delivery hereof and formation of the partnership. All of the same shall be deemed to be independent material and the party to whom made is deemed to have relied upon it.

5.B. ATTORNEY FEES. If legal action is commenced over the terms of this Termination Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees and costs.

5.C. GOVERNING LAW. This Agreement and all of its terms and conditions shall be governed in accordance with the laws of the State of ________________.

5.D. CONSTRUCTION. None of the provisions of this Termination Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

5.E. FURTHER ASSURANCES. Each of the Partners hereto shall execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purposes of this Agreement which are not inconsistent with the terms hereof.

5.F. ENTIRE AGREEMENT AND AMENDMENT. This Termination Agreement incorporates the entire agreement and understanding among the Partners with respect to the subject matter. This Agreement may not be modified or amended except with the written consent of all Partners.

5.G. SEVERABILITY. If any part of this Agreement is void or otherwise invalid and hence unenforceable, such invalid or void portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect as though said void and invalid portions or provisions had never been part of the Agreement.

5.H. PARAGRAPH HEADINGS. The heading of each paragraph of this Agreement is solely for convenience and is not a part of this

Agreement and is not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

5.I. INTERPRETATION. This Agreement is to be deemed to have been prepared equally by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but shall be interpreted according to the application of rules of interpretation of contracts.

5.J. WAIVER OF RIGHTS. Failure of any Partner to insist on compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such rights or powers at any other time.

5.K. CUMULATIVE REMEDIES. No right or remedy herein conferred or reserved to any party is intended to be exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy given herein or existing at law or in equity or by statute.

ADDITIONAL PROVISIONS. ____

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____________, ______ in the County of ______________________ , State of _________________.

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CHAPTER 11

THE LIMITED LIABILITY COMPANY

I. DEFINITION

The most recent development in business law is the creation of the Limited Liability Company (LLC). The first LLC was created in the 1970's. For many years LLC's were not popular because the tax laws subjected them to more taxation than either a corporation or a limited partnership. In 1977, the first LLC was created in Wyoming for an oil company. The company was granted a private tax ruling stating that it would be treated as a partnership. In 1980, the U. S. Treasury issued proposed regulations that stated an LLC would be taxed as a corporation because its members did not have a partner's liability for the company's debts. In 1988, the Internal Revenue Service finally issued Revenue Ruling 88-76, 19882 CB 360, stating that an LLC could be taxed as a partnership. This revenue ruling calmed concerns about forming LLC's. As a result, the number of states permitting spread dramatically. As of April 1997, all fifty states and the District of Columbia have implemented a limited liability act permitting limited liability companies to be formed under their state laws and foreign limited liability companies to operate within their borders.

An LLC is a cross between a corporation and a partnership. The shared characteristics between a corporation or a partnership are:

1. It bestows limited liability on its members just as a corporation does on its shareholders and a limited

partnership does on its limited partners.

2. It can provide for the free transferability of its membership interests the same as a corporation or partnership.

3. It can provide for continuity of life after the death, resignation, expulsion or bankruptcy of a member the same as a corporation or a partnership.

In addition, an LLC may give full management and control to just a few managing members, which is the same treatment that is available in a partnership and similar to that of the board of directors of a corporation.

The following, however, are the major differences between LLC's and corporations or partnerships:

1. Unlike a corporation, which can have perpetual existence, some states limit the life of LLC for a maximum stated period of time (30 years in such states) before it is terminated by operation of law. Most states, however, permit an LLC to have perpetual existence.

2. Unlike the partners of a general partnership, the members of the LLC are not personally liable for the debts of the company, which is the same basic treatment as that of shareholders of a corporation or limited partners of a limited partnership.

3. Unlike a corporation, the company does not have the corporate restrictions on financing. Example: The company does not need to create a special surplus account for distributions.

4. Unlike a corporation, in the majority of states, absent an agreement among the members to the contrary, profits and losses of an LLC are allocated in accordance with each member's percentage of capital contributions. A few states have adopted the per capita partnership rule: if there is

> no agreement on decision, profits and losses will be allocated equally among members. Either method is different from that of a corporation. Division of corporate profits and losses must be based upon the number of shares that a shareholder owns in the corporation.

These characteristics are important. If an LLC has any three of them (as discussed below), it will be taxed as a corporation. Such taxation would be detrimental to members so care must be taken in deciding which common characteristics the company should share with a corporation.

The main advantage of an LLC is the limited liability that it provides its owners, who are called members. In an LLC, the most that its members can lose in a lawsuit against the company are the assets they contributed to the LLC. The limitation of liability would naturally not extend to any personal guarantees of company debts by a member. If a member personally guarantees a company loan of $100,000, the member is personally liable for the repayment. The member's liability arises not because the person is a member of the company but because the member guaranteed that he personally would repay the loan. It is immaterial that the money may have gone directly to the company. The limited liability for members is quite different from that of a general partnership where the partners are totally liable for all debts of the business. The creditors of a general partnership can seek and attach every dollar and piece of property that a partner owns in order to settle a judgement against the partnership. Such personal attachment to satisfy company debts cannot be taken against the assets of a member. People either incorporate or form an LLC to eliminate this unlimited business liability exposure. Few people will invest in a business that risks everything they have or will earn.

LLC's are relatively new and has taken time for them to catch on. In April 1997, Hawaii and Vermont, as the last holdouts, implemented a limited liability company act. Now, all fifty states and the District of Columbia permit limited liability companies to be formed under their laws and also permit foreign limited liability companies to do business within their borders.

An LLC is considered to be separate and apart from all of the people who own, control and operate it. An LLC holds most of the rights of a legal person. An LLC is able to validly execute contracts, incur debts, hold title to both real and personal property and pay taxes. The attractiveness of LLC's is that they are held to be separate legal entities from owners, the members, which gives them unique advantages over both corporations and partnerships.

II. FORMATION

A. General

An LLC is a statutory creation. It can only be formed by strict compliance with the state law under which it is being created. An LLC just as with a corporation or a limited partnership requires a public filing of its formation documents. The filing of the articles of organization is required:

1. To give public notice that the company is formed in a way that bestows limited liability on the members for the debts of the company, and

2. To give the public notice where the company is located and who can act in its behalf.

About a third of the states require a LLC to have more than one owner. This is a different requirement from corporations, which are permitted to have only one shareholder. Most of the states that require a company to have two or more members also require two or more persons to sign the articles of organization or a subscription agreement prior to filing the articles. If a company falls below the minimum number of members for an LLC, it will not only be dissolved but it will lose the limited liability shield for its members to the extent necessary to dissolve the company. A company will be treated harshly if it continues to do business for an undue period after ceasing to have the minimum number of members. Those states that have the two member requirement use it to insure the availability of the partnership classification for tax purposes. A partnership requires, by definition, two or more persons engaged in business.

B. ARTICLES OF ORGANIZATION

Articles of organization is an application by a group of individuals or entities for a license to do business as an LLC. Once the articles are accepted and filed, the LLC is thereafter formed. Each state sets its own requirements for the contents of the articles, however, they all require:

1. A name for the company which does not mislead the public but does disclose that it is an LLC.
2. The address of the company's principal place of business.
3. The name and address of the company's registered agent in the state.

The requirement for listing both the resident agent and the registered office is also imposed upon a company which is incorporating. Listing of registered agent ensures that someone is authorized to receive legal process against the company. The resident agent is the person who is served any legal notices or summons and complaint on behalf of the company. A company maintains a resident agent in the state, or by default agrees to let the secretary of state serve as the resident agent. The registered office is the location where the company's authority is kept in the state. The registered office listed address gives notice to the world where any complaint against the company can be served.

Several states also require additional provisions to be included in the articles, such as:

1. How capital contributions will be made to the company.
2. Whether the company will be treated as a corporation or partnership for tax purposes.
3. Name and address of each organizer.
4. Whether all the members or a centralized management will manage the company.

The states of Colorado, Florida, Minnesota, Nevada, West Virginia and Wyoming require the articles to state if the company will continue in effect upon the death, bankruptcy or withdrawal of a member.

This book attempts to provide a general set of articles sufficient for most states and has provided specific articles when necessary. The reader should, nonetheless, familiarize himself with the particular LLC law of the state where the LLC will be formed. There are possibly current changes not reflected in this text. The provisions contained in the articles of organization for an LLC can only be altered or changed by the filing of an amendment to the articles. Members frequently place important management provisions in the articles because it is difficult to amend them. The articles contained in this book are all that are needed to meet minimum requirements under state law. In practice, the entire operating agreement or any of its provisions can be included in the articles. Remember, once something is listed in the articles, it can only be changed by filing an amendment.

Before the articles are filed they must be approved and adopted. The person who will file the articles calls a meeting of potential members where they decide what provisions will be contained in the articles. They also decide another important detail: whether all the members or a centralized panel of selected managers will manage the business. Once the articles are adopted, they must be signed either by all the selected managing members, or by all of the members (if no managing members are selected. Usually, the operating agreement for the company is also created and adopted at this meeting.

C. OPERATING AGREEMENTS

After the LLC files its articles, it exists on paper; it does not exist at law (de jure) until membership certificates are actually issued. It is the fact that the company has outstanding membership certificates in the hands of members that is the defining characteristic behind the existence of an LLC. Similarly, a corporation is not deemed to be in effect until it has sold and issued stock. Following the filing of the articles, the potential members of the LLC meet to purchase their membership certificates and adopt the operating agreement for the business. After the membership certificates have been issued, the company is fully formed.

Operating agreements are the rules for the general day-to-day management and operation of the LLC. Contained in the operating agreement are the terms of the company concerning:

1. Capitalization of the business,
2. Distributions made from the business,
3. Admission and withdrawal of members,
4. Management of the business,
5. Fiduciary duties owed to and by the members, and
6. Dissolution of the company.

The operating agreement is adopted by the members and thereafter can be amended only by a majority vote of the members. An operating agreement is an attempt to resolve the many areas of potential conflict within an LLC and to delegate duties and assign responsibilities. A proposed form for a basic operating agreement for use in those jurisdictions that permit LLC's is included in the LIMITED LIABILITY COMPANIES book of this legal series.

Operating agreements can be general in nature or tailored to the needs and desires of the members. Most operating agreements contain or mention most of the issues covered in the Operating Agreements chapter. A few states do not require the operating agreement to be in writing. Only if the agreement is in writing can the actual intent of the members be ascertained with confidence.

Operating agreements are not set in concrete and, in fact, quite flexible. Members can change the operating agreements by simple amendments. The purpose of operating agreements is to establish procedures for daily administration and management of the company. As the company develops the operating agreement must be amended to meet new requirements.

As can be seen from the foregoing discussions, the steps for forming a business as an LLC are simple:

1. File the articles of organization,
2. Adopt the operating agreement, and
3. Issue the membership certificates.

Once these steps have been accomplished the LLC is formed and can commence operations. An LLC is easier and less expensive to create than a corporation or a limited partnership provided ordinary caution and care are undertaken.

D. MEMBERS

Members are the owners of the LLC. Nearly a third of the states require that a LLC have two or more members. Members own the membership certificates of the LLC and have the right to vote in the election of managing members. The extent of ownership interest a member has in the company is usually based either:

1. Upon a member's percentage of contribution to the total contribution of all the members,
2. Upon an equal division among all the members irrespective of contribution (per capita), or
3. Upon some other agreement between the members.

Members are not personally liable for the debts of the LLC beyond the extent of their investment in the LLC. Exception: A member is personally liable for a company debt or obligation if he personally guarantees repayment.

Members may agree for all members to manage the company or agree to elect a few members to manage, who will be called "managing members." In addition to electing any managing members, the members are required to vote on the following:

1. Amendment of the articles of organization,
2. Sale, option or lease of substantially all of the LLC's assets,
3. Merger or consolidation of the LLC with another LLC,
4. Amendment of the operating agreement,
5. Removal and replacement of managing members, and
6. Dissolution of the LLC.

The term "managing member" refers to all of the managing members. Managing members must be elected if the operating agreement does not reserve the management to all of the members. If managing members are elected, they alone are responsible for running the day-to-day business of the LLC. When the LLC is taxed as a corporation, the managing members are permitted reasonable compensation for their services. In small LLC's, the managing members usually serve for free to protect their investments. Caveat: The decision to have the LLC managed by elected managing members is an element of corporate existence. If the company also has free transferability of its shares or continuity of life, it will be taxed as a corporation and not as a partnership.

Most operating agreements for an LLC require an annual members' meeting to review business affairs and conduct. The members also will elect or re-elect the managing members for another year. Members are usually given votes proportional to their percentage of ownership in the company. A majority of those membership interests voting is needed to carry a resolution or any other matter brought to the floor.

A member has a duty of loyalty to the LLC. A member cannot usurp a company benefit that could go to the LLC. A member owes the LLC the right of first refusal on any business opportunity he discovers that could affect the company. For example, if the company is in the paving business, a member could not form a competing paving business and solicit business from the LLC's existing clients. When a member has a personal interest on a matter before the board, the member is only allowed to vote on it when:

1. The member's interests has been fully disclosed to the board, and
2. The contract is just and reasonable.

A member cannot be sued by other members for losses incurred as a result of the member's actions or decisions provided they were reasonable and prudent. As agents of the LLC, members have the authority to bind the company by their actions. Members can execute contracts for the company and can subject the company to liability for damages arising from negligent or intentional acts they may commit on behalf of the company.

An assignment of a member's interest only passes financial right unless the operating agreement states otherwise. The assignee (person who acquired a member's interest in the company) only acquires the right to participate in the management of the company through a majority vote of the other members. Usually, a consensus is required.

This is important enough to repeat. The non-assigning members must agree to let the new member participate in the management unless the operating agreement states otherwise. This lack of full transferability of interest means interests do not have "free transferability." As a result, the value of the company is lessened and the company is assisted in obtaining tax treatment as a partnership.

E. MEMBERSHIP CERTIFICATES

Membership certificates should be thought of as the ownership interests in an LLC. The membership certificate is little more than a record that a person is a member of the company. The degree of interest that the member has in the company is determined by the terms of the operating agreement. Every LLC is authorized to sell only a certain amount of membership certificates in accordance with the security laws of the state where the company is formed. The purchasers of the membership certificates acquire an ownership interest in the common equal to their percentage of membership certificates to the total number of membership certificates outstanding. Membership certificates may be sold by an LLC for money, labor, services, canceled debts or property contributed to the LLC. Membership certificates can also be purchased with promissory notes. Although not required, membership certificates acquired with notes are usually secured by tangible property.

Membership certificates can be voting or non-voting. Non-voting membership certificates are usually issued by an LLC to raise money without giving the certificate owner the right to participate in the business. To attract purchasers for non-voting membership certificates, an LLC may guarantee a fixed distribution payment or the right to convert the non-voting interests into voting interest based upon a fixed formula at a later date.

F. SECURITY LAWS

A membership interest in an LLC is a security just like stock in a corporation or interest in a limited partnership. Thus a membership certificate cannot be sold unless it is either registered or exempt from registration under both federal and state law. Registration for sale of a security under federal law costs thousands of dollars and takes months. Fortunately, there are several specific exemptions that a qualified LLC can use to avoid the federal registration requirement. Most small LLC's have at least one exemption available to avoid registration. The exemptions are:

1. The company is exempt under section 3(a)(1) of the Securities and Exchange Act. This is the most popular exemption for small companies. It is available where all the members reside in the same state where the LLC is incorporated and doing business.
2. The sale of the membership certificates is a non-public offering under section 4(2) to sophisticated investors and there was no public advertisement or solicitation for the membership certificates sale.
3. The sale complied with SEC Regulation D requirements by adhering to strict SEC disclosure regulations.

Once the requirements for claiming an exemption have been satisfied, then the LLC can issue its membership certificates without fear of violating federal security laws.

In addition to the federal registration requirement, all states have registration requirements for securities sold in their jurisdictions. Just as there are exemptions from the federal registration requirement, those entities that permit LLC's have exemptions. Usually, an LLC of less than 15 members can simply sell membership certificates and notify the secretary of state of the sale. An LLC using this exemption is generally not required to identify the members who purchased.

If a membership certificate is sold without complying with both federal and state exemption procedure, the sale is voidable at any time by the purchaser. If the company fails, the members could use the fact that no exemption was ever obtained to sue the organizer for their money. A California case provides an actual example of how security laws are applied. A limited partnership was sold to fund the drilling of an oil and gas well. At the time the legal exemption was for a maximum of five persons (it has since been increased to 35). The interests were sold to nine members. The well was drilled and was dry. Two of the investors sued to get their money claiming the sale was not exempt because more than five persons bought interests. The general partner faced criminal charges for selling an unlicensed security and had to refund the full investment money to all of the investors. If the sale had been to only five persons, there would not have been a problem. The lesson to borne in mind is that it is not only necessary but critical to open both the state and federal security laws.

G. TAXATION

How an LLC will be taxed is the second most important concern, the first being the limited liability of members. Because an LLC has elements of both a corporation and partnership, it can, depending on the facts, be treated for tax purposes as either a corporation or a partnership. When the LLC is taxed as a partnership, its income is passed to its members and double taxation is avoided. On the other hand, when an LLC is taxed as a corporation, its income is taxed twice, first upon being earned and second when distributed to its members as dividends. It is almost always better for an LLC to be taxed as a partnership so as to avoid the double taxation.

Regardless of how a LLC is treated for tax purposes, be it as a partnership or as a corporation, the members of the LLC will not have personal liability for the debts of the company.

Federal Tax law changed dramatically in 1997. As of January 1, 1997 all newly formed LLC’s with two or more members will be treated as a partnership for tax purposes unless the LLC elects corporate tax treatment either as a C corporation or S corporation. A single member LLC will be treated as a sole-proprietorship for federal tax purposes. This is a complete reversal of prior federal tax law. Prior to 1997, an LLC was taxed as a corporation unless it could prove to the IRS that is should be a partnership. In order to prove that a pre-1997 LLC should be taxed as a partnership it had pass a special four-prong test created by the IRS.

As of January 1997, LLC are automatically given partnership tax treatment unless they specially opt out of it. To opt for corporate tax treatment, the LLC will file a new IRS Form 8832. The election is effective on the date specified in Form 8832 or the date filed if no date is specified. An effective date can even be chosen that precedes the filing date by up to 75 days. See IRS. Regulation sec. 301.7701-3(c)(1)(i).

While LLC's no longer have to pass the IRS's four prong test for federal tax purposes, many states still apply that test in order to determine if the LLC will get state partnership tax treatment. These states had patterned their tax laws after the federal tax law and have not, as yet, changed their tax law to coincide with the new federal laws. In addition, some states have written the four-prong test into their LLC Acts so that the Articles of Organization filed in those states must address the issues raised in the four prong test.

Because some states still use the IRS four-prong test to determine if an LLC will be treated as a partnership for state tax purposes, this chapter will discuss the four-prong test. The IRS Revenue Rulings on the four-prong test are still persuasive authority for determining whether an LLC will get partnership taxation in a state which still employs the test. If it is not known whether a particular state uses the IRS four prong test in deciding whether to give an LLC partnership treatment, the organizer can go ahead and assume that it does and meet the test, thereby assuring partnership tax treatment for both federal and state purposes. Later if it is determined that the state does not use the four prong test or if state law is changed to do away with it, the company can change the articles or operating agreement any way that it wishes without fear of losing the state partnership tax treatment.

THE FORMER IRS FOUR-PRONG TEST STILL USED IN MANY STATES

The IRS utilized until January 1, 1997, a four-prong test for determining whether an LLC will be taxed as a corporation or a partnership. If an LLC possesses any three of the four following corporate characteristics, it will be taxed as a corporation and not as a partnership:

1. Limited Liability For Its Members. All LLC's will have this characteristic. It is to obtain limited liability for the members and the members elected to conduct business as an LLC.
2. Centralized Management. The states which permit LLC's allow the members to vest the management of the business in certain managing members. When this is done, the management of an LLC assumes the corporate characteristic of a board of directors.
3. Free Transferability of Interests. The right to sell, transfer or convey an interest in a business freely and without restrictions is a corporate characteristic. Such a right is similar to a person being able to sell his stock in a company. If the non-selling members must consent before the new member can participate in the management, then there is no free transferability, and this corporate characteristic would not be present.
4. Continuity of Life. The most important aspect of a corporation is its continuance after the death or withdrawal of one of its shareholders. A corporation, unlike a partnership, does not terminate upon the death of its shareholders. If an LLC is required under the terms of the operating agreement to remain in full effect until its

> termination date, and even after the death of a member, it will be considered to have the continuity-of-life characteristic of a corporation. If the remaining members must vote to continue the company life, this corporate characteristic does not exist.

When three of the four characteristics listed above were present, the LLC was taxed as though it is a corporation. It does not make good sense to do business as an LLC unless the company will be treated as a partnership for federal tax purposes. In states which still utilize the IRS test for determining whether the LLC will be treated as a partnership for state tax purposes, if an LLC has any three of the above characteristics, it will be taxed as a corporation. Such taxation would be detrimental to members so care must be taken in deciding which common characteristics the company should share with a corporation.

Another tax concern of an LLC is how its property will be treated for tax purposes. Property which is titled in the LLC name is owned by the LLC, not the individual members. The same is true for property contributed to a corporation or a partnership. A member who contributes property to an LLC relinquishes ownership in the property, and property purchased with LLC funds is owned by the LLC. This company ownership of the property means that creditors of members cannot attach the property. They are limited to attaching the member's interest in the LLC. The property held by an LLC can be legally sold, transferred or conveyed only by the company. The LLC's basis in the contributed property is the basis that the member had before it was contributed.

H. DEBTS OF THE PRIOR BUSINESS?

Many new businesses are really reformations of existing businesses. Frequently general or limited partnerships are changed to LLC's. At times a sole proprietor will contribute assets of an existing business into the LLC being formed. Question: How are debts from an existing business treated when the business assets are transferred to a new LLC? The general rule is that a newly formed LLC is not liable for the debts of a prior business whose assets were transferred into it unless all of the members (or all of the managing members) agreed to have the LLC so bound. Still, assured by the new LLC or not, the owners of the prior business still remain personally liable for the debts of the prior business.

If the transfer of assets into the LLC is intended to defraud creditors or is in violation of a state's Bulk Transfer Act (which governs the transfer of assets of a business), creditors can sue the company to the extent of the value of the property transferred.

Every state has adopted the Uniform Commercial Code, which contains the Bulk Transfer Act. Under the Bulk Transfer Act, notice must be given to creditors of a business whenever the majority of a business's assets are transferred. The Bulk Transfer Act also applies to transfers into a new LLC. The transfer is usually required to give at least 10 days notice to creditors and the local tax assessor before the transfer. The tax assessor will impose a property tax on the transaction. Notice to creditors is usually given by publishing a Notice of Bulk Transfer in the newspapers of general circulation. If no creditor objects, the transfer occurs and the creditors lose their right to seek return of the transferred assets from the LLC.

III. DISSOLUTION OF AN LLC

Dissolution of an LLC is the termination of the company and is, in fact, its legal death. Dissolution usually occurs under the terms of the operating agreement when and of the following acts occur:

1. Members holding more than 50% of the voting rights in the LLC vote to dissolve.
2. Managing members dissolve the LLC because:
   (a) The LLC did not issue any shares and thus was never really an LLC, or
   (b) The LLC has filed a chapter 7 bankruptcy petition, or
   (c) The LLC has disposed of all of its assets and hasn't conducted business for several years (usually 5 years).
3. Creditors file a legal action and win involuntary dissolution of the LLC to liquidate company assets and pay the creditors.
4. The termination date listed in the articles of organization arrives.

The most common reason for the early termination of a company is the death, bankruptcy or expulsion of a member. Unless the operating agreement states otherwise, a company will automatically terminate upon the death, bankruptcy or expulsion of a member.

In the absence of a contrary provision in the operating agreement, the voluntary withdrawal of a member will automatically dissolve the company in most states. A few states (such as Delaware, Iowa, Maryland, Texas, Virginia and West Virginia) permit members to withdraw without dissolving the company unless the operating agreement states otherwise. The states of Arizona, Colorado, Illinois and Minnesota permit a member to withdraw even though forbidden in the operating agreement. In a situation where a member withdraws and the company is not dissolved, the member is entitled to the return of his capital. Specifically, Florida, Kansas, Nevada, Utah, and Wyoming each require the return of a withdrawing member's capital within six months unless an earlier date is specified in the operating agreement.

Several states (Arizona, Colorado, Illinois and Minnesota) provide for a reduction of the capital returned to a withdrawing member when the withdrawal was in violation of the operating agreement and caused the company to incur damages. In the absence of contrary intent expressed in the operating agreement, the states of Arizona, Colorado, Delaware, Illinois, Iowa, Louisiana, Minnesota, Nevada, Oklahoma, Rhode Island, Texas and Virginia state that a withdrawing member is to receive the fair market value of his interest in the company minus any damages caused by a wrongful withdrawal from the company.

After dissolution has been approved or ordered, the LLC must stop doing business except to the extent necessary to discharge the affairs of the company. When a resolution to dissolve is adopted or ordered, the LLC must file a certificate of dissolution with the secretary of state where it was formed.

The distribution of company assets, following dissolution, will be made as follows:

1. All federal and state taxes are paid.
2. All employee wages and benefits are paid.
3. All secured liabilities are paid.
4. All unsecured liabilities are paid.
5. Any remaining funds are distributed pro rata among the members in accordance with their percentage of ownership interest in the company.

The proceeds received by a member in the dissolution of an LLC are a return of the member's investment. Any gain or loss realized by a member as a result of the dissolution is treated as a capital gain or loss. For example, assume that a member paid $4,000 for the membership certificates. He received $3,000 at dissolution. He has a $1,000 capital loss. Likewise, if the member received $6,000, he would have a $2,000 capital gain.

All states require that LLC's formed under their laws file a statement of dissolution either before or after the dissolution is completed. Arizona, Florida, Kansas, Louisiana, Maryland, Minnesota, Nevada, Oklahoma, Utah and Wyoming require filing a statement of intent when the dissolution begins and a statement of conclusion when the dissolution is finished. Other states such as Delaware, Illinois, Iowa, Rhode Island, Texas, Utah, Virginia and West Virginia do not require the first filing stating the intent to dissolve. All states require the final filing when the dissolution is completed.

Some states require the creditors of the company to be given specific notice of the intent to dissolve the company. For instance, Kansas requires the company to mail each creditor a notice of the dissolution within 20 days after filing the intent to dissolve.

IV. LAWSUITS

An LLC is a legal entity, but because it is an artificial entity, it needs an individual to file any lawsuit on its behalf. When the company is managed by all the members, a suit can be brought by a member only after a majority vote of approval by the members. An exception to the majority vote approval requirement for filing a suit may exist where there is a conflict of interest among the members or members are breaching their fiduciary duties. The non-agreeing members would be excluded from the voting, and only the votes of the disinterested members would be considered. If the suit is commenced, and it is later found that the members whose votes were ignored were not in violation of their fiduciary duties and had no conflict of interest, the persons bringing the suit might be held personally responsible for any damages caused by virtue of the suit.

When a suit is brought by virtue of a majority vote of approval by all members, no member will be personally liable for any damages that might result to the company. When the company is being managed by managing members, it is the managing members who have the authority to file suit on behalf of the company. A manager is bound by the fiduciary standard of care of a reasonable and prudent manager in making a decision about commencement of a lawsuit.

Liability attaches to a member who brings unauthorized or improvident suit that violates the fiduciary standard of care. Should a member act without the approval of the other members to file suit, the company would nonetheless be bound by the decision or settlement. The company may sue a member for any damages which the company suffered by virtue of the member bringing an unauthorized suit or settling one improperly.

As part of the legal series, a book on limited liability companies has also been written.

CHAPTER 12

LIMITED LIABILITY PARTNERSHIPS

The most important change in partnership law since the creation of the limited partnership is occurring now. A new form of partnership has been enacted by some states called the **REGISTERED LIMITED LIABILITY PARTNERSHIP or just the LIMITED LIABILITY PARTNERSHIP (LLP).** The limited liability partnership is a cross between the two existing types of partnerships: the general partnership and the limited partnership. On the whole, a LLP is the treated the same as a general partnership except for the fact that the LLP provides a degree of protection to the partners for the liabilities of the partnership. A LLP must, the same as any other type of partnership, be composed of two or more persons, trusts, or companies who have joined together to engage in a business for profit.

The driving force behind the enactment of LLP Acts is that professionals are permitted to practice their profession through the use of the LLP. As discussed in Chapter 11, **LIMITED LIABILITY COMPANIES** some states, most notably California, do not permit professionals to do business through the use of a limited liability company, LLC. In such states, professionals are limited to doing business in a corporate form, as either a regular corporation or subchapter S to limit their liability for the debts of the business. In order to allow professionals to get together and conduct their profession with some degree of limited liability, some states have enacted limited liability partnership acts. California is a state that does not permit professionals to operate through a LLC and instead adopted in October 1995, one year after the enactment of its LLC Act, a LLP Act. Other states which permit LLP's are Delaware, Minnesota, New York, New Mexico, Texas along with the District of Columbia. More states may be adopt such acts in the future. As of April 1997, all 50 states along with the District of Columbia have enacted limited liability company acts. **A LIMITED LIABILITY COMPANY OFFERS THE OWNERS (MEMBERS) SAME DEGREE OF FREEDOM AND OPERATION AS AN LLP ALONG WITH EVEN GREATER PROTECTION FOR LIABILITY FOR THE BUSINESS'S DEBTS.** Usually, if a person can do business in either the LLC or the LLP form, the LLC form is better. As stated above, however, not all states permit their professionals to do business in the LLC business form. Therefore, in such states, the LLP is the only alternative to a forming a corporation if it is available in the person's state

STATUS OF THE PARTNER

The LLP is for most purposes the same as a general partnership. All of the discussions previously,inn this book, regarding a general partnership except for the personal liability of the partners applies to the LLP. A partner of a LLP is a general partner not a limited partner. One of the major differences between the LLP and a general partnership is that the LLP is governed and managed by a written partnership agreement whereas the general partnership is not required to have a written partnership agreement. **THE GENERAL PARTNERSHIP AGREEMENT IN THIS SERIES' PARTNERSHIP BOOK CAN BE USED BY A LLP IN STATES THAT PERMIT LLP S.**

As with a general partnership or limited partnership, the partners are the owners of the partnership in accordance to the terms and conditions set forth in the partnership agreement. As with any partnership, the partners are responsible for the management of the partnership either directly or through management which they elect or appoint. The partnership agreement will govern, when stated, those disputes that normally arise during the normal course of business. When the partnership agreement does not cover such instances, the normal business disputes or matters are handled by the majority vote of partners. When the disputes,inn question, are outside the normal course of business, the dispute can only be resolved by the unanimous vote of the partners, RUPA section 401(J).

One of the common concerns that arise in the creation of a partnership,bee it a general partnership, limited partnership or LLP, is how the partnership can be capitalized. Every business needs money to operate and a partnership is no different. The question is, however, how the partnership will get its money and what would happen if the company fails. Partnerships almost always have to rely on capital contributed by their partners. The issue is, then, whether the capital will be treated as a loan or the purchase of an equity interest. Loans have to be repaid but do not entitle the lender to an ownership interest in the partnership. Whereas a contribution to equity is not repaid but does purchase a percentage of the partnership. This issue is important if the partnership fails and there is not enough cash to return the capital to the partners after the payments of the partnership debts. The law is settled on this point it is in practice that difficulties arise. Any partner, even for a LLP, can lend money to the partnership and transact business with it in accordance with state law. On dissolution of the partnership, the partners stand on the same footing as regular creditors to the extent of theirloans,equityty interest remain separate. The treatment of loans by partners to the partnership is the same for LLP's as with other types of partnership as discussed in the earlier termination chapter.

A PARTNER'S LIMITED LIABILITY FOR THE PARTNERSHIP'S DEBTS

In a general partnership, the partners are jointly and severally liable for the debts of the partnership. In a limited partnership, the general partner is joint and severally liable for all of the debts of the partnership while the limited partners are not liable for any of those debts. The difference derives from the fact that the limited partners have no management and control of the limited partnership and therefore no liability. If the limited partners subsequently participate in the management of the partnership, they will lose their limited liability protection and become liable for all of the debts of the partnership the same as a general partner.

Since the LLP is a cross between the general partnership and limited partnership, so too is the liability of its partners for the LLP's debts. Generally, partners are jointly and severally liable for the debts of the LLP except that they are specifically held not to be liable, neither directly or indirectly, for the negligence, wrongful acts or misconduct of the other partners. This generally means that if one partner injured another person in the course of the partnership's business, that partner might be personally liable for the damages along with the assets of the partnership but not the other partners. In contrast, if an employee injures a person while in the course of the partnership business, both the partnership and the partners themselves are usually liable for the damages. However, state law is controlling and not all states with LLP Acts treat the issue of liability the same. Some states, for example, extend a partner's limited liability to acts committed by agents and employees while both New York and Minnesota go even further and limit all partner liabilities for all obligations of the LLP. Partners of a LLP still remain liable for their own wrongful misconduct. In addition, most states having LLPs hold partners liable for the misconduct of persons under partners management, control or direction which is rather straight forward.

The rights of creditors of a LLP are determined by state law. As stated above, partners of a LLP possess some degree of limited liability for the debts of the partnership. If a creditor debt is of the type for which a partner is not liable, then a creditor cannot seek payment of the debt from the partner. If the debt is one for which limited liability does not apply, then the creditor can seek collection from the partners. Generally, a partner is not liable for the errors and omissions of the other partners, employees or agents of the partnerships. To know the extent of the limited liability, the state LLP Act must be reviewed.

SPECIAL REQUIREMENTS FOR THE LLP

A general partnership has no formal requirements. A general partnership is usually not required to have its partnership agreement in writing or to file anything with the state. A limited liability partnership however must do both. A LLP needs the partnership agreement in writing, the one in this book would suffice in order the form a LLP.

A LLP, unlike a general partnership, is also required to file an application with the Secretary of State or Department of Corporations, as the case may be, to become registered as a LLP hence the second name, REGISTERED LIMITED LIABILITY COMPANY. The application form can be acquired upon request from the Secretary of State's office if an official one is required. Some states that have LLP Acts do not have official application forms but simply require that the application be typewritten stating information required to be produced under the state's LLP Act. The application, itself, is extremely easy to complete. The basic information to be provided is the name of the partnership, name and addresses of the partners, the business address of the LLP and the agent for service of prosess of the LLP. In essence, this information is the same required by a Certificate of Limited Partnership. Usually, only one filing is required with the Secretary of State. Delaware, however, requires an annual renewal filing for a LLP. Most states that have an LLP Act also require a LLP formed in another state which wishes to do business in the state to register with the Secretary of State as well. For such states, the failure of a foreign LLP to register would strip the LLP of its limited liability protection for its partners in thosestates where it fails to register.

All LLP Acts require that the name of the company contain with the words "limited liability partnership" or the abbreviation "LLP". The name, as with any company can not be so similar to another company as to be deceptive.

CONVERSION OF A GENERAL PARTNERSHIP TO A LLP

The states that permit LLPs also permit general partnerships to be converted into LLPs. The conversion is simple and, in essence, the same as the formation of a new LLP. The general partnership will file with the Secretary of State an application for conversion which contains the basic information as an application from a new LLP along the name of the original general partnership which is being converted. Conversion does not alter or change the partners' liabilities for the company that were incurred prior to the conversion. Prior to the conversion, each of the partners was personally liable for the payment of all of the debts of the partnership. After the conversion, each of the partners still remain personally liable for payment of all of the debts and obligations of the partnership incurred prior to the conversion. Only the new debts and obligations incurred by the partnership following the conversion will be governed by the limited liability provisions of the state's LLP Act.

From a tax standpoint, conversion should not result in a taxable event to either the partnership or any of the partners. In contrast, when a regular corporation converts to a subchapter S status or into a limited liability company, that is considered to be a taxable event. As such, the conversion of a corporation could result in its assets being reappraised and taxes paid on what the IRS would consider to be paper distributions. In such cases, more than the business form is being changed; the tax status is also being changed from a corporate tax status to that usually of a partnership. Conversion from a general partnership to a LLP would not be taxable event because the entity still remains a partnership for tax purposes only the precise business form changes not tax status or ownership.

OPERATING A LLP IN OTHER STATES

As stated above, not all states permit a limited liability partnership to be formed under its state law. Therefore, if an LLP wishes to do business in another state, a review of the law of that second state should be conducted. If the second state permits LLPs to formed under its state law, then there is no problem with doping business in that state. The United States Constitution's Full Faith and Credit and Privileges and Immunities Clauses would require the second state to permit the foreign LLP to operate with limited liability for its partners. Constitutional issue arises when the second state does not permit LLP's to operate under its state law.

In this situation, permitting a foreign LLP to operate with limited liability for the partners would permit non-citizens an advantage not available to its own citizens. The result could be that citizens in the second state would form LLP's in another state just to come into the home state and operate.

The issue of foreign operations of the LLP also came up for limited liability companies. Now, all 50 states and the District of Columbia have enacted limited liability company acts. Prior to adopting such acts it was very unclear as to whether a limited liability company doing business across state lines would have limited liability protection for its members.

For LLP the projected future is different. Most states do not have a LLP Act even though they have a LLC Act. The reason for this is that most states do not prohibit professionals from doing business in the form of a limited liability company. The main reason for having a LLP is that the partners are not permitted to form a LLC. A Limited Liability Company is usually better than a LLP because it generally gives a greater degree of protection from the company's debts while providing the same flexibility of the LLP. Therefore states that permit professionals to form LLCs see no reason to enact LLPs. It is always important to review state law when considering to do business in the LLP form. A LLP valid in one state may not, in the end, be held to bestow limited liability protection for its partners for acts committed in another state that does not recognize LLPs. In that situation, it may be possible for the LLP to form a LLC in the second state and conduct business in the second state as the LLC. Partnerships can be members of an LLC. All of which means that doing business in other states requires care and compliance with the laws of each of the appropriate states.

SAMPLE REGISTRATION STATEMENTS

Most jurisdictions do not have a Limited Liability Partnerships Acts because they are viewed as unnecessary because the jurisdictions have a limited liability company act.

Generally, a limited liability company will give more individual asset protection than an LLP and it is recognized in all 50 states In contrast, not all states have LLP's so how a foreign LLP will be treated under state law as regards the partners debts for the LLP could be a complicated matter.

The reason why only a few jurisdictions have LLP acts is that they implemented their LLP Acts prior to enacting their LLC Acts. In addition some rare states, such as California, do not permit professions to be conducted in an LLC form so they were forced to implement a LLP Act to offer an alternative to forming a corporate entity to conduct a professional business.

In most instances, a limited liability company would be a better form of business entity than a limited liability partnership if it is available in a state. All states, as mentioned before, permit LLC's to be formed for general business but a few states such as California do not permit LLC's to be formed to conduct a professional business. Thus a group of individuals who wish to conduct a profession in California would have to utilize either an LLP or a corporation as their business entity.

To have a valid LLP, there must be a written partnership agreement (which the general partnership in this books would suffice to complied with

the state’s requirements for a LLP. Generally, this is a statement that a limited liability partnership is intended to be created under that state’s law.

In addition to a written partnership agreement, most jurisdictions having an LLP Act also require that a registration statement be filed with the Secretary of State. These are simple statements of record that the partners are creating a LLP rather than a general or limited partnership.

Following herewith are the registration forms for LLPs in the States of California, Colorado, Florida.

It is relatively easy today and fast to determine if a jurisdiction has a LLP. A quick Internet search using the Secretary of State’s name will open the Secretary of State’s web site. Virtually all Secretary of State have samples of their state business forms available for a download or discussion. As such, if a state has an LLP act it will most likely have a discussion of it and offer the forms for download at their secretary of State’s web site, Conversely, if the state does not have an LLP, as many do not, there will not be a mention of an LLP and thus no forms will be available for download as there will be for corporations, partnerships and limited liability companies.

A few jurisdictions such as New York and the District of Columbia do not have sample forms for the Registration Statement. However, the Secretary of State web sites do give other valuable information and direct the user to the applicable state law for the information that must be contained in the registration statement.

File # ________________

State of California

BILL JONES
SECRETARY OF STATE

REGISTERED LIMITED LIABILITY PARTNERSHIP REGISTRATION

A $70.00 filing fee must accompany this form.
IMPORTANT-Read instructions before completing this form.

This Space For Filing Only

1. **Name of registered limited liability partnership or foreign limited liability partnership:**
(End the name with the word "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.", "LLP", "R.L.L.P." or "RLLP".))

2. [ ] Domestic (California) OR [ ] Foreign (Not in California 3. Jurisdiction

4. Address of principal office : City State Zip Code

5. Name of Agent for Service of Process in this state and check the appropriate provision below:

____, which is

[ ] an individual residing in California. Proceed to Item 5.
[ ] a corporation which has filed a certificate pursuant to Section 1505 of the California Corporations Code. Skip Item 5 and proceed to Item 7

6. If an individual, California Address of the agent for service of process
Address

City State CA Zip Code

7. Indicate the business in which the limited liability practice shall engage: (check one)
[ ] Practice of Architecture [ ] Practice of Public Accountancy
[ ] Practice of Law [ ] Related ______________________________

8. By filing this Registered Limited Liability Partnership (LLP-1) with the Secretary of State, the partnership named above is registering as a domestic registered limited liability partnership or a foreign limited liability partnership (DO NOT ALTER)

9. Indicate whether the limited liability partnership is complying with the alternative security provisions:
[ ] Yes. Attach Alternative Security Provision (LLP-3)

10. Future Effective Date Month Day Year

11. Other matters to be included in this registration may be set forth on separate attached pages and are made a part of this registration

12. Total Number of pages attached, if any:

13. Declaration: I declare that I am the person who executed this instrument, which execution is my act and deed.

____________________________________ ____

Signature of Authorized Partner/Person Type or Print Name of Authorized Partner/Person Date

14. RETURN TO: ____ ____

NAME

FIRM

ADDRESS

ZIP CODE _____ _____

INSTRUCTIONS FOR COMPLETING THE REGISTERED LIMITED LIABILITY PARTNERSHIP REGISTRATION (LLP-1)
DO NOT ALTER THIS FORM
Type or legibly print in black ink.

- Attach the fee for filing the Registered Limited Liability Partnership Registration (LLP-1) with the Secretary of State. The fee is seventy dollars ($70).
- Make check(s) payable to the Secretary of State.
- Send the executed document and filing fee to:

California Secretary of State Limited Liability Partnership Unit P.O. Box 944228 Sacramento, CA 94244-2280

Item 1. Enter the name of the registered limited liability partnership or foreign limited liability partnership. The name of the limited liability partnership shall contain the words "Limited Liability Partnership," "Registered Limited Liability Partnership," or one of the abbreviations "L.L.P.,' "LLP," "R.L.L.P.," or "RLLP."

Item 2. Check if the registering limited liability partnership is Domestic (California) or Foreign (not in California). If it is a foreign limited, liability partnership, attach an original certificate of good standing from an authorized public official of the jurisdiction under which the foreign limited liability partnership was formed. If issuance of such a certificate is not permissible in that jurisdiction, the attach a statement by the foreign limited liability partnership indicating such.

Item 3. Enter the jurisdiction of formation of the foreign limited liability partnership.
Item 4. Enter the complete address, including the zip code, of the principal office. Do not abbreviate the name of the city.

Item S. Enter the name and address of agent for service of process in this state. The agent for service of process must be an individual residing in California or a corporation which has filed a certificate pursuant to California Corporations Code Section 1505. Check the appropriate provision.

Item 6. If an individual is designated as the agent for service of process, enter an address in California. Do not enter "in care of" (c/o) o abbreviate the name of the city. DO NOT enter an address if a corporation is designated as the agent for service of process.

Item 7. Check the appropriate provision indicating whether the limited liability partnership shall engage in the practice of architecture, the practice of public accountancy, the practice of law, or a related activity as provided in Section 16101(6)(A).

The inclusion of the practice of architecture as a professional limited liability partnership service permitted by Section 16101 commenced January 1, 1999 and shall extend only until January 1, 2002.

Item 8. Execution of this document confirms the following statement which has been preprinted on this form and may not be altered. "B~ FILING THIS REGISTERED LIMITED LIABILITY PARTNERSHIP REGISTRATION (LLP-1) WITH THE SECRETARY OF STATE, THE PARTNERSHIP NAMED ABOVE IS REGISTERING AS A DOMESTIC REGISTERED LIMITED LIABILITY~ PARTNERSHIP OR FOREIGN LIMITED LIABILITY PARTNERSHIP."

Item 9. Upon registering as a registered limited liability partnership or foreign limited liability partnership, and while transacting intrastate, business, the limited liability partnership shall provide security for claims against it.

Check the appropriate provision indicating whether the limited liability partnership is complying with the alterative security, provisions. If the limited liability partnership is complying with such alternative security provisions, attach the Alternative Security Provision using form LLP-3.

If the limited liability partnership is not utilizing the Alternative Security Provisions, information regarding the security for claim~ against the limited liability partnership or foreign limited liability partnership is not required to be filed with the Secretary of State.

Item 10. Enter the future effective date of the Registered Limited Liability Partnership Registration (LLP-1), if any. If none is indicated, the Registration shall be effective upon filing with the California Secretary of State.

Item 11. The Registered Limited Liability Partnership Registration (LLP-1) may include other matters that the person filing the Registration determines to include. If other matters are to be included, check the box in this item and attach one or more pages setting forth the other matters.

Item 12. Indicate the total number of additional pages attached, if any. All attachments should be 8~' x 11", one-sided and legible.

Item 13. The Registered Limited Liability Partnership Registration (LLP-1) must be executed with the original signatures of one or more partners authorized to execute a registration, if a domestic limited liability partnership, or by an authorized person if a foreign limited liability partnership. A facsimile or photocopy of the signature is not acceptable for the purpose of filing with the California Secretary of State.

Item 14. Enter the name and address of the individual or firm to whom a copy of the filing is to be returned.
- Statutory provisions can be found in Section 16953 and 16959 of the California Corporations Code, unless otherwise indicated.

- **For further information contact the Limited Liability Partnership Unit at (916) 653-3795**

Mail to: Secretary of State
Corporations Section
1560 Broadway, Suite 200
Denver, CO 80202
(303) 894-2251
Fax (303) 894-2242

For office use only 055

Please include a typed
self-addressed envelope

MUST BE TYPED
FILING FEE: $50.00
SUBMIT TWO COPIES

REGISTRATION STATEMENT FOR REGISTRATION AS A REGISTERED LIMITED LIABILITY PARTNERSHIP OR A REGISTERED LIMITED LIABILITY LIMITED PARTNERSHIP

Pursuant to section 7-60-144, Colorado Revised Statutes, the undersigned partnership* has approved this registration statement in the manner provided in its partnership agreement or, if not so provided, such statement has been approved by all of its general partners as follows:

The name of the partnership is ____

If different, the name which it proposes to register, or, if foreign, the name which it proposes to transact business in Colorado is

____

The jurisdiction of its formation (if other than Colorado) is______________________________

The street address of its principal office is

____

If the principal office of a general partnership or a foreign limited liability partnership is not in Colorado, the name and street address of its Colorado registered agent for service of process on such general or foreign partnership is:

______________________________ ______________________________
Last name of an individual or full name of an entity First and middle name of an individual

____
Street address of registered agent named above

____
Name of partnership

Signature______________________________

- As used in this statement, partnership refers to a general partnership or a limited partnership[formed in Colorado or a foreign limited liability partnership or limited liability partnership formed and registered in a jurisdiction other than Colorado. If formed in Colorado, a limited partnership must first or simultaneously file a Certificate of limited Partnership, and if formed elsewhere, it must file an Application for registration as a foreign limited partnership with the Colorado secretary of State.

STATEMENT OF REGISTRATION OF FLORIDA REGISTERED LIMITED LIABILITY PARTNERSHIP

Pursuant to s. 620.78, Florida Statutes, the partnership or limited partnership named below submits the following statement of registration.

1. Name of Partnership or Limited Partnership submitting this statement to register as a Limited Liability Partnership:

____

If a Limited Partnership, the last words or letters of the name must be "Limited" or the abbreviation "Ltd." followed by the words "Registered Limited Liability Partnership" or the abbreviation "L.L.P.' or "LLP"

If a Partnership, the last words must be "Registered Limited Liability Partnership", "L.L.P." or "LLP".

2. Partnership or Limited Partnership registration # or file # in Florida, if applicable: __________________

3. Address of Principal Office: ____

____

4. Name and Florida street address of Registered Agent and registered office for service of process:

____

____

____

____

(Signature of Registered Agent)

5. Number of Partners: _______ 6. Number of Partners in FL: _________7. FEI number: _________________

8. Name and recorded document number of any partner that is an entity other than an individual:

Entity Name	Document Number

9. Type business in which the partnership or Limited Partnership engages: __________________________

____

CONTINUED

10. Effective date of the Florida registered limited liability partnership: As of the date this registration is filed with the Secretary of State of State

or

A date later than the time of filing which shall not exceed 60 days from the date of filing: _________
(Effective date)

11. Attached to this registration pursuant to s. 620.78(4), F.S., is:

[ ] A copy of an insurance policy demonstrating that the partnership complies with s. 620.7851(1)(a), F.S.;

or

[ ] An affidavit sworn to in compliance with 620.78(4)(b)F.S.

12. This statement of registration of Florida Registered Limited Liability Partnership is executed in compliance with 620.78(2)F.S.

Signed this ________ day of ________, 200_

_________________________________ _________________________________

_________________________________ _________________________________

_________________________________ _________________________________

THIS PARTNERSHIP CONTINUES AS A FLORIDA REGISTERED LIMITED LIABILITY PARTNERSHIP FOR ONE (1) YEAR AFTER THE DATE THIS STATEMENT OF REGISTRATION IS FILED.

Filing Fee
$100 Per partner specified in 620.78(3) F.S. (not to exceed $10,000)
certified copy. $52.50 (optional)
Certificate of StatuS; $8.75 (optional)

State of Wisconsin

Sec. 178.40 — DEPARTMENT OF FINANCIAL INSTITUTIONS

Wis. Stats. — Division of Corporate & Consumer Services

DOMESTIC OR FOREIGN
LIMITED LIABILITY PARTNERSHIP REGISTRATION STATEMENT

1. Name of the partnership (see instructions)

( ) Contingent statement The partnership's name does not satisfy sec. 178.42 of the Wisconsin Statutes. and the partnership proposes to register under the following fictitious name:

2. Mailing address of its principal office	**3. This document was drafted by** **(Name the individual who drafted the document)**
4. Name of registered agent	**5. Street address of registered office in Wisconsin**

6. Select and mark (X) the appropriate choice below:

( ) The partnership is formed under the laws of Wisconsin

OR

( ) The partnership is a foreign limited liability partnership, formed and registered under the laws of the state of

7. Has the foreign limited liability partnership transacted business in Wisconsin after December 10, 1995 without filing a registration statement with the Department of Financial Institutions to obtain authority to transact business in this state? ( ) No ( ) Yes If yes, state the period ___________________________________ and refer to item 9 for penalty fee.

(period)

8. Additional information (Optional - May be scheduled)

FILING FEE - $100.00, or more. SEE instructions, suggestions, and procedures on following pages.

9. Remit the appropriate FILING FEE, payable to Department of Financial Institutions

DOMESTIC limited liability partnership	FOREIGN limited liability partnership	
$100.00	Base fee	$100.00
	Penalty (if applicable) for transacting business without holding a certificate of registration	50.00
	Total	$

10. The partnership submits this statement for the purpose of registering as a "registered limited liability partnership" or a "foreign limited liability partnership" under sec. 178.40, Wis. Stats.

11.

Date executed: ______________ **(Partner's signature)** ______________ **(Partner's signature)**

____________ ______________ **(Typed or printed name)** ______________ **(Typed or printed name)**

(See instructions for authorized signatures)

INSTRUCTIONS (Ref. sec. 178.40, Wis. Stats. for document content)

Submit one original and one exact copy to Department of Financial Institutions, P O Box 7846, Madison WI, 53707-7846, together with the appropriate FILING FEE, payable to the department (If sent by Express or Priority U.S. mail, address to 345 W. Washington Ave., 3rd Floor, Madison WI. 53703). This document can be made available in alternate formats upon request to qualifying individuals with disabilities. The original must include an original manual signature. Upon filing, the information in this document becomes public and might be used for purposes other than those for which it was originally furnished. If you have any questions, please contact the Division of Corporate & Consumer Services at 608-261-7577. Hearing-impaired may call 608-266-8818 for TDY.

For a DOMESTIC limited liability partnership, complete items 1 thru 6, and 9. For a FOREIGN limited liability partnership, complete items 1 thru 7, and 9.

1. The name of a domestic limited liability partnership, or any fictitious name it may adopt, must contain the words "registered limited liability partnership," "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name. The name of a foreign limited liability partnership company shall contain the required words or abbreviations previously mentioned or other words or abbreviations as may be required or authorized by the state in which it is organized.

Contingent Statement is to be completed only if it is known or anticipated that the partnership's name is not available for use in Wisconsin. The partnership may not register under a fictitious name unless its actual name is not available for use because it is indistinguishable from other entities on record with the Corporate & Consumer Services Division of the Department of Financial Institutions.

DOMESTIC OR FOREIGN LIMITED LIABILITY PARTNERSHIP REGISTRATION STATEMENT

+

+

^ Your return address and phone number during the day: ( ) ______ - _____________

INSTRUCTIONS (Cont'd)

2. Provide the mailing address of the limited liability partnership's principal office.

3. If the document is executed in Wisconsin, sec. 182.01(3) provides that it shall not be fried unless the name of the person (individual) who drained it is printed, typewritten or stamped thereon in a
legible manner. If the document is not executed in Wisconsin, enter that remark.

4 & 5. The limited liability partnership must continuously maintain a registered agent and registered office within Wisconsin. It cannot name itself as its own registered agent. The address of the registered office must be a physical location. State the street number and name, city and ZIP code in Wisconsin.

6. Indicate if the limited liability partnership is formed under the laws of Wisconsin, or if not, the state under whose laws it is formed.

7. If the applicant is a foreign limited liability partnership, indicate whether or not the partnership has transacted business in Wisconsin without holding a certificate of registration. If "yes," indicate the period.

8. This item is provided for the insertion of any additional information the partnership may elect to include.

9. Determine the FILING FEE and remit the appropriate amount, payable to "Department of Financial Institutions."

10. This statement is required by sec. 178.40(1)(e).

11. The document is to be executed by one or more partners authorized by the partnership, or as otherwise provided in the partnership agreement.

APPENDIX
STATE CITATIONS FOR UNIFORM PARTNERSHIP ACT

Alabama	**Code 1975, Sections 10-8-1 through 10-8-103**
Alaska	**AS 32.05.010 through 32.05.430**
Arizona	**A.R.S. Sections 29-201 through 29-244**
Arkansas	**A.C.A. Sections 4-42-101 through 4-22-702**
California	**Corp. Code Section 15001 through 15045**
Colorado	**C.R.S. Sections 7-60-101 through 7-60-143**
Connecticut	**C.G.S.A. Sections 34-39 through 34-82**
Delaware	**6 Del.C. Sections 1501-1543**
Dist. Columbia	**D.C. Code 1981 Sections 41-101 through 41-142**
Florida	**F.S.A. Sections 620.6 through 620.77**
Georgia	**O.C.G.A. Sections 14-8-1 through 14-8-43**
Hawaii	**HRS Sections 425-101 through 425-143**
Idaho	**I.C. Sections 53-302 through 53-343**
Illinois	**S.H.A. ch 106-1/2, 1-43**
Indiana	**A.I.C. Sections 23-4-1 through 23-4-1-43**
Iowa	**I.C.A. Sections 544.1 through 544.43**
Kansas	**K.S.A. Sections 56-301 through 56-343**
Kentucky	**KRS 363.150 through 362-360**
Maine	**31 M.R.S.A. Sections 281 through 323**
Maryland	**Corp and Asso. Sections 9-101 through 9-703**
Massachusetts	**M.G.L.A. c 108A, Sections 1 through 44**
Michigan	**M.C.L.A. Sections 449.1 through 449.43**
Minnesota	**M.S.A. Sections 323.01 through 323.43**
Mississippi	**Code 1972 Sections 79-12-1 through 79-12-85**
Missouri	**V.A.M.S. Sections 358-010 through 358-430**
Montana	**MCA Sections 35-10-101 through 35-10-615**
Nebraska	**R.R.S. 1943 Sections 67-301 through 67-343**
Nevada	**N.R.S. Sections 87.010 through 87.430**
New Hampshire	**RSA Sections 304A:1 through 304A:43**
New Jersey	**N.J.S.A. Sections 42:1-1 through 42:1-43**
New Mexico	**NMSA 1978 Sections 54-1-1 through 54-1-43**
New York	**Partnership Law Sections 1 through 74**
North Carolina	**G.S. Sections 59-31 through 59-73**
North Dakota	**NDCC Sections 45-05-01 through 45-09-15**
Ohio	**R.C. Sections 1775.01 through 1775.42**
Oklahoma	**54 Ok Sections 201-243**
Oregon	**ORS Sections 68.010 through 68.650**
Pennsylvania	**15 PA C.S.A. Sections 8301 through 8365**
Rhode Island	**General Law Sections 7-12-12 through 7-12-55**
South Carolina	**Code 1976 Sections 33-41-10 through 33-41-1090**
South Dakota	**SDCL Sections 61-1-101 through 61-1-142**
Texas	**Civ St. art. 6132b**
Utah	**U.C.A. 1953, Sections 48-1-1 through 48-1-40**
Vermont	**11 V.S.A.Sections 1121 through 1335**
Virginia	**Code 1950 Sections 50-1 through 50-43**
Washington	**RCWA Sections 25.04.010 through 47-8A-45**
W. Virginia	**Code, Sections 47-8A-1 through 47-8A-45**
Wisconsin	**W.S.A. Sections 178.01 through 178.39**
Wyoming	**W.S. 1977, Sec. 17-13-101 through 17-13-615**

LOUISIANA has not adopted the Uniform Partnership Act. Its partnership law is Sections 2801 through 2848.

STATE CITATIONS FOR UNIFORM LIMITED PARTNERSHIP ACTS

Alabama	Code 1975, Sections 10-9A-1 through 10-9A-203
Alaska	Title 32, Sections 32.11.10 through 32.11.990
Arizona	A.R.S. Sections 29-301 through 29-366
Arkansas	A.C.A. Sections 4-43-101 through 4-43-1109
California	Corp. Code Sections 15611 through 15723
Colorado	C.R.S. Sections 7-62-101 through 7-62-1201
Connecticut	C.G.S.A. Sections 34-4 through 34-3383g
Delaware	6 Del.C. Sections 17-101 through 17-1107
Dist. Columbia	D.C.Code 1981 Sections 41-401 thru 41-499.25
Florida	F.S.A. Sections 620.101 through 620.186
Georgia	O.C.G.A. Sections 14-9-100 through 14-9-1204
Hawaii	Sections 4256D-101 through 425D-1104
Idaho	I.C. Sections 53-201 through 53-267
Illinois	S.H.A. ch 106-1/2, 151-1 through 162.5
Indiana	A.I.C. Sections 23-16-1 through 23-16-12-6
Iowa	I.A.C. Sections 545.101 through 545.1105
Kansas	K.S.A. Sections 56-1a01 through 56-1a609
Kentucky	K.R.S. Sections 362.401 through 363.527
Maine	31 M.R.S.A. Sections 401 through 528
Maryland	Corp and Asso. Sections 10-101 through 10-1105
Massachusetts	M.G.L.A. c 109, Sections 1 through 62
Michigan	M.C.L.A. Sections 449.1101 through 449.2108
Minnesota	M.S.A. Sections 322A.01 through 322A.87
Mississippi	Code 1972 Sections 79-14-1 through 79-14-1107
Missouri	V.A.M.S. Sections 359-011 through 359-691
Montana	MCA Sections 35-12-501 through 35-12-1404
Nebraska	R.R.S. 1943 Sections 67-233 through 67-297
Nevada	N.R.S. Sections 88.315 through 88.645
New Hampshire	RSA Sections 304B:1 through 304B:64
New Jersey	N.J.S.A. Sections 42:2A-1 through 42:2A-73
New Mexico	NMSA 1978 Sections 54-2-1 through 54-2-63
New York	Sections 121-101 through 121-1300
North Carolina	G.S. Sections 59-101 through 59-1106
North Dakota	NDCC Sections 45-10-01 through 45-10-65
Ohio	R.C. Sections 1782.01 through 1782.62
Oklahoma	54 OK Sections 301-365
Oregon	ORS Sections 70.005 through 70.490
Pennsylvania	15 PA C.S.A. Sections 8501 through 8594
Rhode Island	General Law Sections 7-13-1 through 7-13-65
South Carolina	Code 1976 Sections 33-42-10 through 33-42-2040
South Dakota	SCDL Sections 48-7-101 through 48-7-1105
Tennessee	T.C.A. Sections 61-2-101 through 61-2-1208
Texas	Civ St. art. 6132a-1
Utah	U.C.A. 1953, 48-2a-101 through 48-2a-1107
Vermont	Title 11, Sections 1391 through 1419
Virginia	Code 1950 Sections 50-73-1 through 50-73-77
Washington	RCWA Sections 25.10.010 through 25.10.690
W. Virginia	Code, Sections 47-9-1 through 47-9-63
Wisconsin	W.S.A. Sections 179.01 through 179.94
Wyoming	W.S. 1977, Sec. 17-14-201 through 17-14-1104

Louisiana has not adopted either the Uniform Limited Partnership or the Revised Uniform Limited Partnership Act. Its limited partnership law is covered in Sections 2838 through 2848.

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Form **SS-4**

(Rev. December 2001)

Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

► See separate instructions for each line. ► Keep a copy for your records.

EIN

OMB No. 1545-0003

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested

2 Trade name of business (if different from name on line 1)

3 Executor, trustee, "care of" name

4a Mailing address (room, apt., suite no. and street, or P.O. box)

5a Street address (if different) (Do not enter a P.O. box.)

4b City, state, and ZIP code

5b City, state, and ZIP code

6 County and state where principal business is located

7a Name of principal officer, general partner, grantor, owner, or trustor

7b SSN, ITIN, or EIN

8a **Type of entity** (check only one box)

- ☐ Sole proprietor (SSN) ______
- ☐ Partnership
- ☐ Corporation (enter form number to be filed) ► ______
- ☐ Personal service corp.
- ☐ Church or church-controlled organization
- ☐ Other nonprofit organization (specify) ► ______
- ☐ Other (specify) ►
- ☐ Estate (SSN of decedent) ______
- ☐ Plan administrator (SSN) ______
- ☐ Trust (SSN of grantor) ______
- ☐ National Guard
- ☐ Farmers' cooperative
- ☐ REMIC
- ☐ State/local government
- ☐ Federal government/military
- ☐ Indian tribal governments/enterprises

Group Exemption Number (GEN) ► ______

8b If a corporation, name the state or foreign country (if applicable) where incorporated | State | Foreign country

9 **Reason for applying** (check only one box)

- ☐ Started new business (specify type) ► ______
- ☐ Hired employees (Check the box and see line 12.)
- ☐ Compliance with IRS withholding regulations
- ☐ Other (specify) ►
- ☐ Banking purpose (specify purpose) ► ______
- ☐ Changed type of organization (specify new type) ► ______
- ☐ Purchased going business
- ☐ Created a trust (specify type) ► ______
- ☐ Created a pension plan (specify type) ► ______

10 Date business started or acquired (month, day, year)

11 Closing month of accounting year

12 First date wages or annuities were paid or will be paid (month, day, year). **Note:** *If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year)* . . . . ►

13 Highest number of employees expected in the next 12 months. **Note:** *If the applicant does not expect to have any employees during the period, enter "-0-."* . . . . ►	Agricultural	Household	Other

14 Check **one** box that best describes the principal activity of your business.

- ☐ Health care & social assistance
- ☐ Wholesale-agent/broker
- ☐ Construction
- ☐ Rental & leasing
- ☐ Transportation & warehousing
- ☐ Accommodation & food service
- ☐ Wholesale-other
- ☐ Retail
- ☐ Real estate
- ☐ Manufacturing
- ☐ Finance & insurance
- ☐ Other (specify)

15 Indicate principal line of merchandise sold; specific construction work done; products produced; or services provided.

16a Has the applicant ever applied for an employer identification number for this or any other business? . . . . ☐ **Yes** ☐ **No**
Note: *If "Yes," please complete lines 16b and 16c.*

16b If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above.
Legal name ► Trade name ►

16c Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known.

Approximate date when filed (mo., day, year)	City and state where filed	Previous EIN

Third Party Designee

Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.

Designee's name	Designee's telephone number (include area code) ( )
Address and ZIP code	Designee's fax number (include area code) ( )

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Applicant's telephone number (include area code) ( )

Name and title (type or print clearly) ►

Applicant's fax number (include area code) ( )

Signature ► Date ►

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.[1] **See also the separate instructions for each line on Form SS-4.**

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a–6, 8a, and 9–16c.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a–6, 7a–b (if applicable), 8a, 8b (if applicable), and 9–16c.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1–5b, 7a–b (if applicable), 8a, 9, and 16a–c.
Changed type of organization	Either the legal character of the organization or its ownership changed (e.g., you incorporate a sole proprietorship or form a partnership)[2]	Complete lines 1–16c (as applicable).
Purchased a going business[3]	Does not already have an EIN	Complete lines 1–16c (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust[4]	Complete lines 1–16c (as applicable).
Created a pension plan as a plan administrator[5]	Needs an EIN for reporting purposes	Complete lines 1, 2, 4a–6, 8a, 9, and 16a–c.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits[6]	Complete lines 1–5b, 7a–b (SSN or ITIN optional), 8a–9, and 16a–c.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1, 3, 4a–b, 8a, 9, and 16a–c.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file **Form 1042,** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a–5b, 7a–b (if applicable), 8a, 9, and 16a–c.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581[7]	Complete lines 1, 2, 4a–5b, 8a, 9, and 16a–c.
Is a single-member LLC	Needs an EIN to file **Form 8832,** Classification Election, for filing employment tax returns, **or** for state reporting purposes[8]	Complete lines 1–16c (as applicable).
Is an S corporation	Needs an EIN to file **Form 2553,** Election by a Small Business Corporation[9]	Complete lines 1–16c (as applicable).

[1] For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. **A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.**

[2] However, **do not** apply for a new EIN if the existing entity only **(a)** changed its business name, **(b)** elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or **(c)** terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. (The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).)

[3] Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

[4] However, IRA trusts that are required to file **Form 990-T,** Exempt Organization Business Income Tax Return, must have an EIN.

[5] A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

[6] Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. **See Rev. Proc. 2000-12.**

[7] See also *Household employer* on page 4. (**Note:** State or local agencies may need an EIN for other reasons, e.g., hired employees.)

[8] Most LLCs **do not** need to file Form 8832. See **Limited liability company (LLC)** on page 4 for details on completing Form SS-4 for an LLC.

[9] An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

Instructions for Form SS-4

Department of the Treasury
Internal Revenue Service

(Rev. December 2001)

Application for Employer Identification Number

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Use these instructions to complete **Form SS-4,** Application for Employer Identification Number. Also see **Do I Need an EIN?** on page 2 of Form SS-4.

Purpose of Form

Use Form SS-4 to apply for an employer identification number (EIN). An EIN is a nine-digit number (for example, 12-3456789) assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. The information you provide on this form will establish your business tax account.

CAUTION *An EIN is for use in connection with your business activities only. Do **not** use your EIN in place of your social security number (SSN).*

File only one Form SS-4. Generally, a sole proprietor should file only one Form SS-4 and needs only one EIN, regardless of the number of businesses operated as a sole proprietorship or trade names under which a business operates. However, if the proprietorship incorporates or enters into a partnership, a new EIN is required. Also, each corporation in an affiliated group must have its own EIN.

EIN applied for, but not received. If you do not have an EIN by the time a **return** is due, write ''Applied For'' and the date you applied in the space shown for the number. **Do not** show your social security number (SSN) as an EIN on returns.

If you do not have an EIN by the time a **tax deposit** is due, send your payment to the Internal Revenue Service Center for your filing area as shown in the instructions for the form that you are are filing. Make your check or money order payable to the **''United States Treasury''** and show your name (as shown on Form SS-4), address, type of tax, period covered, and date you applied for an EIN.

Related Forms and Publications

The following **forms** and **instructions** may be useful to filers of Form SS-4:

- **Form 990-T,** Exempt Organization Business Income Tax Return
- **Instructions for Form 990-T**
- **Schedule C (Form 1040),** Profit or Loss From Business
- **Schedule F (Form 1040),** Profit or Loss From Farming
- **Instructions for Form 1041 and Schedules A, B, D, G, I, J, and K-1,** U.S. Income Tax Return for Estates and Trusts
- **Form 1042,** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- **Instructions for Form 1065,** U.S. Return of Partnership Income
- **Instructions for Form 1066,** U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return
- **Instructions for Forms 1120 and 1120-A**
- **Form 2553,** Election by a Small Business Corporation
- **Form 2848,** Power of Attorney and Declaration of Representative
- **Form 8821,** Tax Information Authorization
- **Form 8832,** Entity Classification Election

For more **information** about filing Form SS-4 and related issues, see:

- **Circular A,** Agricultural Employer's Tax Guide (Pub. 51)
- **Circular E,** Employer's Tax Guide (Pub. 15)
- **Pub. 538,** Accounting Periods and Methods
- **Pub. 542,** Corporations
- **Pub. 557,** Exempt Status for Your Organization
- **Pub. 583,** Starting a Business and Keeping Records
- **Pub. 966,** EFTPS: Now a Full Range of Electronic Choices to Pay All Your Federal Taxes
- **Pub. 1635,** Understanding Your EIN
- **Package 1023,** Application for Recognition of Exemption
- **Package 1024,** Application for Recognition of Exemption Under Section 501(a)

How To Get Forms and Publications

Phone. You can order forms, instructions, and publications by phone 24 hours a day, 7 days a week. Just call 1-800-TAX-FORM (1-800-829-3676). You should receive your order or notification of its status within 10 workdays.

Personal computer. With your personal computer and modem, you can get the forms and information you need using the IRS Web Site at **www.irs.gov** or File Transfer Protocol at **ftp.irs.gov.**

CD-ROM. For small businesses, return preparers, or others who may frequently need tax forms or publications, a CD-ROM containing over 2,000 tax products (including many prior year forms) can be purchased from the National Technical Information Service (NTIS).

To order **Pub. 1796,** Federal Tax Products on CD-ROM, call **1-877-CDFORMS** (1-877-233-6767) toll free or connect to **www.irs.gov/cdorders.**

Tax Help for Your Business

IRS-sponsored Small Business Workshops provide information about your Federal and state tax obligations. For information about workshops in your area, call 1-800-829-1040 and ask for your Taxpayer Education Coordinator.

How To Apply

You can apply for an EIN by telephone, fax, or mail depending on how soon you need to use the EIN.

Application by Tele-TIN. Under the Tele-TIN program, you can receive your EIN by telephone and use it immediately to file a return or make a payment. To receive an EIN by telephone, IRS suggests that you complete Form SS-4 so that you will have all relevant information available. Then call the Tele-TIN number at 1-866-816-2065. (International applicants must call 215-516-6999.) Tele-TIN hours of operation are 7:30 a.m. to 5:30 p.m. The person making the call must be authorized to sign the form or be an authorized designee. See **Signature** and **Third Party Designee** on page 6. Also see the **TIP** below.

An IRS representative will use the information from the Form SS-4 to establish your account and assign you an EIN. Write the number you are given on the upper right corner of the form and sign and date it. Keep this copy for your records.

If requested by an IRS representative, mail or fax (facsimile) the signed Form SS-4 (including any Third Party Designee authorization) **within 24 hours** to the Tele-TIN Unit at the service center address provided by the IRS representative.

TIP *Taxpayer representatives can use Tele-TIN to apply for an EIN on behalf of their client and request that the EIN be faxed to their* ***client*** *on the same day. (**Note:** By utilizing this procedure, you are authorizing the IRS to fax the EIN without a cover sheet.)*

Application by Fax-TIN. Under the Fax-TIN program, you can receive your EIN by fax within 4 business days. Complete and fax Form SS-4 to the IRS using the Fax-TIN number listed below for your state. A long-distance charge to callers outside of the local calling area will apply. Fax-TIN numbers can only be used to apply for an EIN. **The numbers may change without notice.** Fax-TIN is available 24 hours a day, 7 days a week.

Be sure to provide your fax number so that IRS can fax the EIN back to you. (**Note:** By utilizing this procedure, you are authorizing the IRS to fax the EIN without a cover sheet.)

Do not call Tele-TIN for the same entity because duplicate EINs may be issued. See **Third Party Designee** on page 6.

Application by mail. Complete Form SS-4 at least 4 to 5 weeks before you will need an EIN. Sign and date the application and mail it to the service center address for your state. You will receive your EIN in the mail in approximately 4 weeks. See also **Third Party Designee** on page 6.

Call 1-800-829-1040 to verify a number or to ask about the status of an application by mail.

If your principal business, office or agency, or legal residence in the case of an individual, is located in:	**Call the Tele-TIN or Fax-TIN number shown or file with the "Internal Revenue Service Center" at:**
Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia	Attn: EIN Operation Holtsville, NY 00501 Tele-TIN 866-816-2065 Fax-TIN 631-447-8960
Illinois, Indiana, Kentucky, Michigan	Attn: EIN Operation Cincinnati, OH 45999 Tele-TIN 866-816-2065 Fax-TIN 859-669-5760
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, Wyoming	Attn: EIN Operation Philadelphia, PA 19255 Tele-TIN 866-816-2065 Fax-TIN 215-516-3990
If you have no legal residence, principal place of business, or principal office or agency in any state:	Attn: EIN Operation Philadelphia, PA 19255 Tele-TIN 215-516-6999 Fax-TIN 215-516-3990

Specific Instructions

Print or type all entries on Form SS-4. Follow the instructions for each line to expedite processing and to avoid unnecessary IRS requests for additional information. Enter "N/A" (nonapplicable) on the lines that do not apply.

Line 1—Legal name of entity (or individual) for whom the EIN is being requested. Enter the legal name of the entity (or individual) applying for the EIN exactly as it appears on the social security card, charter, or other applicable legal document.

Individuals. Enter your first name, middle initial, and last name. If you are a sole proprietor, enter your individual name, not your business name. Enter your business name on line 2. Do not use abbreviations or nicknames on line 1.

Trusts. Enter the name of the trust.

Estate of a decedent. Enter the name of the estate.

Partnerships. Enter the legal name of the partnership as it appears in the partnership agreement.

Corporations. Enter the corporate name as it appears in the corporation charter or other legal document creating it.

Plan administrators. Enter the name of the plan administrator. A plan administrator who already has an EIN should use that number.

Line 2—Trade name of business. Enter the trade name of the business if different from the legal name. The trade name is the ''doing business as '' (DBA) name.

CAUTION *Use the full legal name shown on line 1 on all tax returns filed for the entity. (However, if you enter a trade name on line 2 and choose to use the trade name instead of the legal name, enter the trade name on* ***all returns*** *you file.) To prevent processing delays and errors,* ***always*** *use the legal name only (or the trade name only) on* ***all*** *tax returns.*

Line 3—Executor, trustee, ''care of'' name. Trusts enter the name of the trustee. Estates enter the name of the executor, administrator, or other fiduciary. If the entity applying has a designated person to receive tax information, enter that person's name as the ''care of'' person. Enter the individual's first name, middle initial, and last name.

Lines 4a-b—Mailing address. Enter the mailing address for the entity's correspondence. If line 3 is completed, enter the address for the executor, trustee or "care of" person. Generally, this address will be used on all tax returns.

TIP *File* ***Form 8822****, Change of Address, to report any subsequent changes to the entity's mailing address.*

Lines 5a-b—Street address. Provide the entity's physical address **only** if different from its mailing address shown in lines 4a-b. **Do not** enter a P.O. box number here.

Line 6—County and state where principal business is located. Enter the entity's primary **physical** location.

Lines 7a-b—Name of principal officer, general partner, grantor, owner, or trustor. Enter the first name, middle initial, last name, and SSN of **(a)** the principal officer if the business is a corporation, **(b)** a general partner if a partnership, **(c)** the owner of an entity that is disregarded as separate from its owner (disregarded entities owned by a corporation enter the corporation's name and EIN), or **(d)** a grantor, owner, or trustor if a trust.

If the person in question is an **alien individual** with a previously assigned individual taxpayer identification number (ITIN), enter the ITIN in the space provided and submit a copy of an official identifying document. If necessary, complete **Form W-7,** Application for IRS Individual Taxpayer Identification Number, to obtain an ITIN.

You are **required** to enter an SSN, ITIN, or EIN unless the only reason you are applying for an EIN is to make an entity classification election (see Regulations section 301.7701-1 through 301.7701-3) and you are a nonresident alien with no effectively connected income from sources within the United States.

Line 8a—Type of entity. Check the box that best describes the type of entity applying for the EIN. If you are an alien individual with an ITIN previously assigned to you, enter the ITIN in place of a requested SSN.

CAUTION *This is not an election for a tax classification of an entity. See* ***''Limited liability company (LLC)''*** *on page 4.*

Other. If not specifically mentioned, check the ''Other'' box, enter the type of entity and the type of return, if any, that will be filed (for example, "Common Trust Fund, Form 1065" or "Created a Pension Plan"). Do not enter "N/A." If you are an alien individual applying for an EIN, see the **Lines 7a-b** instructions above.

- **Household employer.** If you are an individual, check the ''Other'' box and enter ''Household Employer'' and your SSN. If you are a state or local agency serving as a tax reporting agent for public assistance recipients who become household employers, check the ''Other'' box and enter ''Household Employer Agent.'' If you are a trust that qualifies as a household employer, you do not need a separate EIN for reporting tax information relating to household employees; use the EIN of the trust.
- **QSub.** For a qualified subchapter S subsidiary (QSub) check the ''Other'' box and specify ''QSub.''
- **Withholding agent.** If you are a withholding agent required to file Form 1042, check the ''Other'' box and enter ''Withholding Agent.''

Sole proprietor. Check this box if you file Schedule C, C-EZ, or F (Form 1040) and have a qualified plan, or are required to file excise, employment, or alcohol, tobacco, or firearms returns, or are a payer of gambling winnings. Enter your SSN (or ITIN) in the space provided. If you are a nonresident alien with no effectively connected income from sources within the United States, you do not need to enter an SSN or ITIN.

Corporation. This box is for any corporation **other than a personal service corporation.** If you check this box, enter the income tax form number to be filed by the entity in the space provided.

CAUTION *If you entered* ***"1120S"*** *after the "Corporation" checkbox, the corporation* ***must*** *file Form 2553* ***no later than the 15th day of the 3rd month of the tax year the election is to take effect.*** *Until Form 2553 has been received and approved, you will be considered a Form 1120 filer. See the Instructions for Form 2553.*

Personal service corp. Check this box if the entity is a personal service corporation. An entity is a personal service corporation for a tax year only if:

- The principal activity of the entity during the testing period (prior tax year) for the tax year is the performance of personal services substantially by employee-owners, and
- The employee-owners own at least 10% of the fair market value of the outstanding stock in the entity on the last day of the testing period.

Personal services include performance of services in such fields as health, law, accounting, or consulting. For more information about personal service corporations, see the Instructions for Forms 1120 and 1120-A and Pub. 542.

Other nonprofit organization. Check this box if the nonprofit organization is other than a church or church-controlled organization and specify the type of nonprofit organization (for example, an educational organization).

CAUTION *If the organization also seeks tax-exempt status, you **must** file either Package 1023 or Package 1024. See Pub. 557 for more information.*

If the organization is covered by a group exemption letter, enter the four-digit **group exemption number (GEN).** (Do not confuse the GEN with the nine-digit EIN.) If you do not know the GEN, contact the parent organization. Get Pub. 557 for more information about group exemption numbers.

Plan administrator. If the plan administrator is an individual, enter the plan administrator's SSN in the space provided.

REMIC. Check this box if the entity has elected to be treated as a real estate mortgage investment conduit (REMIC). See the Instructions for Form 1066 for more information.

Limited liability company (LLC). An LLC is an entity organized under the laws of a state or foreign country as a limited liability company. For Federal tax purposes, an LLC may be treated as a partnership or corporation or be disregarded as an entity separate from its owner.

By **default,** a domestic LLC with only one member is **disregarded** as an entity separate from its owner and must include all of its income and expenses on the owner's tax return (e.g., **Schedule C (Form 1040)**). Also by default, a domestic LLC with two or more members is treated as a partnership. A domestic LLC may file Form 8832 to avoid either default classification and elect to be classified as an association taxable as a corporation. For more information on entity classifications (including the rules for foreign entities), see the instructions for Form 8832.

CAUTION ***Do not** file Form 8832 if the LLC accepts the default classifications above. **However, if the LLC will be electing S Corporation status, it must timely file both Form 8832 and Form 2553.***

Complete Form SS-4 for LLCs as follows:

- A single-member, domestic LLC that accepts the default classification (above) does not need an EIN and generally should not file Form SS-4. Generally, the LLC should use the name and EIN of its **owner** for all Federal tax purposes. However, the reporting and payment of employment taxes for employees of the LLC may be made using the name and EIN of **either** the owner or the LLC as explained in Notice 99-6, 1999-1 C.B. 321. You can find Notice 99-6 on page 12 of Internal Revenue Bulletin 1999-3 at **www.irs.gov.** (**Note:** If the LLC-applicant indicates in box 13 that it has employees or expects to have employees, the owner (whether an individual or other entity) of a single-member domestic LLC will also be assigned its own EIN (if it does not already have one) even if the LLC will be filing the employment tax returns.)
- A single-member, domestic LLC that accepts the default classification (above) and wants an EIN for filing employment tax returns (see above) or non-Federal purposes, such as a state requirement, must check the "Other" box and write "Disregarded Entity" or, when applicable, "Disregarded Entity—Sole Proprietorship" in the space provided.
- A multi-member, domestic LLC that accepts the default classification (above) must check the "Partnership" box.
- A domestic LLC that will be filing Form 8832 to elect corporate status must check the "Corporation" box and write in "Single-Member" or "Multi-Member" immediately below the "form number" entry line.

Line 9—Reason for applying. Check only **one** box. Do not enter "N/A."

Started new business. Check this box if you are starting a new business that requires an EIN. If you check this box, enter the type of business being started. **Do not** apply if you already have an EIN and are only adding another place of business.

Hired employees. Check this box if the existing business is requesting an EIN because it has hired or is hiring employees and is therefore required to file employment tax returns. **Do not** apply if you already have an EIN and are only hiring employees. For information on employment taxes (e.g., for family members), see Circular E.

CAUTION *You may be required to make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System (EFTPS). See section 11, Depositing Taxes, of Circular E and Pub. 966.*

Created a pension plan. Check this box if you have created a pension plan and need an EIN for reporting purposes. Also, enter the type of plan in the space provided.

TIP *Check this box if you are applying for a trust EIN when a new pension plan is established. In addition, check the "Other" box in line 8a and write "Created a Pension Plan" in the space provided.*

Banking purpose. Check this box if you are requesting an EIN for banking purposes only, and enter the banking purpose (for example, a bowling league for depositing dues or an investment club for dividend and interest reporting).

Changed type of organization. Check this box if the business is changing its type of organization. For example, the business was a sole proprietorship and has been incorporated or has become a partnership. If you check this box, specify in the space provided (including available space immediately below) the type of change made. For example, ''From Sole Proprietorship to Partnership.''

Purchased going business. Check this box if you purchased an existing business. **Do not** use the former owner's EIN unless you became the "owner" of a corporation by acquiring its stock.

Created a trust. Check this box if you created a trust, and enter the type of trust created. For example, indicate if the trust is a nonexempt charitable trust or a split-interest trust.

Exception. Do **not** file this form for certain grantor-type trusts. The trustee does not need an EIN for the trust if the trustee furnishes the name and TIN of the grantor/owner and the address of the trust to all payors. See the Instructions for Form 1041 for more information.

TIP ***Do not*** *check this box if you are applying for a trust EIN when a new pension plan is established. Check ''Created a pension plan.''*

Other. Check this box if you are requesting an EIN for any other reason; and enter the reason. For example, a newly-formed state government entity should enter "Newly-Formed State Government Entity" in the space provided.

Line 10—Date business started or acquired. If you are starting a new business, enter the starting date of the business. If the business you acquired is already operating, enter the date you acquired the business. Trusts should enter the date the trust was legally created. Estates should enter the date of death of the decedent whose name appears on line 1 or the date when the estate was legally funded.

Line 11—Closing month of accounting year. Enter the last month of your accounting year or tax year. An accounting or tax year is usually 12 consecutive months, either a calendar year or a fiscal year (including a period of 52 or 53 weeks). A calendar year is 12 consecutive months ending on December 31. A fiscal year is either 12 consecutive months ending on the last day of any month other than December or a 52-53 week year. For more information on accounting periods, see Pub. 538.

Individuals. Your tax year generally will be a calendar year.

Partnerships. Partnerships must adopt one of the following tax years:

- The tax year of the majority of its partners,
- The tax year common to all of its principal partners,
- The tax year that results in the least aggregate deferral of income, or
- In certain cases, some other tax year.

See the Instructions for Form 1065 for more information.

REMICs. REMICs must have a calendar year as their tax year.

Personal service corporations. A personal service corporation generally must adopt a calendar year unless:

- It can establish a business purpose for having a different tax year, or
- It elects under section 444 to have a tax year other than a calendar year.

Trusts. Generally, a trust must adopt a calendar year except for the following:

- Tax-exempt trusts,
- Charitable trusts, and
- Grantor-owned trusts.

Line 12—First date wages or annuities were paid or will be paid. If the business has or will have employees, enter the date on which the business began or will begin to pay wages. If the business does not plan to have employees, enter "N/A."

Withholding agent. Enter the date you began or will begin to pay income (including annuities) to a nonresident alien. This also applies to individuals who are required to file Form 1042 to report alimony paid to a nonresident alien.

Line 13—Highest number of employees expected in the next 12 months. Complete each box by entering the number (including zero ("-0-")) of "Agricultural," "Household," or "Other" employees expected by the applicant in the next 12 months. For a definition of agricultural labor (farmwork), see Circular A.

Lines 14 and 15. Check the **one** box in line 14 that best describes the principal activity of the applicant's business. Check the "Other" box (and specify the applicant's principal activity) if none of the listed boxes applies.

Use line 15 to describe the applicant's principal line of business in more detail. For example, if you checked the "Construction" box in line 14, enter additional detail such as "General contractor for residential buildings" in line 15.

TIP *Do not complete lines 14 and 15 if you entered zero "(-0-)" in line 13.*

Construction. Check this box if the applicant is engaged in erecting buildings or other structures, (e.g., streets, highways, bridges, tunnels). The term "Construction" also includes special trade contractors, (e.g., plumbing, HVAC, electrical, carpentry, concrete, excavation, etc. contractors).

Real estate. Check this box if the applicant is engaged in renting or leasing real estate to others; managing, selling, buying or renting real estate for others; or providing related real estate services (e.g., appraisal services).

Rental and leasing. Check this box if the applicant is engaged in providing tangible goods such as autos, computers, consumer goods, or industrial machinery and equipment to customers in return for a periodic rental or lease payment.

Manufacturing. Check this box if the applicant is engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is also considered to be manufacturing.

Transportation & warehousing. Check this box if the applicant provides transportation of passengers or cargo; warehousing or storage of goods; scenic or sight-seeing transportation; or support activities related to these modes of transportation.

Finance & insurance. Check this box if the applicant is engaged in transactions involving the creation, liquidation, or change of ownership of financial assets and/or facilitating such financial transactions;

underwriting annuities/insurance policies; facilitating such underwriting by selling insurance policies; or by providing other insurance or employee-benefit related services.

Health care and social assistance. Check this box if the applicant is engaged in providing physical, medical, or psychiatric care using licensed health care professionals or providing social assistance activities such as youth centers, adoption agencies, individual/ family services, temporary shelters, etc.

Accommodation & food services. Check this box if the applicant is engaged in providing customers with lodging, meal preparation, snacks, or beverages for immediate consumption.

Wholesale–agent/broker. Check this box if the applicant is engaged in arranging for the purchase or sale of goods owned by others or purchasing goods on a commission basis for goods traded in the wholesale market, usually between businesses.

Wholesale–other. Check this box if the applicant is engaged in selling goods in the wholesale market generally to other businesses for resale on their own account.

Retail. Check this box if the applicant is engaged in selling merchandise to the general public from a fixed store; by direct, mail-order, or electronic sales; or by using vending machines.

Other. Check this box if the applicant is engaged in an activity not described above. Describe the applicant's principal business activity in the space provided.

Lines 16a-c. Check the applicable box in line 16a to indicate whether or not the entity (or individual) applying for an EIN was issued one previously. Complete lines 16b and 16c **only** if the "Yes" box in line 16a is checked. If the applicant previously applied for **more than one** EIN, write "See Attached" in the empty space in line 16a and attach a separate sheet providing the line 16b and 16c information for each EIN previously requested.

Third Party Designee. Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of Form SS-4. The designee's authority terminates at the time the EIN is assigned and released to the designee. **You must complete the signature area for the authorization to be valid.**

Signature. When required, the application must be signed by **(a)** the individual, if the applicant is an individual, **(b)** the president, vice president, or other principal officer, if the applicant is a corporation, **(c)** a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership, government entity, or other unincorporated organization, or **(d)** the fiduciary, if the applicant is a trust or an estate. Foreign applicants may have any duly-authorized person, (e.g., division manager), sign Form SS-4.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to comply with section 6109 and the regulations thereunder which generally require the inclusion of an employer identification number (EIN) on certain returns, statements, or other documents filed with the Internal Revenue Service. If your entity is required to obtain an EIN, you are required to provide all of the information requested on this form. Information on this form may be used to determine which Federal tax returns you are required to file and to provide you with related forms and publications.

We disclose this form to the Social Security Administration for their use in determining compliance with applicable laws. We may give this information to the Department of Justice for use in civil and criminal litigation, and to the cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to Federal, state, or local agencies that investigate or respond to acts or threats of terrorism or participate in intelligence or counterintelligence activities concerning terrorism.

We will be unable to issue an EIN to you unless you provide all of the requested information which applies to your entity. Providing false information could subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	6 min.
Learning about the law or the form	22 min.
Preparing the form	46 min.
Copying, assembling, and sending the form to the IRS	20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **How To Apply** on page 2.