# PARTNERSHIP AGREEMENT OF

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# THIS PARTNERSHIP AGREEMENT (hereinafter "Agreement"), is made effective as of December 12, 2006, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Partners")

# ARTICLE I

# FORMATION, NAME, PRINCIPAL OFFICE, TERM, RECORDS

# 1.1 Formation of Partnership. The parties hereto hereby form, pursuant to the Texas Business Organizations Code (hereinafter, as from time to time amended, referred to as the "Code"), a General Partnership, which organization is hereinafter referred to as the "Partnership." The rights, duties, status and liabilities of the Partners shall, except as hereinafter expressly stated to the contrary, be as provided for in the Code.

# 1.2 Partnership Name. The business of the Partnership shall be conducted under the name of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other name as the Partners may select from time to time. As necessary, the Partners shall promptly execute, file, record and/or publish with the proper offices an assumed name certificate.

# 1.3 Principal Office. The principal place of business of the Partnership shall be at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, but substitute or additional places of business may be established at such other locations as may, from time to time, be determined by the Partners.

# 1.4 Term of Partnership. The Partnership shall become effective upon the execution of this Agreement and shall remain effective until the Partnership is dissolved pursuant to the Code.

# 1.3 Records. The Partnership shall keep complete and accurate records of Partnership transactions. All records of the Partnership will be maintained at the principal office. Any Partner shall have the right at any time to inspect and copy the records of the Partnership.

# ARTICLE II

# DEFINITIONS

# Whenever used in this Agreement, the terms set forth below shall be defined as follows:

# 2.1 "Additional Capital Contribution" shall mean that amount of money or other property, if any, that the Partners may contribute to the Partnership for additional capital, if any, to be used for operating capital.

# 2.2 "Affiliate" means, with respect to a Partner, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with such Partners. The term "control," as used in this definition means, with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than ten percent (10%) of the voting rights attributable to the shares of the controlled corporation, and with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

# 2.3 "Transferee" shall mean a Person who has acquired all or a portion of an interest in the Partnership by assignment or Transfer as of the date the assignment or Transfer of such interest becomes effective. A Transferee has only the rights granted under sections 152.401-152.405 of the Code. A Transferee does not have the right to become a Partner, except as provided in this Agreement. For a proper purpose, a Transferee may require reasonable information or an account of Partnership transactions and make reasonable inspection of the Partnership books. In addition, no Transferee of an interest in the Partnership shall have the right to assign any transferred interest except as otherwise provided in this Agreement.

# 2.4 "Capital Contribution" means the total contribution to the capital of the Partnership which a Partner is legally bound and obligated to make, which amount is designated as a Capital Contribution for such Partner pursuant to Article IV of this Agreement.

# 2.5 "Contribution Agreement" means, with respect to each of the Partners, the agreement respecting the original Capital Contribution to be made by, or on behalf of, each such Partner pursuant to section 4.2 hereof, as described more fully in section 4.3 hereof.

# 2.6 "Default Rate of Interest" shall mean the rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks as its prime commercial or similar reference interest rate, with adjustments to be made on the same date as any change in the rate, and (b) the maximum rate permitted by applicable law.

# 2.7 "Distributable Cash" shall mean, at the time of determination for any period (on the cash receipts and disbursements method of accounting), all Partnership cash derived from the conduct of the Partnership's business, including distributions from entities owned by the Partnership, cash from operations or investments, and cash from the sale or other disposition of Partnership property, other than (a) Capital Contributions with interest earned pending its utilization; (b) financing or other loan proceeds; (c) reserves for working capital; and (d) other amounts that the Partners reasonably determine should be retained by the Partnership in accordance with the Partners' discretion under section 6.1 hereof.

# 2.8 "Majority-in-interest" shall mean as to all of or a specified group of Partners, Partners owning more than 50 percent of the current interest in the profits of the Partnership owned by all of the Partners or by the Partners in the specified group, as appropriate.

# 2.9 "Partner" or "Partners" shall mean all Persons designated as a Partner on Exhibit "A" and any successor Partners pursuant to the terms of this Agreement.

# 2.10 "Initial Capital Contribution" shall mean that amount of money or property initially contributed by the Partners as set forth in Exhibit "A" hereto.

# 2.11 "Partnership Property" shall mean that property, real, personal, or mixed, tangible or intangible, or an interest in that property, which is contributed to or acquired by the Partnership.

# 2.12 "Person" shall mean any individual, corporation, business trust, estate, trust, custodian, trustee, executor, administrator, nominee, partnership (including a registered limited liability partnership and a limited partnership), association, limited liability company, government, governmental subdivision, governmental agency, governmental instrumentality, and any other legal or commercial entity, in its own or representative capacity

# 2.13 "Profits" or "Losses" means, for each fiscal year or other period, profits and losses as determined by generally accepted accounting principles.

# 2.14 "Transfer" when used as a noun shall mean any voluntary or involuntary transfer, sale, pledge, hypothecation, assignment or other disposition, and as a verb shall mean voluntarily or involuntarily to transfer, sell, pledge, hypothecate, assign or otherwise dispose.

# 2.15 "Wholly Owned Affiliate" of any Person shall mean an Affiliate of such Person, 100% of the voting stock or beneficial ownership of which is owned by such Person, directly or indirectly, through one or more Wholly Owned Affiliates, or by any Person who, directly or indirectly, owns 100% of the voting stock or beneficial ownership of such Person, and an Affiliate of such Person who, directly or indirectly, owns 100% of the voting stock or beneficial ownership of such Person.

# ARTICLE III

# PURPOSE

# 3.1 Purposes of the Partnership. The purposes of the Partnership shall be (a) to own, hold, sell, develop, lease, dispose of, exchange, convert, manage, exercise voting rights with respect to, and otherwise exercise all of the rights, duties and obligations of an owner of the Partnership Property; (b) to reinvest, in any manner and in any real or personal property which the Partners deem appropriate, all proceeds derived from the Partnership Property; (c) to invest the Partnership Property in any manner deemed reasonable by the Partners, in any real or personal property; and (d) to conduct any other business or make any investment which a partnership may make without violating the Code or any other applicable law. Without limiting the generality of the foregoing, the purposes of the Partnership shall specifically include \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# 3.2 Powers. The Partners may make, enter into, deliver and perform all contracts, agreements or undertakings, pay all costs and expenses and perform all acts deemed appropriate by the Partners to carry out the Partnership purposes, subject to the limitations of this Agreement and the Code.

# 3.3 Other Transactions of Partners.

# (a) It is acknowledged that the Partners may in the future, from time to time, obtain additional opportunities to acquire property for investment, development or otherwise. Each Partner shall be free to acquire such interests in other property as such Partner may in such Partner's sole discretion deem desirable without having to offer interests in such property to the other Partners or this Partnership, and such action on the part of any Partner shall not be deemed a breach of any fiduciary relationship owed by that Partner to the other Partners or the Partnership. Participation in the Partnership shall not in any way act as a restraint on the other present or future business activities or investments of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner, except to the extent such activities are competitive with the business of the Partnership. As a result of this Agreement, no Partner (or Affiliate of any Partner), shall be obligated or bound to offer the Partnership or any of the other Partners any business opportunity presented to or offered to them or the Partnership as a prerequisite to the acquisition of or investment in such business opportunity by such Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of such Partner for its account or the account of others, unless such business activity in which a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner engages, conducts, or participates outside the Partnership shall be a business activity in competition with the Partnership. Any such business or activity of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner may be undertaken with or without prior notice to or participation therein by the Partnership or the other Partners, unless such business activity in which a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner engages, conducts, or participates outside the Partnership shall be a business activity in competition with the Partnership. Each Partner and the Partnership hereby waive any right or claim such Partner or the Partnership may have against a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner with respect to such business or activity or the income or profits thereof, unless such business activity in which a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner engages, conducts, or participates outside the Partnership shall be a business activity in competition with the Partnership.

# (b) With the consent of all of the Partners, the Partnership may contract with any of the Partners or their Affiliates for the purchase of goods and services for the benefit of the Partnership at any time provided that the compensation paid to such Person shall be commensurate with rates prevailing for such services at the time such services are performed, and any charges so incurred shall be deemed expenses of the Partnership. With the consent of all of the Partners, the Partnership shall have the authority to enter into any transaction despite the fact that another party to the transaction may be (a) a trust of which a Partner is a trustee or beneficiary; (b) an estate of which a Partner is a personal representative or beneficiary; (c) a business controlled by one or more Partners or a business of which any Partner is also a director, officer, partner, member, manager or employee; (d) any Affiliate, employee, stockholder, associate, manager, partner, or business associate; (e) any Partner, acting individually; or (f) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties.

# ARTICLE IV

# CAPITAL CONTRIBUTIONS AND

# SHARES OF PROFITS AND LOSSES

# 4.1 Ownership Percentages. The percentage interest of each Partner will be determined by dividing the balance of such Partner's capital account by the total of all of the capital accounts of all Partners. A Partner's percentage interest will be determinative of: (a) a Partner's ownership interest in the Partnership as an entity; (b) a Partner's interest in the distribution of Distributable Cash; (c) a Partner's allocable share of the items of Profits and Losses; and (d) a Partner's distributive share of cash and other property upon dissolution of the Partnership.

# 4.2 Initial Capital Contributions. Receipt is hereby acknowledged for each Partner's Initial Capital Contribution.

# 4.3 Contribution Agreements. The Capital Contributions made by each of the Partners pursuant to section 4.2 hereof shall be subject to the terms and provisions of the Contribution Agreement of each Partner referenced in Exhibit "B" attached hereto. The Partners, on behalf of the Partnership, shall enter into the Contribution Agreements, and any agreement referred to therein, without requirement of any further act, approval, or vote of any other Person, and such agreements shall be deemed to satisfy all requirements of this Agreement.

# 4.4 Additional Capital Contributions. The Partners shall not be permitted to make Additional Capital Contributions to the Partnership without the consent of all of the Partners.

# 4.5 Capital Accounts. A Partnership capital account shall be established for each Partner and shall be maintained at all times throughout the existence of the Partnership. The amount in a Partner's capital account shall initially be the amount of such Partner's Initial Capital Contribution which shall be the fair market value of the assets such Partner contributed. A Partner's capital account shall be credited with its Additional Capital Contribution, and any other voluntary Capital Contribution made by such Partner when made, and such Partner's share of Partnership Profits. A Partner's capital account shall be decreased by the amount of money and the fair market value of property distributed to such Partner and by the amount of Partnership losses charged to such Partner. The capital accounts shall not bear interest. Additional Capital Contributions shall be recorded at the fair market value of the assets contributed by the Partner and the distributions to a Partner shall also be recorded at the fair market value of the assets distributed.

# 4.6 Return of Capital. No Partner shall have the right to withdraw, demand a return or reduce his, her or its Capital Contribution to the Partnership. In the event a return of or reduction in the capital account of a Partner is made, any amounts paid to such Partner shall be reduced by all costs, fees and other expenses incurred by the Partnership in facilitating such return of or reduction in capital.

# 4.7 Additional Operating Capital.

# (a) Each Partner may from time to time be required to make an Additional Capital Contribution pursuant to this section. Any such contribution shall be made within thirty (30) days from the date of written notice by the Partners. If the cash receipts are insufficient to pay the obligations of the Partnership, the Partners are hereby expressly authorized to borrow, on behalf of the Partnership, such sums of money sufficient to offset negative cash flow. To secure any such loan, the Partners or record title holder, are hereby authorized and empowered to pledge, mortgage or otherwise encumber or hypothecate the Partnership Property. Should the Partners not be able to borrow on behalf of the Partnership such funds as are necessary to timely discharge Partnership obligations, then the Partners may assess each Partner, based upon such Partner's pro rata ownership interest in the Partnership, such sum or sums as are necessary to timely discharge Partnership obligations. All sums raised by the Partners pursuant to this section shall be used solely for Partnership purposes.

# (b) If a Partner fails to make a required Additional Capital Contribution pursuant to section 4.7 hereof, the Partnership may exercise, on notice to that Partner (the "Delinquent Partner"), one or more of the following remedies:

# (1) Taking such action, at the cost and expense of the Delinquent Partner, to obtain payment by the Delinquent Partner, of the portion of the Delinquent Partner's Additional Capital Contribution that is in default, together with interest on that amount at the Default Rate of Interest from the date that the Additional Capital Contribution was due until the date that it is made;

# (2) Permitting the Partners in proportion to their ownership interests in the Partnership, or in such other percentages as they may agree (the "Lending Partner", whether one or more), to advance the portion of the Delinquent Partner's Additional Capital Contribution that is in default, with the following results:

# (i) The sum advanced constitutes a loan from the Lending Partner to the Delinquent Partner and an Additional Capital Contribution of that sum to the Partnership by the Delinquent Partner;

# (ii) The principal balance of the loan and all accrued unpaid interest is due and payable on the tenth day after written demand by the Lending Partner to the Delinquent Partner;

# (iii) The amount lent bears interest at the Default Rate of Interest from the date that the advance is deemed made until the date that the loan, together with all interest accrued, is repaid to the Lending Partner;

# (iv) All distributions from the Partnership that would be made to the Delinquent Partner shall be paid to the Lending Partner until the loan and all interest accrued have been paid in full;

# (v) The payment of the loan and interest accrued to the Lending Partner is secured by a security interest in the Delinquent Partner's ownership interest in the Partnership;

# (vi) The Lending Partner has the right, in addition to the other rights and remedies granted to the Lending Partner under this Agreement or at law or in equity, to take any action, at the cost and expense of the Delinquent Partner, that the Lending Partner may deem appropriate to obtain payment by the Delinquent Partner of the loan and all accrued and unpaid interest;

# (3) Exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas; or

# (4) Exercising any other rights available at law or in equity.

# Each Partner grants to the Partnership, and to the Lending Partner with respect to any loans made by the Lending Partner to a Delinquent Partner, as security, equally and ratably for the payment of all Additional Capital Contributions that Partner has agreed to make and the payment of all loans and interest accrued made by the Lending Partner to that Partner, a security interest in such Partner's ownership interest in the Partnership under the Uniform Commercial Code of the State of Texas. On any default in the payment of a required Additional Capital Contribution or in the payment of a loan or interest accrued, the Partnership or the Lending Partner, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Texas with respect to the security interest granted.

# 4.8 Use of Contributions. The cash and property contributed by the Partners, initially being the aggregate amounts reflected on Exhibit "A," will be utilized by the Partnership for the purposes of the Partnership set forth in Article III.

# 4.9 Nature of Interests. All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity. No Partner shall have any direct ownership of any Partnership property.

# ARTICLE V

# ACCOUNTING

# 5.1 Profits and Losses. Profits or Losses for any fiscal year shall be allocated among the Partners in proportion to their ownership interests in the Partnership, unless a different allocation is agreed to in writing by all of the Partners.

# 5.2 Fiscal Year and Annual Accounting. The Partnership fiscal year shall be the calendar year. The Partnership books shall be kept on the cash receipts and disbursements method of accounting or in accordance with generally accepted accounting principles, at the discretion of the Partners. The Partnership shall furnish to the Partners, on a quarterly basis, accounting reports reflecting Partnership income and expenses. In addition, the Partnership shall provide the Partners with the full annual Partnership tax return for the preceding year in a timely manner to comply with all Code reporting deadlines.

# ARTICLE VI

# DISTRIBUTIONS

# 6.1 Distributions of Partnership Funds. Distributions of Distributable Cash shall be made at such times as may be determined by a majority-in-interest of the Partners, but no less frequently than annually, as provided in this section 6.1. Unless agreed in writing by a transferor and transferee, Distributable Cash allocable to a transferred Partnership interest which may have been transferred during any year shall be distributed to the holder of such Partnership interest who was recognized as the owner on the date of such distribution, without regard to the results of Partnership operations during the year. With regard to Distributable Cash and other Partnership Property, the Partners shall make a determination, in accordance with such Partners' duty of care and loyalty to the Partnership, as to the need for the Partnership Property in the operation of the Partnership business, considering current needs for operating capital and prudent reserves for future operating capital, all in keeping with the Partnership's purposes. It is the duty of the Partners, in determining the amount of Distributable Cash available for the payment of distributions, to take into account the needs of the Partnership in its business and sums necessary in the operation of its business until the income from further operations is available, the amounts of its debts, the necessity or advisability of paying its debts, or at least reducing such debts within the limits of the Partnership's credit, and the preservation of its capital as represented in the Partnership Property as a fund for the protection of its creditors.

# 6.2 Loans. Any Person may, with the consent of all of the Partners, lend or advance money to the Partnership. If any Partner shall make any loan or loans to the Partnership or advance money on its behalf, the amount of any such loan or advance shall not be treated as a Capital Contribution but shall be a debt due from the Partnership. The amount of any such loan or advance by a lending Partner shall be repayable out of the Partnership's cash and shall bear interest at such rate as the Partners and the lending Partner shall agree but not in excess of the maximum rate permitted by law. If a Partner, or an Affiliate of a Partner, is the lending Partner, the rate of interest shall be determined by the Partners taking into consideration, without limitation, prevailing interest rates and the interest rates such Partner or an Affiliate of such Partner would be required to pay in the event such Partner or Affiliate of such Partner had itself borrowed funds to loan or advance to the Partnership, and the terms and conditions of such loan, including the rate of interest, shall be no less favorable to the Partnership than if the lender had been an independent third party.

# 6.3 Tax Distributions. If for any Partnership Year, the Partnership reports taxable income (including gains from the disposition of Partnership Assets), the Partners shall cause the Partnership to distribute Distributable Cash in amounts sufficient to pay the federal income tax liability of each Partner associated with the Partnership's taxable income. Such distribution shall be made to the Partners in proportion to the taxable income allocated to them in accordance with the provisions of this Agreement and shall be in an amount equal to the taxable income so allocated multiplied by the maximum rate of federal income tax imposed upon individuals under the Code at the time such allocation is made.

# ARTICLE VII

# POWERS, RIGHTS AND DUTIES OF PARTNERS

# 7.1 Time Devoted to Partnership Business. The Partners shall not be required to devote full time to the affairs of the Partnership, but shall diligently and faithfully devote whatever time, effort, and skill may be necessary for the conduct of the Partnership's business, and shall perform all of the duties of a Partner which are provided for in this Agreement and the Code.

# 7.2 Management. At any time, 80% of the then outstanding ownership interest of the Partners may appoint a Partner as Managing Partner. The Managing Partner shall serve until the designation is revoked, until such Managing Partner is removed by vote of 51% of the then outstanding ownership interest of the Partners, or until the Managing Partner ceases to serve for any other reason. If a Managing Partner is designated, the Managing Partner is authorized and directed to manage and control the assets and the business of the Partnership. The Managing Partner may exercise all of the powers which could be exercised by majority-in-interest of the Partners, subject to the limitations described in sections 7.4 and 7.5 of this Agreement. It is understood and agreed that the Managing Partner shall consult and confer with the Partners before taking any steps resulting in any substantial change in the operation or policies of the Partnership affairs, or the sale of any portion of the Partnership assets other than in the usual course of business, or in any manner which affects the Partnership business in a manner judged unusual by the Partners in the ordinary operation of the Partnership business. If a Managing Partner is serving as such, any reference to "Partner" or "Partners" in this Agreement shall also include "Managing Partner" if applicable.

# 7.3 Authority of Partners. Subject to the limitations of this Agreement, and to the duties, obligations and limitations imposed upon the Partners at law, the Partners shall manage the day-to-day operations of the Partnership. The Partners shall have the authority to take any action which the Partners believe in good faith to be in furtherance of the Partnership business and purposes and to exercise all rights and powers generally conferred by law in connection therewith. No Person dealing with the Partnership shall be required to inquire into, or obtain any consents or other documentation as to the authority of the Partners to take any such action or to exercise any such rights or powers. Specifically:

# (a) The Partners shall have the right, power and authority on behalf of the Partnership:

# (1) To receive and hold all Partnership Property in the name of the Partnership;

# (2) To obtain and maintain such insurance as is deemed to be desirable and appropriate by the Partners;

# (3) To open, maintain, and close bank accounts, brokerage accounts and checking accounts in the name of the Partnership, to designate and change signatories on such accounts, and to draw checks and other orders for the payment of monies;

# (4) To engage accountants, attorneys and any and all other agents and assistants, both professional and non-professional, which may include the Partners, and to compensate them reasonably for services rendered;

# (5) To collect all sums due to the Partnership;

# (6) To prepare and file all tax returns of the Partnership and to make all elections for the Partnership thereunder;

# (7) To the extent that funds of the Partnership are available therefor, to pay as they become due all debts and obligations of the Partnership;

# (8) To vote and exercise all other rights available to the holder of any securities included in the Partnership Property; and

# (9) To take any and all other action, including legal action, that the Partners deem necessary, appropriate or advisable in furtherance of the Partnership's business and purposes.

# (b) The Partners shall have the sole authority to manage, deal with, negotiate and contract with respect to, and convey the Partnership Property on behalf of the Partnership.

# (c) The Partners shall act in good faith in the performance of the Partners' obligations hereunder but shall have no liability or obligation to any other Partner or the Partnership for any decision made or action taken in connection with the discharge of the Partners' duties hereunder if such decision or action is made or taken in good faith and in the exercise of due care in connection with the Partnership business.

# (d) The Partners shall have the power to designate, from time to time, a depository of Partnership funds, and to draw upon the same for Partnership purposes.

# (e) Any person dealing with the Partnership or the Partners may rely on a certificate signed by the Partners concerning:

# (1) The identity of the Partners;

# (2) The existence or nonexistence of any fact or facts that constitute conditions precedent to acts by the Partners or in any other manner germane to the business and affairs of the Partnership;

# (3) The person or persons who are authorized to execute and deliver any instrument or document of the Partnership; or

# (4) Any act or failure to act by the Partnership or concerning any other matter whatsoever involving the Partnership or any Partner.

# 7.4 Requirement of Unanimous Consent. The Partners shall not have the authority to enter into any of the following transactions without the unanimous consent of all the Partners:

# (a) Terminate, liquidate and wind up the Partnership, except as otherwise provided in this Agreement;

# (b) Admit additional or substitute Partners, except as otherwise provided in this Agreement;

# (c) Do any act that would make it impossible to carry on the purposes of the Partnership and business of the Partnership;

# (d) Engage in any business activity other than that which is consistent with the purposes of the Partnership;

# (e) Amend this Agreement, except as otherwise provided in this Agreement.

# 7.5 Restrictions on Partners. The Partners will not have the authority to enter into any of the following transactions without the consent of 80% of the outstanding ownership interest of the Partners:

# (a) Prior to the actual termination of the Partnership, sell substantially all of the Partnership Property in liquidation or cessation of business;

# (b) Compromise any claim or dispute having an amount or value in issue in excess of 50% of the total value of the Partnership Property;

# (c) Sell, assign, lease, exchange, convert or otherwise transfer or dispose of all or part of the Partnership Property;

# (d) Mortgage, pledge, grant a security interest in, or incur, renew, or refinance any indebtedness of the Partnership;

# (e) Confess a judgment against the Partnership;

# (f) Do any act in violation of this Agreement; and

# (g) Make, execute or deliver any assignments for the benefit of creditors.

# 7.6 Dissolution or Bankruptcy of a Partner. On the dissolution or bankruptcy of a Partner, such Partner and his, her or its successors shall thereafter have the status of a Transferee and shall receive distributions to which such Transferee is entitled.

# 7.7 Indemnification of the Partners. The Partners shall be jointly and severally indemnified and held harmless by the Partnership and by each other to the extent of each Partner's individual ownership in the Partnership from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever, arising out of or incidental to the management of the Partnership affairs or to any Persons acting as an employee while in the course of managing the Partnership affairs; provided, however, that no Partner shall be entitled to indemnification hereunder where the claim at issue is based upon any of the following:

# (a) A matter entirely unrelated to such Partner's management of the Partnership affairs.

# (b) The proven gross negligence, misconduct, fraud or bad faith of such Partner.

# (c) The proven breach by such Partner of any provisions of this Agreement.

# The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies, and resources to which the Partners, shall be entitled, whether pursuant to some other provisions of this Agreement, at law or in equity.

# ARTICLE VIII

# MANAGEMENT FEES AND OTHER EXPENSES

# 8.1 Salary, Fees and Draws. Except as provided in this Article or by unanimous agreement of the Partners, no Partner shall receive any salary, fee, or draw for services rendered to or on behalf of the Partnership.

# 8.2 Expenses. In connection with the operation of the Partnership, the Partners shall be reimbursed for any direct expenses reasonably incurred in connection with the Partnership's business; provided, however, that no such expense shall be incurred other than at a price which reflects a competitive market rate for such expense; and provided further, that no contract or arrangement entered into by a Partner on behalf of the Partnership with such Partner or an Affiliate shall be on terms less advantageous to the Partnership than that generally available from an unaffiliated third party. Without limiting the foregoing, the Partners may charge to the Partnership and pay or recover out of Partnership funds, as and when available, the following: all fees that may be required by applicable state or local authorities relating to the formation and operation of the Partnership or in compliance with the terms of this Agreement, including but not limited to, all filing fees for assumed name certificates, all reasonable expenses incurred by the Partners in connection with the organization and formation of the Partnership, all reasonable expenses incurred by the Partners to acquire, preserve, protect, or perfect the title to the Partnership Property or to operate and maintain such property, including, but not limited to, travel expenses, attorneys' fees, accountants' fees and court costs incurred in connection with such matters and any sums owed by the Partnership pursuant to any contract entered by the Partners pursuant to their authority under this Agreement; the cost of public liability insurance carried in connection with the business of the Partnership; taxes on property of the Partnership; principal and interest, and any other amounts whatsoever owing on any indebtedness of the Partnership, or any part hereof, or any instruments securing any of same, together with any expenses incurred in connection with renewing or rearranging such or any other indebtedness incurred for the benefit of the Partnership deemed necessary by the Partners; and normal closing costs reasonably incurred in the event of the lease, sale or other disposition of the Partnership Property.

# ARTICLE IX

# TRANSFERS OF PARTNERSHIP INTERESTS

# 9.1 Generally. No Partner may transfer all or any portion of such Partner's interest in the Partnership, without the prior consent of all of the Partners, which consent may be granted or withheld in the sole discretion of any Partner. Each Partner agrees with the Partnership and all of the other Partners that such Partner will not make or permit a disposition of all or any portion of its Partnership Interest in violation of the provisions of this Article IX.

# 9.2 Prohibited Transfers. Any purported Transfer by any Partner of an interest in the Partnership that is not consented to by all of the Partners under section 9.1 of this Agreement shall be null and void and of no effect whatever; provided that if the Partnership is required to recognize a Transfer that is not permitted (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not permitted), the rights of the Transferee shall be limited to those rights set forth in section 152.404 of the Code. In the case of a Transfer or attempted Transfer of an interest that is not a transfer consented to by all of the Partners under section 9.1 of this Agreement, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Partnership and the other Partners from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

# 9.3 Acquisition of an Interest Conveyed to Another Without Authority. If an unauthorized Transfer occurs because: (1) any Person acquires a Partnership Interest, or becomes a Transferee, as the result of an order of a court which the Partnership is required by law to recognize; (2) a Partner's interest in the Partnership is subjected to a lawful "charging order"; (3) a Partner's ex-spouse is awarded all or a portion of a Partner's partnership interest in a divorce proceeding; (4) a Partner dies; (5) a Partner's spouse dies; (6) a Partner makes an unauthorized Transfer of an interest in the Partnership; or (7) of the dissolution or bankruptcy of a Partner, the Partnership will have the unilateral option to acquire the interest of the Transferee, or any fraction or part thereof, upon the following terms and conditions:

# (a) The Partnership will have the option to acquire the interest by giving written notice to the Transferee of its intent to purchase within ninety (90) days from the date it is finally determined that the Partnership is required to recognize the Transfer. If the Partnership fails to exercise its option within such 90-day period, the remaining Partners shall have the option to acquire pro rata shares of such interest by giving written notice to the Transferee of their intent to purchase within ninety (90) days following the expiration of the expired 90-day option period held by the Partnership.

# (b) The valuation date for the determination of the purchase price of the interest will be the first day of the month following the month in which the notice is delivered.

# (c) Unless the Partnership and the Transferee agree otherwise, the purchase price for the interest, or any fraction to be acquired by the Partnership, shall be its fair market value as determined by a written valuation report prepared by a Person qualified to perform business valuations of partnerships and ownership interests in partnerships describing the value of the ownership interest in the Partnership. Payment for the cost of such valuation report shall be made by such Transferee. Closing of the sale will occur at the principal office of the Partnership at 10:00 a.m. on the first Tuesday of the month following the month in which the Appraisal is rendered. The purchase price paid by the Partnership shall be reduced by any costs or fees incurred by the Partnership in acquiring the interest of such Transferee.

# (d) In order to reduce the burden upon the resources of the Partnership, the Partnership will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in fifteen (15) equal annual installments (or for a period of time equal to the remaining term of the Partnership if such period is less than fifteen (15) years) with interest at the Default Rate of Interest. The first installment of principal, with interest, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership will have the right to prepay all or any part of the purchase money obligation at any time without penalty.

# (e) Neither the Transferee of an unauthorized Transfer nor the Partner causing the unauthorized Transfer shall have the right to vote on Partnership matters during the prescribed option period or, if the option to purchase is timely exercised, until the sale is closed.

# 9.4 Survival of Liabilities. It is expressly understood and agreed that no Transfer of a Partnership Interest, even if it subsequently results in the substitution of the Transferee as a Partner herein, shall release the transferor or assignor from those liabilities as to the Partnership which survive such Transfer as a matter of law.

# 9.5 Partnership Interest Pledge or Encumbrance. No Partner may grant a security interest or otherwise pledge, hypothecate or encumber his, her or its interest in this Partnership or such Partner's distributions without the consent of all the Partners. It is understood that the Partners are under no obligation to give consent nor are they subject to liability for withholding consent.

# 9.6 Nonrecognition of an Unauthorized Transfer. The Partnership will not be required to recognize the interest of any Transferee who has obtained a purported transferred interest as the result of a Transfer that is not authorized by this Agreement and the Transfer shall be null and void for all purposes. If there is doubt as to ownership of an interest in the Partnership or who is entitled to distributions or liquidating proceeds or other property, the Partners may accumulate such property until the issue is resolved to the satisfaction of the Partners.

# ARTICLE X

# TERMINATION AND WINDING UP PARTNERSHIP BUSINESS

# 10.1 Winding Up and Termination of Partnership. The Partnership shall continue after the occurrence of an event requiring winding up until the winding up of its business is completed, at which time the Partnership shall be terminated.

# 10.2 Conduct of Winding Up.

# (a) The following Persons are authorized to wind up the business of the Partnership:

# (1) First, the Partners who have not withdrawn may wind up the Partnership's business;

# (2) Second, the legal representative of the last surviving Partner may wind up the Partnership's business; or

# (3) any Person appointed by a court to carry out the winding up.

# (b) To the extent appropriate for winding up, as soon as reasonably practicable, and in the name of and for and on behalf of the Partnership, a Person winding up the Partnership's business may:

# (1) prosecute and defend civil, criminal, or administrative suits;

# (2) settle and close the Partnership's business;

# (3) dispose of and convey Partnership Property;

# (4) satisfy or provide for the satisfaction of the Partnership's liabilities;

# (5) distribute to the Partners any remaining Partnership Property; and

# (6) perform any other necessary act.

# (c) A Person winding up the Partnership's business may continue the business of the Partnership in whole or in part, including delaying the disposition of Partnership Property, but only for the limited period necessary to avoid unreasonable loss of the Partnership Property or business.

# 10.3 Partner's Liability to Partnership For Incurring Inappropriate Liability After Occurrence of Event Requiring Winding Up. A Partner who, with notice that an event requiring a winding up has occurred, incurs a Partnership liability under section 10.04(b) by an act that is not appropriate for winding up the Partnership business shall be liable to the Partnership for a loss caused to the Partnership arising from that liability.

# 10.4 Partner's Power to Bind Partnership After Occurrence of Event Requiring Winding Up. After the occurrence of an event requiring winding up, the Partnership shall be bound by a Partner's act that:

# (a) is appropriate for winding up the Partnership business; or

# (b) would otherwise bind the Partnership before the occurrence of the event requiring winding up, if the other party to the transaction does not have notice that an event requiring winding up has occurred.

# 10.5 Rules for Distribution on Winding Up.

# (a) In winding up the Partnership business, the Partnership Property, including the contributions of the Partners required by this section 10.5, shall be applied to discharge its obligations to creditors, including, to the extent permitted by other applicable law, Partners who are creditors other than in their capacities as Partners. Any surplus must be applied to pay in cash the net amount distributable to Partners in accordance with their right to distributions under subsection 10.5(b).

# (b) Each Partner shall be entitled to a settlement of all Partnership accounts on winding up the Partnership business. In settling accounts among the Partners, the Partnership interest of a withdrawn Partner that has not been redeemed under Chapter 152, Subchapter H of the Code shall be credited with a share of any profits for the period after the Partner's withdrawal but shall be charged with a share of losses for that period only to the extent of profits credited for that period, and the profits and losses that result from the liquidation of the Partnership Property shall be credited and charged to the Partners' capital accounts. The Partnership shall make a distribution to each Partner in an amount equal to that Partner's positive balance in the Partner's capital account. Except as provided by section 152.304(b) or 152.801 of the Code, each Partner shall contribute to the Partnership an amount equal to that Partner's negative balance in the Partner's capital account.

# (c) Except as provided by section 152.304(b) or 152.801 of the Code, to the extent not taken into account in settling the accounts among Partners under subsection 10.5(b) above:

# (1) each Partner must contribute, in the proportion in which the Partner shares Partnership losses, the amount necessary to satisfy Partnership obligations, excluding liabilities that creditors have agreed may be satisfied only with Partnership Property without recourse to individual Partners;

# (2) if a Partner fails to contribute, the other Partners shall contribute, in the proportions in which the Partners share Partnership losses, the additional amount necessary to satisfy the Partnership obligations; and

# (3) a Partner or Partner's legal representative may enforce or recover from the other Partners, or from the estate of a deceased Partner, contributions the Partner or estate makes to the extent the amount contributed exceeds that Partner's or the estate's share of the Partnership obligations.

# (d) The estate of a deceased Partner shall be liable for the Partner's obligation to contribute to the Partnership.

# (e) The Partnership, an assignee for the benefit of creditors of the Partnership or a Partner, or a person appointed by a court to represent creditors of the Partnership or a Partner may enforce the obligation of a Partner or the estate of a deceased Partner to contribute to the Partnership.

# ARTICLE XI

# MISCELLANEOUS

# 11.1 Notices. Any notices required hereunder shall be sent to the Partners by personal service or by certified or registered mail, return receipt requested, at the address set forth for such parties, respectively, on Exhibit "A" of this Agreement. By giving to the Partnership and each Partner written notice thereof, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America. No transferee of any interest of any Partner shall be entitled to receive a notice independent of the notice sent to the Partner making such transfer.

# 11.2 Additional Instruments. Each Partner hereby agrees to execute all such agreements, certificates, tax statements, tax returns and other documents as may be required by law to effectuate the provisions contained herein.

# 11.3 Applicable to Successors. This Agreement and each provision herein shall be binding upon and applicable to, and shall inure to the benefit of, the parties hereto and their respective heirs, legatees, devisees, successors, assigns and legal representatives, except as otherwise expressly provided herein.

# 11.4 Waiver. No consent or waiver, express or implied, by any parties hereto of the breach or default by any other party or parties hereto in the performance by any such party or parties of its or their obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach of default in the performance of such other or others of the same or any other obligations of such other or others hereunder. Failure on the part of any party hereto to complain of any act of any of the other parties or to declare any of the other parties hereto in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

# 11.5 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

# 11.6 Amendment. This Agreement may be amended or modified at any time only if all Partners agree to such amendment or modification in writing.

# 11.7 Waiver of Rights to Partition. Inasmuch as all real and personal property owned by the Partnership is owned by the Partnership as an entity, and no party hereto, individually, has any ownership in such property, none of the parties hereto shall have any right to partition any of the Partnership Property, and all parties hereto hereby irrevocably waive any and all rights that any party hereto might have to maintain any action for partition of any of the Partnership Property with respect to their undivided interest, if any, therein, either as a partition in kind or a partition by sale.

# 11.8 Meetings of the Partners. Meetings of the Partners may be called upon the written request of 51% of the then outstanding ownership interests of the Partners. Notice of any such meeting shall be given to all Partners not less than seven (7) business days nor more than thirty (30) business days prior to the date of such meeting and shall state the nature of any business to be transacted thereof. Partners may vote in person or by proxy at such meeting. Whenever the vote or consent of Partners is permitted or required under this Agreement, such vote or consent may be given at a meeting of Partners. Except as otherwise expressly provided in this Agreement, the vote of a majority in interest (at least 51% of the then outstanding ownership interest) of the Partners shall control. For the purpose of determining the Partners entitled to vote on, or to vote at, any meeting of the Partners or any adjournment thereof, the Partners requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) business days nor less than ten (10) business days before any such meeting. Each Partner may authorize any Person or Persons to act for it by proxy on all matters in which a Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Partner or his, her or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable by the Partner executing it. Each meeting of the Partners shall be conducted by the Partners or such other Person as the Partners may appoint pursuant to such rules for the conduct of the meeting as the Partners or such other Person deem appropriate.

# 11.9 Action Without Meeting. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if written consent setting forth the action to be taken is signed by all Partners entitled to vote. This consent will have the same force as a unanimous vote of the Partners. The original signed consents shall be kept with the Partnership records.

# 11.10 Counterparts. This Agreement may be signed in a number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.

# 11.11 Gender. Wherever in this Agreement, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this Agreement, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply.

# 11.12 Attorney Fees. In the event a dispute arises between any Partner(s) and the Partnership or between the Partners, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs incurred.

# 11.13 Foreign Qualification. Prior to the qualification of the Partnership to conduct business in any jurisdiction other than Texas, the Partners shall cause the Partnership to comply, to the extent procedures are available and those matters are reasonably within the control of the Partners, with all requirements necessary to qualify the Partnership as a foreign partnership in that jurisdiction. At the request of the Partners, each Partner shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with the terms of this Agreement that are necessary or appropriate to qualify, continue and terminate the Partnership as a foreign partnership in all jurisdictions in which the Partnership may conduct business.

# 11.14 Governing Law. This Agreement shall be subject to, and governed by, the laws of the State of Texas.

# 11.15 Reliance by Third Parties. Notwithstanding any other provision of this Agreement, any action taken by the Partners on behalf of the Partnership shall be binding as to any Person who acts in reliance on the authority of the Partners taking such action, and such Person shall have no duty to ascertain whether such Partner has such authority even if such action appears to be prohibited by this Agreement. Any Person dealing with the Partnership or the Partners may rely upon a certificate signed by the Partners as to: (a) the identity of the Partners; (b) any conditions precedent to acts by the Partnership; (c) the Persons who are authorized to execute any documents and bind the Partnership; and (d) any other matter involving the Partnership or any Partner.

# 11.16 Entire Agreement. The Agreements and representations in this Partnership Agreement contain all of the Agreements and representations of the parties hereto, and it is expressly provided that the Partners shall not be liable for any claim that may hereafter be made alleging any verbal agreement by and between the Parties hereto and the Partners, or any Partner's agents, employees or associates.

# 11.17 Headings. The heading of each of the articles and sections of this Agreement are inserted for convenience only and shall not be considered in construing the terms of this Agreement.

# EXECUTED in multiple counterparts, by the Partners on the date indicated opposite their respective signatures below, all effective on the date aforementioned.

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| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name of Partner |

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

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name of Partner |

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

# EXHIBIT "A"

# PARTNERSHIP AGREEMENT OF

# NAME OF PARTNERSHIP

# PARTNER'S NAME, ADDRESSES, PERCENTAGE INTERESTS

# AND INITIAL CAPITAL CONTRIBUTIONS

|  |  |  |
| --- | --- | --- |
| Name and Address | Percentage Partnership Interest | Initial Capital Contribution |

|  |
| --- |
| Partner Name and Address: |

|  |  |  |
| --- | --- | --- |
|  | \_\_\_\_\_\_\_\_% | $\_\_\_\_\_\_\_\_\_\_ |

|  |  |  |
| --- | --- | --- |
|  | \_\_\_\_\_\_\_\_\_% | $\_\_\_\_\_\_\_\_\_\_ |

# 