

## PARTNERSHIP AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of 20\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_ (the "Partners").

### WITNESSETH:

WHEREAS, the Partners have formed a partnership for the purpose of owning one or more parcels of real estate and the improvements thereon and certain items of tangible personal property ("Property"); and

WHEREAS, the Partners each have a \_\_\_\_\_ percent (\_\_\_\_%) interest in the Partnership and desire to set forth their respective rights, obligations and interests in respect to the Partnership and Property;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. *Recitations.* The above recitations are true and correct.

2. *Formation, Name, Purposes, and Term.* The Partners hereby form and establish a partnership (the "Partnership") to be conducted under the name and style of "\_\_\_\_\_" or such other name as the Partners may from time to time determine, such Partnership to be under the terms and provisions set forth in this Agreement. The principal office and place of business of the Partnership shall be located at such place in \_\_\_\_\_ County, \_\_\_\_\_, as the Partners may from time to time determine.

The purposes of the Partnership are:

- a. To purchase or receive as a contribution the Property described on Exhibit "A" and such other properties as the Partners deem desirable;
- b. To own, maintain, renovate, lease, sell, manage, develop, and operate the Property and the improvements presently; and
- c. To engage in such other business or activities or do such other things as the Partners may unanimously hereinafter decide.

The term of this Partnership shall be from the date hereof to \_\_\_\_\_, unless sooner terminated, as hereinafter provided.

3. *Percentage of Ownership in the Partnership.* The Partners own the following percentage of interest in and to the Partnership and its property and assets:

4. *Capital and Loans to the Partnership.* The Partners shall each make initial capital contributions of \_\_\_\_\_ to the Partnership on or before \_\_\_\_\_. In the event the Partnership shall need sums in excess of the initial capital contributions, the Partners hereby agree to make additional capital contributions and/or loans to the Partnership in such amounts and at such times as a majority in interest of the Partners shall agree.

Loans to the Partnership by the Partners shall be repaid in full before any payments pursuant to paragraph 6 hereof may be made. Additional capital contributions and/or loans to the Partnership shall be made in good faith and shall only be required in order to carry out the business of the Partnership. In the event a call for a capital contribution or a call for a loan is made, each Partner shall have thirty (30) days from the date of receipt of such written notice to pay his percentage (as determined by his percentage of Partnership interest) share of such amount requested. In the event that any Partner does not advance his share of the capital contribution and/or loan within the time provided, the other Partner shall have the right to advance such funds not advanced by the defaulting Partner in the proportion of their Partnership interests, or such other proportions as they may agree among themselves.

The refusal or failure of any Partner to advance the capital contribution and/or loan within the time required hereunder shall cause the Partnership interest of such defaulting Partner to be adjusted downward to the percentage that is equivalent to the following fraction:

The numerator shall be the sum of such Partner's capital contributions to the Partnership and his loans advanced to date to the Partnership, and the denominator shall be the sum of the capital contributions and the loans of the Partnership of all the Partners to date.

— For example, assume Mr. X, a twenty (20%) percent Partner who has paid in his share (\$1,800.00) of the Partner's total contributions to capital (\$9,000.00) would be required to contribute twenty (20%) percent of a capital contributions called for by the Partners. If there was a call for a capital contribution of \$9,000.00, and all Partners except Mr. X advanced his respective share, Mr. X's interest in the Partnership would equal the following percentage:

\$1,800.00	(Mr. X's capital contribution)
\$9,000.00	(Total initial capital contribution)
	plus \$7,200.00
	(contributions by non-defaulting Partners)

\$ 1,800.00  
\$16,200.00

The Partnership interest of the non-defaulting Partners shall be increased by the percentage decrease in the defaulting Partner's interest, such interest to be allocated among them in proportion to their respective interest in the Partnership prior to such default; provided, however, that if a non-defaulting Partner advances part or all of the called for capital contribution and/or loan not advanced by the defaulting Partner hereunder, and if such advances are not made in proportion to their respective Partnership interests, any increases in the Partnership interest of the non-defaulting Partners shall be first allocated among them in proportion to the fraction of the amount of the capital contribution and/ or loan not made by the defaulting Partner that each non-defaulting Partner actually paid.

5. *Capital Account.* A capital account shall be established for each Partner on the books of the Partnership, and there shall be credited to each Partner's capital account, any additional capital contributions and his share of undistributed profits of the Partnership. There shall be charged against each Partner's capital account the amount of all distributions made by the Partnership to each Partner and his share of any losses of the Partnership. No Partner shall have the right to withdraw any capital which he has paid to the Partnership, except in accordance with the provisions of this Agreement. No additional capital contributions shall be made or shall be required to be made to the Partnership, except as expressly set forth in this Agreement.

Upon a distribution of property to a Partner other than in liquidation of such Partner's interest in the Partnership, the Partnership, for capital account purposes, will be deemed to have disposed of the property for its fair market value in a taxable transaction. The gain or loss from the deemed sale shall be allocated among the capital accounts of all Partners in such a manner as gain or loss would be allocated among the Partners had there been an actual taxable disposition of such property.

In the event of a property distribution to a Partner in liquidation of such Partner's interest in the Partnership, the gain or loss from the deemed sale shall be first allocated to the liquidating Partner to the extent needed to cause such Partner's capital account to equal the fair market value of the property distributed. The remaining gain or loss from the deemed sale shall be allocated to the remaining Partners in accordance with a partner's capital account.

For example, assume partnership X has three partners, A, B and C who each have a \$100.00 capital account. Further, assume X owns the following assets:

	<i>Book Value</i>	<i>FMV</i>	<i>Gain on Deemed Sale</i>
Property (1)	\$100	\$200	\$100
Property (2)	50	200	150
Property (3)	150	200	50

If X distributes property (2) to A in liquidation of his interest in the Partnership, \$100.00 of the gain on the deemed sale would be allocated to A so as to cause A's capital account to equal the fair market value of the distributed property. The remaining \$50.00 of gain would be allocated equally to B and C. The sum of B and C's capital accounts would then equal \$250.00 which would balance with X's book value of its remaining assets.

In the event the allocation of such gain is not sufficient to cause the capital account of the liquidating Partner to equal the fair market value of the distributed property (for example, if X distributed property (3) to A), the Partnership, if permitted by Treas. Reg. 1.704-1(b)(2)(iv)(f), shall cause a "gross up" of the book value of the remaining Partnership assets to their respective fair market values with a corresponding adjustment to the capital accounts of the remaining Partners.

6. *Allocation of Profits and Losses, Cash Flow and Distribution Thereof.* All profits, losses and cash flow (as hereinafter defined) of the Partnership shall be allocated and distributed annually on a pro rata basis in accordance with the percentages of interest of each Partner in the Partnership.

Cash Flow shall be defined for the purposes of this Agreement as the taxable income for federal income tax purposes as shown on the books of the Partnership increased by:

- a. the amount of depreciation deductions taken in computing such taxable income; and
- b. non-taxable income or receipts of the Partnership (excluding capital contributions), and reduced by:

(1) payments upon the principal of any mortgages upon Partnership Property or of any other Partnership obligations or loans which are not otherwise tax deductible; and

(2) expenditures for the acquisition of replacements or capital improvements (except to the extent already deducted in arriving at taxable income referred to above).

7. *Powers.* The Partnership shall have authority and power to:

- a. acquire real or personal property or any interest therein;
- b. lease all or any part of its property for terms which may extend beyond the duration of the Partnership;
- c. borrow money and, as security therefor, mortgage all or any part of its property, obtain any replacement of any such mortgage, prepay in whole or in part, refinance, recast, increase or modify any mortgages or security affecting its property, all for terms which may extend beyond the duration of the Partnership;

d. sell, assign or convey all or any part of its property;  
e. lend its funds or make guarantees of obligations of others upon such terms as the Partners shall determine;  
f. employ such persons, firms, or companies as the Partners shall determine for the operation and management of the Partnership's Property and business on such terms and for such compensation as the Partners shall determine;  
g. retain counsel, accountants, financial advisors, and other professional personnel; and  
h. engage in such other activities and incur such other expenses as may be necessary or appropriate for the furtherance of the Partnership's purposes, and execute, acknowledge and deliver any and all instruments necessary to the foregoing.

All real and personal property owned by the Partnership shall be kept in such names as the Partners may determine from time to time.

8. *Decisions.* All decisions, approvals, consents, or authorizations of the Partnership shall require and be made by the concurrence or approval by \_\_\_\_\_ percent (\_\_\_\_%) in interest of the Partners, except as otherwise specifically provided in this Agreement.

9. *Management.* A Managing Partner will be selected by a majority in interest of the Partners, and he shall receive no compensation from the Partnership for services rendered to the Partnership, but shall be entitled to reimbursement for expenses reasonably incurred or monies expended on behalf of the Partnership. A management company may be employed to operate the Partnership Property, and the cost thereof shall be considered an expense of the Partnership and not as compensation or payment of services to any Partner. The Managing Partner shall have the full authority and responsibility for the day-to-day operation of Partnership. The Managing Partner shall serve until removed by a majority in interest of the Partners or until he resigns.

10. *Accounting.* The books and records of the Partnership shall be maintained in accordance with proper accounting principles. The fiscal year of the Partnership shall be the calendar year. Periodically, as determined by the Partners and their accountants, there shall be prepared and delivered to each partner a statement showing the results of operations during such determined period. The Partnership may employ as its accountants a firm of certified public accountants satisfactory to the Partners. Each Partner shall be furnished with copies of all statements prepared by the accountants for the Partnership and shall have access to all of the Partnership books and records. The Partnership shall furnish to each Partner such reports on the Partnership's operation and condition as may be reasonably requested by any Partner.

All receipts, funds and income of the Partnership shall be deposited in such banks as are mutually determined by the Partners. Single withdrawals in excess of \$1,000.00 (of multiple withdrawals in excess of \$1,000.00 within a three (3) day period) from said banks shall be made only with the consent of all the Partners, and there shall be no commingling of the monies and funds of the Partnership with monies and funds of any other entity, and said monies and funds shall be maintained in separate and distinct accounts of the Partnership.

11. *Restriction of Transfer or Pledge of Interests in the Partnership.* Except as expressly provided herein, no Partner shall sell, transfer, assign, syndicate, pledge or otherwise dispose of or encumber any interest in the Partnership, its property or assets without prior written consent of all the Partners.

a. In the event a Partner desires to make a gift of part or all of his Partnership interest to his wife and/or his children and/or an entity in which his wife and/or children have a beneficial or equitable interest of at least percent (%) of such entity, the transferring Partner shall secure the written approval of the other Partners before effectuating such transfer. In the event one or more of the other Partners do not agree to such transfer, the transferring Partner shall be prohibited from making such transfer, but shall have the right to again propose a transfer identical to, or substantially similar to, the prohibited transfer after six (6) months have expired from the date that such proposed transfer was not approved.

b. In the event a Partner desires to transfer a part or all of his Partnership interest to a party who is not presently a Partner (except for a transfer under Subparagraph 11(a) hereof), the transfer shall be subject to the following terms and conditions:

(1) If the proposed transfer occurs within two (2) years from the date of this Agreement, the Partnership shall have the right to purchase the Partnership interest being offered for sale at a purchase price equal to the total amount of capital contributions to the Partnership by the selling Partner. The purchase price shall be paid by the Partnership paying twenty-five (25%) percent of the purchase price at Closing, and the remainder shall be paid in three (3) equal annual installments commencing one (1) year after the date of Closing with subsequent payments on each anniversary date thereafter until fully paid. The interest rate for such preferred payments shall be at the rate of nine (9%) percent per annum and shall be paid with each principal installment. If the Partnership desires to purchase the interest of the selling Partner, it must do so within thirty (30) days of the date that the selling Partner gives written notice of his desire to transfer his interest to the non-Partner.

(2) If the proposed transfer occurs subsequent to the two (2) year period from the date of this Agreement, the Partnership shall have the right to purchase the interest of the selling Partner in the same manner as provided in subparagraph (i) of this Paragraph (b) of this Article 11, except that the purchase price shall be equal to the greater of

the capital contributions to the Partnership of the selling Partner or the fair market value of the Partner's Partnership Interest as determined herein by the accountant of the Partnership, and such determination shall be binding upon all Partners. \_\_\_\_\_ fair market value of such Partnership Interest, as determined by the certified public accountant regularly utilized by the Partnership, and such determination shall be binding upon all parties.

c. Upon the death of a Partner, the Partnership shall purchase the interest of such deceased Partner for a purchase price which is equal to the greater of the amount of such deceased Partner's capital contributions to the Partnership or the fair market of the Partner's Partnership Interest as determined herein by the accountant of the Partnership, and such determination shall be binding upon all parties. The purchase price shall be paid to the estate of such deceased Partner by the Partnership paying twenty-five (25%) percent of such purchase price at the Closing of such transaction, which shall be within sixty (60) days after the death of the deceased Partner, and the remainder shall be paid by the Partnership making three (3) annual installment payments commencing on the first anniversary of the Closing and each subsequent anniversary date thereafter until the purchase price is fully paid. Such installment payments shall bear interest at the rate of nine (9%) percent per annum, and such accrued interest payments shall accompany each installment payment.

d. In the event the relationship between one Partner and another Partner is such that they can no longer work together as Partners in order to operate the Partnership, each such dissenting Partner shall deliver to the certified public accountant employed by the Partnership a sealed bid setting forth the price at which he is willing to purchase the Partnership interest of the other dissenting Partner. The bids shall be submitted by each Partner within thirty (30) days after the date that such dissenting Partners determine that they can no longer work together, provided, however, that each such Partner shall give notice to the other dissenting Partner that he has submitted his respective bid. The certified public accountant shall open the bids on such thirtieth (30th) day, and the Partner submitting the higher sealed bid shall have the right to purchase the Partnership interest of the other dissenting Partner by a full cash payment within sixty (60) days after the bids are unsealed, subject to a thirty (30) day option of the non-dissenting Partners to purchase their respective pro rata share of the Partnership interest being sold. If a non-dissenting Partner does not properly exercise his option by giving written notice to the selling Partner, the Partner who is required to purchase the interest of the selling Partner shall purchase such unexercised share. If either Partner fails to submit a bid on or before the date scheduled for opening the bids, the Partner submitting a bid shall be deemed to be the higher bidder. If neither Partner submits a bid, the Partnership shall continue in full force and effect as if such disagreement had never occurred.

The provisions of this paragraph notwithstanding, any assignee who shall have acquired an interest in the Partnership in accordance with the provisions of this agreement shall be bound by and shall hold his interest subject to all of the provisions of this Agreement, and no conveyance or assignment to such assignee shall be valid unless concurrently therewith the assignee shall deliver to the other Partners an agreement assuming and agreeing to be bound by all of the provisions of this Agreement with respect to the interest acquired.

The computation of the fair market value of a Partner's Partnership Interest shall be made in accordance with generally accepted accounting principles consistently applied giving due regard to prior accounting methods of the Partnership, and the following shall be observed:

- a. No allowance of any kind shall be made for good will or any similar asset of the Partnership.
- b. All accounts payable shall be taken at face amount, less discounts deductible therefrom and all accounts receivable shall be taken at the fair amount thereof, unless in the opinion of the accountant a reserve is necessary.
- c. All furniture and fixtures and equipment are to be computed at the depreciated value appearing on the books of the Partnership.
- d. Inventory of supplies shall be computed at cost or market, whichever is lower.
- e. All unpaid and accrued federal, state, city, and municipal taxes shall be deducted as liabilities.
- f. Death proceeds of Partnership-owner insurance insuring the life of a deceased Partner whose Partnership Interest is being valued for purchase under this Agreement shall not be included in "book value" to the extent such proceeds exceed the prepaid premiums and cash value on the policy or policies of the insured Partner.
- g. Real estate and securities of the Partnership shall be valued at fair market value, and the accountant of the Partnership may select qualified appraisers to assist him in determining the fair market value of such items.
- h. In the event of any pending or known claims for liability which are not fully insured, the accountant, if the same is in keeping with good business practices, may establish such reserves as he deems necessary as a liability of a Partnership.

Except as proved herein, the date of determination of "fair market value" and the adjustments proved hereunder shall be the last day of the calendar month immediately preceding the notice of the Partner's desire to gift or transfer his Partnership Interest or the death of a Partner, whichever shall apply.

## *12. Termination.*

a. This Partnership shall terminate upon the first to occur of the following events:

- (1) upon the sale of all or substantially all of the Partnership Property and assets;

- (2) by mutual agreement of the Partners; and
- (3) upon the expiration of the term of the Partnership.

b. *Distributions on Termination.* Upon termination of the Partnership, a final audit shall be made by the Partnership's accountants, and all of the property and assets of the Partnership shall be distributed as follows:

(1) All of the property and assets, if any, other than cash, shall be sold and collected to the extent feasible, and turned into cash within a period of one (1) year from the date of such termination. Any Partner shall have the right to bid on and purchase any of the property and assets being sold, provided any accepted bid of a Partner shall be payable in cash and may not be paid by a debit against the Partner's capital account.

(2) All of the Partnership's debts, liabilities and obligations, including any loans or advances from any Partner, shall be paid in full or reserves therefor shall be set aside.

(3) The balance of the assets, if any shall be distributed in the percentages of ownership in the Partnership. A reasonable time shall be allowed for the orderly liquidation and discharge of the liabilities of the Partnership. Each Partner shall be furnished with a statement, prepared by the Partnership's accountants, setting forth the total amount of the assets available for distribution after satisfaction of all liabilities. In the event that the liabilities of the Partnership shall exceed the assets available for distribution, the Partners shall assume and pay the excess in the percentages of ownership in the Partnership, and in the event that any Partner does not so pay his full pro rata share of such excess and the other Partners are required to do so, then the other Partners shall be entitled to contribution from the defaulting Partner. If the assets of the Partnership are not sold in liquidation, they shall be distributed in kind to the Partners in proportion to their percentages of ownership in the Partnership, subject to all then existing encumbrances thereon.

13. *Disputes.* Where specified in this Agreement, certain controversies or disputes shall be settled by arbitration if a majority in interest of the Partners agree in writing to submit such controversy or dispute to arbitration. Such arbitration shall be effected by arbitration in , in accordance with the rules existing at such time of the American Arbitration Association. Judgment may be entered on any award rendered by the arbitrators in any federal or state court having jurisdiction over the site of the property. The fees and expenses of arbitration shall be borne by the Partner demanding arbitration.

#### 14. *Liabilities and Indemnification.*

a. *Liability.* It is specifically understood and agreed between the Partners that this Partnership extends only to and is limited to the rights and obligations under this Agreement, and nothing herein shall be construed to constitute any Partner the agent or general partner of any other Partner, nor in any manner to limit the Partners in the carrying on of their respective businesses or activities, other than the activities included within the scope of the Partnership. Nothing herein shall deprive or otherwise affect the right of any Partner to own, invest in, manage, or operate property or to transact business activities which are not competitive with the business of the Partnership.

b. *Indemnification.* Each Partner shall be indemnified by each other Partner and held harmless against and from all claims, demands, actions, and rights of action which shall or may arise by virtue of anything done or omitted to be done by each other Partner (directly or through or by agents, employees or other representatives) outside the scope of, or in breach of the terms of this agreement, provided that each other Partner shall be promptly notified of the existence of the claim, demand, action, or right of action, and shall be given reasonable opportunity to participate in the defense thereof, and further provided that failure to give such notice shall not affect each other Partner's obligations hereunder, except to the extent of any actual prejudice to them resulting therefrom. In the event of joint and several liability by reason of notes or mortgages executed on behalf of the Partnership by the individual Partners, each Partner agrees to hold the other harmless to the extent of any claims, demands, actions, and rights of action or judgments obtained in excess of the percentage interest of each such Partner in this Partnership.

15. *Inspection.* Each Partner or his authorized representative may examine any of the books and records of the Partnership at any time without notice.

16. *Integration.* This Agreement is the entire agreement between the parties with respect to the subject matter hereof and cancels all prior agreements with respect to the subject matter hereof, and no alteration, modification, or interpretation hereof shall be binding unless in writing and signed by each party.

17. *Remedies.* Subject to the provisions of this Agreement requiring arbitration, each Partner acknowledges and agrees that the remedy at law for any breach of any terms of this Agreement would be inadequate, and agrees and consents that temporary and permanent injunctive and other equitable relief may be granted in any proceeding which may be brought to enforce any provision hereof, including within such other equitable relief, specific performance, without the necessity of proof of actual damage or inadequacy of any legal remedy.

18. *Notices.* All notices or demands required or permitted by this Agreement shall be in writing and shall be sent by registered mail addressed to the addresses on file with the Managing Partner, or to such other address as shall from time to time be supplied in writing by any party to the other.

19. *Benefits and Obligations.* The covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. Any person succeeding to the interest of a Partner shall succeed to all of such Partner's rights, interests and obligations hereunder, subject to and with the benefit of all terms and conditions of this Agreement, except as hereinabove set forth, including the restrictive conditions contained herein.

20. *Severability.* If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstance other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

21. *Applicable Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_