

LIMITED PARTNERSHIP AGREEMENT
OF
INTO THE WIND PARTNERS, L.P.

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of
Limited Partnership Agreement
of
Into the Wind Partners, L.P.

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THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. SUCH SECURITIES MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED AT ANY TIME WHATSOEVER, EXCEPT UPON SUCH REGISTRATION OR UPON DELIVERY TO THE PARTNERSHIP OF AN OPINION OF COUNSEL SATISFACTORY TO THE GENERAL PARTNER OF THE PARTNERSHIP THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER AND/OR THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR APPLICABLE STATE SECURITIES LAWS AND/OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

LIMITED PARTNERSHIP AGREEMENT

OF

INTO THE WIND PARTNERS, L.P.

This **LIMITED PARTNERSHIP AGREEMENT OF INTO THE WIND PARTNERS, L.P.** is made and entered into effective as of the ___th day of December, 2004 (the “Effective Date”), by and between **INTO THE WIND, LLC**, a Texas limited liability company, as the general partner (the “General Partner”), and the Persons who have executed the Limited Partner Signature Pages annexed hereto and made a part hereof for all purposes, as limited partners (the “Limited Partners”).

WITNESSETH:

WHEREAS, the Partners desire to join together to pursue the production of a documentary film on powered paragliding; and

WHEREAS, the Partners desire to formalize their understanding and agreements and reduce such agreements to writing;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I.

1.1 **Definitions.** As used in this Agreement, the following terms shall have the respective meanings indicated:

(a) “Affiliate” means, with respect to a Partner, (i) any member of the immediate family of an individual Partner, including parents, siblings, spouse and children (including those by

adoption); the parents, siblings, spouse, or children (including those by adoption) of such immediate family member; and in any such case any trust whose primary beneficiary is such individual Partner or one or more members of such immediate family and/or such Partner's lineal descendants; (ii) the legal representative or guardian of such individual Partner or of any such immediate family members in the event such individual Partner or any such immediate family members becomes mentally incompetent; and (iii) any Person that, either directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Partner. The term "control", as used in the immediately preceding sentence, means, with respect to a Person that is a corporation, the right to exercise directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to a Person that is not a corporation, being in possession, directly or indirectly, of the power to direct or cause the direction of the management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of the Person.

(b) "Agreement" means this Limited Partnership Agreement, as amended from time to time.

(c) "Allocation Percentage" means, with respect to a Limited Partner, that fraction expressed as a percentage, having as its numerator the Units held by such Limited Partner and having as its denominator the sum of the Units held by all Limited Partners.

(c) "Bankruptcy" means, as to any Partner, that Partner's taking or acquiescing in the taking of any action seeking relief under, or advantage of, any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar law affecting the rights or remedies of creditors generally, as in effect from time to time. For the purpose of this definition, the term "acquiescing" shall include, without limitation, (i) the failure to cause to be dismissed, within sixty (60) days after its commencement, any action against such Partner seeking any liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar relief under any present or future law; (ii) the failure to have stayed, within sixty (60) days after its entry, any order or proceeding affecting the business operations of such Partner; or (iii) the failure to have vacated any order or proceeding if the stay of such order or proceeding shall thereafter be set aside.

(d) "Capital Account" means the account established for each Partner pursuant to Section 4.4.

(e) "Capital Contributions" means, with respect to any Partner, the amount of money and the fair market value of any property (other than money) contributed to the Partnership with respect to the Units held by such Partner, including, without limitation, the amount of capital described in Section 4.1 contributed by the Partners to the Partnership. Loans to the Partnership shall not be included in the Capital Account of any Partner. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note shall not be included in the Capital Account of any Partner until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

(f) “Certificate” means the certificate of limited partnership concerning the Partnership to be filed with the Secretary of State of the State of Texas in accordance with the Limited Partnership Act.

(g) “Code” means the Internal Revenue Code of 1986, as amended.

(h) “Film” means a documentary film regarding the exciting sport of powered paragliding.

(i) “Limited Partnership Act” means the Texas Revised Limited Partnership Act, Article 6132a-1 of the Texas Revised Civil Statutes Annotated, as amended from time to time.

(j) “Liquidating Trustee” means the Person appointed pursuant to Section 9.4 to supervise the liquidation of the Partnership.

(k) “Nonrecourse Deductions” has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

(l) “Nonrecourse Liability” has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

(m) “Ownership Interest” means the interest in the Partnership owned by a Partner in accordance with Sections 4.1, 8.1, 8.2 and 8.7.

(n) “Partner” means a Limited Partner or the General Partner, as the case may be.

(o) “Partners” means collectively the General Partner and the Limited Partners.

(p) “Partner Nonrecourse Debt” has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

(q) “Partner Nonrecourse Debt Minimum Gain” means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

(r) “Partner Nonrecourse Deductions” has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

(s) “Partnership” means the limited partnership formed pursuant to this Agreement.

(t) “Partnership Assets” means the real, personal and intangible property of the Partnership, including without limitation, the Film.

(u) "Partnership Minimum Gain" has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

(v) "Person" means an individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.

(w) "Prime Rate" means the prime commercial lending rate in effect from time to time at JPMorgan Chase Bank, Houston, Texas, or its successor, as such rate changes from time to time.

(x) "Profits" and "Losses" means, for each Partnership Year (as defined in Section 8.4), an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.1(y) shall be added to such taxable income or loss;

(ii) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-2(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses pursuant to this Section 1.1(y) shall be subtracted from such taxable income or loss;

(iii) Any items of Partnership income, gain, loss or deduction, which are specially allocated pursuant to Section 8.9 shall not be taken into account; and

(iv) All items of Partnership income, gain, loss, or deduction shall be computed without reference to any basis adjustments under Code Sections 734(b) or 743(b).

(y) "Regulations" means the Treasury Regulations on Income Tax, 26 C.F.R., as effective as of the date of this Agreement.

(z) "Unit" means the economic interest of a Limited Partner in the capital, profits, and losses of the Partnership. The Limited Partners shall purchase Units in increments of 1 Unit, with each increment being purchased for the cash sum of \$1,000. The General Partner, in its sole discretion, may accept purchases for lesser increments of Units. The number of Units shall be up to 80 Units constituting a maximum total of initial Capital Contributions by all Limited Partners of \$80,000. "Units" means collectively all of the Units.

Each of the following terms is defined in the part or Section of this Agreement set opposite such term:

<u>Term</u>	<u>Section</u>
Adjusted Capital Account Deficit	8.9(b)
Available Cash	8.7
Dissolution Event	9.1(a)
Effective Date	Preamble
General Partner	Preamble
Indemnified Parties	5.7
Limited Partners	Preamble
Optional Loan(s)	4.5
Partnership Year	8.4
Regulatory Allocations	8.10
Reserves	8.5
Tax Matters Partner	5.12(b)

ARTICLE II

2.1 **Formation of Partnership.** The parties hereto hereby form the Partnership as a limited partnership pursuant to the Limited Partnership Act. The rights and liabilities of the Partners shall, except as hereinafter expressly stated to the contrary, be as provided for in the Limited Partnership Act.

2.2 **Partnership Name.** The business of the Partnership shall be conducted under the name of “Into the Wind Partners, L.P.” or such other name as the General Partner may select from time to time.

2.3 **Principal Office; Agent for Service of Process.** The registered agent and registered street address for the Partnership in the State of Texas is: Christopher M. Page, 2230 Alberton Lane, Pearland, Texas 77584, until changed by the General Partner. The principal place of business of the Partnership shall be at 2230 Alberton Lane, Pearland, Texas 77584, but substitute or additional places of business may be established at such other locations as may, from time to time, be determined by the General Partner. All records of the Partnership required by the Act will be maintained at the Principal Office.

2.4 **Term of Partnership.** The Partnership shall commence on the Effective Date, and shall continue as provided herein until dissolved pursuant to Section 9.1.

2.5 **Organization Certificate.** The General Partner shall, for and on behalf of the Partnership, immediately execute, file, record and/or publish such certificates and other documents, including, without limitation, a Certificate of Limited Partnership to be filed pursuant to Section 2.01 of the Limited Partnership Act, and take all other appropriate action, to comply with all legal requirements for the formation of a limited partnership under the Limited Partnership Act.

ARTICLE III

3.1 **Purposes of the Partnership.** The purposes of the Partnership shall be (a) to produce the Film and to thereafter sell, license or otherwise generate revenues off the Film as determined by the General Partner, in its sole discretion; (b) to conduct such other business and operations as the General Partner may determine from time to time; and (c) to take any and all actions necessary and prudent to the successful pursuit of the foregoing purposes; provided, however, that no actions taken under this Section 3.1(c) shall be inconsistent with Sections 3.1(a) and (b).

3.2 **Ownership of Partnership Assets.** The Partners hereby acknowledge and agree that the Partnership will hold legal title to the Partnership Assets.

ARTICLE IV

4.1 Initial Capital Contributions of the Partners.

(a) The General Partner has contributed to the Partnership for its interest cash or property having a value of at least \$1,000.00.

(b) Upon execution of this Agreement, each Limited Partner shall initially contribute to the Partnership the cash sum of \$1,000 for each Unit acquired by such Limited Partner as set forth on the Limited Partner Signature Pages annexed hereto.

4.2 **No Third-Party Beneficiary.** The Partners hereby confirm and acknowledge that it is their intention that the covenants and agreements contained in Section 4.1 are personal and between and among the Partners and that no third party, including without limitation, any third-party creditor of the Partnership or of the General Partner, shall be entitled to the benefits of Section 4.1.

4.3 **No Mandatory Additional Contributions.** The Partners shall have no mandatory obligations to contribute capital to the Partnership, except as provided in Sections 4.1 and 4.6.

4.4 Capital Accounts.

(a) Capital accounts shall be maintained for each Partner which shall reflect the value of its investment in the Partnership (a "Capital Account"). Capital Accounts shall be maintained in accordance with Regulations Section 1.704-1(b)(2)(iv), or any successor regulation, and the provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent therewith.

(b) Subject to Section 4.4(a), the Capital Account of each Partner shall be credited with or increased by the following:

- (i) The net agreed value of such Partner's Capital Contribution;
- (ii) Such Partner's distributive share of Profits; and

(iii) Any items in the nature of income or gain which are specially or curatively allocated pursuant to Sections 8.9 and 8.10.

(c) Subject to Section 4.4(a), the Capital Account of each Partner shall be debited with or decreased by the following:

(i) The amount of cash and the net agreed value of any Partnership Asset distributed to such Partner pursuant to any provision of this Agreement;

(ii) Such Partner's distributive share of Losses; and

(iii) Any items in the nature of expenses or Losses which are specially or curatively allocated pursuant to Sections 8.9 and 8.10.

(d) In the event all or a portion of an Ownership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Ownership Interest.

(e) In determining the amount of any liability for purposes of this Section 4.4, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(f) The provisions of this Section 4.4 are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Partnership or a Partner) are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it will not have a material effect on the amounts distributable to any Partner upon the dissolution of the Partnership. The General Partner also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the General Partner and the Limited Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications if unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

4.5 **Loans to the Partnership.** Any Partner may, but shall not be obligated to, make loans to the Partnership (individually, an "Optional Loan," and collectively, the "Optional Loans"), from time to time, to cover Partnership obligations and operating cash deficits. Such Optional Loans shall be evidenced by promissory notes executed by the Partnership, which shall bear interest at a variable annual rate equal to the Prime Rate, plus two percent (2%), or such other rate as the Company and the lending Partner may agree. Such Optional Loans shall be repaid by the Partnership in accordance with Sections 8.7 and 9.5.

4.6 **Deficit Makeup Provision.** If, on liquidation of the Partnership or the General Partner's interest, there is a deficit in the General Partner's Capital Account after giving effect to all allocations required by this Agreement at a time when a Limited Partner has a positive Capital Account, the General Partner shall contribute to the capital of the Partnership the lesser of (a) the amount of such deficit, or (b) the amount of the Limited Partner's positive Capital Account.

4.7 **Additional Interests in Partnership.** Following the execution of this Agreement, Units in the Partnership may be issued to individuals and entities by the General Partner for such consideration as the General Partner shall determine. To the extent that Units are issued pursuant to this Section 4.7, the existing Partners hereby consent to admission of such Unit holders without the requirement of notice or further approval, and further consent to such amendments to this Agreement relating to the issuance of additional Units as may be deemed necessary in the discretion of the General Partner, including without limitation amendments which may affect Partners' equity and economic interest in the Partnership.

ARTICLE V

5.1 **Rights and Obligations of the General Partner.** Subject to the limitations of this Agreement, the General Partner shall have full, exclusive, and complete authority and discretion to manage and control the Partnership and make all decisions affecting the management and operation of the Partnership's business, and to exercise all rights and powers generally conferred by law in connection therewith. Subject to the limitations of this Agreement, the General Partner shall have full authority to take any action which the General Partner believes in good faith to be in furtherance of the Partnership's business and purposes and to exercise all rights and powers generally conferred by law in connection therewith. In carrying out its duties and obligations hereunder, the General Partner shall have full power and authority to execute any and all documents on behalf of the Partnership. When carrying out its obligations as General Partner hereunder, no Person or governmental body dealing with the Partnership shall be required to inquire into, or obtain any consents or other documentation as to, the authority of the General Partner to take any such action or to exercise any such rights or powers, whether or not the General Partner is required by the terms of this Agreement to first obtain the consent of the Limited Partners for the particular act in question. Without limiting the generality of the preceding provisions, and subject to the provisions set forth below in this Section 5.1 and of Sections 5.2, 5.11 and 5.12(c), the General Partner shall have the authority, right, power, and responsibility on behalf of and at the cost and expense of the Partnership:

(a) To expend Partnership funds on the production of the Film as the General Partner determines;

(b) To obtain Loans on such terms and conditions as are acceptable to General Partner and to pledge Partnership Assets to secure such Loans;

(c) To retain or employ for the Partnership's account and coordinate the services of all employees, independent contractors, accountants, attorneys and other persons necessary or appropriate to carry out the business of the Partnership;

(e) To arrange for and make disbursements for proper Partnership expenses;

- (f) To establish and adopt any operating budget for the Partnership business;
- (g) To keep the Limited Partners informed of Partnership operations through written progress reports rendered at such intervening periods as deemed appropriate by the General Partner;
- (h) To cause a review to be made of the financial condition of the Partnership for each Partnership Year within a reasonable time after the close of each Partnership Year (but not later than March 15), and the General Partner shall furnish a copy of such review to the Limited Partners as soon as such review is available. The General Partner may, at its discretion, cause an audit to be made of the financial condition of the Partnership and the compliance of the General Partner with the financial, accounting and reporting provisions of this Agreement;
- (i) To maintain complete and accurate books of the Partnership, showing all receipts, income, expenditures, assets, and liabilities, profits and losses, and all other records necessary for recording the Partnership's business and affairs, and furnish the Partners all reasonably necessary tax reporting information, all of such books and records to be available for the Limited Partners' review upon request;
- (j) To generally manage the day-to-day operation of the Partnership Assets, which management may include the negotiation and execution of leases for the occupancy of all or portions of any improvements by tenants; and
- (k) To market, sell or license rights in the Film for the benefit of the Partnership as the General Partner sees fit.

5.2 **Decisions Requiring Prior Approval.** The General Partner shall not do any of the following without first obtaining the prior written approval and consent of the Limited Partners holding not less than a majority of the then outstanding Units (the "Major Decisions"):

- (a) Commingle Partnership funds with those of any other Person; or
- (b) Take any action causing the Partnership to seek relief under or advantage of (other than as a creditor) any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar law affecting the rights or remedies of creditors generally, as in effect from time to time.

5.3 **Responses to Consent Requests.** If a Partner fails or refuses to respond to a written request for consent (including requests of the Limited Partners for approval of and consent to any Major Decisions) within five (5) days after another Partner has given such Partner such written request (unless a longer or shorter period of time is required under this Agreement), then such Partner shall be conclusively deemed to have consented to such proposal.

5.4 **Other Interests and Transactions.** The General Partner shall devote such part of its time as is reasonably necessary to manage the Partnership's business, it being understood that the

General Partner and its Affiliates may engage in activities and transactions, for their own respective accounts and for the accounts of others during the Partnership Term. No Partner shall, merely by virtue of its interest in the Partnership, be in any way prohibited from, or restricted in engaging in, or possessing an interest in, any other business venture of any nature, including any venture that may be deemed competitive with the Partnership.

5.5 **Voting.** In those cases where the Limited Partnership Act or other law requires that the Partners vote on a matter relating to the Partnership notwithstanding the broad authorities granted to the General Partner herein, the voting of the Partners shall be in accordance with their Units, as exist on the date of such vote.

5.6 **Meetings of Partners; Action Without Meeting.** A meeting of the Partners shall be held at such times and at such places as determined by the mutual agreement of all of the Partners. The Partners may hold a meeting in person, over the telephone or through written consents or correspondence. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if consent, in writing setting forth the actions so taken or to be taken, is signed by the Partners holding not less than the minimum amount of Units that would be necessary to authorize such action at a meeting of the Partners. Such consent shall have the same force and effect as a vote of the Partners at a meeting properly called.

5.7 **Indemnification of the General Partner.** Except as otherwise expressly provided, the General Partner shall not be liable to a Limited Partner or its Affiliates, for any loss of its contributions or loans to the Partnership or any loss of potential profit and shall not be otherwise liable to the Partnership or any Limited Partner for any action or omission taken in good faith, or upon the advice of counsel, or believed to be in the best interests of the Partnership, in the absence of proven fraud, willful violation of law or gross negligence (i.e. reckless disregard of consequences) by the General Partner. In addition, the General Partner, its shareholders, members, managers, officers, directors, employees and agents (“Indemnified Parties”) shall be indemnified and held harmless by the Partnership (but only to the extent that the Partnership Assets are sufficient therefor) from and against, and the Partnership shall reimburse the Indemnified Parties for all liabilities, obligations, losses, expenses, judgments, penalties, including excise and similar taxes, fines, settlements and reasonable attorneys’ fees and expenses, incurred by such Indemnified Party or arising out of any suit or legal proceeding, if such Indemnified Party was, is, or is threatened to be named as a defendant or respondent in any legal proceeding based upon or arising out of services of the General Partner hereunder in the manner provided in Section 11.02 of the Limited Partnership Act, which provision is incorporated herein by this reference as if fully recited herein. It is expressly stipulated, however, that the Indemnified Parties shall not be entitled to indemnification hereunder where the claim at issue is based upon:

- (a) The gross negligence or willful misconduct of an Indemnified Party; or
- (b) The material breach by the General Partner of any provision of this Agreement.

5.8 **Banking.** All funds of the Partnership shall be deposited into such account or accounts at a bank or banks as the General Partner shall determine from time to time, and all

withdrawals may be made therefrom by the General Partner or such other person or persons authorized by the General Partner. Funds may be withdrawn from the Partnership account or accounts only for the furtherance of the Partnership business.

5.9 **Books and Records to be Maintained.** The General Partner shall diligently record on a current basis in the books and records of the Partnership:

(a) All loan proceeds, revenues, reimbursements, capital contributions and loans by the Partners, including the dates of receipt by the Partnership and the amounts thereof; and

(b) All Partnership expenditures, including the dates of payment by the Partnership, the amounts thereof and the name of the payee.

5.10 **Reimbursement of Fees and Expenses.** All reasonable expenses of the General Partner incurred from time to time on behalf of the Partnership will be reimbursed by the Partnership upon receipt of invoices and adequate documentation that the costs were incurred for the benefit of the Partnership.

5.11 **Prohibited Actions.** The Partners hereby covenant and agree that, without the written approval or deemed approval of the General Partner and Limited Partners holding at least a majority of the then outstanding Units, no Partner shall:

(a) Amend or modify this Agreement;

(b) Make, execute or deliver any assignment for the benefit of creditors or any bond, confession or judgment, mortgage, deed, guaranty or contract of sale of all or substantially all of the assets of the Partnership;

(c) Hypothecate, mortgage, encumber, or in any manner sell, assign or transfer such Partner's Ownership Interest;

(d) Utilize Partnership Assets in any way for the furtherance of personal business activities unrelated to the Partnership business;

(e) Voluntarily withdraw from the Partnership; or

(f) Admit any other Person as a Partner into the Partnership except as expressly permitted by this Agreement.

5.12 **Tax Rules Governing the Partnership.**

(a) The Partners hereby acknowledge and agree that it is the intention of the Partnership to be governed by the provisions of Subchapter K of the Code and all rules and regulations promulgated thereunder. The Partners shall take any and all actions necessary to ensure full compliance by the Partnership with all such applicable provisions, rules and regulations,

including, but not limited to, the filing of information returns as required by Section 6031 of the Code, or similar provisions of later law.

(b) The General Partner shall serve as the “Tax Matters Partner” for the Partnership for purposes of and under the Code. As Tax Matters Partner, the General Partner shall keep the Partners informed of all administrative and judicial proceedings, as required by Section 6223(g) of the Code, and shall furnish to the Partners a copy of each notice or other communication received by the General Partner from the Internal Revenue Service.

(c) As Tax Matters Partners, the General Partner shall not have the authority, unless such action has been approved by all of the Partners, to do any of the following:

(i) To enter into a settlement agreement with the Internal Revenue Service which purports to bind Partners other than the General Partner;

(ii) To file a petition as contemplated in Section 6226(a) or 6228 of the Code;

(iii) To intervene in any action as contemplated in Section 6226(b) of the Code;

(iv) To file any request contemplated in Section 6227(b) of the Code; or

(v) To enter into an agreement extending the period of limitations as contemplated in Section 6229(b)(1)(B) of the Code.

(d) The General Partner acknowledges that the relationship of the Tax Matters Partner to the other Partners is that of a fiduciary, and the Tax Matters Partner has a fiduciary obligation to perform its duties as Tax Matters Partner in such manner as will serve the best interests of the Partnership and the Partners.

5.13 **Power of Attorney.**

(a) By the execution of this Agreement, or a counterpart hereof, each Limited Partner does irrevocably constitute and appoint the General Partner as its true and lawful attorney-in-fact and agent, with full power and authority to act in its name, place and stead to execute, acknowledge, deliver, file and record all certificates and other documents which the General Partner deems necessary or reasonably appropriate:

(i) To qualify or continue the Partnership as a limited partnership (or a partnership in which special partners have limited liability);

(ii) To reflect a modification of the Partnership, or an amendment of this Agreement and/or the Certificate (including but not limited to amendments to substitute or add a person as a Partner when such person has acquired a Partnership Interest in accordance with the provisions hereof or has been transferred a Partnership Interest in compliance with

the applicable provisions hereof, and amendments by both consenting and non-consenting Partners when amendments or modifications are approved by less than all the Partners in accordance with the provisions hereof);

(iii) To reflect the dissolution and termination of the Partnership and cancellation of the Certificate; and

(iv) To comply with any applicable assumed name laws.

(b) Without limiting the generality of the foregoing, the General Partner, pursuant to the powers of attorney from the Limited Partners granted pursuant to this Section 5.13, may, without the consent of any Limited Partner, amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(i) A change in the name of the Partnership or the location of the principal place of business of the Partnership;

(ii) A change in the registered agent or the registered office of the Partnership;

(iii) Admission or termination of Partners in accordance with this Agreement;

(iv) A reduction in all or a portion of any Limited Partner's capital contribution or any increase thereof in accordance with this Agreement;

(v) A change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the General Partner to increase the chances that the Partnership will not be treated as an association taxable as a corporation for federal income tax purposes;

(vi) A change that is necessary to cure any ambiguity, to correct or supplement any provisions herein which may be inconsistent with any other provision herein or to add any other provision with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement; provided, however, that no such change shall adversely affect the Limited Partners in any material respect;

(vii) A change (A) that is of an inconsequential nature and does not adversely affect the Limited Partners in any material respect, (B) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or contained in any federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, or (C) that is required or contemplated by this Agreement; or

(viii) Any other amendments similar to the foregoing.

(c) Except where expressly provided otherwise, nothing herein shall be construed to authorize the General Partner to take any action or execute any certificate or other document on behalf of any Limited Partner, with respect to any matter which (i) requires voting approval of the Limited Partners; (ii) causes a dilution of the rights of the Limited Partners hereunder; (iii) causes an increase in the obligations of the Limited Partners hereunder; (iv) causes an increase in the rights of the General Partner hereunder; or (v) causes a dilution of the obligations of the General Partner hereunder, without first having received the consent and approval of the Limited Partners holding a majority of the then outstanding Units.

(d) The power of attorney granted herein:

(i) Shall be deemed to be coupled with an interest, shall be irrevocable, and shall survive the death, incompetency, dissolution, termination or legal disability of each of the Limited Partners;

(ii) May be exercised by the General Partner for the Limited Partners by listing the name of the Limited Partners, and executing such instrument, with the signature of the General Partner; and

(iii) Shall be binding on any assignee or vendee of an Ownership Interest hereunder, or any portion thereof, including only the distributive rights relating thereto.

ARTICLE VI

6.1 **Rights of Limited Partners.** A Limited Partner shall not be:

(a) Personally liable for any of the debts of the Partnership or to the Partnership or of the General Partner beyond a Limited Partner's agreed contributions to the Partnership, as specified in Article IV, unless a liability of the Partnership or the General Partner, as the case may be, is founded on some unauthorized activity of such Limited Partner in breach of the terms of this Agreement or such Limited Partner accepts a distribution in violation of the Limited Partnership Act or rights of creditors of the Partnership;

(b) Personally liable, merely because of a Limited Partner's interest in the Partnership, for any losses of the General Partner;

(c) Personally liable, beyond the Limited Partner's agreed contributions to the Partnership as specified in Article IV, for any Partnership losses;

(d) Allowed to take part in the management or control of the Partnership business, or to sign for or to bind the Partnership, merely because of the Limited Partner's interest in the Partnership, which power is vested solely and exclusively in the General Partner;

(e) Entitled to be paid any salary or to have a Partnership drawing account;

(f) Except as expressly set forth in Articles VIII and IX, entitled to a return of its capital contributions or loans until (i) all Partnership liabilities (except liabilities to Partners on account of their capital contributions or loans) shall have been paid or sufficient Partnership Assets then exist to pay them, or the consent of the General Partner is obtained, or the Partnership is dissolved, and (ii) the Certificate is appropriately amended or canceled, and then only to the extent as permitted by law and elsewhere in this Agreement; or

(g) Entitled to a partition of Partnership Assets, notwithstanding any other provision of law to the contrary.

6.2 **Assignments of Ownership Interests.**

(a) Except as provided in Section 6.2(b), no Partner may sell, assign, transfer, pledge, mortgage, or grant a lien or security interest in its Ownership Interest, or portions of such Ownership Interest, without first having obtained the written consent of the General Partner.

(b) Notwithstanding anything in Section 6.2(a) to the contrary, a Limited Partner may transfer all or a portion of its Ownership Interest to an Affiliate.

(c) Any purported sale or assignment consummated without first complying with all of the requirements of this Section 6.2 shall, as between the Partnership, on the one hand, and the assignor/vendor and assignee/vendee, on the other hand, be null and void. Any Partner may deny consent to a requested assignment for any reason in its sole and absolute judgment and discretion, including for the reason that the effect of any such assignment would be to result in a termination of the Partnership for federal income tax purposes pursuant to Section 708 of the Code.

(d) If a Partner desires to transfer all or any of its Ownership Interest, and such transfer is permitted by Section 6.2(b) or approved in writing by the other Partners, then the transferring Partner shall arrange for its transferee to be bound by the provisions of this Agreement, as it may then be amended, by having such transferee execute two (2) counterparts of an instrument of assignment and assumption in a form satisfactory to the other Partners, including provisions whereby the transferee agrees to be bound by the terms hereof, and by delivering the same to the other Partners. In addition, and if necessary, appropriate amendments to this Agreement shall be executed by all of the Partners to reflect the transfer. It is understood that the proposed transferee shall be required to pay any and all reasonable filing and recording fees, legal fees, accounting fees and other charges and fees incurred by the Partnership and its counsel as a result of any such transfer. Each permitted assignment or transfer shall be effective as of the first day of the calendar month during which all the other Partners actually receive the aforesaid instrument of assignment executed by both the transferor and transferee. If and when the requirements of this Section 6.2 are satisfied, the transferee shall become a substituted Partner.

6.3 **Assignments of Distributive Rights.** Pursuant to this Section 6.3, a Partner may assign to any Person all or any portion of such Partner's right to receive distributions hereunder; provided, however, that no such assignment shall be effective as to the Partnership or the other

Partners unless the General Partner has first received fifteen (15) business days' prior written notice of such proposed assignment, which shall include a description of the proposed transaction, the provisions of the last paragraph of this Section 6.3 have been fully complied with, and the General Partner shall have received:

- (a) A copy of the instrument of assignment, in recordable form, executed by both the assignor and the assignee of such distributive right;
- (b) An instrument in such form as may be prescribed by or otherwise acceptable to the Partnership, executed by the assignor, instructing the Partnership as to what percentage, to whom, and where such distributive share is to be paid; and
- (c) An identification number for United States federal income tax purposes for such assignee.

If the conditions described above in this Section 6.3 have been satisfied, the Partnership may (but shall not be obligated to), without requesting further documentation from either the assignor or the assignee, remit directly to the named assignee all distributions to which such Partner may be entitled pursuant to the provisions of this Agreement and the assignment. So long as the party to whom such distributive share was remitted was either the assignor or the assignee named in the instrument of assignment, the Partnership shall be free from liability to any person if such distribution is received by a person that is not entitled thereto. An assignee of any distributive right of a Partner shall not be deemed a substituted Partner.

6.4 **Survival of Liabilities.** It is expressly understood and agreed that no sale or assignment of an Ownership Interest, even if it results in the substitution of the assignee or vendee as a Partner herein, shall release the assignor or vendor from its obligations and liabilities to the Partnership contained herein.

6.5 **Investment Representation.** Each of the Limited Partners understands that his Units and Ownership Interest in the Partnership have not been registered under the Securities Act of 1933, as amended, or the securities laws of any state (the "Securities Acts"), on the grounds that the Units are exempt from the registration requirements of such Securities Acts. In this connection, each of the Limited Partners represents and warrants with respect to the acquisition of his respective Units that:

- (a) He is acquiring his Units for his own account, as an investment, and not with a view to the resale, pledge, hypothecation or other transfer or distribution of such Units.
- (b) He recognizes that the Partnership is newly organized and it has no history of operations or earnings.
- (c) He has no need for liquidity of this investment and his total commitment to investments that are not readily marketable is not disproportionate as a result of his investment in the Units.

(d) He has had access to or has been furnished with sufficient written and oral information about the Partnership to facilitate making an informed investment decision prior to purchasing any Units, and has been furnished access to any and all additional information requested; and he either (i) has experience in business enterprises or investments entailing risks of a type or to a degree substantially similar to those entailed in an investment in the Partnership, or (ii) has obtained independent financial advice with respect to investment in the Partnership.

(e) The offer and purchase of such Units has been made in the course of a negotiated transaction involving direct communication between the General Partner or its representatives and the Limited Partner or his representatives.

(f) He has been advised that his Units may not be sold, transferred or otherwise disposed of in the absence of either an effective registration statement covering such interest under the Securities Act, or an opinion of counsel satisfactory to the Partnership that registration is not required under the Securities Act, and that no Limited Partner will have any rights to require registration of any interest under the Securities Act.

(g) He agrees to hold the General Partner, the Partnership, and their respective heirs, successors, assigns, or other controlling persons harmless and to indemnify them against all liabilities, costs, and expenses incurred by them as a result of any sale or distribution by such Limited Partner of his Units in violation of the Securities Acts. Additionally, each Limited Partner shall and does hereby agree to indemnify and save harmless the General Partner and the Partnership from any damages, claims, expenses, losses or actions resulting from the untruth of any of the warranties and representations made by such Limited Partner contained herein. In the event that the General Partner discovers any breach or untruth of any of the foregoing representations and warranties by a Limited Partner, the General Partner may, at its election, rescind the sale of any Units to such Limited Partner. In the event of any such rescission of the sale by the Partnership, the Capital Contribution of such Limited Partner or any other funds of such Limited Partner held by the Partnership or its agent may, at the election of the General Partner, be retained by the Partnership and applied in satisfaction of the indemnification obligation of such Limited Partner set out herein.

ARTICLE VII

7.1 **Compensation of the Partners.** Except as otherwise provided herein, no Partner (in their capacities as such) shall be entitled to any compensation, whether by way of a percentage return or interest on capital accounts or otherwise, other than the share of profits and cash flow expressly set forth herein.

ARTICLE VIII

8.1 **Profits.** After giving effect to the special and curative allocations set forth in Section 8.9, Profits for any fiscal year shall be allocated to the Partners as follows:

(a) First, to the Partners in the ratio in which Losses were allocated pursuant to Section 8.2(b) until the aggregate Profits allocated pursuant to this Section 8.1(a) for such fiscal year

and all previous fiscal years equals the aggregate Losses allocated to the Partners pursuant to Section 8.2(b) for all previous fiscal years;

(b) Second, to the Partners in the inverse order and ratio in which Losses were allocated pursuant to Section 8.2(a) until the aggregate Profits allocated pursuant to this Section 8.1(b) for such fiscal year and all previous fiscal years equals the aggregate Losses allocated to the Partners pursuant to Section 8.2(a) for all previous fiscal years;

(c) Third, to the Limited Partners in accordance with their Allocation Percentages until they have received distributions equal to the sum of all payments contemplated by Sections 8.7(b) and Sections 9.5(c); and

(e) Thereafter, 50% to the General Partner and 50% to the Limited Partners allocated to them in accordance with their relative Allocation Percentages.

8.2 **Losses.** After giving effect to the special and curative allocations set forth in Section 8.9, Losses for any fiscal year shall be allocated as set forth in Section 8.2(a), subject to the limitation in Section 8.2(b).

(a) Losses for any fiscal year shall be allocated in accordance with the Limited Partners' and the General Partner's respective positive Capital Account balances existing at the time such Loss was incurred or realized.

(b) The Losses allocated pursuant to Section 8.2(a) shall not exceed the maximum amount of Losses that can be so allocated without causing a Limited Partner to have an Adjusted Capital Account Deficit at the end of any fiscal year. All Losses in excess of the limitations set forth in this Section 8.2(b) shall be allocated to the General Partner.

8.3 **Partners' Intent.** The Partners intend that Profits and Losses (including, to the extent necessary, items of income, gain, deduction, or loss) be allocated among the Partners in a manner that (as accurately as permissible by federal income tax rules) permits distributions to the Partners, in liquidation or otherwise, to be made in accordance with Section 8.7. Sections 8.1 and 8.2 shall be interpreted in a manner consistent with this intent.

8.4 **Partnership Year and Accounting Method.** The Partnership fiscal year shall be the calendar year ("Partnership Year"). The Partnership books shall be kept on such method of accounting as the Partners determine after consultation with the Partnership's tax advisors.

8.5 **Reserves.** The General Partner shall be entitled at any time to establish such reserves (collectively, the "Reserves") out of income, in such amounts as the General Partner determines to be appropriate or desirable to provide for, without limitation, the following:

(a) Payment of expenses incurred or anticipated to be incurred; and

(b) Any and all contingent liabilities including, without limitation, any actual, threatened or potential claims, suits or other actions, which reserve accounts shall be maintained

until such time as the General Partner believes and is satisfied that the need and necessity for such account no longer exists or that such claims, suits or contingent liabilities are (after consultation with the Partnership's legal counsel) fully and completely satisfied, settled, barred by the applicable statute of limitations, or otherwise conclusively disposed of.

8.6 **Determination of Profit and Loss.** At the end of each Partnership Year all Partnership Profits and Losses and Regulatory Allocations (as defined in Section 8.10) shall be determined with respect to the Ownership Interests of each Partner for the accounting period then ending and shall be allocated to the accounts of the Partners. However, in instances where a Partner has sold, assigned, transferred or otherwise disposed of all or part of its Ownership Interest during such accounting period, all such allocations shall be made between the transferor and the transferee in accordance with Section 706 of the Code. The determinations made pursuant to this Section 8.6 shall be binding on all Partners.

8.7 **Distributions.** The General Partner, in its discretion, may distribute all or a portion of the available funds of the Partnership, after providing for the satisfaction of current debts and obligations and for the Reserves ("Available Cash"). If the General Partner elects to make any distribution of Available Cash, such distributions shall be made as follows:

(a) First, to the General Partner and the Limited Partners, respectively, an amount equal to the amount of their respective Optional Loans made pursuant to Section 4.5, if any, with such distributions to be applied first to the Optional Loans of the most distant date and origin and then applied to the Optional Loans of the second most distant date and origin, and so on, until the principal and interest of all Optional Loans have been paid in full, and made pro rata among the Partners based upon the total amount of Optional Loans of even date made by each, to be applied first against interest, then against principal;

(b) Second, one hundred percent (100%) to the Limited Partners in accordance with their respective Allocation Percentages until an amount equal to the Limited Partners' Capital Contributions has been distributed to the Limited Partners; and

(c) Thereafter, 50% to the General Partner and 50% to the Limited Partners paid to them in accordance with their respective Allocation Percentages.

8.8 **Elections by Partnership as to Optional Adjustment to Basis.** Where a distribution of property is made in the manner provided in Section 734 of the Code or where a transfer of Ownership Interest permitted by this Agreement is made in the manner provided in Section 743 of the Code, the General Partner shall file on behalf of the Partnership, upon any remaining Partner's request, an election under Section 754 of the Code in accordance with the procedures set forth in the applicable Regulations.

8.9 **Special Allocations.** Notwithstanding the provisions of Section 8.1 and 8.2 to the contrary, the following special allocations, if any, shall be made in the following order and priority:

(a) **Allocation of Profits to Follow Distributions.** In any year in which the Partnership distributes Available Cash pursuant to Section 8.7, items of net income and gain equal to

the Available Cash actually distributed for such year shall, to the extent possible, be allocated among the Partners in the ratio in which they receive such distributions from such sources for such year.

(b) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article VIII, if there is a net decrease in Partnership Minimum Gain during any fiscal year, each Partner shall be specially allocated items of Partnership income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Section 1.704-2(g) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 8.9(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

The term "Adjusted Capital Account Deficit" shall mean, with respect to any Limited Partners, the deficit balance, if any, in such Limited Partner's Capital Account as of the end of the relevant Partnership Year after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Limited Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

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

(c) Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article VIII, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any fiscal year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(4) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 8.9(c) is intended to comply with the minimum gain chargeback required in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(d) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5), or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Limited Partner as quickly as possible, provided that an allocation pursuant to this Section 8.9(d) shall be made only if and to the extent that such Limited Partner has an Adjusted Capital Account Deficit after all other allocations provided for in this Article VIII have been tentatively made as if this Section 8.9(d) were not in this Agreement.

(e) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Partnership fiscal year which is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 8.9(e) shall be made only if and to the extent that such Limited Partner has a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VIII have been tentatively made as if Section 8.9(d) hereof and this Section 8.9(e) were not in this Agreement.

(f) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period shall be specially allocated among the Partners in proportion to their Ownership Interests.

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

(h) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in accordance with their interests in the Partnership in the event Section 1.704-1(b)(2)(iv)(m)(2) of the Regulations applies, or to the Partner to whom such distribution was made in the event Section 1.704-1(b)(2)(iv)(m)(4) of the Regulation applies.

(i) Code Section 704(c) Allocations. In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial fair market value. Additionally, the

Partners' Capital Accounts shall be adjusted as prescribed in Regulations Section 1.704-1(b)(2)(iv)(d) and (g).

8.10 **Curative Allocations.** The allocations set forth in Section 8.9 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 8.10. Therefore, notwithstanding any other provision of this Article VIII (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Agreement and all Partnership items were allocated pursuant to Sections 8.1 and 8.2 (without regard to paragraphs (a) or (b) thereof). In exercising its discretion under this Section 8.11, the General Partner shall take into account future Regulatory Allocations under Sections 8.9(b) and 8.9(c) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 8.9(f) and 8.9(g).

8.11 **Excess Nonrecourse Liabilities.** Solely for purposes of determining each Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), each Partner's interest in the Profits of the Partnership shall be its Ownership Interest.

8.12 **Time of Allocations.** Except as otherwise required by any other Sections of this Agreement or the Code, allocations pursuant to this Article VIII shall be made as of the last day of each Partnership Year.

8.13 **Material Items.** Any provision of this Agreement to the contrary notwithstanding, at all times during the existence of the Partnership, the aggregate interest of the General Partner in each material item of income, gain, loss, deduction or credit shall equal at least one percent (1%) of each such material item.

8.14 **Income, Gains, Losses and Deductions and Credits.** For U.S. federal income tax purposes, each item of income, gain, loss, deduction and credit for a Partnership Year not specifically allocated pursuant to Section 8.9 shall be allocated among the Partners in the same manner as the Profit or Loss for such Partnership Year is allocated.

8.15 **Treatment of Loans.** Any Optional Loan (under Section 4.5) shall, as provided in Section 707(a)(1) of the Code, be treated for federal income tax purposes as a loan to the Partnership from a Partner not acting in his capacity as a Partner, and shall not be treated as a contribution to the capital of the Partnership.

8.16 **Treatment of Fees and Reimbursement.** Except as provided in Section 4.1, none of the fees provided for in Section 7.1 or reimbursements provided for in Section 5.10 shall be treated as distributions of capital to the Partners. The fees provided for in Section 7.1 shall be treated for federal income tax purposes as either (depending upon the circumstances) (a) payments

from the Partnership to a Partner not acting in his capacity as a Partner, as provided in Section 707(a)(1) of the Code, or (b) guaranteed payments, as provided in Section 707(c) of the Code.

ARTICLE IX

9.1 **Dissolution and Termination of the Partnership.** The Partnership shall be immediately dissolved upon:

(a) The dissolution, liquidation, or Bankruptcy of the General Partner or the occurrence of any other act which would legally disqualify or prevent the General Partner from acting hereunder;

(b) The consent of the General Partner and Limited Partners holding a majority of the Units to dissolve;

(c) Upon the sale, conveyance, transfer or other voluntary disposition of all or substantially all of the Partnership Assets or upon the foreclosure or other involuntary disposition, or deed in lieu of foreclosure, of all or substantially all of the Partnership Assets;

(d) The occurrence of an event which would render the continuation of the Partnership business or operation unlawful; or

(e) If none of the foregoing events have previously occurred, then the Partnership shall automatically dissolve twenty (20) years from the Effective Date.

9.2 **Effect of Dissolution, Liquidation or Bankruptcy of a Limited Partner.** The dissolution, liquidation or Bankruptcy of a Limited Partner shall not result in the dissolution of the Partnership. Upon the dissolution, liquidation or Bankruptcy of a Limited Partner, the legal representative of such Limited Partner shall have the respective rights and liabilities as set forth in Section 7.05 of the Limited Partnership Act. In no event shall a creditor of the bankrupt Limited Partner be treated as an assignee of the Limited Partner's Ownership Interest, and the creditors of the bankrupt Limited Partner shall be entitled only to those remedies set forth in Section 7.03 of the Limited Partnership Act.

9.3 **Liquidation of Assets.** On the effective date of the dissolution of the Partnership, the General Partner (or a Person designated by the Limited Partner if the General Partner causes such dissolution) shall act as agent of the dissolved Partnership in liquidation, and of the Partners, for winding up all Partnership affairs and all business transactions of the Partnership (the "Liquidating Trustee"). The Liquidating Trustee shall continue to serve until the completion of the winding up and liquidation, unless Bankruptcy, insolvency or resignation shall intervene. The Liquidating Trustee shall not be paid for its services after the dissolution of the Partnership and the winding up for liquidating operations. It may, out of the assets and proceeds of the assets on hand, employ such assistance as it determines appropriate, and it may employ and pay any one of the Partners to take any such actions and render any such services in the winding up and liquidation.

9.4 **Prior Opportunity of Partners to Bid for Purchase of Partnership Assets Being Liquidated.** The Partners shall be given first opportunity over any other prospective bidder for the purchase of any of the Partnership Assets, with all Partners being given an equal opportunity to bid. If the best bid by any of the Partners is at least ninety-five percent (95%) of the highest best bid otherwise received by a non-Partner, then such best bid by that Partner is to be accepted.

9.5 **Distribution of Proceeds from Liquidation.** In the event of dissolution of the Partnership, the business affairs of the Partnership shall be wound up and liquidated as promptly as business circumstances and orderly business practices will permit. The proceeds of liquidation and all Partnership cash shall be distributed in the following order:

(a) First, to Partnership creditors (other than the Partners or their Affiliates) funds, to the extent that they are available, sufficient to extinguish current Partnership liabilities and obligations, including the costs and expenses of liquidation;

(b) Second, to the General Partner and the Limited Partners, respectively, an amount equal to the amount of their respective Optional Loans made pursuant to Section 4.5, if any, with such distributions to be applied first to the Optional Loans of the most distant date and origin and then applied to the Optional Loans of the second most distant date and origin, and so on, until the principal and interest of all Optional Loans have been paid in full, and made pro rata among the Partners based upon the total amount of Optional Loans of even date made by each, to be applied first against interest, then against principal;

(c) Third, one hundred percent (100%) to the Limited Partners in accordance with their respective Allocation Percentages until an amount equal to the Limited Partners' Capital Contributions has been distributed to the Limited Partners; and

(d) Thereafter, 50% to the General Partner and 50% to the Limited Partners paid to them in accordance with their respective Allocation Percentages.

Upon liquidation of the Partnership, if the General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations for all taxable years, including the taxable year in which the liquidation occurs), the General Partner shall contribute to the capital of the Partnership the amount of such deficit balances in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3), which contributions shall be paid to creditors of the Partnership or distributed to other Partners in accordance with their positive Capital Account balances in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3).

Notwithstanding anything to the contrary set forth hereinabove, if after the payment of current Partnership liabilities and obligations to the extent of the funds and/or other assets available for that purpose, either any portion of Partnership liabilities remains unpaid or the Liquidating Trustee determines that additional funds will be required to meet Partnership costs and expenses theretofore incurred or for which the Partnership may become responsible, then the Liquidating Trustee shall be obligated to retain such required amounts, if available (or as and when they become available), before any partnership cash or other assets are distributed to any of the Partners.

The General Partner and the Limited Partners hereby confirm and acknowledge that it is their intention that the provisions of this paragraph are personal between the General Partner and the Limited Partners only, and that no third party, including, without limitation, any third party creditor of the Partnership or the General Partner, shall be entitled to the benefits of this paragraph.

9.6 **Indemnification of the Liquidating Trustee.** The Liquidating Trustee shall be indemnified and held harmless by 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 Liquidating Trustee's taking of any action authorized under, or within the scope of, this Article IX; provided, however, that the Liquidating Trustee shall not be entitled to indemnification hereunder where the claim at issue arose out of:

- (a) A matter entirely unrelated to the Liquidating Trustee's acting under the provisions of this Article IX;
- (b) The gross negligence or willful misconduct of the Liquidating Trustee; or
- (c) The material breach by the Liquidating Trustee of its obligations under this Article IX.

The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies and recourses to which the Liquidating Trustee shall be entitled, at law or in equity.

9.7 **Final Accounting.** Within a reasonable time following the completion of liquidation, an accounting shall be made of the accounts of the Partnership, the account of each Partner thereof, and of the Partnership's Assets, liabilities, and operations from the date of the last previous accounting to the date of such liquidation.

ARTICLE X

10.1 **Notices.** All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if hand delivered or if mailed from within the United States by first class United States mail, postage prepaid, or by overnight carrier guaranteeing next-day delivery, and addressed as follows:

If to the General Partner:

Into the Wind, LLC
2230 Alberton Lane
Pearland, Texas 77584
Attention: Christopher M. Page, President

If to the Limited Partners:

To their respective addresses set forth
on their Limited Partner Signature Page
annexed hereto

A Partner may change its address by giving notice in writing, stating its new address, to the other Partner. Notice to a Partner, if deposited in the United States mail as herein provided, shall be deemed given to and received by the named addressee on the earlier of actual receipt or three (3) business days after it is so deposited. Notice to a Partner given by hand delivery or by overnight carrier shall be effective upon receipt by the addressee named therein.

10.2 **Law Governing.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.3 **Amendments.** This Agreement may not be amended or modified except by a written instrument executed by the General Partner and Limited Partners holding not less than a majority of the then outstanding Units.

10.4 **Successors and Assigns.** Subject to the provisions of Article VI, this Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Partners, and their respective heirs, legal representatives, successors and permitted assigns.

10.5 **Counterparts.** This Agreement shall be executed in multiple independently signed or fully signed counterparts, each of which shall be considered an original but all of which together shall constitute one agreement. If each party signs a separate original, this Agreement shall be effective (as of the effective date) when the last party has signed his or its separate original, and the separate signature pages may be collated and attached hereto as if they were one.

10.6 **Gender and Number.** Whenever required by the context, as used in this Agreement, the singular number shall include the plural, and the masculine gender shall include the feminine or the neuter.

10.7 **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

10.8 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation thereof.

10.9 **References.** Any reference to an "Article" or to a "Section" contained in this Agreement shall be to a provision of this Agreement, unless such provision specifically provides otherwise.

10.10 **Time of the Essence.** Time is of the essence with this Agreement.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

GENERAL PARTNER:

INTO THE WIND, LLC,
a Texas limited liability company

By: _____
Christopher M. Page, President

LIMITED PARTNERS:

**[SEE LIMITED PARTNER SIGNATURE
PAGES ANNEXED HERETO]**

**INTO THE WIND PARTNERS, L.P.
LIMITED PARTNER SIGNATURE PAGES**

The undersigned hereby elects to participate as a Limited Partner in the Limited Partnership Agreement of Into the Wind Partners, L.P. and agrees to be bound by the terms and conditions contained in the attached Limited Partnership Agreement of the Partnership, a copy of which the undersigned has received and reviewed with legal and financial counsel of its choice.

FOR COMPANY OWNERS:

FOR INDIVIDUAL OWNERS:

(Print Company Name)

(Your Signature)

(Indicate Whether Corporation,
Partnership, Etc.)

(Your Printed Name)

By: _____
(Your Signature)

(Your Social Security Number)

Name: _____
(Your Printed Name)

Title: _____

(Federal Identification Number)

FOR ALL OWNERS:

Designated Representative
and Address for Notice:

Name: _____

Address: _____

No. Units Subscribed: _____

x \$1,000 per Unit

x \$1,000

= Total Capital Contribution: _____

= _____

Total Capital Contribution _____

