

_____ **PARTNERSHIP AGREEMENT**
LOCATED IN THE STATE OF SOUTH DAKOTA

The signatories below hereby agree to enter into this agreement of partnership on this _____ day of _____, 20_____, (hereafter collectively referred to as the "Partners and separately"). The name of the partnership shall be " _____",

(Check One)

- a _____ **Partnership** (hereinafter referred to as "the Partnership").

- a _____ **Limited Partnership** (hereinafter referred to as "the Partnership") _____ shall be the General Partner of the Partnership.

- a _____ **Limited Liability Partnership** (hereinafter referred to as "the Partnership") _____ shall be the Managing Partner of the Partnership.

IT IS AGREED AS FOLLOWS:

1. **Purpose:** The purpose of the Partnership is to engage in _____ and any other lawful purpose.
2. **Registration:** The Partners shall cause to be filed with the State of South Dakota any required certificates or other documentation reflecting the status of the Partnership as a:

(Check One)

- _____ PARTNERSHIP AGREEMENT
- _____ LIMITED LIABILITY PARTNERSHIP AGREEMENT
- _____ PARTNERSHIP AGREEMENT

3. **Office:** The principal place of business of the Partnership is _____, City of _____, State of South Dakota or such other place as the Partnership may hereinafter determine.

4. **Term:** The term of the Partnership shall commence on the date set forth above and continue thereafter for a term of _____ years, unless sooner terminated by law or as provided herein.

5. **Capitalization:** The initial capitalization of the Partnership shall be _____ dollars (\$_____), made up of the initial cash amounts contributed by each partner such amounts and percentages set forth next to each Partner's name on Schedule A. The capital of the Partnership shall be the aggregate amount of capital contributions made to it by the Partners. Contributions to the capital of the Partnership shall not bear interest. In the event that a Partner advances money to the Partnership in excess of the amounts provided for herein, such advancement shall be considered a loan to the Partnership and shall have payment terms agreed upon by the Partnership. No partner shall be obligated to make any additional capital contributions except as otherwise set forth herein.

6. **Capitalization Call:**
(Check One)

- Partnership: If _____% of the Partners vote that additional capitalization is required, the Partners shall send out a notice ("Call Notice") to each partner specifying the proportional amount required. The proportional share is determined by multiplying the total amount required for the additional capitalization by the percentage interest set forth next to each Partner's name on Schedule A. The Partners vote as to additional capital shall be binding on each Partner.

- Limited Partnership: The General Partner may from time to time determine that additional capitalization is required and send out a notice ("Call Notice") to each Partner, setting forth the proportional amount each Partner is required to contribute. The proportional share is determined by multiplying the total amount required for the additional capitalization by the percentage interest set forth next to each Partner's name on Schedule A. The General Partner's determination as to additional capital shall be binding on each Partner unless at least _____% of the Partners vote otherwise.

- Limited Liability Partnership: The Managing Partner may from time to time determine that additional capitalization is required and send out a notice ("Call Notice") to each Partner, setting forth the proportional amount each Partner is required to contribute. The proportional share is determined by multiplying the total amount required for the additional capitalization by the percentage interest set forth next to each Partner's name on Schedule A. The General Partner's determination as to additional capital shall be binding on each Partner unless at least ____% of the Partners vote otherwise.

In the event that a Partner fails to contribute the amount required within ____ days after receiving a Call Notice, that Partner shall be considered in default of this Agreement and will have forfeited all voting rights until the default is cured. The defaulting Partner will have ____ days to cure the default. If the defaulting Partner fails to cure the default, the other Partners will have the opportunity to contribute the defaulted amount in proportion to their interests. The profit and loss amounts shall be adjusted accordingly.

7. **Capital Accounts:** An individual capital account shall be maintained for each Partner, and capital contributions to the Partnership by the Partners shall be credited to such accounts. Partnership profits or losses shall also be charged or credited to the separate capital accounts in the manner provided in this Agreement. No interest shall be paid on the capital account of any Partner.

8. **Allocations and Distributions:**

(Check One)

- Partnership: A majority of the Partners shall vote to determine the timing and amount of any distribution and such determination shall be binding on all partners.

- Limited Partnership: The General Partner shall determine the timing and amounts of distributions and such determination shall be binding on all Partners.

- Limited Liability Partnership: The Managing Partner shall determine the timing and amounts of distributions and such determination shall be binding on all Partners.

The net income of the Partnership shall be proportionally allocated to and any net losses of the Partnership shall be borne proportionally by the Partners as such percentages are set forth in Schedule A hereto. No Partner is entitled to priority preference in any distribution from the Partnership. No Partner shall be entitled to make withdrawals from his individual account or have returned to him his capital contributions except in accordance herewith. All distributions shall be made in cash.

9. Management of Partnership:

(Check One)

- Partnership: The business and affairs of the Company shall be conducted and managed by the Partners in accordance with this Agreement and the laws of the State of South Dakota. Except as expressly provided elsewhere in this Agreement, all decisions respecting the management, operation and control of the business and affairs of the Partnership and all determinations made in accordance with this Agreement shall be made by the affirmative vote or consent of Partners holding a majority of the percentage interest of the Partnership. Notwithstanding any other provision of this Agreement, the Partners shall not, without the prior written consent of the unanimous vote or consent of the Partners, sell, exchange, lease, assign or otherwise transfer all or substantially all of the assets of the Partnership; sell, exchange, lease (other than space leases in the ordinary course of business), assign or transfer the Partnership's assets; mortgage, pledge or encumber the Partnership's assets other than is expressly authorized by this Agreement; prepay, refinance, modify, extend or consolidate any existing mortgages or encumbrances; borrow money on behalf of the Partnership in the excess of \$_____.00; lend any Partnership funds or other assets to any person in an amount or with a value in excess of \$_____.00; establish any reserves for working capital repairs, replacements, improvements or any other purpose, in excess of an aggregate of \$_____.00; confess a judgment against the partnership; settle, compromise or release, discharge or pay any claim, demand or debt in excess of \$_____.00, including claims for insurance; approve a merger or consolidation of the Partnership with or into any other limited liability company, corporation, partnership or other entity; or change the nature or character of the business of the Partnership.

- Limited Partnership: Except as otherwise set forth herein, the General Partner shall have control of the Partnership and exercise ordinary business judgment in managing the Partnership. The General Partner shall have the power and authority including, but not limited to the following:

- a. Borrow money from third parties to finance the Partnership's activities on terms the General Partner deems appropriate;
- b. Hire, employ and retain services of personnel to facilitate the purposes of the Partnership;
- c. Acquire real and personal property upon terms and conditions deemed by the General Partner to be beneficial to the partnership
- d. Take any and all other action which is lawful and customary and reasonable as related to the conduct of the Partnership and its purposes.

The General Partner shall not be liable to the Limited Partners for any mistake of fact or judgment or investment loss unless such mistake of fact or judgment or loss of investment was the result of fraud, deceit or gross negligence on the part of the General Partner.

Notwithstanding the foregoing, the Limited Partners must approve by a majority vote of their percentage interests the following actions of the Partnership:

- a. Veto the General Partner's Capital Call;
- b. Admission of either an additional Limited Partner or General Partner;
- c. Amendment of this Agreement;
- d. Consent to dissolution;
- e. Election of a new General Partner.

- Limited Liability Partnership: Except as otherwise set forth herein, the Managing Partner shall have control of the Partnership and exercise ordinary business judgment in managing the Partnership. The Managing Partner shall have the power and authority including, but not limited to the following:

- e. Borrow money from third parties to finance the Partnership's activities on terms the Managing Partner deems appropriate;
- f. Hire, employ and retain services of personnel to facilitate the purposes of the Partnership;
- g. Acquire real and personal property upon terms and conditions deemed by the Managing Partner to be beneficial to the partnership
- h. Take any and all other action which is lawful and customary and reasonable as related to the conduct of the Partnership and its purposes.

The Managing Partner shall not be liable to the Limited Liability Partners for any mistake of fact or judgment or investment loss unless such mistake of fact or judgment or loss of investment was the result of fraud, deceit or gross negligence on the part of the Managing Partner.

Notwithstanding the foregoing, the Limited Liability Partners must approve by a majority vote of their percentage interests the following actions of the Partnership:

- f. Veto the Managing Partner's Capital Call;
- g. Admission of either an additional Limited Partner or Managing Partner;
- h. Amendment of this Agreement;
- i. Consent to dissolution;
- j. Election of a new Managing Partner.

10. **Banks and Books of Account:** The funds of the Partnership shall be kept in separate accounts in a financial institution in the name of the Partnership. Full and complete financial books shall be kept and maintained at the principal place of business. Each Partner shall have the right to inspect and copy all Partnership records. The books shall be closed at the end of each calendar year and statements prepared showing the financial condition of the Partnership and its profit or loss.

11. **Relationship of the Partners.** Each Partner may have other business interests and may engage in any other business, trade, profession, or employment whatsoever on his own account or in partnership with, as an employee of, or as an officer, director, or stockholder of any other person, firm, or corporation (whether competitive with the Partnership or otherwise) and he shall not be required to devote his entire time to the business of the Partnership. No Partner shall receive any salary or other special compensation or services rendered by him as Partner of the Partnership, except as otherwise agreed upon by all the Partners. Each of the parties hereto are Partners for the purpose of this Partnership as set forth herein, but nothing contained in this Agreement shall make the Partners "partners" with respect to any matters unrelated to the Partnership, or render them liable for any debts or obligations of any other Partner, nor shall any Partner be hereby constituted the agent for any Partner except to the limited extent herein specifically permitted and as may be hereinafter agreed upon by consent of all the parties.

12. **Partnership Meetings:** Meetings of the Partners at the Principal Executive Office of the partnership may be called by any Partner by written request within at least ten days of the proposed meeting. The written request shall include the business to be discussed, the time, date and place of the meeting. Notice shall be given by mail to the Partners at the address set forth in the records of the Partnership. Partners holding a majority of the percentage interest shall constitute a quorum at any meeting. Attendance of a Partner at a meeting shall be considered a waiver of notice, except in the event the Partner objects at the beginning of the meeting that the meeting was not lawfully convened.

13. **Consent in Lieu of a Meeting:** Partners may consent in writing to any action of the Partnership in lieu of a meeting provided that at least ____ of the partnership interests have agreed in writing to the action. All Partners must be notified of the action proposed to be taken by written notice as set forth in Paragraph 11 and any Partner may request that such action shall not be taken without a meeting. If there is no meeting requested on a written action, the action shall be effective within ten days of the Partnership receiving the requisite consents.
14. **Voluntary Termination.** The Partnership may be dissolved at any time by agreement of a majority of the percentage interests of the Partners, in which event the partners shall proceed with reasonable promptness to liquidate the business of the partnership. The assets of the partnership and proceeds of liquidation shall be applied in the following order:
- a. To the payment of or provision for all debts, liabilities and obligations of the Partnership to any person (other than Partners) and the expenses of liquidation;
 - b. To the payment of all debts and liabilities (including interest) to the Partners (except those on account of their capital contributions); and
 - c. To the discharge of the balance of the income accounts of the Partners;
 - d. To the payment of the capital accounts of the Partners, less any previous distributions and any losses charged or chargeable to the capital accounts of the Partners and increased by any income or gains credited to such capital accounts.

Notwithstanding any other provisions of this Paragraph 13, if, upon liquidation of the Partnership, the liquidating allocations would leave any Partner with a deficit in his capital account that is not to be repaid to the Partnership, then, such allocation shall be modified so that, to the extent possible, the amount of total gain (including the portion of any cancellation of indebtedness income not excluded by an election under Internal Revenue Code Sections 108 and 1017) allocated to such Partner is sufficient to eliminate such deficit. If there are several Partners with such deficits and the total gain is less than the aggregate deficits, such gains shall be allocated in proportion to, but not in excess of, their respective deficits.

15. **Retirement.** Any Partner shall have the right to retire from the Partnership with written notice served to the other Partners of the intention to retire at least _____ days before the first day of the month in which the retiring Partner intends to retire. The retirement of such Partner shall have no effect upon the continuance of the Partnership business. If the remaining Partners elect to purchase the interest of the retiring Partner, the Partners shall serve written notice of such election upon the retiring Partner within _____ days after receipt of the retiring Partner's notice of intention to retire, and the purchase price and method of payment for the Partnership interest shall be as set forth in Paragraph 17 hereof. If the remaining Partners elect not to purchase the interest of the retiring Partner, then the

Partners shall proceed with reasonable promptness to liquidate the business of the Partnership.

16. **Involuntary Withdrawal.** Any Partner may be required to withdraw from the Partnership upon the happening of any of the following events:
- a. If any Partner makes an assignment for the benefit of creditors or applies for the appointment of a trustee, a liquidator or receiver of any substantial part of his assets or commences any proceeding relating to himself under any bankruptcy, reorganization, or arrangement of similar law; or if any such application is filed or proceeding is commenced against any Partner and such Partner indicates his consent thereto, or an order is entered appointing any such trustee, liquidator or receiver, or approving a petition in any such proceeding and such order remains in effect for more than sixty (60) days; then that Partner shall be deemed to have withdrawn from the Partnership as of the date of the happening of any such event.
 - b. If any Partner shall be adjudged incompetent, then such Partner shall be deemed to have withdrawn from the Partnership on the date set forth in a notice to such incompetent Partner from the remaining Partners.

The value of the Partnership interest in the Partnership of any Partner who shall be required to withdraw from the Partnership as provided in this paragraph, and the method of payment for the Partnership interest shall be as provided in Paragraph 17 hereof.

17. **Death of a Partner.** Upon the death of a Partner, the Partnership shall not terminate, and the business of the Partnership shall be continued to the end of the fiscal year in which the death occurs. The estate of the deceased Partner shall share in the net profits or losses of the Partnership for the balance of the fiscal year in the same manner the deceased Partner would have shared in them had he survived to the end of the fiscal year, but the liability of the estate for losses shall not exceed the deceased Partner's interest in the Partnership assets at the time of his death. The estate of the deceased Partner shall have no voice in the affairs of the Partnership. At the end of the fiscal year, the surviving Partners shall have the option either to liquidate the Partnership or to purchase the interest of the deceased Partner as set forth in Paragraph 17.

18. **Purchasing Partnership Interest**

- a. If the remaining Partners elect to purchase the interest of a retiring or deceased Partner, they shall notify in writing of such election within _____ months after the death or retirement of the Partner upon the Partner or upon the Representative of the deceased Partner's estate. The purchase price shall be equal to the retiring or deceased Partner's capital account as of the end of the month next preceding the date of his death or

retirement plus the Partner's income account as of such date, adjusted for the Partner's share of profits not previously distributed or losses not previously charged to either of said accounts through the end of the month preceding retirement or death. The capital account of the deceased Partner shall be adjusted to reflect the fair market value of any Partnership property and improvements located thereon and fixtures affixed thereto, such value to be determined by an independent appraiser selected by the parties for this purpose. The purchase price shall be paid within _____ year(s) of the death or retirement of the Partner. The Partners intend that the payments for the deceased or retiring Partner's capital account shall be considered distributions pursuant to Section 736(b) of the Internal Revenue Code, and that payments for undistributed profits shall be a distributive share of the Partnership income under Section 736(a) of the Internal Revenue Code.

- b. If the remaining Partners do not elect to purchase the interest of the deceased or retiring Partner, they shall proceed with reasonable promptness to liquidate the Partnership. During the period of liquidation, the remaining Partners and the retiring Partner or the estate of the deceased Partner shall share in the profits and losses of the business in the same manner that they would have shared in them had the deceased or retiring Partner remained to the end of the fiscal year, except that the deceased Partner's estate or retiring Partner shall not be liable for losses in excess of the deceased Partner's interest or retiring Partner's interest in the Partnership assets as of the time of his death or retirement. Except as herein otherwise stated, the procedure as to liquidation and distribution of the assets of the Partnership business shall be the same as stated in Paragraph 13.

The parties agree that the provisions contained herein with respect to the discharge of a deceased Partner's interest in the Partnership are in lieu of the provisions of the South Dakota State Statutes and shall exclusively govern the disposition of and accounting for the interest of a deceased Partner in the Partnership.

19. **New Partners.** No person shall be admitted as a Partner of the Partnership except with the consent of all the Partners who shall determine the terms and conditions upon which such admission is to be effective.

20. **Liability:**

- Partnership: Each partner shall hold harmless any other Partners from any liability arising from the conduct of the business affairs or operations

of the Partnership or from the debts of the Partnership in excess of the Partner's proportional interest in the Partnership.

- Limited Partnership: Except as otherwise provided in this Agreement, the liability of the General Partner arising from the conduct of the business affairs or operations of the Partnership or from the debts of the Partnership is not restricted. Each Partner shall hold harmless the General Partner from any liability to the Partnership in excess of the General Partner's proportional interest in the Partnership. Each Partner (other than the General Partner) shall be liable only to the extent of such Limited Partner's proportionate interest in the Partnership.

- Limited Liability Partnership: No Partner shall be personally liable or accountable, directly or indirectly (including by way of indemnification, contribution, assessment or otherwise), for debts, obligations and liabilities of, or chargeable to, the Partnership, or another Partner or Partners, whether arising in tort, contract or otherwise, solely by reason of being a Partner or acting (or omitting to act) in such capacity, which such debts, obligations and liabilities occur, are incurred or are assumed while the Partnership is a limited liability partnership.

21. **Amendments:** The provisions of this Agreement may be amended by a vote or written consent of the partners representing at least ____% of the percentage interest of the Partnership.
22. **Prohibition on Transfer.** A Partner shall not, and shall have no right, to sell, assign, pledge or mortgage his interest in the Partnership, or the Partnership property or assets, except with the written consent of all the Partners, and any such prohibition transfer, if attempted, shall be void and without force or effect.
23. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto and supersedes any prior written or oral agreements relating to the subject matter herein.
24. **Notices:** All notices shall be in writing and sent by regular United States mail to the addresses on record at the Partnership offices.
25. **Governing Law.** This Agreement shall be governed, controlled by and construed in accordance with the laws of the State of South Dakota.

