

AMENDED AGREEMENT OF LIMITED PARTNERSHIP

OF

SRE PROPERTIES PARTNERSHIP NO. 1, L.P.

A TEXAS LIMITED PARTNERSHIP

**GOVERNMENT
EXHIBIT**

24264

Crim No. H 04-0025

FTE-1737B25-000316

AMENDED
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OF
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This AMENDED AGREEMENT OF LIMITED PARTNERSHIP OF SRE PROPERTIES PARTNERSHIP NO. 1, L.P. (this "Agreement") restates the AGREEMENT OF LIMITED PARTNERSHIP OF SRE PROPERTIES PARTNERSHIP NO. 1, L.P. made and entered into as of as of June 29, 2000 by and among the Partners (a capitalized term used in this Agreement has the meaning ascribed to it in Article I unless its meaning is ascribed to it elsewhere in this Agreement).

FOR AND IN CONSIDERATION OF the mutual covenants, rights, and obligations set forth in this Agreement, the benefits to be derived from them, and other good and valuable consideration, the receipt and the sufficiency of which each Partner acknowledges and confesses, the Partners agree as follows:

ARTICLE I
DEFINITIONS

1.01 ***Certain Definitions.*** As used in this Agreement, capitalized terms shall have the following meanings unless their meanings are ascribed to them elsewhere in this Agreement:

"Act" means the Texas Revised Limited Partnership Act and any successor statute, as amended from time to time.

"Affected Partner" has the meaning ascribed to it in Section 10.04.

"Advisory Committee" has the meaning ascribed to it in Section 7.05.

"Affiliate" means, with respect to any Person, any other Person Controlling, Controlled By, or under common Control with that first Person.

"Agreement" means this Amended Agreement of Limited Partnership of SRE Properties Partnership No. 1, L.P., as it may be amended in accordance with the provisions below.

"Bankrupt Partner" means any Partner (whether a General Partner or a Limited Partner) with respect to which an event of the type described in Sections 4.02(a)(4) or 4.02(a)(5) of the Act has occurred, subject to the lapsing of any period of time therein specified.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which banks in the State of Texas generally are closed.

"Capital Contribution" means any contribution by a Partner to the capital of the Partnership.

"Certificate" means the Partnership's certificate of limited partnership, as amended or restated from time to time, as filed with the Secretary of State of the State of Texas and as described in Section 2.05.

"Code" means the Internal Revenue Code of 1986 and the corresponding provisions of any successor statutory provisions, as amended from time to time.

"Commitment" means, subject in each case to adjustments on account of Dispositions of Partnership Interests permitted by this Agreement, (a) in the case of a Partner executing this Agreement as of the date of this Agreement or a Person acquiring that interest, the amount specified for that Partner as its Commitment on Exhibit A, and (b) in the case of a Partnership Interest issued under Section 3.04, 10.01(c), 10.02, or 10.03, the Commitment established in that provision.

"Control," "Controls," "Controlling" or "Controlled By" means (a) in the case of a Person that is a corporation, the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of such person, and (b) in the case of a

Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) three percent (3 %) plus a varying rate per annum that is equal to the interest rate publicly quoted by the Wall Street Journal (Southwest Edition) from time to time as the prime rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

"Delinquent Partner" has the meaning ascribed to it in Section 4.03(a).

"Dispose," "Disposing," or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance, or the acts of the foregoing.

"Excess" has the meaning ascribed to it in Section 5.02(a).

"Excess Determination" has the meaning ascribed to it in Section 5.02(a).

"FINGER-FSC Agreement" means the Limited Partnership Agreement between FDC Group, Ltd. and the Partnership dated as of July 6, 2000 forming FINGER-FSC, LTD., a Texas limited partnership.

"FINGER-FSC Partnership" means FINGER-FSC, LTD., a Texas limited partnership formed by the Limited Partnership Agreement between FDC Group, Ltd. and the Partnership dated as of July 6, 2000.

"General Interest Rate" means a rate per annum equal to the lesser of (a) a varying rate per annum that is equal to the interest rate publicly quoted by the Wall Street Journal (Southwest Edition) from time to time as the prime rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

"General Partner" means any Person executing this Agreement as a general partner or subsequently admitted to the Partnership as a general partner as provided in this Agreement, but does not include any Person who has ceased to be a general partner in the Partnership.

"Indemnified Person" means a Person indemnified pursuant to Section 6.04.

"Lending Partner" has the meaning ascribed to it term in Section 4.03(a)(ii).

"Limited Partner" means any Person executing this Agreement as a limited partner or subsequently admitted to the Partnership as a limited partner as provided in this Agreement, but does not include any Person who has ceased to be a limited partner in the Partnership.

"Liquidator" means the Person acting as the Liquidator pursuant to Section 11.02.

"Losses" has the meaning ascribed to it in Section 6.04.

"Managing General Partner" means FSI No. 2 Corporation, a Delaware business corporation, or any other General Partner designated as Managing General Partner as provided in this Agreement.

"Partner" means any General Partner or Limited Partner.

"Partnership" has the meaning ascribed to it in Section 2.01.

"Partnership Interest" means the interest of a Partner in the Partnership, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

"Person" has the meaning given that term in Section 1.02(12) of the Act.

"Power of Attorney" has the meaning ascribed to it in Section 6.05.

"Required Interest" means one or more Limited Partners having among them more than 50% of the Base Sharing Ratios of all Limited Partners in their capacities as such.

"Section" means a Section of this Agreement unless otherwise noted.

"Securities Act" has the meaning ascribed to it in Section 3.02.

"Sharing Ratio" with respect to any Partner means the percentage set forth in Exhibit A for such Partner under the heading "Sharing Ratio".

"Treas. Reg." means a Treasury Regulation promulgated under the Code.

1.02 **Construction.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. All references to Articles and Sections refer to articles and sections of this Agreement unless otherwise noted, and all references to Exhibits are to Exhibits attached to this Agreement, each of which is made a part of this Agreement for all purposes.

ARTICLE II ORGANIZATION

2.01 **Formation.** The Persons executing this Agreement as of the date of this Agreement form a limited partnership (the "*Partnership*") for the purposes set forth in this Agreement effective as of the date of the filing of the Certificate as described in Section 2.05.

2.02 **Name.** The name of the Partnership is "SRE Properties Partnership No. 1, L.P.", and all Partnership business must be conducted in that name or such other names that comply with applicable law as the Managing General Partner may select from time to time.

2.03 ***Registered Office; Registered Agent; Other Offices.*** The registered office of the Partnership in the State of Texas shall be at such place as the Managing General Partner may designate from time to time. The registered agent for service of process on the Partnership in the State of Texas or any other jurisdiction shall be such Person or Persons as the Managing General Partner may designate from time to time. The Partnership may have such other offices as the Managing General Partner may designate from time to time.

2.04 ***Purposes.*** The purposes of the Partnership are (a) to invest in one or more Project Companies as defined in Section 1.3 of the FINGER-FSC Agreement and (b) to engage in any other business or activity that now or in the future may be necessary, incidental, proper, advisable, or convenient to accomplish the foregoing purposes (including, without limitation, obtaining appropriate financing) and that is not forbidden by the law of the jurisdiction in which the Partnership engages in that business.

2.05 ***Certificate; Foreign Qualification.*** The Managing General Partner has executed and filed with the Secretary of State of the State of Texas a Certificate containing information required by the Act and such other information as the Managing General Partner deemed appropriate. Prior to the Partnership's conducting business in any jurisdiction other than Texas, the Managing General Partner has caused or shall cause, as the case may be, the Partnership to comply, to the extent those matters are reasonably within the control of the Managing General Partner, with all requirements necessary to qualify the Partnership as a foreign limited partnership (or a partnership in which the Limited Partners have limited liability) in that jurisdiction. At the request of the Managing General Partner, each Partner shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to form, qualify, continue, and terminate the Partnership as a limited partnership under the laws of the State of Texas and to qualify, continue, and terminate the Partnership as a foreign limited partnership (or a partnership in which the Limited Partners have limited liability) in all other jurisdictions in which the Partnership may conduct business, and to this end the Managing General Partner may use the Power of Attorney.

2.06 ***Term.*** The Partnership shall commence on the date the Certificate first is properly filed with the Secretary of State of the State of Texas and shall continue in existence

until its business and affairs are wound up following dissolution automatically at the close of Partnership business on the earlier of (a) the termination date of the FINGER-FSC Partnership as specified in Section 1.6 of the FINGER-FSC Agreement or (b) any other time specified in this Agreement.

2.07 ***Merger or Consolidation.*** The Partnership may merge or consolidate with or into another limited partnership or other business entity, or enter into an agreement to do so, only with the consent of the Managing General Partner and a Required Interest.

ARTICLE III DISPOSITIONS OF INTERESTS

3.01 ***Initial Partners.*** The initial general partners and limited partners of the Partnership are the Persons executing this Agreement as of the date of this Agreement as general partners and limited partners, respectively, each of which is admitted to the Partnership as a General Partner or a Limited Partner, as the case may be, effective with the commencement of the Partnership.

3.02 ***Representations and Warranties.*** Each Partner represents and warrants to the Partnership and each other Partner that (a) if that Partner is a corporation, it is duly organized, validly existing, and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated in that jurisdiction), (b) if that Partner is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed in that jurisdiction) and the representations and warranties in clause (a) or (b), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other member of that Partner, (c) that Partner has full corporate, partnership, trust, or other applicable power and authority to enter into this Agreement and to perform its obligations under this Agreement and all necessary actions by the board of directors, shareholders, partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Agreement by that Partner have been duly

taken, (d) that Partner has duly executed and delivered this Agreement, (e) that Partner's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which that Partner is a party or by which it is bound, (f) that (i) Partner understands the Partnership Interests will not be registered under the Securities Act of 1933 (the "*Securities Act*") or any state securities laws in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act, and Regulation D promulgated thereunder, and similar exemptions under applicable state securities laws and (ii) Partner is an "accredited investor" under Regulation D and as defined in Rule 501 under the Securities Act of 1933, (g) that Partner has adequate means of providing for its current needs and is able to bear the economic risks of an investment in the Partnership and, consequently, is able to hold its Partnership Interest for an indefinite period of time, (h) that Partner has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment represented by its Partnership Interest, (i) that Partner's Partnership Interest is being acquired for such Partner's own account for investment and not with a view to the distribution or resale thereof, (j) that Partner is familiar with the business, financial condition, properties, operations and prospects of the Partnership and the proposed business of the Partnership, and (k) that Partner has received no representations, warranties or undertakings from the Managing General Partner or its directors, officers, employees or agents.

3.03 *Restrictions on the Disposition of an Interest.* (a) Except as provided in this Section 3.03, a Disposition of a Partnership Interest may be effected only with the consent of the Managing General Partner and a Required Interest. Any attempted Disposition by a Person of a Partnership Interest, or any part of a Partnership Interest, other than in accordance with this Section 3.03 is void and the Partnership may not recognize it.

(b) Subject to the provisions of Section 3.03(d), (e), and (f), any Partner (i) may Dispose of all or part of its Partnership Interest (including by will or intestate succession) to (A) such Partner's personal representative appointed by will or by a court having jurisdiction over such Partner or such Partner's estate, (B) a member of that Partner's immediate family, or (C) a trust, partnership or corporation Controlled By that Partner or members of that Partner's immediate family, or (D) another Person Controlling, Controlled By, or under common Control with that Partner, or pursuant to merger, consolidation, or transfer of all or

substantially all of that Partner's assets, or (ii) may pledge, assign for security purposes, or otherwise grant a security interest in (and the pledgee, assignee, or secured party may foreclose on) all or part of that Partner's interest in distributions from the Partnership.

(c) Subject to the provisions of Section 3.03(d), (e), and (f), with the permission of the Managing General Partner (which may be withheld in its sole discretion), any Partner may grant a permitted transferee of all or an undivided part of its Partnership Interest, or a Lending Partner may grant the purchaser of a Delinquent Partner's Partnership Interest at a foreclosure of the security interest granted pursuant to Section 4.03(b), the right to be admitted to the Partnership as a General Partner or a Limited Partner (as applicable), with such Sharing Ratio and such Commitment (no greater than the Sharing Ratio and the Commitment of the Partner effecting the Disposition before the Disposition) as they may agree. Any permitted transferee of all of the Managing General Partner's Partnership Interest as a General Partner automatically becomes Managing General Partner on that transfer and promptly shall notify the other Partners of that change, and any permitted transferee of a portion of the Managing General Partner's Partnership Interest may become Managing General Partner on notice from the existing Managing General Partner to all other Partners.

(d) The Partnership may not recognize for any purpose any purported Disposition of all or part of a Partnership Interest unless and until the other applicable provisions of this Section 3.03 have been satisfied and the Managing General Partner has received, on behalf of the Partnership, a document (i) executed by both the Partner effecting the Disposition (or if the transfer is on account of the death, incapacity, or liquidation of the transferor, its representative) and the Person to which the Partnership Interest or part of a Partnership Interest is Disposed, (ii) including the notice address of any Person to be admitted to the Partnership as a Partner and its agreement to be bound by this Agreement in respect of the Partnership Interest or part of a Partnership Interest being obtained, (iii) setting forth the Sharing Ratios and the Commitments after the Disposition of the Partner effecting the Disposition and the Person to which the Partnership Interest or part of a Partnership Interest is Disposed (which together must total the Sharing Ratio and the Commitment of the Partner effecting the Disposition before the Disposition), and (iv) containing a representation and warranty that the Disposition was made in accordance with all applicable laws and regulations (including securities laws) and, if the Person to which the Partnership Interest or part of a

Partnership Interest is Disposed is to be admitted to the Partnership, its representation and warranty that at all relevant times the representations and warranties in Section 3.02 are true and correct with respect to that Person. Each Disposition and, if applicable, admission complying with the provisions of this Section 3.03(d), is effective as of the first day of the calendar month immediately succeeding the month in which the Managing General Partner receives the notification of Disposition and the other requirements of this Section 3.03 have been met; provided, however, that if there is only one General Partner and as a result of the Disposition that General Partner would cease to be a General Partner, the transferee's admission as a General Partner is effective immediately prior to that cessation.

(e) For the right of a Partner to Dispose of a Partnership Interest or any part of a Partnership Interest or of any Person to be admitted to the Partnership in connection with such a Disposition to exist or be exercised, (i) either (A) the Partnership Interest or part of a Partnership Interest subject to the Disposition or admission must be registered under the Securities Act, as amended, and any applicable state securities laws or (B) the Partnership must receive a favorable opinion of the Partnership's legal counsel or of other legal counsel acceptable to the Managing General Partner to the effect that the Disposition or admission is exempt from registration under those laws and (ii) the Partnership must receive a favorable opinion of the Partnership's legal counsel or of other legal counsel acceptable to the Managing General Partner to the effect that the Disposition or admission complying with the provisions of Section 3.03(d), when added to the total of all other sales, assignments, or other Dispositions within the preceding 12 months, would not result in the Partnership's being considered to have terminated within the meaning of the Code. The Managing General Partner, however, may waive any or all of the requirements of this Section 3.03(e).

(f) The Partner effecting a Disposition and any Person admitted to the Partnership in connection with that Disposition shall pay, or reimburse the Partnership for, all costs incurred by the Partnership in connection with the Disposition or admission (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in Section 3.03(e)) on or before the tenth day after the receipt by that Person of the Partnership's invoice for the amount due. If payment is not made by the date due, the Person owing that amount shall pay interest on the unpaid amount from the date due until paid at a rate per annum equal to the Default Interest Rate.

3.04 ***Additional Partners.*** If so voted by all of the Partners, Additional Persons may be admitted to the Partnership as General Partners or Limited Partners and Partnership Interests may be created and issued to those Persons and to existing Partners at the direction of the Managing General Partner on such terms and conditions as are determined at the time of admission by such vote of all Partners. The terms of admission or issuance must specify the Sharing Ratios and the Commitments applicable to the new Partnership Interest, and provided all Partners agree, may provide for the creation of different classes or groups of Limited Partners or General Partners and having different rights, powers, and duties. The Managing General Partner shall reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Managing General Partner. Any such admission also must comply with the provisions of Section 3.03(e)(i) and (ii) to the extent that the Managing General Partner does not waive compliance with such provisions pursuant to the last sentence of Section 3.03(e), and is effective only after the new Partner has executed and delivered to the Managing General Partner a document including the new Partner's notice address, its agreement to be bound by this Agreement, and its representation and warranty that at all relevant times the representation and warranties in Section 3.02 are true and correct with respect to the new Partner.

3.05 ***Death of Partner's Spouse; Termination of Marital Relationship; Partition of Community Property.*** (a) SPOUSES OF THE PARTNERS ARE NOT PARTNERS IN THE PARTNERSHIP, EXCEPT TO THE EXTENT THEY OTHERWISE ARE PARTNERS.

(b) If the spouse of a Partner predeceases such Partner and neither such Partner nor one or more descendants of such Partner (or trusts for such descendants) succeeds by the spouse's will or intestate succession to the spouse's community property interest (if any) in such Partner's Partnership Interest, such Partner shall have the option through the 90th day after the death of such spouse to buy, and upon the exercise of such option such spouse's estate shall sell, such community property interest in the Partnership pursuant to Section 10.04 as if such spouse's estate were an Affected Partner. If such option is not exercised by such Partner, the Partnership shall have the option through the 30th day after the expiration of such Partner's option to buy, and upon the exercise of such option such spouse's estate shall sell, such

community property interest pursuant to Section 10.04 as if such spouse's estate were that of an Affected Partner.

(c) Upon the termination of the marital relationship of any Partner other than by death, or upon the partition of the community or separate property between any Partner and such Partner's spouse for any reason, such Partner shall have the option through the 90th day after such termination or partition to buy, and upon the exercise of such option such Partner's spouse or former spouse shall sell, any of the spouse's or former spouse's interest in such Partner's interest pursuant to Section 10.04 as if such spouse were an Affected Partner. If such option is not exercised by such Partner, the Partnership shall have the option through the 30th day after the expiration of such Partner's option to buy, and upon the exercise of such option such Partner's spouse or former spouse shall sell, any such property interest pursuant to Section 10.04 as if such spouse were an Affected Partner.

3.06 ***Interests in a Partner.*** A Partner that is not a natural person may not cause or permit an interest, direct or indirect, in itself to be Disposed of such that, after the Disposition, (a) the Partnership would be considered to have terminated within the meaning of the Code or (b) without the consent of the Managing General Partner and a Required Interest, that Partner shall cease to be Controlled By substantially the same Persons who Control it as of the date of its admission to the Partnership. On notice from the Partnership in its discretion following any breach of the provisions of clause (b) of the immediately preceding sentence, the breaching Partner shall cease to be a Partner and the Partnership shall buy, and, on exercise of that option, the breaching Partner shall sell, the breaching Partner's Partnership Interest, all in accordance with Section 10.04.

ARTICLE IV CAPITAL CONTRIBUTIONS

4.01 ***Initial Contributions.*** Each Partner has made the Capital Contributions described for that Partner in Exhibit A.

4.02 ***Subsequent Contributions.*** Without creating any rights in favor of any third party, each Partner shall contribute to the Partnership, in cash, on or before the date specified

as described in this Section 4.02, that Partner's Sharing Ratio of all monies that in the judgment of the Managing General Partner are necessary to (a) enable the Partnership to cause the assets of the Partnership to be properly operated and maintained, (b) to discharge the Partnership's costs, expenses, obligations, and liabilities with respect to taxes and (c) maintain or increase the Investment Assets. The Managing General Partner shall notify each Partner of the need for Capital Contributions pursuant to this Section 4.02 when appropriate, which notice must include a statement in reasonable detail of the proposed uses of the Capital Contributions and a date (which date may be no earlier than the fifth Business Day following each Partner's receipt of its notice) before which the Capital Contributions must be made. Notices for Capital Contributions must be made to all Partners in accordance with their Sharing Ratios.

4.03 Failure to Contribute. (a) If a Partner does not contribute by the time required all or any portion of a Capital Contribution that Partner is required to make as provided in this Agreement, the Partnership may exercise, on notice to that Partner (the "*Delinquent Partner*"), one or more of the following remedies:

(i) taking such action (including, without limitation, court proceedings) as the Managing General Partner may deem appropriate to obtain payment by the Delinquent Partner of the portion of the Delinquent Partner's Capital Contribution that is in default, together with interest on that amount at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Delinquent Partner;

(ii) permitting the Managing General Partner and, to the extent the Managing General Partner does not elect to do so, the other Partners in proportion to their Sharing Ratios or in such other percentages as they may agree (the "*Lending Partner*," or "*Lending Partners*", if more than one), to advance the portion of the Delinquent Partner's Capital Contribution that is in default, with the following results:

(A) the sum advanced constitutes the principal of a loan from the Lending Partner to the Delinquent Partner and a Capital Contribution of that

sum to the Partnership by the Delinquent Partner under the applicable provisions of this Agreement,

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

(C) the principal balance of the loan bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Partner,

(D) all distributions from the Partnership that otherwise would be made to the Delinquent Partner (whether before or after dissolution of the Partnership) instead shall be paid to the Lending Partner until the loan, together with all interest accrued on it, have been paid in full to the Lending Partner (with payments being applied first to accrued and unpaid interest and then to principal),

(E) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Partner's Partnership Interest, as more fully set forth in Section 4.03(b), and

(F) the Lending Partner has the right, in addition to the other rights and remedies granted to it under this Agreement or at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Partner may deem appropriate to obtain payment by the Delinquent Partner of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Partner;

(iii) exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas, as more fully set forth in Section 4.03(b); or

(iv) exercising any other rights and remedies available at law or in equity.

(b) Each Partner grants to the Partnership, and to each Lending Partner with respect to any loans made by the Lending Partner to that Partner as a Delinquent Partner as described in Section 4.03(a)(ii), as security, equally and ratably, for the payment of all Capital Contributions that Partner has agreed to make and the payment of all loans and interest accrued on them made by Lending Partners to that Partner as a Delinquent Partner as described in Section 4.03(a)(ii), a security interest in and a general lien on its Partnership Interest and the proceeds of that Partnership Interest, all under the Uniform Commercial Code of the State of Texas. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Partnership or the Lending Partner, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Texas with respect to the security interest granted in this Section 4.03(b). Each Partner shall execute and deliver to the Partnership and the other Partners all financing statements and other instruments that the Managing General Partner or the Lending Partner, as applicable, may request to effectuate and carry out the preceding provisions of this Section 4.03(b). At the option of the Managing General Partner or a Lending Partner, this Agreement or a carbon, photographic, or other copy of this Agreement may serve as a financing statement.

4.04 Advances by Partners. If the Partnership does not have sufficient cash to pay its obligations, the Managing General Partner, or any other Partner or Partners that may agree to do so with the Managing General Partner's consent, may advance all or part of the needed funds to or on behalf of the Partnership. Payment by a General Partner on account of liability as a matter of law for Partnership obligations is deemed to be an advance under this Section 4.04. An advance described in this Section 4.04 constitutes a loan from the Partner to the Partnership, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

4.05 Capital Accounts. A capital account shall be established and maintained for each Partner. Each Partner's capital account (a) shall be increased by (i) the amount of money contributed by that Partner to the Partnership, (ii) the fair market value of property contributed by that Partner to the Partnership (net of liabilities secured by the contributed

property that the Partnership is considered to assume or take subject to under section 752 of the Code), and (iii) allocations to that Partner of Partnership income and gain (or items of income and gain), including income and gain exempt from tax and income and gain described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treas. Reg. § 1.704-1(b)(4)(i), and (b) shall be decreased by (i) the amount of money distributed to that Partner by the Partnership, (ii) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by the distributed property that the Partner is considered to assume or take subject to under section 752 of the Code), (iii) allocations to that Partner of expenditures of the Partnership described in section 705(a)(2)(B) of the Code, and (iv) allocations of Partnership loss and deduction (or items of loss and deduction), including loss and deduction described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (b)(iii) above and loss or deduction described in Treas. Reg. §§ 1.704-1(b)(4)(i) or 1.704-1(b)(4)(iii). The Partners' capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. §§ 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Partners of depreciation, depletion, amortization and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for federal income tax purposes, as required by Treas. Reg. § 1.704-1(b)(2)(iv)(g). A Partner that has more than one Partnership Interest shall have a single capital account that reflects all its Partnership Interests, regardless of the class of Partnership Interests owned by that Partner and regardless of the time or manner in which those Partnership Interests were acquired. On the transfer of all or part of a Partnership Interest, the capital account of the transferor that is attributable to the transferred Partnership Interest or part of a Partnership Interest shall carry over to the transferee Partner in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(l).

ARTICLE V

ALLOCATIONS AND DISTRIBUTIONS

5.01 ***Allocations.*** (a) Except as may be required by section 704(c) of the Code and Treas. Reg. § 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction, and credit of the Partnership shall be allocated among the Partners in accordance with their Sharing Ratios.

(b) All items of income, gain, loss, deduction, and credit allocable to any Partnership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Partnership Interest, without regard to the results of Partnership operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under section 706 of the Code and the Treasury Regulations promulgated under it.

5.02 **Distributions.** (a) With respect to distributions of Partnership cash on hand, the Managing General Partner shall determine in its reasonable judgment (such determination being an "Excess Determination") from time to time (but at least once each calendar quarter) prior to the commencement of winding up under Section 11.02 the extent (if any) to which the amount of the Partnership's cash on hand exceeds the sum of (i) the Partnership's actual and contingent liabilities at the time of such Excess Determination and (ii) the Partnership's reasonable and necessary cash requirements for the remainder of the calendar quarter in which such Excess Determination is made and the succeeding calendar quarter. If such an excess (the "Excess") exists:

(i) the Managing General Partner shall cause the Partnership to distribute to the Partners, in accordance with their Sharing Ratios, an amount of cash not to exceed the lesser of the amount of the Excess or the aggregate amount of the Partners' federal and state tax liabilities resulting from the Partnership's operations for the period beginning the day after the date of the last distribution pursuant to this Section 5.02(a)(i) and ending of the date of such Excess Determination; and

(ii) the Managing General Partner shall determine in its reasonable judgment to what extent (if any) the remaining amount of the Excess, if any, exceeds anticipated needs, including, without limitation, operating expenses, debt service, acquisitions, and a reasonable contingency reserve, but not including any amounts taken into account in the Excess Determination, and shall distribute to

the Partners, in accordance with their Sharing Ratios, an amount equal to such remaining amount of the Excess which exceeds such anticipated needs.

The Managing General Partner shall furnish each Partner with a written list of the Partnership's actual and contingent liabilities at the time of an Excess Determination and (ii) the Partnership's reasonable and necessary cash requirements for the remainder of the calendar quarter in which such Excess Determination is made and the succeeding calendar quarter, and if a Required Interest determines that the amounts set forth on such list are excessive, the Managing Partner shall revise such list to reflect the amounts determined by the Required Interest and make those additional distributions which would have been made if the list determined by the Required Interest had constituted the list prepared initially by the Managing General Partner.

(b) From time to time, the Managing General Partner also may cause property of the Partnership other than cash to be distributed to the Partners, which distribution must be made in accordance with their Sharing Ratios and may be made subject to existing liabilities and obligations. Immediately prior to such a distribution, the capital accounts of the Partners shall be adjusted as provided in Treas. Reg. § 1.704-1(b)(2)(iv)(f).

ARTICLE VI MANAGEMENT AND OPERATION

6.01 ***Management of Partnership Affairs.*** (a) Except for situations in which the approval of other Partners is expressly required by this Agreement, including, without limitation, the provisions of Section 6.01(b), or by nonwaivable provisions of applicable law, the Managing General Partner shall have full, complete, and exclusive authority (i) to manage and control the business, affairs, and properties of the Partnership, (ii) to make all decisions regarding those matters, and (iii) to perform any and all other acts or activities customary or incident to the management of the Partnership's business.

(b) Notwithstanding the provisions of Section 6.01(a), the Managing General Partner may cause the Partnership to sell all or substantially all of the Partnership's assets only with the consent of a Required Interest.

(c) A Partner (other than the Managing General Partner) may not (i) act for or on behalf of the Partnership, (ii) do any act that would be binding on the Partnership, or (iii) incur any expenditures on behalf of the Partnership.

(d) Any Person dealing with the Partnership, other than a Partner, may rely on the authority of the Managing General Partner in taking any action in the name of the Partnership without inquiry into the provisions of this Agreement or compliance with it, regardless of whether that action actually is taken in accordance with the provisions of this Agreement.

6.02 **Compensation.** The Managing General Partner is not entitled to compensation for its services as Managing General Partner unless such compensation is established with the consent of a Required Interest, but it is entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of its service in that capacity in accordance with this Agreement, including reimbursement for the portion of its overhead reasonably allocable to Partnership activities.

6.03 **Standards and Conflicts.** (a) **The Managing General Partner is liable for errors or omissions in performing its duties with respect to the Partnership only in the case of willful misconduct and gross negligence, but not otherwise (this provision specifically protecting the Managing General Partner against its own sole, partial or concurrent negligence or strict liability).** The Managing General Partner shall devote such time and effort to the Partnership business and operations as is necessary to promote fully the interests of the Partnership, but neither the Managing General Partner nor any other General Partner must devote full time to Partnership business

(b) Subject to the other provisions of this Agreement, the Managing General Partner and each other Partner at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Partnership and ones that are identical to or similar to

those possessed by the Partnership, with no obligation to offer to the Partnership or any other Partner the right to participate in those activities.

(c) The Partnership may transact business with any Partner or Affiliate of a Partner, provided the terms of such transactions are no less favorable than those the Partnership could obtain from unrelated third parties.

6.04 **Indemnification.** To the fullest extent permitted by law and on request by a Person entitled to indemnification pursuant to this Section 6.04 (an "*Indemnified Person*"), the Partnership shall indemnify each General Partner, its Affiliates, and their respective officers, directors, partners, employees, and agents and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) (collectively, the "*Losses*") any of them may incur as a General Partner or in performing the obligations of that General Partner with respect to the Partnership, **specifically including the Indemnified Person's sole, partial, or concurrent negligence** or strict liability, and on request by the Indemnified Person the Partnership shall advance expenses associated with defense of any related action; provided, however, that this indemnity does not apply to Losses actually caused by the willful misconduct or gross negligence of the Indemnified Person.

6.05 **Power of Attorney.** Each Partner appoints the Managing General Partner (and any Liquidator) as that Partner's attorney-in-fact for the purpose of executing, swearing to, acknowledging, and delivering all certificates, documents, and other instruments as may be necessary, appropriate, or advisable in the judgment of the Managing General Partner (or the Liquidator) in furtherance of the business of the Partnership or complying with applicable law, including, without limitation, filings of the type described in Section 2.05. This power of attorney (a or this "*Power of Attorney*") is irrevocable and is coupled with an interest. On request by the Managing General Partner (or any Liquidator), a Partner shall confirm its grant of this Power of Attorney or any use of it by the Managing General Partner (or any Liquidator) and shall execute, swear to, acknowledge, and deliver any such certificate, document, or other instrument.

ARTICLE VII
RIGHTS OF OTHER PARTNERS

7.01 **Information.** (a) In addition to the other rights set forth in this Agreement, each Partner is entitled to all information to which that Partner is entitled to have access under applicable law; provided, however, that the Managing General Partner may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Partnership should be kept confidential and not provided to some or all of the other Partners and assignees of Partnership Interests. The Partners agree that the restrictions in the immediately preceding sentence are just and reasonable.

(b) The Partners acknowledge that, from time to time, they may receive information from or regarding the Partnership in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Partnership or Persons with which it does business. Each Partner shall hold in strict confidence and not use (except for matters involving the Partnership) any information it receives regarding the Partnership that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Partner, except for disclosures (i) compelled by law (but the Partner must notify the Managing General Partner promptly of any request for that information before disclosing it if practicable) (ii) to advisers or representatives of the Partner or Persons to which that Partner's Partnership Interest may be Disposed as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this Section 7.01(b), or (iii) of information that Partner also has received from a source independent of the Partnership that the Partner reasonably believes obtained that information without breach of any obligation of confidentiality. The Partners acknowledge that breach of the provisions of this Section 7.01(b) may cause irreparable injury to the Partnership for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Partners agree that the provisions of this Section 7.01(b) may be enforced by specific performance.

7.02 **Withdrawal.** A Limited Partner does not have the right or power to withdraw from the Partnership as a limited partner.

7.03 **Consents and Voting.** (a) Subject to the provisions of Section 6.03(a) with respect to the Managing General Partner in its capacity as such, a Partner (including the Managing General Partner with respect to any Partnership Interest it may have as a Limited Partner) may grant or withhold its consent or vote its interest in its sole discretion, without regard to the interests of the Partnership or any other Partner.

(b) In any request for consent or approval from another Partner, the Managing General Partner may specify a response period, ending no earlier than the fifth and no later than the 15th Business Day following the date on which the Partner whose consent or approval is sought receives the request pursuant to the notice provisions of Section 12.02. If the receiving Partner does not respond by the end of this period, it shall be deemed to have consented to or approved the action set forth in the request.

7.04 **Meetings.** On written request of Partners having 50% of the Sharing Ratios, the Managing General Partner shall call, and at any time it may call, a meeting of the Partners to transact business that the Partners or any group of Partners may conduct as provided in this Agreement. The call must be made by notice to all other Partners on or before the tenth day prior to the date of the meeting specifying the location and the time and stating the business to be transacted at the meeting, which must include any items the Partners requesting the meeting have specified in their request. The chairperson of the meeting shall be an individual specified by the Managing General Partner. At the meeting, the Partners may take any action included in the notice of the meeting by vote of Partners present, in person or by proxy, constituting Partners whose consent is required for that action pursuant to the other provisions of this Agreement. With respect to other matters, the meeting must be conducted in accordance with rules that the Managing General Partner and a Required Interest establish or, failing agreement on rules, in accordance with *Roberts Rules of Order*.

7.05 **Advisory Committee.** A Required Interest from time to time may designate Limited Partners or representatives thereof to constitute the Advisory Committee of the Partnership (the "*Advisory Committee*"). From time to time, but at least once each calendar year, the Managing General Partner, on notice to each member on or before the tenth day prior thereto, shall call a meeting of the Advisory Committee, at which the Managing General Partner informs the Advisory Committee generally of the business and affairs of the Partnership since

the latest meeting of the Advisory Committee. The Advisory Committee may make recommendations to or otherwise advise and consult with the Managing General Partner regarding the business and affairs of the Partnership, but this sentence does not authorize the Advisory Committee or any Limited Partner to take any action on behalf of the Partnership. A Limited Partner or representative is not entitled to payment from the Partnership or any other Partner for its expenses regarding attendance at meetings of the Advisory Committee.

ARTICLE VIII

TAXES

8.01 ***Tax Returns.*** The Managing General Partner shall cause to be prepared and filed all necessary federal and state income tax returns for the Partnership, including making the elections described in Section 8.02. Each Partner shall furnish to the Managing General Partner all pertinent information in its possession relating to Partnership operations that is necessary to enable the Partnership's income tax returns to be prepared and filed.

8.02 ***Tax Elections.*** The Partnership shall make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Partnership's fiscal year;
- (b) to adopt the accrual method of accounting and to keep the Partnership's books and records on the income-tax method;
- (c) if a distribution of Partnership property as described in section 734 of the Code occurs or if a transfer of a Partnership Interest as described in section 743 of the Code occurs, on request by notice from any Partner, to elect, pursuant to section 754 of the Code, to adjust the basis of Partnership properties;
- (d) to elect to amortize the organizational expenses of the Partnership ratably over a period of 60 months as permitted by section 709(b) of the Code; and

(e) any other election the Managing General Partner may deem appropriate and in the best interests of the Partners.

Neither the Partnership nor any Partner may make an election for the Partnership to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law.

8.03 **Tax Matters Partner.** The Managing General Partner shall be the “tax matters partner” of the Partnership pursuant to section 6231(a)(7) of the Code. The Managing General Partner shall take such action as may be necessary to cause each other Partner to become a “notice partner” within the meaning of section 6223 of the Code. The Managing General Partner shall inform each other Partner of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice on or before the fifth Business Day after becoming aware of the matter and, within that time, shall forward to each other Partner copies of all significant written communications it may receive in that capacity. The Managing General Partner may not take any action contemplated by sections 6222 through 6231 of the Code without the consent of a Required Interest, but this sentence does not authorize the Managing General Partner to take any action left to the determination of an individual Partner under sections 6222 through 6231 of the Code.

ARTICLE IX

BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

9.01 **Maintenance of Books.** The books of account for the Partnership shall be maintained on a cash basis in accordance with the terms of this Agreement, except that the capital accounts of the Partners shall be maintained in accordance with Section 4.05. The Partnership’s accounting year or period shall be the calendar year.

9.02 **Reports.** As soon as practicable following the end of each fiscal year during the term of the Partnership, the Managing General Partner shall cause each other Partner to be furnished with a copy of the federal tax return (together with relevant and related schedules) filed by the Partnership for that year. The Managing General Partner also may cause to be

prepared or delivered such other reports as it may deem appropriate. The Partnership shall bear the costs of all these reports.

9.03 ***Accounts.*** The Managing General Partner shall establish and maintain one or more separate bank and investment accounts and arrangements for Partnership funds in the Partnership name with financial institutions and firms that the Managing General Partner determines. The Managing General Partner may not commingle the Partnership's funds with the funds of any Partner; however, Partnership funds may be invested in a manner the same as or similar to the Managing General Partner's investment of its own funds or investments by its Affiliates.

ARTICLE X

WITHDRAWAL, BANKRUPTCY, REMOVAL, ETC.

10.01 ***Withdrawal, Bankruptcy, Etc. of Managing General Partner.*** (a) Each General Partner agrees that in spite of its statutory rights to withdraw at any time from the Partnership, it will not withdraw from the Partnership as a general partner within the meaning of Section 6.02.(a) of the Act. If a General Partner withdraws from the Partnership in violation of this covenant, the withdrawal is effective on the 90th day following notice of the withdrawal to all other Partners, or such later date as the notice may specify. On a withdrawal in violation of this Section 10.01(a), the Partnership may (i) recover damages from the withdrawing General Partner, including, without limitation, the reasonable cost of obtaining replacement of the services that General Partner is obligated to perform, (ii) pursue any other remedies available under applicable law, (iii) effect recovery of damages by offsetting those damages against the amount otherwise distributable to that General Partner, and (iv) reduce the Limited Partner's Partnership Interest into which that General Partner's Partnership Interest may be converted as provided in Section 10.03.

(b) A General Partner does not cease to be a General Partner on the occurrence of an event of the type described in subsections (a)(7) through (a)(10) of Section 4.02. of the Act, but ceases to be a General Partner (and, in the case of the Managing General Partner, the Managing General Partner) on the substantial completion of winding up of that General Partner's activities. A General Partner shall notify each other Partner that an event of the type

described in subsections (a)(4), (a)(5) or subsections (a)(7) through (a)(11) of Section 4.02. of the Act has occurred with respect to it on or before the fifth Business Day after that occurrence.

(c) Following any notice that the Managing General Partner is withdrawing, or following the occurrence of an event of the type described in subsections (a)(4) through (a)(11) of Section 4.02. of the Act with respect to the Managing General Partner (without regard to the lapse of any time periods), a Required Interest may select a new Managing General Partner by written consent. If the Person selected is not already a General Partner, it shall be admitted to the Partnership as a General Partner effective immediately prior to the existing Managing General Partner's ceasing to be a General Partner with a Sharing Ratio and a Commitment that the Limited Partners making the selection specify, but only if the new Managing General Partner has made a Capital Contribution in an amount the Limited Partners making the selection specify and has executed and delivered to the Partnership a document including the new Managing General Partner's notice address, its agreement to be bound by this Agreement, and its representation and warranty that at all relevant times the representation and warranties in Section 3.02 are true and correct with respect to it. Regardless of any other provisions of this Section 10.01(c), for the right to select a new Managing General Partner to exist or to be exercised, the Partnership must receive a favorable opinion of the Partnership's legal counsel, or of other legal counsel acceptable to the Limited Partners making the selection, to the effect that the selection and admission (if any) will not result in (i) the loss of limited liability of any Limited Partner or (ii) the Partnership's being treated as an association taxable as a corporation for federal income tax purposes. Regardless of any other provisions of this Section 10.01(c), the selection of a new Managing General Partner shall be rescinded (and the existing Managing General Partner shall continue as such) if the event that permitted the selection of a new Managing General Partner is an event of the type described in subsection (a)(5) of Section 4.02 of the Act that with the passage of time would cause the existing Managing General Partner to become a Bankrupt Partner but that situation does not continue and the existing Managing General Partner does not become a Bankrupt Partner.

10.02 *Removal of Managing General Partner.* The Managing General Partner may be removed only with the written consent of a Required Interest. Any action for removal also must (a) select a new Managing General Partner, (b) specify the Capital Contribution is to make, which shall be deposited with the Partnership, and the new Managing General Partner's

Sharing Ratio and Commitment, and (c) be accompanied by an instrument executed by the new Managing General Partner including the new Managing General Partner's notice address, the new Managing General Partner's agreement to be bound by this Agreement, and the new Managing General Partner's representation and warranty that at all relevant times the representation and warranties in Section 3.02 are true and correct with respect to the new Managing General Partner. The new Managing General Partner so selected shall be admitted to the Partnership as a General Partner with the Sharing Ratio and the Commitment specified, and the removal is effective only immediately subsequent to that admission. Regardless of any other provisions of this Section 10.02, for the right to remove the Managing General Partner to exist or to be exercised, the Partnership must receive a favorable opinion from the Partnership's legal counsel (or other counsel acceptable to the Limited Partners consenting to the removal) that the removal of the Managing General Partner and the selection and admission of a new Managing General Partner will not result in (i) the loss of limited liability of any Limited Partner or (ii) the Partnership's being treated as an association taxable as a corporation for federal income tax purposes. No other General Partner may be removed.

10.03 *Conversion of Interest.* In the event of a Managing General Partner's ceasing to be Managing General Partner following the admission of a new Managing General Partner pursuant to Section 10.01(c) or 10.02, the former Managing General Partner's Partnership Interest as a General Partner automatically and simultaneously is converted into that of a Limited Partner having a Sharing Ratio and a Commitment equal to the Sharing Ratio and the Commitment of such former Managing General Partner as they existed immediately prior to such cessation of General Partner status, and the Managing General Partner automatically and simultaneously is admitted to the Partnership as a Limited Partner.

10.04 *Partnership Interest.* (a) If any Partner ceases to be a Partner other than in connection with the transfer of all that Partner's Partnership Interest and the admission of the transferee as a Partner as permitted by Section 3.03, or remains a Partner after becoming a Bankrupt Partner (an "*Affected Partner*"), the Partnership shall have the option, exercisable by notice from the Managing General Partner (including any newly-designated Managing General Partner) to the Affected Partner (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become an Affected

Partner, to buy, and on the exercise of this option, the Affected Partner (or its representative) shall sell, its Partnership Interest.

(b) The purchase price shall be an amount equal to the fair market value of the Affected Partner's Partnership Interest determined by agreement by the Affected Partner (or its representative) and the Managing General Partner; provided, however, if the Affected Partner (or its representative) and the Managing General Partner do not agree on the fair market value on or before the 30th day following the exercise of the option, either the Affected Partner (or its representative) or the Managing General Partner, by written notice to the other, may require that the determination of fair market value be made by an independent appraiser specified in that notice. If the recipient of that notice objects to the independent appraiser designated in that notice on or before the tenth day following receipt of the notice, and the Affected Partner (or its representative) and the Managing General Partner otherwise fail to agree on an independent appraiser, either the Affected Partner (or its representative) or the Managing General Partner may petition the Chief Judge of the United States District Court for the Southern District of Texas to designate an independent appraiser. The determination of the independent appraiser, however designated, is final and binding on all parties. The Affected Partner and the Partnership each shall pay one-half of the costs of the appraisal. The purchaser of the Affected Partner's Partnership Interest shall pay the fair market value as so determined in four equal cash installments, the first due on closing and the remainder (together with accumulated interest on the amount unpaid at the General Interest Rate) due on each of the first three anniversaries of the closing.

(c) The payment to be made to the Affected Partner (or its representative) under this Section 10.04 is in complete liquidation and satisfaction of all the rights and interest of the Affected Partner (or its representative) and of all Persons claiming by, through, or under the Affected Partner (or its representative), in and in respect of the Partnership, including, without limitation, any Partnership Interest, any rights in specific Partnership property, and any rights against the Partnership and (insofar as the affairs of the Partnership are concerned) against the Partners, and constitutes a compromise to which all Partners have agreed pursuant to subsection (d) of Section 5.02 of the Act.

(d) If at the time a Partner becomes an Affected Partner there is only one other Partner, that other Partner has all the rights of the Partnership and the Managing General Partner under this Section 10.04. If the Affected Partner is the existing Managing General Partner, the Partnership Interest subject to this Section 10.04 includes the Partnership Interest as a Limited Partner into which that Managing General Partner's Partnership Interest is converted under Section 10.03, along with any other Partnership Interest it may have.

(e) If an event requiring a winding up of the Partnership occurs before the purchase price for the Partnership is determined under Section 10.04(b), then the purchase and sale shall not occur. Instead, the Affected Partner (or its successor) shall be entitled to receive in the liquidation of the Partnership the same amount that Person would have received had the Affected Partner continued to be a Partner or not become a Bankrupt Partner.

ARTICLE XI

DISSOLUTION, LIQUIDATION, AND TERMINATION

11.01 ***Dissolution.*** The Partnership shall dissolve and its business and affairs shall be wound up on the first to occur of the following:

(a) the written consent of the Managing General Partner and a Required Interest;

(b) the date set forth in Section 2.06;

(c) a Managing General Partner's ceasing to be a General Partner as described in Section 10.01(a) or (b), unless a new Managing General Partner is selected and admitted as provided in Section 10.01(c); or

(d) any other event causing dissolution as described in Section 8.01 of the Act (other than an event described in section 4.02(a)(5) or (7)-(10) of the Act except as provided in Sections 10.01(b) and 11.01(c));

provided, however, that if dissolution otherwise would occur due to an event of withdrawal of a general partner within the meaning of section 4.02(a) of the Act with respect to a General Partner and at least one other General Partner remains and a Managing General Partner either remains or is being admitted pursuant to Section 3.03(c), 10.01(c), or 10.02, the remaining General Partner or Partners shall, and agree to, carry on the business of the Partnership and the Partnership shall not dissolve.

11.02 *Liquidation and Termination.* On dissolution of the Partnership, the Managing General Partner or one or more other Persons appointed by the Managing General Partner shall proceed diligently to wind up the affairs of the Partnership and make final distributions as provided in this Agreement (the Managing General Partner or such other Person or Persons acting in such capacity being the "*Liquidator*"); provided, however, that if the Partnership dissolves on account of an event of the type described in section 4.02(a)(4)-(10) of the Act with respect to the Managing General Partner, the Liquidator shall be one or more Persons selected in writing by a Required Interest. The costs of liquidation shall be borne as a Partnership expense. Until final distribution, the Liquidator shall continue to operate the Partnership properties with all of the power and authority of the Managing General Partner. The steps to be accomplished by the Liquidator are as follows:

(a) as promptly as practicable after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Partnership's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the Liquidator shall pay from Partnership funds all of the debts and liabilities of the Partnership (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.04) or otherwise make adequate provision for them (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the Liquidator may reasonably determine); and

(c) all remaining assets of the Partnership shall be distributed to the Partners as follows:

(i) the Liquidator may sell any or all Partnership property, including to Partners, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Partners;

(ii) with respect to all Partnership property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Partners shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Partners if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(iii) Partnership property shall be distributed among the Partners in accordance with the positive capital account balances of the Partners, as determined after taking into account all capital account adjustments for the taxable year of the Partnership during which the liquidation of the Partnership occurs (other than those made by reason of this clause (iii)); and those distributions shall be made by the end of the taxable year of the Partnership during which the liquidation of the Partnership occurs (or, if later, 90 days after the date of the liquidation).

All distributions in kind to the Partners shall be made subject to the liability of each distributee for its allocable share of costs, expenses, and liabilities previously incurred or for which the Partnership has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee under this Section 11.02. The distribution of cash or property, or both, to a Partner in accordance with the provisions of this Section 11.02 constitutes a complete return to the Partner of its Capital Contributions and a complete distribution to the Partner of its Partnership Interest and all the Partnership's property and constitutes a compromise to which all Partners have consented within the meaning of section 5.02(d) of the Act. To the extent that a Partner returns funds to the Partnership, the returning Partner has no claim against any other Partner for those funds.

11.03 **Termination.** On completion of the distribution of Partnership assets as provided in this Agreement, the Partnership is terminated, and the General Partners (or such other Person or Persons as the Act may require or permit) shall cause the cancellation of the Certificate and any filings made as provided in Section 2.05 and shall take such other actions as may be necessary to terminate the Partnership.

ARTICLE XII GENERAL PROVISIONS

12.01 **Offset.** Whenever the Partnership is to pay any sum to any Partner, any amounts that Partner owes to the Partnership may be deducted from that sum before payment.

12.02 **Notices.** All notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given either (a) by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested, or (b) by delivering that writing to the recipient in person, or by courier, or (c) by facsimile transmission. A notice, request, or consent given under this Agreement is effective on receipt at the address of the Person to whom such notice, request or consent is to be given. All notices, requests, and consents to be sent to a Partner must be sent to or made at the addresses given for that Partner on Exhibit A or in the instrument described in Section 3.03(d), 3.04, 10.01(c), or 10.02, or such other address as that Partner may specify by notice to the other Partners. Any notice, request, or consent to the Partnership must be given to the Managing General Partner.

12.03 **Entire Agreement; Supersedure.** This Agreement constitutes the entire agreement of the Partners and their Affiliates relating to the Partnership and supersedes all prior contracts or agreements with respect to the Partnership, whether oral or written.

12.04 **Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Partnership is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Partnership. Failure on the part of a Person to complain of any act of any Person or to

declare any Person in default with respect to the Partnership, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until barred by the applicable statute-of-limitations period.

12.05 ***Amendment or Modification.*** This Agreement may be amended or modified from time to time only by a written instrument executed by the Managing General Partner and a Required Interest; provided, however, that (a) an amendment or modification reducing a Partner's Sharing Ratio or increasing a Partner's Commitment (other than to reflect changes otherwise provided by this Agreement) is effective only with that Partner's consent, (b) an amendment or modification reducing the requisite level of consent or approval by the holders of Sharing Ratios or other measure for any consent or vote in this Agreement is effective only with the level of consent or vote of holders of Sharing Ratios or of Partners in effect immediately prior to the proposed reduction, and (c) amendments of the type described in Section 3.04 shall be adopted as provided in that Section.

12.06 ***Binding Effect.*** Subject to the restrictions on Dispositions set forth in this Agreement, this Agreement is binding on and inures to the benefit of the Partners and their respective heirs, legal representatives, successors, and assigns.

12.07 ***Governing Law; Severability.*** **THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.** If any provision of this Agreement or its application to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not and shall not be affected and that provision shall be enforced to the greatest extent permitted by law

12.08 ***Further Assurances.*** In connection with this Agreement and the transactions contemplated by it, each Partner shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

12.09 ***Waiver of Certain Rights.*** Each Partner irrevocably waives any right it may have to maintain any action for dissolution of the Partnership or for partition of the property of the Partnership.

12.10 ***Indemnification.*** To the fullest extent permitted by law, each Partner shall indemnify the Partnership and each other Partner and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of any breach by that Partner of this Agreement.

12.11 ***Counterparts.*** This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

EXECUTED as of the date first set forth above.

GENERAL PARTNERS:

FSI NO. 2 CORPORATION

By:

Mrs. Raye G. White
Executive Vice President

LIMITED PARTNERS:

FAYEZ S. SAROFIM

RUSSELL B. HAWKINS

L. E. SIMMONS

DAVID L. PESIKOFF

RICHARD RABINOW

RAY REZA

GARY ROSENTHAL

ROSENTHAL TRUST

BY: _____

LENTS FAMILY PARTNERSHIP

BY: _____

J. DAVID HEANEY

REAL STAR PARTNERS, L.P.

BY: _____

MORTON A. COHN

**KEN AND LINDA LAY, TENANTS IN
COMMON**

KEN LAY

LINDA LAY

KLL & LPL INVESTMENTS

BY: _____

EXHIBIT A

Name and Address of Partner	<u>Commitment</u>	<u>Sharing Ratio</u>
<u>GENERAL PARTNERS:</u>		
FSI No. 2 Corporation 2907 Two Houston Center Houston, TX 77010	\$500,000	1%
<u>LIMITED PARTNERS:</u>		
Fayez S. Sarofim 2907 Two Houston Center Houston, TX 77010	\$31,950,000	63.90%
Russell B. Hawkins 2907 Two Houston Center Houston, TX 77010	\$2,000,000	4.00%
L. E. Simmons 6600 Chase Tower Houston, Texas 77002	\$500,000	1.00%
David Pesikoff 2907 Two Houston Center Houston, Texas 77010	\$100,000	0.20%
Richard Rabinow 3711 San Felipe Apt. 12-I Houston, Texas 77027	\$100,000	0.20%
Ray Reza 2907 Two Houston Center Houston, Texas 77010	\$100,000	0.20%

Name and Address of Partner	<u>Commitment</u>	<u>Sharing Ratio</u>
Rosenthal Trust Attention: Gary Rosenthal 600 Travis Street, Suite 6110 Houston, Texas 77002	\$250,000	0.50%
Lents Family Partnership Attention: Mr. David Heaney 600 Travis Street, Suite 6110 Houston, Texas 77002	\$1,000,000	2.00%
J. David Heaney 600 Travis Street, Suite 6110 Houston, Texas 77002	\$500,000	1.00%
Real Star Partners, L.P. Attention: Ms. Elaine K. Bauman 601 Jefferson, Suite 4000 Houston, Texas 77002	\$5,500,000	11.00%
Morton A. Cohn 800 Bering Drive, #210 Houston, Texas 77057	\$2,000,000	4.00%
Ken and Linda Lay, Tenants In Common 2121 Kirby Drive, Suite 137 Houston, Texas 77019	\$2,500,000	5.00%
KLL & LPL Investments Attention: Mr. Ken Lay 2121 Kirby Drive, Suite 137 Houston, Texas 77019	\$2,500,000	5.00%

EXHIBIT A - Names, Addresses, Commitments, and Sharing Ratios of Initial Partners
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**AMENDED AGREEMENT OF LIMITED PARTNERSHIP
OF
SRE PROPERTIES PARTNERSHIP NO. 1, L.P.**

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