



**The Law Society
of Manitoba**

INCORPORATED 1877 | INCORPORÉ EN 1877

CORPORATE COMMERCIAL

Chapter 1

Business Entities

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A. BUSINESS ENTITIES

There are a variety of forms in which business activity may be carried on, including a sole proprietorship; partnership (either a general partnership, limited partnership, or limited liability partnership); co-ownership; joint venture, or a corporation.

The most common forms of business entities encountered in practice are sole proprietorships, partnerships, and corporations.

1. Sole Proprietorship

a) Generally

The sole proprietorship is the simplest form of business organization. In a sole proprietorship, an individual carries on a business activity on their own account, for their own benefit, without involving any other business medium or other individuals, except as employees, agents, or contractors.

The sole proprietor is the sole owner of the business. All benefits from the business accrue to the exclusive enjoyment of the sole proprietor and all debts, obligations, and liabilities of the business are their sole responsibility.

The sole proprietor is personally liable for any tort personally committed and is vicariously liable for the torts committed by employees, and others for whom they are responsible at law, in the course of their engagement by the business. All business and personal assets of the sole proprietor are subject to seizure to fulfil the sole proprietor's business obligations and liabilities. The sole proprietor may be able to limit liability by contract or through insurance, failing which they are fully liable.

A further consequence of sole proprietorship is that the net income earned by the business is added to the proprietor's personal income from all other sources and the aggregate net income is taxed at the individual proprietor's personal rate.

b) Business Names Registration

There are few formalities necessary to carry on business as a sole proprietorship. If the sole proprietor carries on business under some name other than the family name or surname, the provisions of *The Business Names Registration Act (BNRA)* apply to the business name.

Pursuant to section 2(1) of the *BNRA*, a person carrying on or intending to carry on business under a name or style different than their family name or surname (or in the case of a corporation under a name or style other than its corporate name) shall register a written declaration called a “business name registration”. If a person intends to carry on business under their family name or surname, but the business name indicates a plurality of persons in the business (e.g., Smith **and Company**), then pursuant to section 2(1)(c) a business name registration must be filed.

Section 2(2) provides an exemption from the registration requirement for a person practising a profession, either alone or in partnership (other than a limited liability partnership), if the profession is regulated by a governing body pursuant to an Act of the Legislature.

Before filing a business name registration, the proposed business name must be cleared and reserved through the [Companies Office](#), by filing a Request for Name Reservation form and paying the prescribed fee. This can be done online if you have an account with the Companies Office.

Sections 12 and 13 of the *BNRA* and the regulations deal with prohibited business names. The prohibition most frequently encountered is that a business name must not be the same as, or “liable to be confounded with, or closely resemble”, an existing business or corporate name (ss. 12(1)(a), (b)(i), (ii), (iii)).

Once the business name is reserved, the business registration forms must be filed within 90 days, or the reservation will expire.

See:

- the Companies Office [instruction sheets and forms](#) for common filings;
- the [guide sheet](#) containing information and regulations to consider when choosing a business name;
- the [instruction sheet](#) for registering a business name.

When the name is cleared, the [Business Filing Request and Registration of a Business Name form](#) can be completed and filed in duplicate with the *Companies Office* together with the prescribed filing fees.

The registration must be done within one month of the date on which the person commenced to carry on business or within one month prior to the date the person intends to carry on business (*BNRA*, s. 3(2)). A registration or a renewal is valid for three years (s. 5(1)).

Proprietary rights to a business name or to a corporate name do not arise and may not be protected by the mere act of registration under the *BNRA*, *The Corporations Act (Manitoba)*, or the *Canada Business Corporations Act* (the federal business corporations legislation). The federal *Trade-Marks Act* establishes ownership rights to business or trade names and trademarks. Subject to a few exceptions, priority is determined on the basis of the first person to continuously use a business name or mark, whether registered or not.

When consulted by a client to obtain a business name registration or to incorporate a corporation, you should conduct and review a federal trademark search and a more comprehensive cross-Canada search (NUANS*) in addition to the provincial corporate or business names search.

In this way, you can properly warn your client of possible problems that may arise from businesses with similar names who may well have proprietary rights to the business name your client wishes to register or incorporate under. The provincial search does list out-of-province corporate names and some trade-marks.

*[NUANS](#) is a search system whose database includes the Federal corporations name database, the Canadian trademark name databases, and provincial corporate and business name databases, depending on the type of NUANS search requested. There is a small charge for a Nuans Report. The Government of Canada website has a list of [NUANS members in Manitoba](#). Contact [Innovation, Science and Economic Development Canada](#) for more information.

2. Partnership

a) Generally

Pursuant to section 3 of *The Partnership Act*, a partnership is a relationship between persons carrying on a business in common, with a view to profit.

Like the sole proprietorship, a partnership is not a legal entity separate from its partners (*Re Thorne and New Brunswick Workmen's Compensation Board*, 1962 CanLII 494 (NB CA); *Porter v. Armstrong*, 1926 CanLII 23 (SCC), [1926] S.C.R. 328).

Common examples of partnerships are law firms and chartered accountancy firms, although many small businesses operate as partnerships, whether intentionally or not.

b) Formation of a Partnership

Although a partnership may be created intentionally or simply deemed to exist between parties without any formality, once two or more persons begin carrying on an enterprise with one another, there are a number of laws that will apply to such persons and their business.

Originally, the common law provided the framework for the relationship between partners for carrying on the partnership business. Most of the partnership rules are now codified in *The Partnership Act*. However, section 2(2) states that the rules of equity and the common law continue where they are not inconsistent with *The Partnership Act*.

A partnership exists when persons carry on a business in common with a view to profit. The term "business" in *The Partnership Act* includes every trade, occupation, profession or venture. The carrying on of the business in common may be by oral or written agreement. The sharing of gross returns from the business does not in itself create a partnership (s. 4(b)) but the sharing of profits is *prima facie* proof that the recipient is a partner (s. 4(c)).

Section 4 of *The Partnership Act* sets out rules for determining whether or not a partnership exists. Generally, a court will look at the intention of the parties as disclosed by the agreement and their conduct. A statement in the agreement that the parties are not partners is not necessarily conclusive evidence of the absence of a partnership (*Weiner v. Harris*, [1910] 1 K.B. 285 at 290 (C.A.), per Cozens-Hardy, M.R. – as quoted in *Royal Winnipeg Ballet v. M.N.R.*, 2006 FCA 87 (CanLII) at para 93).

Under section 6 of *The Partnership Act*, persons who have entered into partnership are collectively called a “firm” and the name under which their business is carried on is the “firm name”. The firm name must be registered pursuant to the *BNRA*, section 2, unless subsection 2(2) applies (i.e., professional partnerships).

c) Liability and Duties

In a general partnership, each partner is jointly and severally liable for all debts and obligations of the firm incurred while that person is a partner (ss. 12-15).

In a limited partnership, the liability of the limited partners is limited essentially to the amount of capital contributed by them (s. 53), subject to the provisions of section 63(1) further discussed below.

Each partner is an agent of the firm and the other partners for the purpose of the partnership business and can bind the firm and the partners (s. 8). Section 20 deals with the liability of new and retiring partners.

Partners have fiduciary and other duties to each other, certain of which are described in sections 31 to 33.

At common law, because the partnership does not exist as an entity separate from the partners, no one can bring an action against the partnership’s firm name. However, in Manitoba, King’s Bench Rule 8 provides the procedures pursuant to which partnerships may be involved in litigation, and firms named as applicants or respondents under the firm name.

Many of the statutory provisions concerning partnerships may be varied by written agreement of the parties. However, the rights and duties of the partners cannot be varied as against third parties by internal agreement of the partners alone.

d) Partnership Property

Although a partnership is not a separate entity, property contributed to the partnership becomes partnership property (s. 23). Certain other rules regarding the interests and duties of partners are set out in section 27. Pursuant to section 24 property bought with partnership money is deemed to have been bought on account of the firm, unless a contrary intention appears.

e) Dissolution

Sections 35 to 38 of *The Partnership Act* deal with dissolution of a partnership. Subject to any agreement between the partners, a partnership dissolves automatically, *inter alia*, by any partner giving notice to the others of an intention to dissolve the partnership or by the death, bankruptcy or insolvency of any partner.

Pursuant to section 38, a partner may apply to the Court of King's Bench for a dissolution of the partnership, *inter alia*, where any other individual partner is shown to be of permanently unsound mind, or where a partner has been guilty of conduct that "is calculated prejudicially to affect the carrying on of the [partnership] business" or where a partner willfully or persistently breaches the partnership agreement.

A dissolution must be registered under the *BNRA*, which gives notice as against third parties who have had no dealings with the partnership. The Companies Office publishes [Instructions](#) for dissolution of a business name and the [Business Filing Request and Dissolution of a Business Name form](#) is also found online.

Sections 42 to 47 deal with partnership property in the event of a dissolution of a partnership.

f) Limited Partnerships

i. Formation

A limited partnership is frequently used as an alternative to incorporation. Part II of *The Partnership Act* deals with limited partnerships.

Under section 52, a limited partnership must consist of one or more persons who are general partners and one or more persons who contribute a specific amount of capital and are limited partners. Pursuant to section 51(3), a person may be both a general partner and a limited partner at the same time in the same partnership. The limited partner's liability is generally limited to the amount of capital contributed by that person (s. 53), subject to section 63.

Pursuant to section 55, a limited partner is not entitled to the limited liability under the Act until the declaration of limited partnership is made and registered at the Companies Office under the *BNRA*. This requires completion and filing of the [Business Filing Request and Registration of a Limited Partnership form](#) with the appropriate filing fee.

Section 57 provides that changes under subsections 4(1)(b) or (d) or subsection 4(2) of the *BNRA* are not effective until the registration requirements are completed. So, if there are any changes in the membership (general or limited partners), or the number of partners, or an increase or a decrease in the capital contributed by any limited partner or the firm name, those changes must be registered with the Companies Office by filing the Business Filing Request and Change in a Limited Partnership form to be effective.

ii. Loss of Limited Liability

One of the essential characteristics of a limited partnership is that only the general partners are authorized to bind the partnership and to engage in the management of the business of the partnership.

A limited partner can only bind the partnership where the limited partner, to the knowledge of the general partners, takes part in the management of the partnership business. (s. 54). Pursuant to section 62, a limited partner may inspect the books of the firm, examine the state and progress of the partnership business and advise as to its management.

Where the limited partner takes an active part in the partnership business, they are liable as a general partner to any person with whom the limited partner deals on behalf of the partnership and when the other person does not know that the limited partner is a limited partner (s. 63(1)) until the time that the person first acquires actual knowledge that they are dealing with a limited partner (s. 63(2)). In addition, a limited partner loses limited liability if the name of the limited partner is used in the name or firm of the limited partnership (s. 58(1)).

Because the limited partnership does not come into existence until the declaration under the *BNRA* is registered, a limited partner is deemed to be a general partner until such declaration is registered (s. 55)). If the limited partnership is for a fixed duration, on the continuance of the limited partnership beyond the fixed period of the declaration, or on the expiry of the limited partnership without renewal, it is deemed a general partnership (s. 56).

Deeming the partnership to be a general partnership will cause the limited partners to lose their limited liability.

iii. Dissolution

Pursuant to section 66, unlike a general partnership, no dissolution of a limited partnership shall take place until notice of dissolution is registered under the *BNRA* using the Business Filing Request and Dissolution of a Business Name form and paying the prescribed fee. A limited partnership is not dissolved automatically by the death or bankruptcy of a limited partner, and the mental incompetence of a limited partner is not generally a ground for dissolution unless the mentally incompetent partner's share cannot be otherwise ascertained and realized (s. 63(3)). Subject to any agreement between the partners, the other partners are not entitled to dissolve the partnership by reason of a limited partner charging their share for that limited partner's separate debt (s. 63(5)(c)).

iv. Advantages

The limited partnership as an investment vehicle has certain distinct advantages. A carefully drafted limited partnership agreement may achieve advantages similar to those provided by a corporation. The limited partner's liability is generally limited to the amount of capital contributed or agreed to be contributed; therefore, limited partners are not exposed to the seizure of their personal assets as they would be in a general partnership. Profits of the partnership business flow directly to the limited partners since the partnership is not a distinct legal entity and losses of the partnership can be used by the limited partners to offset income taxes payable on certain other income.

g) Limited Liability Partnerships

i. Formation

A limited liability partnership is another form of partnership. Limited liability partnerships are governed by Part III of *The Partnership Act* starting at section 67.

A limited liability partnership may be formed by two or more persons who have agreed to carry on business in a limited liability partnership if:

- (a) they carry on business in Manitoba only for the purpose of practising a profession governed by an Act of the legislature;
- (b) the governing Act, or a regulation under *The Partnership Act*, permits the profession to be practised in a limited liability partnership; and
- (c) the governing body of the profession, or a regulation under *The Partnership Act*, requires members who are partners in a limited liability partnership to maintain a minimum amount of liability insurance (s. 69(1)).

Limited partnerships are not entitled to register as limited liability partnerships (s. 69(3)).

The status of a partnership as a limited liability partnership takes effect on the day on which the Director registers the partnership under the *BNRA* as a limited liability partnership (s. 69(4)). Registration under the *BNRA* is done using the Business Filing Request and Registration of a Limited Liability Partnership form and paying the required filing fee.

A partnership that becomes registered as a limited liability partnership must, without delay, send a notice to all of its existing clients advising of the registration and explaining in general terms the potential changes in liability of the partners of the partnership that result from such registration (s. 71).

A list of the partners of the limited liability partnership must be maintained by the limited liability partnership at its Manitoba registered office and the list must be available to the public during normal business hours (s. 72(3)). A list of the partners and/or a list of the persons who were partners on a specified date must be provided without charge to any person who requests that information (s. 73).

Currently, four professions (lawyers, chartered accountants, certified management accountants, and certified general accountants) are permitted to register as limited liability partnerships.

Part III of *The Partnership Act* (s. 77(1)) also permits the registration of extra-provincial limited liability partnerships in Manitoba under the *BNRA* but without such registration, the extra-provincial limited liability partnership shall be treated as an ordinary partnership while carrying on business in Manitoba (s. 78).

ii. Partial Limited Liability

Limited liability partnerships can protect partners from obligations for debts, obligations, or liabilities of the partnership or another partner that arise from the negligence, wrongful act or omission, malpractice or misconduct of another partner or an employee, agent, or representative of the partnership, occurring in the ordinary course of professional practice (s. 75).

This protection from liability does not apply where a partner knew of the negligence, wrongful act or omission, malpractice or misconduct at the time it was committed and failed to take reasonable steps to prevent its commission. It also does not apply where the negligence, wrongful act or omission, malpractice or misconduct was committed by an employee, agent or representative of the partnership for whom the partner was directly responsible in a supervisory role (s. 75(2)).

This form of liability protection is commonly referred to as a “partial shield.” It protects innocent partners from the negligence, wrongful act or omission, malpractice or misconduct of others in the firm, but does not provide any protection for contractual or trade debts of the partnership.

Notwithstanding the protection given to an innocent partner in a limited liability partnership under the partnership legislation, all partnership property and any applicable liability insurance remains an available source of recovery for a person claiming to have been harmed by the negligence, wrongful act or omission, malpractice or misconduct of a partner, employee, agent or representative of the limited liability partnership (s. 75(4)). As noted above, the Act requires that a minimum level of insurance be maintained (s. 69).

In addition, there are restrictions on the distribution of partnership property contained in Part III of *The Partnership Act* (s. 85) with the intention that partnership property will not be dissipated so as to preclude recovery by a person claiming to have been harmed by the negligence, wrongful act or omission, malpractice or misconduct of a partner, employee, agent or representative of the limited liability partnership.

A partner in a limited liability partnership who receives a prohibited distribution is liable to repay that distribution up to the lesser of the value of the property received, or the amount necessary to discharge partnership obligations (s. 86(1)). A partner in a limited liability partnership who authorizes a prohibited distribution is jointly and severally liable to the partnership for any shortfall that cannot be recovered from a partner who actually received the distribution (s. 86(2)).

3. Co-ownership

Co-ownership may occur where two or more persons own property jointly. A co-ownership agreement must be very carefully drafted to avoid classification as a partnership. Unless the co-ownership agreement otherwise provides, co-owners are able to deal freely with their interests in the property. The agreement and the conduct of the parties will be closely examined to determine whether co-ownership or a partnership exists. See for example [*LePage Ltd. v. March*](#), 1977 CanLII 44 (ON CA), 16 O.R. (2d) 193 – appeal to SCC dismissed. Co-ownership is similar to and may sometimes be a joint venture.

4. Joint Venture

The phrase “joint venture” does not describe a specific form of legal relationship and a “joint venture” is not a separate legal entity. Generally, a joint venture refers to a business model where two or more parties pool their resources and expertise to conduct a specific or limited commercial venture without becoming partners. Generally, a joint venture is formed by two or more parties to engage in collaboration regarding a single project or a specific type of project for a certain length of time.

As with any of these commercial enterprises, it is important to have a written agreement governing the conduct of the parties to the joint venture.

In a joint venture, it is common for one or more of the parties to contract with the other venture parties to provide specific services, materials or management.

5. Franchises and Licences

Franchises and licences are not business entities; these terms describe methods of transferring information or industrial or intellectual property from one person (or entity) to another in connection with a certain commercial activity.

In a franchise, the franchisor commonly grants to the franchisee (which may be an individual, a partnership or a corporation) the right to use a trademark or trade name in connection with the supply of goods or services. The franchisor usually requires the franchisee to use operating methods and procedures developed and controlled by the franchisor.

Frequently, the franchise agreement provides for training, site selection, management and accounting systems, construction and equipment of the premises, advertising, marketing and inventory provided by the franchisor to the franchisee. The franchisor maintains a continuing interest in the business of the franchisee, often with compensation to the franchisor. Franchise relationships are governed in Manitoba under *The Franchises Act*.

A licence is generally a contractual arrangement where the owner of a patent, trademark, copyright or technical data grants the right to the licensee to use it in exchange for a royalty or other payment. Generally, there is little or no control by the licensor over the licensee's business.

6. Corporations

A corporation is a legal entity distinct from its shareholders (*Salomon v. Salomon and Co.*, [1897] A.C. 22 (H.L.)). A shareholder has an ownership interest in the corporation equal to the number of shares owned by that shareholder. Shareholders do not own the assets of the corporation. The property and the business of the corporation are owned by the corporation and the rights and liabilities of the corporation enure to the corporation and not to the shareholders (see *Macaura v. Northern Assurance Co. Ltd.*, [1925] A.C. 619 (H.L.)). No shareholder has any property right in any item of property owned by the corporation.

A shareholder has no direct liability to the creditors of the corporation and the shareholder's personal exposure is limited to the amount of the shareholder's investment in the corporation. A shareholder could be liable to creditors if the shareholder guaranteed the obligations of the corporation. It is quite common for a corporation's lenders to require the shareholders to make guarantees for corporate obligations, particularly if it is a small, closely-held corporation which is not heavily capitalized or has few assets of its own. The obligations to the creditors of the corporation arise from the guarantee that the shareholder gives directly to the creditor and not by virtue of that person being a shareholder.

Corporations are created pursuant to statute. Most corporations operating in Manitoba are created by and governed under the provisions of *The Corporations Act (MCA)* or the *Canada Business Corporations Act (CBCA)*. Banks, cooperatives, credit unions, and other entities are incorporated and governed by separate statutes.

The nature of the corporation and the governing rules are covered in more detail in Chapter 2 of these materials.

7. Choosing a Business Entity

With the various forms of business entities available, how does one choose the appropriate vehicle to carry on business? There are a number of advantages and disadvantages to each form of business entity.

a) Limited Liability

If incorporation is chosen, a shareholder's liability for the debts and obligations of the corporation is limited to the amount of investment in the corporation through shares or loans (and any guarantees of the corporation's obligations). Although a limited partner's liability is also limited, the limited partnership vehicle is not always available. For example, a partnership cannot be created where only one person is involved. A one-person corporation is permitted under the *MCA* and the *CBCA*.

Persons in partnerships and sole proprietorships are liable for the obligations of the business to the full extent of the business and personal assets available. If there is a substantial uninsurable risk, it is worthwhile to consider the corporate vehicle rather than partnership or sole proprietorship. Incorporation may also be less expensive than the purchase of insurance as a means of obtaining limited liability.

However, where bank financing is required, personal guarantees may be required from major shareholders or limited partners. These guarantees can expose the shareholder or limited partner's personal assets to seizure. In addition, directors, officers and sometimes the shareholders have specific statutory liabilities including as related to the issuance of shares for improper consideration, unpaid wages, environmental liabilities, filing of tax and annual returns, conflicts of interest, improper declaration of dividends and so forth.

b) Perpetual Existence

Unless there is an agreement to the contrary, death, bankruptcy, insolvency, or a minor difference of opinion which provokes a notice to dissolve the partnership, could result in its dissolution. The dissolution could necessitate the re-negotiation of major contracts following notice of the dissolution, a new partnership declaration and agreement and new arrangements with the bankers of the business. The dissolution of the business on the death of a partner or sole proprietor can be very serious.

The corporation continues notwithstanding the death, bankruptcy or withdrawal of shares of the shareholder. The corporation continues to exist in perpetuity unless the majority of the shareholders resolve to wind up the corporation, the court orders its dissolution, or the Companies Office dissolves the corporation for breach of statutory provisions (usually for failure to file annual returns for the requisite period of time).

Perpetual existence of an entity may not be desirable or a requirement where a business venture is only for a specific project for a certain length of time.

c) Estate Planning

In selecting the business form, it is often necessary to consider the other assets of the client and the long-range plans for the disposition of those assets. The client may wish to maintain direct control of the business and to funnel the growth of the corporation to others, often family members.

Corporations provide the greatest flexibility for the structure of arrangements to benefit various groups. A well-designed share structure permits flexibility and ease of succession without the necessity of re-negotiation of partnership agreements each time a change is made.

d) Number of Parties

If the business entity will involve a large number of persons with interests in the business, incorporation is preferable to partnership where there are fiduciary duties owed by partners to each other. The transfer of shares of a corporation is often simpler than the transfer of interests in a limited partnership or the amendment of partnership agreements.

e) Relationship of Proposed Parties

A significant consideration in choosing a business entity is whether or not all of the parties intend to take an active part in the affairs of the business. In a general partnership, the rules of agency permit one partner to bind the partnership whereas one shareholder, in the capacity of shareholder, cannot bind the corporation to obligations. Similarly, while a shareholder can contract with or sue the corporation, a partner cannot contract with or sue the partnership and must instead, contract with or sue the other partners.

Incorporation with different classes of shares with varying conditions is desirable if the various investments have different conditions attached, or if there will be several degrees of control and of risk-taking. On the other hand, if marketability of the interests is important, the shares of minority shareholders are not very marketable in the absence of a compulsory buy-sell agreement and minority shareholders are generally subject to the will of the majority. A partner or limited partner's interest may be more easily transferable and a partner in a general partnership may normally dissolve the partnership and require its assets to be liquidated.

f) Borrowing Requirements

If the business intends to raise money from the public or from arm's length parties, a share offering by a corporation may be more marketable and flexible. It should be noted that *The Securities Act* of the particular jurisdiction may apply to an issue of securities by any type of business vehicle.

If the lender insists on an equity position, incorporation may be the most convenient business entity to choose as the issue of shares to an equity shareholder is more easily accomplished than the introduction of a new partner with the resulting transfer of undivided interests in the assets of the partnership. As stated, lenders often require the principal shareholders to provide guarantees of the corporation's obligations, which reduces the advantages of the limited liability offered by a corporation.

g) Employees

If proprietors wish to give employees a share in the growth and profits of the business without the management rights of a partner, incorporation is advisable, although a limited partnership could also be used.

h) Availability of Government Grants

Some grants and loans are available only to corporations while others are available to all types of business entities. It is important to obtain the most recent information in this area as government programs are constantly changing.

i) Costs and Record-keeping

Corporations must keep certain records specified by statute and comply with annual filing requirements. It may be more expensive to incorporate than to file a declaration of partnership, although the preparation of or amendments to partnership agreements may cost as much in legal fees. Government fees payable by partnerships are generally less than those payable by corporations. Corporations are also subject to corporation capital tax, and therefore recurring legal and accounting costs of incorporation may be higher than other business forms.

j) Income Tax

Income tax consequences may be the determining factor in the choice of a business organization. The corporation is a separate legal entity distinct from the shareholders and it is taxed separately pursuant to the provisions of the *Income Tax Act*. Partnerships are not taxed separately from the partners, although the calculation of the partnership income and losses is computed first at the partnership level and then allocated among the various partners. These different means of taxation may or may not result in a tax advantage to a certain business entity. In determining which business entity to use, the accountants or auditors of the clients should be consulted along with tax lawyers to determine the most attractive business structure from a tax point of view.

B. CHECKLIST/PRECEDENTS

1. Partnership Agreement Checklist

1. Date

2. Describe Partners

Can be a corporation.

If an individual, ensure at least 18 years old.

Obtain a representation that each partner is acquiring the interest for the partner's own account.

3. Firm name

Must carry on business under this name.

Possibility of conflict with another name resulting in loss of goodwill or injunction and passing off action.

Possibly search with trade-marks office and register under *Trade-Marks Act*. Will require search report (federal or provincial), before registration, which should disclose conflicting names.

4. Term of Partnership

Insert date of commencement and how partnership is to be terminated.

Unless term stated, it is at will of all partners, subject to provisions of agreement and sections 35 - 38 of *The Partnership Act*.

5. Place of Business

Not required if no desire to restrict geographical limits.

6. Description of Business

Describe the purpose and objectives of the partnership.

7. Percentage and/or Amount of Contribution to Capital

Include any obligation to make future contributions to capital which could include a percentage of profits or that percentage of profits be retained as a reserve.

In a limited partnership a change in contributed capital, as opposed to additional advances, requires a new declaration registered at [Companies Office](#).

In absence of agreement, partners contribute equally and share equally on winding up. Attach a form of subscription for limited partners.

8. Division and Calculation of Net Profits

Should be specifically provided for.

In absence of agreement, partners share equally. Include provision for periodic review and objective criteria or basis for revising interests.

9. Accounting and Other Records

Nature of records kept and nature of statements to be given to partners.

Should be sufficient for tax purposes, law and efficient business operation.

In absence of an agreement, each partner entitled to access partnership books.

10. Auditors or Accountants

11. Fiscal Year

12. Accounting Principles

- (a) Valuation of assets at cost, market depreciating value
- (b) Valuation of goodwill
- (c) Capital v. income
- (d) Depreciation policy
- (e) Interest on advances and capital
- (f) Write offs
- (g) Reserves for working capital; receivables, overvalued inventory, etc.
- (h) Partnership v. personal expenses
- (i) Calculation of profit

13. Banking Arrangements

Banker, kinds of accounts, signing authorities (provide for two or more signatures on large amounts).

14. Restrictions on Partners

Restrict partners re: bail bonds, guarantees for friends, release of debt payable to partner, charging partnership interest for separate debts, borrowing for partnership or releasing partnership debts.

Partner's liability for personal obligations is exigible out of partner's own share of partnership assets enabling others to dissolve the partnership and would also diminish the partner's ability to assume partner's share of firm's obligations to detriment of other partners.

15. Partners to devote full time and attention to Partnership

State other things to be included in partnership income, e.g. directors' fees and royalties. Provide whether or not partners may carry on other business or compete with the partnership. (See ss. 31-33 *Partnership Act* and for the general partner in a limited partnership).

16. Management

Who is in charge of sales; administration; production? Unless agreed otherwise, all partners are entitled to participate in management.

In a limited partnership, a limited partner will lose its limitation on liability if it engages in the management of the business of the partnership (s. 63(1)).

If a limited partner, to the knowledge of the general partner, takes part in the management of the business, it has the power to bind the partnership (s. 54(1)).

Meetings, notices, procedures; what can or must be done by a vote of the partners.

Unless agreed otherwise, simple majority governs except with regard to admitting new partners, changing the nature of the business, and changes to the agreement.

May wish to include specific powers of general partner (e.g. partnership may contract with general partner) and limitations on powers of general partner (e.g. no major borrowing or sale or encumbrance of assets out of ordinary course of business without consent of specified number or percentage of limited partners).

Provide for less than unanimous vote to change such terms of the agreement as partners agree do not require unanimous consent.

17. Partnership Contracts

Who signs which contracts? If limited partnership, only general partner can sign (however, see ss. 54(1) and 63(1)).

18. Drawing Arrangements

How often?

How much (not exceeding specified percentage of anticipated share of profit for year)? Otherwise, may have to borrow to pay draw of partner, who in drawing more than others is receiving an interest-free loan at cost of all partners.

19. Vacations, Sabbaticals

20. Retirement or Death of Partner

Unless agreed otherwise, results in dissolution.

Should provide a notice period and agreement by remaining partners to buy out retiring or expelled partner.

Method of valuation of retiring or expelled partner's interest (see No. 28 below) and terms of payment (s. 29 and s. 36).

In limited partnerships, the partnership is not dissolved on the death of a limited partner (s. 63(3)).

21. Non-Competition Clause

Restrictive covenants on subsequent activities - must be reasonable as to time, activity and geographical area both as between the parties and to the public - liquidated damages on breach. Only fair if retiring partner's interest acquired by others includes valuation for goodwill.

22. Sale of Interest to Outsider

Best to prohibit. But could provide for it only if survivors refuse to buy out retiring partner, however, not very marketable (s. 34).

23. Expulsion of Partner

Unless agreement otherwise, cannot expel (s. 28).

24. Default

By general or limited partners - what constitutes default and what are the consequences.

25. Grounds for Dissolution

See sections 35 to 38 *Partnership Act*. Unless agreement to contrary, death, insolvency and notice by partner dissolve a partnership, so need specific provisions to provide otherwise.

Dissolution automatic on event making business unlawful or unlawful for partners to carry on in partnership, or court order.

Could include some or all of grounds in sections 38(a) to (e).

May choose to provide for dissolution on vote of a specified percentage of partners (e.g. 50%). This is an effective force for settling differences since normally business cannot be sold without depreciating its value.

26. Admission of a New Partner

Provide for majority on vote; contribution to be made to capital, allocate new partner's interest in capital and profits pro rata from other partners and provide method of payment by partner for capital contribution.

27. (a) Obligation to Purchase

By the continuing partners on retirement, expulsion or death of a partner.

(b) Option to Purchase

Successor can purchase from continuing founder. Could specify mandatory retirement at specified age with right of remaining partners to purchase certain percentage of retiring partner's interest in each of the certain number of years prior to retirement date.

If no obligation but only an option of continuing partners to buy out retiring partner and option not fully exercised, should give retiring partner option to buy out remaining partners and thus avoid possible court application for dissolution on "just and equitable" grounds and preserve any goodwill which would be lost on consequent liquidation of the assets.

28. Valuation of Partnership Interest

How is amount to be paid to a retiring, expelled or deceased partner for their interest in the partnership determined?

Is goodwill to be included? If so, could be based on a reasonable multiple of audited profits over past several years or a multiple of book value at cost or depreciated value or at figure to be agreed periodically by all partners.

If goodwill is not to be included, could be advances or loans plus share of capital assets, including amounts contributed by partners, plus undrawn share of profits.

Income tax consequences could affect valuation.

Auditor, accountant or tax lawyer can assist in advising on a reasonable and workable formula which should be in the agreement.

Make sure amount is not based on future profits or retiring partner may be considered to be a continuing partner.

29. Partnership Property

Registered in firm name or name of one or more partners (general partner in limited partnership). If latter, define the property and confirm partners hold in trust for the partnership.

30. Limitation of Liability of General Partners to Limited Partners

31. Insurance

- (a) Kinds, limits and deductibles
- (b) Errors and omissions
- (c) Products liability
- (d) Fire, boiler, theft, tenants' liability
- (e) Obligation on each partner to purchase stipulated amount of term insurance on life of other partners sufficient to fund in whole or in part the partner's obligation to purchase interest of a deceased partner.

32. Arbitration of Disputes

Keep disputes out of courts as it will only harm the partnership business.

- (a) Auditor or accountant is final unappealable arbitrator on financial matters and named person on non-financial matters; or
- (b) One or more arbitrators, under *The Arbitration Act*, whose decision is final and not appealable (expensive).

33. Registration

Provide for requisite registration under *The Business Names Registration Act* and *The Partnership Act* and undertaking by all partners to facilitate registration of any change made in accordance with the agreement.

Attach power of attorney making each partner attorney for the other (surviving death or any assignment of interest) for the purpose of any registration requirements.

Attach limited partnership declaration to be signed and registered.

34. Applicable Law

35. Enurement

36. No assignment

37. Notices

38. Counterparts

39. Tax Consequences

Consult with tax practitioner for information relevant to the partnership, its formation, dissolution etc., before agreement is drafted.

2. General Partnership Agreement

THIS AGREEMENT made in duplicate this day of ,

BETWEEN:

ELLEN ARNOLD, of the City of Winnipeg, in the Province of Manitoba,
("Arnold"),

– and –

BOB BAKER, of the City of Winnipeg, in the Province of Manitoba,
("Baker"),

Arnold and Baker have decided to enter into a partnership for the purpose of carrying on the business of RENOVATION AND REPAIR and all other business which can be carried on necessarily or incidentally in connection with such business.

In consideration of the mutual covenants and agreements herein the parties agree as follows:

Partnership

1. To enter into partnership effective as of the 1st day of JUNE, 202_, upon and subject to the terms, conditions and stipulations of this Agreement.
2. Subject to the provisions herein, the partnership shall continue until one partner gives written notice to the other partner that the partner is terminating the partnership and the partnership shall terminate at the expiration of six (6) months after the giving of such notice, or if both partners give their written consent, the partnership may be terminated without notice and on such date as may be specified in such consent.
3. The name of the partnership shall be ARNOLD BAKER and the business of the partnership shall be that of RENOVATION AND REPAIR and all other businesses which are carried on necessarily or incidentally in connection with such business.

Banking and Finances

4. The cash funds of the partnership shall be deposited in accounts at such Canadian chartered banks or credit unions as the partners shall from time to time determine. All cheques, drafts and other instruments and documents on behalf of the partnership shall be signed by (and only by) both the partners or by such persons as are from time to time designated in writing by both the partners. All partnership money shall, as and when received, be paid and deposited with the bankers of the partnership to the credit of the partnership account.
5. It is agreed that:
 - (a) if at any time capital and/or further capital is required for carrying on the business of the partnership, such capital shall be advanced by the partners in equal shares. If a partner, with the consent of the other, brings in additional capital or leaves any part of that partner's profits in the business, the same shall be considered a debt due to that partner from the partnership and shall bear interest at the rate of 19 % per annum but that debt owed by the partnership shall not be drawn out by that partner who is owed the debt except upon that partner giving sixty (60) days written notice to the other; or if the other partner gives sixty (60) days written notice to the partner who is owed the debt, that partner shall be bound to draw out the same and future interest on the debt shall cease to be payable at the expiration of such period of sixty (60) days written notice given by either partner to the other. Subject to the foregoing, any and all capital of the partnership from time to time belongs in equal shares to the partners;
 - (b) the profits of the partnership shall be divided equally between the partners; and
 - (c) the expenses and losses of the partnership in any one partnership year shall in the first place be paid out of the earnings of the partnership for that year and, if such earnings shall be insufficient to pay all expenses and losses, the deficiency shall, unless otherwise agreed, be made up by the partners equally.
6. It is agreed that at the end of the period commencing at the date of this agreement and continuing up to and including the 31st day of January, xxxx, and at the end of each partnership year thereafter terminating on the 31st day of January, xxxx Red Blue CPA, or such other chartered accountant or firm of chartered accountants as approved by the partners from time to time (the "Auditor") shall forthwith make an examination of the financial statement of the partnership as prepared by the partners and shall make a report to the partners on the financial statement and shall state in the report whether in the Auditor's opinion the financial statement fairly presents the financial position of the partnership. For such purpose the Auditor shall have access to all books of account and records and all vouchers, cheques, papers and documents of or which may relate to the partnership business. Forthwith upon its preparation, a copy of the Auditor's report shall be given to each partner. The partners shall be

bound by the report unless one of the partners objects and gives the Auditor notice of the objection within thirty (30) days after the copy of the report was given to the partner. Upon receiving a partner's notice objecting to the report, the Auditor shall reconsider the report and revise it if the Auditor considers it necessary to do so provided that the Auditor shall have the sole and final decision as to whether any revision is necessary. Immediately after the revision of the report by the Auditor or immediately after the Auditor has advised the objecting partner that the Auditor considers no revision is necessary, the net profits if any, shown by the profit and loss account as modified by the Auditor's report if such is the case, shall be divided equally between the partners unless the partners agree otherwise.

7. If at any time either of the partners is required to pay or becomes personally liable for more than that partner's proportion of the partnership debts as provided for in subparagraph (c) of paragraph 5 of this agreement, such partner shall have as against the other partner (the offending partner) a right of recovery of the appropriate proportion of such payment or indemnification against such liability and the partner shall have on becoming liable for such debt a first lien or charge on the capital and all other interest or interests of the offending partner in the partnership business.
8. Neither partner shall assign or encumber their own share or interest in the partnership without the prior written consent of the other.
9. Each of the partners shall at all times duly and punctually pay and discharge their own separate debts, liabilities, obligations, duties and agreements whether present or future and keep indemnified and save harmless the partnership property and the other partner and the partner's estate and effects from all actions, proceedings, costs, claims and demands of every nature or kind whatsoever.

Dissolution of Partnership

10. The Partnership shall be dissolved in the manner provided upon the happening of any of the following events:
 - (a) a decision by the partners to dissolve the partnership; and
 - (b) the entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating the partnership to be a bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal.
11. No Termination by Withdrawal of Partner. The partnership shall not be terminated or dissolved by reason of the death, bankruptcy, insolvency, incapacity, legal incompetency or withdrawal of a partner or the admission of a new partner.
12. Method of Liquidation. Upon the happening of any of the events specified in paragraph 10 above, the partners shall immediately commence to wind up the

partnership's affairs and shall liquidate the assets of the partnership as promptly as possible, unless it is determined that an immediate sale of partnership assets would cause undue loss to the partnership, in which event (i) the liquidation may be deferred for a reasonable time, and/or (ii) all or part of the partnership assets may be distributed in kind. The partners shall continue to share cash flow, profits and losses during the period of liquidation in the same proportions as before dissolution. The proceeds from liquidation of the partnership, including repayment of any debts of partners to the partnership, shall be applied in the order of priority as follows:

- (a) to payment of the expenses of liquidation of the partnership;
 - (b) to debts of the partnership, including debts to partners;
 - (c) to the establishment of any reserves reasonably necessary to pay for any contingent or unforeseen liabilities or obligations of the partnership. Such reserves established hereunder shall be held for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as is reasonably deemed advisable, of distributing the balance of such reserves in the manner provided in this Section;
 - (d) the balance, if any, shall be divided equally among the partners.
13. The partners agree to devote their full time and energy during normal working hours to the business of the partnership.
14. Each partner may draw on account of the partner's own profits such amount or amounts as may be agreed upon by the partners from time to time. If either partner draws out a sum exceeding the profits to which that partner is entitled, the partner shall repay the excess drawn back to the partnership forthwith.
15. Proper accounts of all partnership transactions shall be kept in books and such books, together with all other documents connected with the partnership business, shall be kept at the partnership's principal place of business and be accessible to each partner.
16. All differences or disputes which arise between the partners or between either of them and the personal representatives or committees of the other of them or between the personal representatives and committees of the partners and whether during or after the termination of the partnership and whether in relation to the interpretation of this agreement or to any act or omission of any party to the dispute or to any act which ought to be done by the parties in dispute or in relation to any other matter whatsoever touching the partnership affairs shall be referred to a single arbitrator to be agreed upon by the parties to the dispute and in default of agreement to a single arbitrator appointed by the court under the provisions of *The Arbitration Act*. The award or determination which shall be made by such arbitrator shall be final and binding upon the partners hereto, their heirs, executors, administrators, assigns and committees and there shall be no appeal from such award or determination, provided however that in any and all cases where the Auditor exercises any discretion

exercisable by the Auditor under this Agreement such decision shall be final and binding upon the parties and their personal representatives or committees and shall not be subject to the arbitration provisions provided for herein.

17. Any notice required or permitted to be given hereunder to either partner or the personal representatives or committee of either partner shall be in writing and shall be given by prepaid registered letter addressed to Ellen Arnold at 123 Main St., Altona, Manitoba, or by delivering the same to Ellen Arnold, Ellen Arnold's personal representatives or committee, as the case may be, and shall be in writing and shall be given by prepaid registered letter addressed to Bob Baker at 456 First Ave, Beausejour, Manitoba, or by delivering the same to Bob Baker, Bob Baker's personal representatives or committee, as the case may be.

IN WITNESS HEREOF the parties hereto have hereunto set their hands and seals this

day of , .

SIGNED, SEALED AND DELIVERED)
in the presence of:)
)
)
)

Witness

Witness

3. Limited Partnership Agreement

THIS Limited Partnership Agreement made this _____ day of _____, 20__

BETWEEN:

_____ of the _____ of _____
in Manitoba, ("LP"),

- and -

_____ of the _____ of _____
in Manitoba, ("General Partner"),

is made pursuant to *The Partnership Act* of Manitoba on the following terms and conditions:

In consideration of their mutual promises, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.01 Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

- (a) **"Act"** means *The Partnership Act* of Manitoba as amended from time to time;
- (b) **"Agreement"** means this agreement and any amendment made to it from time to time;
- (c) **"Capital Account"** means the separate account to be established and maintained for each of the Partners pursuant to Article 3.03;
- (d) **"Distributable Cash"** means the aggregate of:
 - (i) all revenue received from the operation of the business and undertaking of the Partnership by or on behalf of the Partnership after deducting all usual expenditures, including, without limitation, principal and interest debt service payments; and
 - (ii) all proceeds from the sale of any or all of the assets of the Partnership;after deducting from the said aggregate such reserves as are considered necessary by the General Partner to meet anticipated future operating deficiencies and anticipated future expenses or liabilities of the Partnership;
- (e) **"Limited Partners"** means LP and any other person who acquires a Partnership Interest as a limited partner by virtue of a transfer or the issuance of a Partnership Interest;
- (f) **"Major Partnership Decision"** means a resolution passed by Partners holding in the aggregate at least 60% of the Partnership Interest respecting any of the following matters:
 - (i) any proposed sale, refinancing or additional financing of all or substantially all of the Partnership assets;
 - (ii) a proposed dissolution of the Partnership;
 - (iii) a proposed material change in the nature of the business carried on by the Partnership;
 - (iv) a proposed amendment of this Agreement;
 - (v) a proposed increase in the capital of the Partnership;
- (g) **"Net Sale Proceeds"** means the proceeds of disposition of all or substantially all of the assets of the Partnership after deducting all costs and expenses of disposition and all debts and liabilities of the Partnership and after making

provision for any reserves considered by the General Partner to be necessary for contingent or unforeseen liabilities or obligations of the Partnership;

- (h) **"Original Capital Contribution"** means the amount to be contributed by each of the Partners pursuant to the provisions of Article 3.01;
- (i) **"Partners"** means the General Partner and the Limited Partners;
- (j) **"Partnership"** means the limited partnership formed by the Limited Partners and the General Partner pursuant to this Agreement;
- (k) **"Partnership Business"** means the business of the Partnership as set out in Article 2.01 hereof;
- (l) **"Partnership Unit"** means a percentage interest of the Partners in all amounts of net income, net loss, Net Sale Proceeds, Distributable Cash and in the distributions, assets and property of the Partnership and has the attributes set forth in Article 3.01. The percentage interest attributable to each Partnership Unit shall be the fraction having a numerator of one and a denominator equal to the number of Partnership Units of the Partnership outstanding from time to time; and
- (m) **"Proportionate Share"** means the proportion that the number of Partnership Units held by a Partner at any particular time is to the aggregate number of Partnership Units then outstanding.

ARTICLE II - THE LIMITED PARTNERSHIP

2.01 Formation, Registration and Compliance

The General Partner and the Limited Partners agree to and do form the Partnership pursuant to the provisions of the *Act* for the purpose of purchasing and operating the Partnership Business. The General Partner and the Limited Partners shall, concurrently with the execution of this Agreement, execute such forms as are required to duly register the Partnership as a limited partnership pursuant to the provisions of the *Act* and *The Business Names Registration Act* of Manitoba. The General Partner and the Limited Partners agree that they and each of them will from time to time comply with all the laws of Canada, and Manitoba, in order to have the Partnership registered and qualified in Manitoba and to maintain such registration and qualification so long as the Partnership continues. The registration, qualification and maintenance of the Partnership in all jurisdictions where it is necessary shall be at the expense of the Partnership.

The Partnership Business shall consist of _____ and such other businesses as determined by the Partners by Major Partnership Decision.

2.02 Name, Head Office and Principal Place of Business

The parties agree that the name of the Partnership shall be

Limited Partnership, or such other name as may be designated by the General Partner from time to time and acceptable to the appropriate authorities in the appropriate jurisdictions. The head office and principal place of business of the Partnership shall be located at

in the Province of Manitoba or such other location as may be designated by the General Partner from time to time. The General Partner shall promptly notify the Limited Partners of any change in the name, head office or principal office of business of the Partnership.

2.03 Term of Partnership

The Partnership shall be deemed to have commenced business as of the date of this Agreement, notwithstanding any delay in registering same as a limited partnership, and shall continue until the happening of any one of the following events:

- (a) the close of business on the last day of the fiscal year of the Partnership during which the 20th anniversary date of this Agreement occurs, unless all the Limited Partners and the General Partner agree in writing to extend the term beyond such last day;
- (b) a Major Partnership Decision to dissolve the Partnership;
- (c) the entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating the Partnership to be a bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal therefrom; and
- (d) the death, dissolution or legal incompetency of the last remaining Limited Partner;
- (e) the extinction, loss or disposition of all or substantially all of the assets of the Partnership.

ARTICLE III - PARTNERSHIP CAPITAL

3.01 Partnership Capital

The interest in the Partnership of the Partners shall be divided into and be represented by 1000 Partnership Units and such additional Partnership Units as may be authorized and offered for sale in accordance with the provisions of the Agreement. Except as otherwise expressly provided in this Agreement, each Partner holding a Partnership Unit shall have the same rights and obligations as each other Partner holding a Partnership Unit, including:

- (a) the right to one vote (to be exercised as hereinafter set forth) for each Partnership Unit so held;
- (b) the right to allocations or distributions of net income, net losses, Distributable Cash and Net Sale Proceeds; and
- (c) the right to share in distributions upon the dissolution of the Partnership

and, except as provided to the contrary in this agreement, no Partnership Unit shall have any preference, priority or right in any circumstances over any other Partnership Unit. The original capital of the Partnership which is divided into 1000 Partnership Units shall be issued as follows:

- (a) One (1) Partnership Unit shall initially be issued to the General Partner upon and in consideration of the General Partner making an Original Capital Contribution of \$0.10; and
- (b) Nine Hundred Ninety-Nine (999) Partnership Units shall initially be issued to LP upon and in consideration of LP making an Original Capital Contribution of \$99.90

and the Original Capital Contributions of all of the Limited Partners shall be used only for the purpose of the Partnership Business.

3.02 Proportionate Share

The present Proportionate Share of each Partner is as follows:

<u>Partner</u>	<u>Number of Partnership Units</u>	<u>Proportionate Share</u>
LP	999	99.9%
General Partner	1	0.1%

3.03 Capital Accounts

A Capital Account for each Partner shall be established on the books of the Partnership and the amount of the Partner's Original Capital Contribution referred to in Section 3.01 and such other capital contributions as may be made from time to time and the amount of any net income allocated to such Partner shall be credited to that account, and against that account shall be charged the amount of any net loss allocated to such Partner and the amount of any Distributable Cash distributed to such Partner. None of the Partners shall have the right to withdraw or to make any demand for withdrawal of any amount of income or capital from the Partnership or to receive any allocation or distribution from the Partnership except as expressly provided in this Agreement. Except as expressly provided in this Agreement, no Partner shall be entitled to any interest on its Capital Account and no Partner shall have the right to demand the return of all or any part of the amount standing

to its credit in its Capital Account in the Partnership. No Partner shall have the right to demand property other than cash in return for the commitments or contributions to the Partnership capital of such Partner.

3.04 Waiver of Right of Partition and Dissolution

Having previously been advised that it may have a right to bring an action for partition, each of the Partners does hereby agree to and does hereby irrevocably waive, for the duration of this Agreement, any right or power any such Partner might have to cause the Partnership or any of its assets to be partitioned, to cause the appointment of a receiver for the assets of the Partnership, or, except as expressly provided for herein, to compel any sale of all or any portion of the assets of the Partnership pursuant to any applicable law or laws or to file a complaint or to institute any proceeding at law or in equity to cause the termination or dissolution of the Partnership except as expressly provided for in this Agreement. Each of the Partners hereby acknowledges and agrees that such Partner has been induced to enter into this Agreement in reliance upon the mutual waivers set forth in this Section 3.04 and without such waivers, no Partner would have entered into this Agreement. No Partner has any interest in specific Partnership property but the interests of all Partners in the Partnership are, for all purposes, personal property.

3.05 Negative Accounts

No Partner shall be required to pay to the Partnership or to any other Partner any deficit or negative balance which may exist from time to time in its Capital Account as a result of the provisions of this Agreement. However, in the event a Partner may have received distributions or made withdrawals in excess of the amount which it should have received or withdrawn based on its Proportionate Share, then, as between the Partners but not for the benefit of other persons, a Partner shall be indebted to the Partnership in an amount equal to distributions to it in excess of its Proportionate Share and such indebtedness shall be repaid out of distributions of Distributable Cash referred to in Section 9.01 of this Agreement.

3.06 Return of Capital

Subject to the provisions of this Agreement, the General Partner may, at its sole discretion, determine when capital should, in whole or in part, be returned to the Partners. No such return of capital shall be made until after such public filings and recordings as are required by law have been made and unless all debts and liabilities of the Partnership (except debts and liabilities to Partners in respect of their Original Capital Contributions) have been paid or there remain, in the judgment of the General Partner, assets of the Partnership sufficient to pay such debts and liabilities. Any Partner who receives any return of capital pursuant to this Section 3.06 shall be liable to the Partnership for any sum (not in excess of such amount of capital returned) necessary to discharge debts and liabilities of the Partnership to creditors who extended credit or whose claims otherwise arose prior to such return of capital. Every such return of capital shall be deemed to have been consented to by

all Partners and shall be made to Partners who are registered as such on a date 7 days prior to the date established for such return of capital.

3.07 Additional Capital Contributions

If the Partners determined by a Major Partnership Decision to increase the capital of the Partnership, or to issue additional Partnership Units, each of the Partners shall contribute additional capital or acquire additional Partnership Units in proportion to their respective Partnership Interest.

ARTICLE IV - MANAGEMENT OF PARTNERSHIP

4.01 Management of Partnership

The General Partner shall have full power and authority to transact the business of the Partnership and to deal with and in the Partnership assets for the use and benefit of the Partnership. For these purposes the General Partner shall have full, complete power and authority to manage and carry on the Partnership Business and to do any and all acts and things required in connection therewith and incidental thereto and to execute all documents in respect thereof required to be signed by the Partnership. The General Partner shall be in charge of the partnership, the Partnership Business and assets in all respect and in all matters, and, shall have such power and authority as may be necessary to carry out its rights, duties and obligations as provided in this Agreement.

- 4.02 (a) Assignment of Rights of General Partner.** The General Partner shall not sell, assign, transfer or otherwise dispose of its rights as the general partner of the Partnership except with the prior written approval of the Limited Partners given by unanimous consent, unless such disposition of interest or rights is in connection with and ancillary to a merger or amalgamation of the General Partner with another corporation or corporations or is in connection with or ancillary to a sale of assets or other corporate reorganization which results in the General Partner being the surviving or continuing corporation. The General Partner shall promptly notify the Limited Partners in writing of any change in the effective control of the General Partner, directly or indirectly.
- (b) Deemed Withdrawal of General Partner.** The General Partner shall be deemed to withdraw as the general partner of the Partnership in the event of the bankruptcy, dissolution, liquidation or winding-up of the General Partner (or the commencement of any act or proceeding in connection therewith which is not contested in good faith by the General Partner) or by the insolvency of the General Partner or by the appointment of a trustee, receiver or receiver and manager of the affairs of the General Partner or if a mortgagee or other encumbrancer shall take possession of the property or assets of the General Partner or a substantial part thereof or if a levy or execution or any similar process shall be levied or enforced against the property or assets of

the General Partner. The General Partner shall forthwith advise the Limited Partners by written notice of the occurrence of any event referred to in this Subsection 4.02(b).

- (c) **Effective Date of Deemed Withdrawal of General Partner.** In the event of the deemed withdrawal of the General Partner as general partner of the Partnership by virtue of the provisions of Subsection 4.02(b) hereof, the effective date of such deemed withdrawal and the date on which the General Partner shall cease to be the general partner of the Partnership shall be the earlier of the appointment of a new general partner of the Partnership by the Limited Partners by unanimous consent or the expiration of 90 days from the date of the giving of the notice of the occurrence of an event referred to in Subsection 4.02(b) hereof.

4.03 Removal of General Partner

The General Partner may be removed as the general partner of the Partnership at any time by Major Partnership Decision provided that any such Major Partnership Decision must also by its provisions appoint a new general partner of the Partnership and the removal of the General Partner shall be effective upon the passing of such Major Partnership Decision.

4.04 Specific Power and Authority of the General Partner

Without limiting the generality of Section 4.01 hereof, the power and authority of the General Partner to make all decisions with respect to the business and affairs of the Partnership and to take such action for and on behalf of the Partnership as it may deem necessary or appropriate to enable the Partnership to carry out its purposes as set forth herein, shall include, without limitation (except as may be limited by any Major Partnership Decision) full and complete power and authority:

- (a) to execute any and all documents on behalf of the Partnership, including but not limited to, agreements, leases, deeds, mortgages, notes, bonds, assignments, stock powers and other forms of contracts and all amendments, modifications or rescissions of the same;
- (b) to borrow money for and on behalf of the Partnership for its operating purposes, upon such terms and conditions as it, in its sole discretion, may deem necessary or appropriate;
- (c) in order to secure any loans to the Partnership for Partnership purposes, to convey, mortgage, pledge and hypothecate, for and on behalf of the Partnership and upon such terms and conditions as it, in its sole discretion, deems necessary or appropriate, all or any part of the Partnership's assets;

- (d) to execute and to deliver for and on behalf of the Partnership any promissory notes, deeds of trust, mortgages, security agreements, financing statements, assignments of leases, "master leases," "convenience leases," or other instruments required or advisable in connection with any such loans, conveyances, pledges or hypothecations;
- (e) to collect all rentals and all other income accruing to the Partnership and to pay all acquisition and development costs and expenses of operation, whether capital or otherwise;
- (f) to prepare, or have prepared, and file all tax returns for the Partnership (but not the tax returns or other reporting of the individual Partners, or of their respective heirs, representatives, executors or assigns, in their individual capacities) and make all appropriate tax elections for the Partnership, including any special basis adjustments which may be appropriate or desirable under applicable laws pertaining to taxation on the income of the Partnership, provided, however, that the Limited Partner benefiting from such election, if any, shall reimburse the Partnership for additional costs incurred by the Partnership in making the election for and on behalf of the Partnership;
- (g) to institute, prosecute, defend and settle any legal, arbitration or administrative actions or proceedings on behalf of or against the Partnership;
- (h) to maintain and operate the assets of the Partnership or any part or parts thereof;
- (i) to employ, terminate the employment of, supervise and compensate such persons, firms or corporations (including accountants or auditors) for and in connection with the business of the Partnership and the acquisition, development, improvements, operation, refinancing, sale, exchange or other disposition of any assets of the partnership or any interest in any of such assets as the General Partner, in its sole discretion, may deem necessary or desirable;
- (j) to pay any debts and other obligations of the Partnership, including amounts due under permanent financing of improvements and other loans to the Partnership and costs of operation and maintenance of the assets of the Partnership;
- (k) to pay all taxes, assessments, rents and other impositions applicable to the assets of the Partnership and undertake when appropriate any action or proceeding seeking to reduce such taxes, assessments, rents or other impositions;

- (l) to deposit all monies received by the General Partner for or on behalf of the Partnership as may be designated by the General Partner and to disburse and pay all funds on deposit on behalf of the Partnership in such amounts and at such times as the same are required in connection with the ownership, maintenance and operation of the assets of the Partnership;
- (m) to perform other obligations provided elsewhere in this Agreement to be performed by the General Partner;
- (n) to hold the registered title to the assets of the Partnership in its name, for the use and benefit of and in trust for the Partnership; and
- (o) to do anything (including the investment of Partnership funds) that is in furtherance of or is incidental to the business of the Partnership or that is provided for in this Agreement.

Other than as limited by this Agreement, the signed statement of the General Partner, reciting that it has authority to undertake any act or has the necessary votes or consents of the Limited Partners to take any such act, when delivered to any third party, shall be sufficient evidence any such third party shall require concerning the capacity of such General Partner, and any such third party shall be entitled to rely upon such statement and shall not be required to inquire further as to any of the facts contained in such statement, said facts being deemed to be true insofar as such third party is concerned. The General Partner, by its signature alone, may sign any instrument and bind the Partnership and the Partnership property just as though all of the Partners had also signed.

4.05 Evidence of Authority

The signed statement of the General Partner, reciting that it has authority to undertake any act when delivered to any third party, shall be sufficient evidence that any such third party shall require concerning the capacity of such General Partner, and any such third party shall be entitled to rely upon such statement and shall not be required to inquire further as to any of the facts contained in such statement, said facts being deemed to be true insofar as such third party is concerned. The General Partner, by its signature alone, may sign any instrument and bind the Partnership and the Partnership property.

4.06 Limitations on Powers and Authority of General Partner

Notwithstanding the powers of the General Partner set forth in this Agreement, the General Partner shall not have the right or power, without the prior written consent of the Limited Partners, to do any of the following:

- (a) do any act in contravention of this Agreement;

- (b) do any act which would make it impossible to carry on the Partnership Business;
- (c) make any loans of Partnership funds to any person, firm or entity other than loans for Partnership purposes, or as expressly provided in this Agreement; and
- (d) encumber assets of the Partnership as security for, or otherwise guarantee the repayment of, the indebtedness of persons, firms or entities other than the Partnership, except for the Partnership purposes.

Each Partner agrees to execute such instruments as may reasonably be determined by the solicitors for the Partnership to be necessary or desirable to evidence the authority of the General Partner to consummate the sale, loan, exchange or other transfer of all or substantially all of the assets of the Partnership on behalf of the Partnership, as contemplated by this Agreement.

4.07 Representations and Warranties of General Partner

The General Partner represents and warrants to the Limited Partner that during the term of the Partnership the General Partner:

- (a) is and will continue to be a corporation duly existing and in good standing under *Canada Business Corporations Act* or *The Corporations Act* of Manitoba;
- (b) is and will continue to be duly registered and qualified to carry on business and has and will continue to have all requisite authority, licences and permits to carry on the Partnership Business in the Province of Manitoba;
- (c) has and will continue to have the capacity and corporate authority to act as the general partner of the Partnership and the performance of its obligations hereunder as General Partner does not and will not conflict with or be in breach of its constituting documents, by-laws or any agreement to which it is or will be a party or by which it is or will be bound or by law or regulation applicable to it;
- (d) will maintain its corporate existence as long as it is General Partner;
- (e) will carry out its powers and authorities hereunder and will manage and operate the Partnership and the undertaking and assets thereof in a reasonable and prudent manner; and
- (f) will devote as much time to the conduct of the business and affairs of the Partnership as is reasonably required for the prudent management of the business and affairs of the Partnership.

4.08 Compensation of Partners

No Limited Partner shall receive any compensation from the Partnership (except for services which may be rendered by one of the Limited Partners in a capacity other than as a Limited Partner) without the prior written consent of all Limited Partners to the payment of such compensation by the Partnership.

4.09 Specific Duties

Without limiting any other duties or responsibilities imposed upon the General Partner in this Agreement or usually performed by a general partner, the General Partner shall perform, or cause to be performed, the following specific services:

- (a) if required, engage a Manager to provide the overall management, financial and business supervision of the Partnership Business for the Partnership;
- (b) establish books of account, records and payment procedures including the Partners' Capital Accounts as hereinbefore referred to;
- (c) provide bookkeeping and other related services to the Partnership;
- (d) make distributions of Distributable Cash and Net Sale Proceeds in accordance with this Agreement;
- (e) receive all funds paid to the Partnership and make all necessary payments and expenditures required to cause the Partnership to discharge its obligations in accordance with the terms thereof;
- (f) make all reports to Limited Partners as required by this Agreement or by law; and
- (g) perform all duties imposed by this Agreement on the General Partner in a prompt and diligent manner.

4.10 Bank Accounts

The cash funds of the Partnership shall be deposited in bank accounts at such Canadian chartered banks as the General Partner shall determine. Disbursements therefrom shall be made by the General Partner in conformity with this Agreement. The funds of the Partnership shall not be co-mingled with the funds of any other person.

4.11 Insurance

The General Partner shall ensure that the Partnership shall at all times maintain comprehensive insurance coverage, including fire and third-party property and personal liability and business interruption coverage in such amounts as may be determined by the General Partner for the protection of the Partnership and its assets.

4.12 Partnership Loans

Without limiting the generality of the powers conferred upon the General Partner in this Agreement, the General Partner shall have the power to borrow money for and on behalf of the Partnership for operating purposes, upon such terms and conditions as it, in its sole discretion, deems necessary or appropriate, and in order to secure any such loans to the Partnership for Partnership purposes, to convey, mortgage, pledge and hypothecate, for and on behalf on the Partnership and upon such terms and conditions as it, in its sole discretion, deems necessary or appropriate, all or any part of the Partnership's assets; and for that purpose to execute and deliver for and on behalf of the Partnership any promissory notes, deeds of trust, mortgages, security agreements, financing statements, or other instruments required or advisable in connection with any such loans, conveyances, pledges or hypothecations.

4.13 Reimbursement of General Partner

The General Partner shall be reimbursed by the Partnership for all costs and expenses incurred by the General Partner in conducting the Partnership Business including administrative and overhead expenses and the cost of such professional, technical, administrative, and other services and advice as the General Partner shall consider necessary.

ARTICLE V - LIABILITY AND INDEMNIFICATION

5.01 Liability of Limited Partners

Except as may be otherwise herein expressly provided, the Limited Partners shall not be liable or accountable, in damages or otherwise to the Partnership or to any other Limited Partner for any error of judgment or for any mistake of fact or law for anything which it may do to refrain from doing hereafter in connection with the business and affairs of the Partnership except in the case of willful misconduct or gross negligence. No Limited Partner shall have any personal liability for the return of another Limited Partner's capital.

5.02 Indemnification of General Partner

- (a) The General Partner and its directors, officers, agents and employees shall be indemnified and held harmless out of the assets of the Partnership from any loss, liability or damage incurred or suffered by the General Partner or its

directors, officers, agents or employees by reason of any act performed or omitted to be performed by them in connection with the business and affairs of the Partnership (other than a breach of this Agreement or negligence), including legal fees incurred by them in connection with the defense of any claim or action based on any such act or omission, which legal fees may be paid as incurred, except to the extent that indemnification is prohibited by law. All judgments or other assessments against which the General Partner or its directors, officers, agents or employees are entitled to indemnification, shall be first satisfied from Partnership assets before the General Partner shall be required to satisfy such liability or obligation. The indemnification contained in this section shall be recoverable only out of Partnership assets and not from the Limited Partners. Any indemnification required herein to be made by the Partnership shall be made promptly following the fixing of the loss, liability or damage incurred or suffered by a final judgment of any court, settlement, contract or otherwise.

- (b) The General Partner and its directors, officers, agents and employees:
 - (i) shall be entitled to the indemnification provided for under Subsection 5.02(a); and
 - (ii) shall not be liable to the Partnership for any loss, liability or damage suffered or incurred by the Partnership, directly or indirectly, in connection with any activity

if the General Partner or such officer, director, agent or employee was acting in good faith, such course of conduct was in the best interests of the Partnership, and such course of conduct did not constitute fraud, negligence, misconduct, or breach of any term or provision of this Agreement.

- (c) The Partnership hereby indemnifies and saves the General Partner harmless from any loss, liability or damage, including legal fees, incurred or suffered by the General Partner as a result of any claim or claims for which the General Partner is liable as such for any Partnership obligation which the Partnership is unable to pay. If at any time, the Partnership has insufficient funds to furnish indemnification as herein provided, it shall provide such indemnification if, as, and when, it generates sufficient funds and prior to the making of any further distribution of Distributable Cash to the Limited Partners.

5.03 Other Activities of Partners and Agreements with Related Parties

- (a) Each Limited Partner, in its individual capacity or otherwise, shall be free to engage in, to conduct, or to participate in any business or activity whatsoever, without accountability, liability or obligation whatsoever to the Partnership or

to any other Limited Partner, even if such business or activity competes with or is enhanced by the business of the Partnership.

- (b) The General Partner, in the exercise of its power and authority under this Agreement, may contract and otherwise deal with or otherwise obligate the Partnership to entities in which any one or more of the Limited Partners may have an ownership or other financial interest.

ARTICLE VI - POWER OF ATTORNEY

6.01 Power of Attorney

Each of the Limited Partners hereby irrevocably constitutes and appoints the General Partner its true and lawful attorney in its name, place and stead, to make, execute, consent to, swear to, acknowledge, deliver, record and file:

- (a) any instrument which may be required to be filed by the Partnership or the Limited Partners under the applicable laws of any jurisdiction to the extent the General Partner deems such filing to be necessary or desirable;
- (b) any amendments or modifications to any instrument described above which are required by or in conformity with this Agreement or are otherwise agreed upon by the Limited Partners; and
- (c) all other instruments which may be required to effectuate the dissolution and termination of the Partnership pursuant to the provisions of this Agreement or the registration of the Partnership under the laws of the Province of Manitoba.

ARTICLE VII - ACCOUNTING

7.01 Fiscal Year

The fiscal year of the partnership shall end on December 31 in each year.

7.02 Books of Account

The Partnership books of account shall be maintained at the head office of the Partnership or at such other locations and by such person or persons as may be designated by the General Partner and permitted by any applicable law. Each Limited Partner shall have, during reasonable business hours and upon reasonable notice, access to the books of the Partnership and in addition, at its expense, shall have the right to copy such books and to require, at any time, an audit of the Partnership's books of account. The General Partner, at the expense of the Partnership, shall cause to be prepared, and distributed to the Limited Partners, the following:

- (a) an annual budget for the Partnership;

- (b) quarterly income and expense reports;
- (c) within 120 days of the end of each fiscal year of the Partnership, annual financial statements, including a balance sheet, statement of income, statement of changes in financial position and statement of changes in capital as of the close of the Partnership's fiscal year, with comparative financial statements for the immediately preceding fiscal year;
- (d) the annual income tax information returns of the Partnership;
- (e) a report on the allocations and distributions made by the Partnership during such fiscal year pursuant to the terms of this Agreement; and
- (f) such other information as is necessary to enable such Partner to file income tax returns with respect to such Partner's income from the Partnership in respect of such fiscal year.

7.03 Method of Accounting

The Partnership books of account shall be maintained and its net income and net loss computed in accordance with generally accepted principles consistently applied from year to year. However, the General Partner shall have the right, for income tax purposes to adopt any different method for accounting, to adopt different treatment of particular items and to make and revoke such elections on behalf of the Partnership and the Limited Partners under the *Income Tax Act* (Canada) as the General Partner may deem appropriate and in the best interests of the Limited Partners, not inconsistent with this Agreement.

ARTICLE VIII - ALLOCATION OF NET INCOME AND NET LOSS

8.01 Allocation of Net Income and Net Loss

Net income and net losses of the Partnership for each fiscal year of the Partnership shall be allocated to the Partners in accordance with their respective Proportionate Shares. For the purposes hereof, net income and net loss shall be determined according to generally accepted accounting principles consistently applied from year to year, and in computing the net income or net loss of the Partnership in any fiscal year, the General Partner shall be entitled to make provisions for adequate reserves as normally provided for under generally accepted accounting principles.

ARTICLE IX - DISTRIBUTION OF DISTRIBUTABLE CASH

9.01 Distributions of Distributable Cash

The Partnership shall distribute all Distributable Cash within 90 days of the end of each fiscal year among the Partners according to their respective Proportionate Shares.

ARTICLE X - TRANSFER OF PARTNERSHIP UNITS

10.01 Transfer of Partnership Units by Limited Partners

Except as otherwise provided in this Agreement, no person, firm, corporation, or other entity shall be admitted to the Partnership as a Limited Partner without the consent of all of the Limited Partners. If there is more than one Limited Partner of the Partnership, then each of the Limited Partners hereby covenants and agrees that, except as may be expressly permitted by this Agreement, it will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate, or otherwise dispose of all or any part of its record or beneficial interest in the Partnership or the Partnership property to any firm, person, corporation, or other entity without having complied with this Agreement. If at any time any Limited Partner (being called herein the "Selling Partner") wishes to sell its entire interest in the Partnership (the "Interest") it shall offer the same to the other Limited Partners, (such other Limited Partners being called herein the "Other Limited Partners") upon such terms and conditions and at such price as may be stipulated in the offer. The Other Limited Partners or one or more of them may, within 30 days of receipt by the last of them to receive such offer, acquire the Interest at the price and on the terms and conditions offered, and if acquired by all the Other Limited Partners, such acquisition shall be made in proportion to their respective Proportionate Shares; if acquired by less than all Other Limited Partners, such acquisition shall be made in such proportions as are agreed among the acquiring Limited Partners, and failing any such agreement, shall be made in proportion to their respective Proportionate Shares. If none of the Other Limited Partners wish to acquire the Interest, the Selling Partner may, within a further period of 30 days, sell the Interest to any person not previously offered the Interest, on no more favourable terms and conditions and at no less a price than offered to the Other Limited Partners. Any purchase and sale effected in accordance with the provisions of this paragraph shall be subject to the following express conditions:

- (a) the Partnership shall continue and the transferee of such Interest, if it is not already a Limited Partner of the Partnership, shall be admitted to the Partnership or, if it is already a Limited Partner of the Partnership, shall continue as a Limited Partner of the Partnership with the Proportionate Share in the Partnership or with an additional Proportionate Share in the Partnership, as the case may be, and with all rights or with additional rights as the case may be, in and to all distributions made by the Partnership, in liquidation or otherwise, and with the share or with an additional share, as the case may be, of the Partnership's net income and net losses for both financial accounting and income tax purposes equal to that which the transferring Limited Partner had with respect to the transferred Interest in the Partnership as well as any other rights of the transferring Limited Partner with respect to such Interest;
- (b) the purchase and sale shall be subject to the usual adjustments, together with the adjustment of any amounts owing by any Limited Partner to another pursuant to the provisions of this Agreement;

- (c) all lenders shall have approved or consented to such purchase and sale, if required;
- (d) any transferee or assignee of any Interest in the Partnership, whether such transfer or assignment is pursuant to this Agreement or by operation of law, or otherwise, shall be required to execute such documents, assurances or the like as the solicitors for the time being of the Partnership may reasonably request or require in order to ensure that such transferee or assignee agrees to be bound by the provisions of this Agreement as if it were an original party hereto; and
- (e) no Limited Partner shall be bound to recognize any purchaser or transferee or assignee of any Interest in the Partnership unless the transfer thereof shall be made in accordance with the provisions of this Agreement.

ARTICLE XI - DEFAULT

11.01 Purchase of Defaulting Limited Partner's Interest

Except as otherwise provided in this Agreement, if there is more than one Limited Partner of the Partnership, then in the event a Limited Partner shall be in default under any provision of this Agreement for a period of 30 days after being notified in writing by the General Partner of being in default, the non-defaulting Limited Partner(s) may within 30 days thereafter by written notice to the defaulting Limited Partner purchase, in proportion to the Proportionate Shares of the non-defaulting Limited Partners or in such proportion as may be mutually agreed among them, the defaulting Limited Partner's Proportionate Share (but not less than all of its Proportionate Share), in which case the defaulting Limited Partner shall sell its Proportionate Share to the non-defaulting Limited Partners, at a price equal to the then total contributions to the Partnership capital of the defaulting Limited Partner less 20% of the value thereof and upon such notice being given by all non-defaulting Limited Partners all necessary instruments to effect the purchase and sale shall be executed and delivered.

11.02 Deemed Default

Any one or more of the following acts or omissions shall be deemed a default by a Limited Partner under this Agreement:

- (a) attempted dissolution of the Partnership by such Limited Partner, unless the same is pursuant to, or is not inconsistent with, the provisions contained in this Agreement;
- (b) attempted partitioning of the assets of the Partnership by such Limited Partner;

- (c) the commencement of proceedings in bankruptcy or reorganization under any bankruptcy or insolvency laws against or by such Limited Partner, which shall not have been vacated within 60 days;
- (d) such Limited Partner making any assignment for the benefit of creditors or confessing judgment against its Partnership interest;
- (e) such Limited Partner's failure to perform any material obligation or act required hereunder; and
- (f) such Limited Partner's material violation or breach of any of the terms or provisions of this Agreement including, without limitation, any assignment or transfer of any Partnership Unit in violation of this Agreement.

11.03 Notice of Default

The General Partner shall promptly give each Limited Partner notice of any default under this Agreement by any Limited Partner.

ARTICLE XII - LIQUIDATION AND DISSOLUTION OF PARTNERSHIP

12.01 Liquidation or Dissolution of Partnership

Upon the happening of any of the events specified in Section 2.03 hereof, the General Partner shall immediately commence to wind up the Partnership's affairs and shall liquidate the assets of the Partnership as promptly as possible, unless the General Partner shall determine that an immediate sale of the Partnership assets would cause undue loss to the Partnership in which event (i) the liquidation may be deferred for a reasonable time and/or (ii) all or part of the Partnership assets may be distributed in kind. The Limited Partners shall continue to share in net income, net losses and Distributable Cash during the period of liquidation in the same proportions as before dissolution. The proceeds from liquidation of the Partnership, including repayment of any debts of Limited Partners to the Partnership, shall be applied in the order of priority as follows:

- (a) to payment of the expenses of liquidation of the Partnership;
- (b) to payments of debts of the Partnership;
- (c) to the establishment of any reserves reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Such reserves established hereunder shall be held for the purpose of paying any such contingent or unforeseen liability or obligations and, at the expiration of such period as the General Partner reasonably deems advisable, of distributing the balance of such reserves in the manner provided hereinafter in this section; and
- (d) the balance, if any, shall be divided among the Partners in accordance with their respective Proportionate Shares.

ARTICLE XIII - LIABILITY AND AUTHORITY OF LIMITED PARTNERS

13.01 Limitations on Authority and Liability of Limited Partners

Except as expressly limited in this Agreement, the General Partner has the continuing and exclusive authority to make the management decisions necessary to conduct the Partnership Business. Except as expressly provided in this Agreement, no Limited Partner shall take part in the control or the management of the Partnership Business and no Limited Partner shall have, or purport to have, the power or authority to execute documents which bind the Partnership or any other Limited Partner or undertake obligations on behalf of the Partnership or in any way bind the Partnership or any other limited partnership as such. Subject to the provisions of the Act and this Agreement, the liability of the Limited Partners for the debts, liabilities and obligations of the Partnership shall be limited to the amount contributed by such Limited Partners to the capital of the Partnership and a Limited Partner shall not, subject to the provisions of this Agreement, be further liable for any of the debts of, or for any further claims, assessments or contributions to the Partnership.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.01 Notices

Any notice to be given under this Agreement shall be in writing and shall be delivered, mailed by prepaid mail or sent by email or facsimile addressed:

To LP:

To the General Partner:

All such notices shall:

- (a) if delivered, be deemed to have been received upon receipt;
- (b) if transmitted by email or facsimile be deemed to have been given on the next business day following the day they were sent; and
- (c) if mailed, be deemed to have been given on the fifth business day following the date they were mailed.

In the event of disruption of normal postal service, notice shall be made by delivery or email or facsimile only.

14.02 Modifications

No changes or modifications of this Agreement shall be valid or binding upon any party hereto, nor shall any waiver of any term or condition hereof be binding upon any party hereto, unless such change or modification or waiver shall be in writing and signed by all of the parties hereto.

14.03 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective legal representatives, heirs, administrators, successors, and permitted assigns.

14.04 Governing Law

This Agreement shall be interpreted according to and shall be governed by the laws of the Province of Manitoba. Should any dispute arise in connection with this Agreement, including, but without restricting the generality of the foregoing, any question in respect of the interpretation, validity, termination or non-termination of this Agreement, the parties agree to submit to the exclusive jurisdiction of the courts of the Province of Manitoba.

14.05 Other Instruments

The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the Partnership created by this Agreement and the transactions contemplated hereby.

14.06 Legal Construction

In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Furthermore, in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable.

14.07 Gender

Wherever the context shall so require, all words herein in any gender shall be deemed to include the masculine, feminine or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

14.08 Entire Agreement

This Agreement supersedes any prior understanding or written or oral agreements between the parties hereto respecting the within subject matter, and this Agreement contains the entire understanding and agreement between the parties with respect to the said subject matter.

14.09 Time

Time shall be of the essence of this Agreement.

14.10 Currency

All amounts referred to in this Agreement and all references to “dollars” shall be deemed to be and to refer to Canadian dollars.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

By:

SIGNED, SEALED & DELIVERED)
in the presence of:)
)
)
