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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Fiscalini Cheese Company, LLC		06/11/2001	LIMITED LIABILITY COMPANY: CALIFORNIA

**RECEIVING PARTY DATA**

<b>Name:</b>	Fiscalini Cheese Company, LP
<b>Street Address:</b>	7231 Covert Road
<b>City:</b>	Modesto
<b>State/Country:</b>	CALIFORNIA
<b>Postal Code:</b>	95358
<b>Entity Type:</b>	LIMITED PARTNERSHIP: California

**PROPERTY NUMBERS Total: 11**

Property Type	Number	Word Mark
Serial Number:	78938066	LIONZA
Serial Number:	77351020	
Serial Number:	76806495	FISCALINI FARMSTEAD HORSEFEATHERS A GENTLE HORSE RADISH CHEDDAR SPREAD A BLEND OF CHEDDAR CHEESE, SOUR CREAM, AND HORSERADISH WWW.FISCALINICHEESE.COM MODESTO, CALIF.
Serial Number:	76806494	HORSEFEATHERS
Serial Number:	76519437	FISCALINI FARMSTEAD
Serial Number:	76519438	FISCALINI FARMSTEAD SINCE 1914
Serial Number:	76519436	PURPLE MOON
Serial Number:	76318103	FISCALINI SINCE 1914 FARMSTEAD
Serial Number:	76318104	FISCALINI
Serial Number:	76318106	FISCALINI FARMSTEAD
Serial Number:	76318107	SAN JOAQUIN GOLD

OP \$290.00 78938066

## CORRESPONDENCE DATA

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 Address Line 4: Modesto, CALIFORNIA 95354

ATTORNEY DOCKET NUMBER:	FISCC-3
NAME OF SUBMITTER:	Brett L. Dickerson
Signature:	/Brett L. Dickerson/
Date:	03/17/2011

## Total Attachments: 32

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**FISCALINI CHEESE COMPANY, LLC,  
a California Limited Company**

**PLAN OF CONVERSION  
TO  
FISCALINI CHEESE COMPANY, L.P.,  
a California Limited Partnership**

This PLAN OF CONVERSION (the "Plan") is effective as of the start of business on October 5, 2006, and is made by and between JOHN B. FISCALINI, trustee of the JOHN FISCALINI REVOCABLE TRUST dated June 11, 2001 ("John's Trust") and JOHN FISCALINI MANAGEMENT COMPANY, LLC a California limited liability company (Management Company). John's Trust and Management Company are referred to collectively as "Partners" and individually as a "Partner." Partnership, Partnership and Partners collectively but non-specifically referred to in this Agreement as "Party" and "Parties "

**RECITALS OF FACTS**

A Partners hold all of the outstanding membership interest in FISCALINI CHEESE COMPANY, LLC, a California Limited Liability Company ("LLC") Partners desire to convert the LLC to a limited partnership FISCALINI CHEESE COMPANY, L P , a California Limited Partnership (the "Partnership"), to be organized in accordance with the laws of the State of California effective the start of the business on October 5, 2006 (Effective Date)

B Partners desire to convert their membership interest in the LLC into partnership interests of Partnership as of the Effective Date, as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows.

**AGREEMENT**

- 1 Conversion The LLC shall be converted to Partnership as of the Effective Date
- 2 Issuance of General Partnership Interests In exchange for all of the Management Company's membership interest in LLC, Partnership agrees to issue 100 General Partnership Units in Partnership that represents right to 1% in net profit, and net loss, capital and cash distribution ("General Partnership Units") to Management Company
- 3 Issuance of Limited Partnership Interests In exchange for all of the Membership Interest of John's Trust, Partnership agrees to issue 9900 Limited Partnership Units in Partnership that represent right to 99% in net profit, and net loss, capital and cash distribution ("Limited Partnership Units") to John's Trust
- 4 Best Efforts. Upon the terms and subject to the conditions of this Agreement, each of the Parties hereto will use its commercially reasonable efforts to take, or cause to be taken, all action, and

to do, or cause to be done, all things necessary, proper or advisable consistent with applicable law to consummate and make effective in the most expeditious manner practicable the transactions contemplated hereby Upon the request of Partnership, Partners will forthwith execute and deliver such further instruments of assignment, transfer, conveyance, endorsement, direction or authorization and other documents as Partnership or its counsel may request in order to effectuate the purposes of this Agreement

5 Tax-Free Transfer. It is the intention of Partners that this transfer is tax free in compliance with the Internal Revenue Code of 1986.

**EXECUTION**

IN WITNESS WHEREOF, this Plan of Conversion has been executed by the Parties as of the day and year first above written

FISCALINI CHEESE COMPANY, LLC  
Management, LLC, a California limited liability company

JOHN FISCALINI REVOCABLE TRUST  
dated June 11, 2001

John B. Fiscalini  
JOHN B. FISCALINI, TRUSTEE

By: JOHN FISCALINI REVOCABLE TRUST  
dated June 11, 2001, Member

By: John B. Fiscalini  
JOHN B. FISCALINI, Trustee

**AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT  
FOR THE  
FISCALINI CHEESE COMPANY, L.P.  
a California Limited Partnership**

This AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT for FISCALINI CHEESE COMPANY, L.P., a California Limited Partnership (this "Agreement") is entered into effective as of the start of business on January 1, 2007 ("Effective Date"), by and among JOHN FISCALINI MANAGEMENT COMPANY, LLC, a California limited liability company, as "General Partner," and JOHN B. FISCALINI, trustee of the JOHN FISCALINI REVOCABLE TRUST under instrument dated June 11, 2001 ("John's Trust"), ROBERT A SCHMIDT, trustee of the LAURA A GENASCI IRREVOCABLE TRUST under instrument dated September 29, 2006 ("Laura's Trust"), ROBERT A. SCHMIDT, trustee of the ELAINE C FISCALINI IRREVOCABLE TRUST under instrument dated September 29, 2006 ("Elaine's Trust"), and ROBERT A. SCHMIDT, trustee of the BRIAN J FISCALINI IRREVOCABLE TRUST under instrument dated September 29, 2006 ("Brian's Trust"), as "Limited Partners". The General Partner and Limited Partners are collectively referred to as the "Partners," and individually as a "Partner."

**RECITALS**

A FISCALINI CHEESE COMPANY, LLC, a California limited liability company ("Company") was formed pursuant to the Limited Liability Company Articles of Organization filed in the office of the Secretary of State of the State of California on October 26, 2000. Thereafter, the Company was converted to FISCALINI CHEESE COMPANY, L.P., a California limited partnership ("Partnership") by filing a certificate of Limited Partnership – Conversion on October 6, 2006, and then current Members of the Company became the partners of the Partnership. On October 5, 2006, then current partners of the Partnership entered into a Limited Partnership Agreement ("Partnership Agreement") On December 29, 2006, John's Trust assigned to each of Laura's Trust, Elaine's Trust and Brian's Trust one hundred (100) limited partnership units. On the same day, the Partners amended the Partnership Agreement by executing the Assignment Of The Limited Partnership Units And First Amendment To The Limited Partnership Agreement For Fiscalini Cheese Company, L.P., a California Limited Partnership.

B On even date herewith, John's Trust desires to assign to each of Laura's Trust, Elaine's Trust and Brian's Trust additional one hundred (100) limited partnership units including the corresponding right to vote, capital, net profit, loss, and distribution. Each of Laura's Trust, Elaine's Trust and Brian's Trust have accepted the assignment.

C The Partners desire to fully amend and restate in its entirety the Partnership Agreement as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**  
**ARTICLE 1: GENERAL PROVISIONS**

1.1 Name The name of the Partnership is FISCALINI CHEESE COMPANY, L.P., a California Limited Partnership. The General Partner may cause the Partnership to conduct business under any other or substitute name as the General Partner deems appropriate. The General Partner shall give the Limited Partners at least thirty (30) days' notice before using any such other or substitute name.

1.2 Place of Business. The principal place of business of the Partnership shall be the address of the General Partner at 7231 Covert Road, Modesto, CA 95358, or such other place or places as the General Partner may determine. The General Partner shall give the Limited Partners at least thirty (30) days' notice of any change in the principal place of business of the Partnership.

1.3 Purpose The purposes of the Partnership are as follows:

1.3.1 To engage in the business of processing, manufacturing and packaging of cheese products,

1.3.2 To invest the net proceeds for the benefit of the Partners in other activities or distribute the income for the benefit of the Limited Partners as determined by the General Partner in accordance with this Agreement and the fiduciary duties owed by a General Partner to Limited Partners,

1.3.3 To protect the assets of the Partnership from claims of individual creditors of the Partners and the underlying real property from being subject to partition, and

1.3.4 To help ensure that the underlying assets of the Partnership continue to be managed and owned by members of JOHN B. FISCALINI family.

1.3.5 These specific purposes shall not prevent the Partnership from engaging in any other business in which the Partnership may be lawfully engaged, nor shall it restrict the Partnership from acquiring assets other than those stated herein.

1.4 Term The Partnership term shall begin on the date of filing the Partnership's Certificate of Limited Partnership (LP-1) with the Secretary of State's office and shall continue until the Partnership is dissolved by the terms of this Agreement or by operation of law.

**ARTICLE 2: MANAGEMENT**

2.1 Control in General Partner Subject to the voting rights of Limited Partners as provided in this Agreement and general fiduciary principles, the General Partner shall have exclusive and complete control over the investments of the Partnership and to make new investments on behalf of the Partnership, including the power to assign duties, to sign deeds, notes, deeds of trust, contracts and leases and shall have all rights, power, and authority generally.

conferred by law or necessary, advisable, or consistent with accomplishing the purpose of the Partnership. Subject to fiduciary principles, the General Partner shall have exclusive and complete control of the Distribution of Cash Available for Distribution, including the decision of whether to distribute Cash Available for Distribution or retain Cash Available for Distribution for further investment by the General Partner on behalf of the Partnership

2.2 Limitation on Partners' Obligations The General Partner is not obligated to devote full time to the affairs of the Partnership. The General Partner may become involved in other businesses and occupations and other partnerships. The General Partner shall devote to the Partnership business the amount of time reasonably necessary to manage the business and affairs of the Partnership and to perform the duties of the General Partner. A Partner shall have no obligation to present any investment opportunity to the Partnership, even if the opportunity is of a character consistent with the purpose of the Partnership and which, if presented to the Partnership, could be taken by the Partnership. Each Partner shall have the right to take for the Partner's own account or to recommend to others any investment opportunity. The Partners shall have no duties or obligations to one another except those expressly stated in this Agreement.

2.3 Indemnification of General Partner The Partnership, its successors and assigns, shall indemnify, protect, defend, hold harmless, and pay all judgments and claims against the General Partner, its agents and assigns, arising from or in connection with any liability, loss, or damage incurred by any of them by reason of any act performed or omitted to be performed with respect to the business of the Partnership, including costs and attorneys' fees and any amounts expended in the settlement of any such claims, unless the loss, liability, or damage was caused by the gross negligence, fraud, or willful misconduct of the indemnified person.

2.4 Compensation of the General Partner The General Partner may, in addition to the General Partner's interest in Net Profit receive a periodic guaranteed payment as reasonable compensation for the services performed by the General Partner on behalf of the Partnership. The General Partner may elect to take compensation to which the General Partner is entitled but to defer payment of such compensation to some time in the future. The failure by the General Partner to take compensation in one year shall not affect the General Partner's right to be compensated in future years either for past or present services performed as General Partner.

2.5 Reimbursement of Expenses The Partnership shall pay or reimburse the General Partner for all expenses of the Partnership and its business. The reimbursement paid under this Section to the General Partner shall be deemed to be an expense of the Partnership.

2.6. Rights and Obligations of the Limited Partners. Except as specifically set forth in this Agreement, Limited Partners shall take no part in and have no vote respecting the Partnership's management and operations. Any Partner may call a meeting of the Limited Partners. Meetings shall be held at the place determined by the General Partner. Meetings shall be conducted in accordance with rules and regulations adopted by the General Partner consistent with the provisions of the RLPA. The General Partner shall be free to vary any provisions of the RLPA with respect to meetings as fully as if the rules and regulations adopted by the General Partner were part of this Partnership Agreement and approved by each of the Partners. Limited Partners shall take no part in

the control, conduct, or operation of the business of the Partnership and shall have no right or authority to act for or bind the Partnership. Limited Partners shall have the right by unanimous vote to approve or disapprove only the following matters, and no others:

- 2.6.1. Election of a new General Partner in the manner set forth in this Agreement,
- 2.6.2. Termination and dissolution of the Partnership as set forth in this Agreement;
- 2.6.3. Subject to Section 2.7.2, the removal of a General Partner; or
- 2.6.4. Subject to Section 7.2, the amendment of this Agreement.

2.6.5. Any other matter on which the General Partner decides, in its sole discretion, to seek a vote of the Limited Partners, provided that the General Partner has received, before the vote, a written opinion of counsel that neither the vote on, nor approval of, the matter will cause the Limited Partners to participate in the control of the Partnership's business.

No Limited Partner shall have the right or power to withdraw or reduce the capital contribution of the Limited Partner except on dissolution and liquidation of the Partnership. Limited Partners may consult with the General Partner on matters relating to the business of the Partnership, however, no such consultation shall constitute participation in the control of the business of the Partnership or constitute taking action on behalf of the Partnership.

2.7. General Partner Ceasing To Be a General Partner. A General Partner shall cease to be a general partner on the occurrence of any of the events set forth in Section 15642 of the RLPA (or any successor provision) and the remaining General Partner(s), if any, shall conduct the business of the Partnership. The effect of the General Partner ceasing to be a general partner is that the interest of the General Partner becomes that of a limited partner. If there is no remaining General Partner, then a new General Partner may be admitted upon the affirmative vote of the Limited Partners representing Majority of Outstanding Partnership Units within ninety (90) days from the date the General Partner ceases to be a General Partner. A failure of the Limited Partners to elect a successor General Partner within the ninety (90) day period shall result in dissolution of the Partnership in accordance with the provisions of ARTICLE 6.

2.7.1. The General Partner may withdraw as a General Partner only upon ninety (90) days' written notice to the Limited Partners. The General Partner shall cease to be a General Partner on the effective date of the withdrawal and the remaining General Partner, if any, shall conduct the business of the Partnership. The effect of a withdrawal shall cause the interest of the General Partner to become that of a Limited Partner. If there is no remaining General Partner, then a new General Partner may be admitted upon the affirmative vote of Limited Partners representing Outstanding Partnership Units within ninety (90) days from the date the General Partner ceases to be a General Partner. A failure of the Limited Partners to elect a successor General Partner within the ninety (90) day period shall result in dissolution of the Partnership in accordance with the provisions of ARTICLE 6.



2.7.2. Limited Partners may remove the General Partner only by the affirmative vote of the Limited Partners holding seventy-five percent (75%) of the Partnership Units. However, except in the event of death or incompetence, the General Partner may be removed only for cause. "Cause" means gross negligence, willful misconduct, breach of fiduciary duty, or conviction of a crime involving a potential penalty of at least one year in jail and a fine of \$5,000.00. A General Partner, who is individual, shall be incompetent upon the written notarized certification of two (2) physicians who are not partners to the effect that the General Partner is mentally incompetent and the incompetence prevents the General Partner from performing his / her duties in a sensible manner

2.8 Vote of General Partners. If there is more than one General Partner, then each General Partner shall have one vote per each General Partnership Unit held by that General Partner in accordance with Section 3.1. A determination by the General Partner shall be deemed to have been made upon the affirmative vote of General Partners holding a majority of the General Partnership Units

2.9 Tax Matters Partner. The General Partner shall be the Tax Matters Partner for the Partnership

### ARTICLE 3: CONTRIBUTIONS/FINANCIAL

3.1 Capital Contribution and Partnership Units. The amount of each Partner's initial capital contribution and beginning capital account ("Initial Capital Contribution") is set forth in Exhibit "A" attached to this Agreement and incorporated into this Agreement by reference. If at any time during the term of the Partnership, a Partner should contribute additional property to the capital of the Partnership, then the Partners shall at that time enter into and execute an agreement in writing setting forth the agreed upon fair market value of the property at the time of contribution. As consideration for the contributions set forth in this Section, the Partners shall receive the Partnership Units set forth in Exhibit "A." Each "General Partnership Unit" shall represent the voting interest in the Partnership. Each "Limited Partnership Unit" shall represent the non-voting interest in the Partnership. The "Outstanding Partnership Units" are defined as the total General Partnership Units and Limited Partnership Units held by all of the Partners at a given time. The "Partnership Units" held by a Partner are equal to the combined total of General Partnership Units and Limited Partnership Units held by the Partner

3.2 Capital Accounts. A separate capital account shall be maintained for each Partner ("Capital Account"). The amount or the balance of each Partner's Capital Account, as of any particular date shall be an amount equal to the sum of the following:

3.2.1 The cumulative amount of cash that has been contributed to the capital of the Partnership by such Partner as of that date, plus

3.2.2. The agreed upon net fair market value (as of the date of contribution) of any property other than cash that has been contributed to the capital of the Partnership by such Partner as of that date; plus

3.2.3. The cumulative amount of the Partnership's Net Profit and other items of income and gain for all calendar years ending prior to such date that has been, or is required to be, allocated to such Partner; less

3.2.4. The cumulative amount of the Partnership's Net Loss for all calendar years ending prior to such date that has been, or is required to be, allocated to such Partner, less

3.2.5. The cumulative amount of cash and the agreed upon net fair market value (as of the date of distribution) of all other property that has been distributed by the Partnership to such Partner as of that date.

3.2.6. A Partner's Capital Account shall also be increased or decreased as of that date to reflect any items affected by the requirements of Section 1.704-1(b)(2)(iv) of the Regulations under Section 704(b) of the Code which are not otherwise considered in computing the Capital Account

3.3. Accounting, Books and Records - General. The General Partner shall keep true and complete books of account to which shall be entered fully and accurately each and every transaction of the Partnership. The books of account shall be kept on the cash receipts and disbursements method or the accrual method as the General Partner may decide and in a manner sufficient to meet the reporting requirements of taxing authorities. Such books of account, together with all correspondence, papers, tax returns and reports, any financial statements and other documents of the Partnership, shall be, at all reasonable times, at an office of the Partnership open to the examination of all or any of the Partners who shall have the right, at their expense, to make copies of all or any portion thereof.

3.4. Financial Statements. Within ninety (90) days of the close of each fiscal year, the General Partner, at the Partnership's expense, shall cause to be issued to all Partners the financial statements and tax returns.

3.5. Special Basis Adjustment. In connection with any transfer of Partnership Units, the General Partner may, but shall not be required, make an election to adjust the basis of the Partnership's property in the manner provided in Section 734(b) and 743(b) of the Code, and such transferee shall pay all costs incurred by the Partnership in connection therewith, including, without limitation reasonable attorneys' fees and accountants' fees.

#### **ARTICLE 4: ALLOCATION OF INCOME, LOSS AND DISTRIBUTIONS**

4.1. Allocation of Net Profit and Net Loss. After giving effect to the allocation set forth in Sections 4.4 through 4.14, Net Profit and Net Loss of the Partnership shall be allocated to each Partner in an amount equal to the total Net Profit or Net Loss for the period multiplied by the number of Partnership Units held by that Partner divided by the Outstanding Partnership Units.

4.2. Assignment or Death. In the event of a Transfer of Partnership Units or of a Partner's death, or exclusion, profits and losses shall be allocated based on the number of days in

the particular year during which each Partner owned his / her / its Partnership Units, or on any other reasonable basis consistent with applicable United States tax laws and regulations.

4.3 Definition of Net Profit and Net Loss The Partnership's "Net Profit" or "Net Loss" for each fiscal year shall be determined as soon as practicable after the close of that calendar year in accordance with the principles employed in Section 703 of the Code, except (i) any special provisions for tax-exempt or partially tax-exempt income shall be taken into account (ii) depreciation shall be calculated in the manner provided in the Treasury Regulations under Section 704(b) of the Code ("Book Method") rather than the depreciation method utilized for federal income tax purposes and (iii) gain or loss from the sale or other disposition of assets shall be the amount of such gain or loss as determined under the Book Method rather than for federal income tax purposes

4.4. Limitation on Allocation of Losses Notwithstanding the provisions of Section 4.1, if the amount of Net Loss for any calendar year that would otherwise be allocated to a Limited Partner under Section 4.1 would cause or increase an "Adjusted Capital Account Deficit" (as defined in Section 4.15.1) of such Limited Partner as of the last day of such calendar year, then a proportionate part of such Net Loss equal to such excess shall be allocated to the General Partner, and the remainder of such Net Loss shall be allocated to such Limited Partner

4.5. Qualified Income Offset. Notwithstanding any provision to the contrary, if a Limited Partner unexpectedly receives in any calendar year any adjustment, allocation or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations under Section 704 of the Code, and if such Limited Partner has an Adjusted Capital Account Deficit as of the last day of such calendar year, then all items of income and gain of the Partnership (consisting of a pro rata portion of each item of Partnership income and gain, including gross income) for such fiscal year (and, if necessary, for subsequent calendar years) shall be allocated to such Limited Partner in the amount and in the manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible

4.6 Gross Income Allocation. Notwithstanding any provision to the contrary, if a Limited Partner has an Adjusted Capital Account Deficit as of the last day of any calendar year, in excess of the sum of (i) the amount such Partner is obligated to restore to the Partnership pursuant to this Agreement and (ii) the amount such Partner is deemed to be obligated to restore pursuant to Sections 1.704-1(c)(1), (2) and 1.704-2(g) of the Regulations then all items of income and gain of the Partnership (consisting of a pro-rata portion of each item of Partnership income and gain, including gross income) for such calendar year shall be allocated to such Limited Partner in the amount and in the manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible

4.7 Section 704(c) Allocation. Any item of income, gain, loss, and deduction with respect to any property (other than cash) that has been contributed by a Partner to the Capital of the Partnership and which is required or permitted to be allocated to the Partners for income tax purposes under Section 704(c) of the Code so as to take into account the variation between the tax

basis of such property and its agreed upon fair market value at the time of its contribution shall be allocated to the Partners solely for income tax purposes in the manner so required or permitted.

4 8. Partner Nonrecourse Deductions. Notwithstanding any provisions to the contrary, any Partner Nonrecourse Deductions for any calendar year or other period shall be specially allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1 704-2(i) of the Regulations

4 9 Minimum Gain Chargeback Notwithstanding any provision to the contrary, if there is a net decrease in "Partnership Minimum Gain" (as defined below) during any Partnership fiscal year, each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to the greater of (i) the portion such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Section 1 704-2(g)(1) of the Regulations, that is allocable to the disposition of Partnership property subject to Nonrecourse Liabilities, determined in accordance with Section 1.704-2(f), or (ii) if such Partner would otherwise have an Adjusted Capital Account Deficit (as defined below) at the end of such year, an amount sufficient to eliminate such Adjusted Capital Account Deficit. This Section 4 9 is intended to comply with the minimum gain chargeback requirement in the Section 1 704-2(f) of the Regulations and shall be interpreted consistently therewith. To the extent permitted by the Regulations and for purposes of this Section only, each Partner's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to this Section 4 9 with respect to such calendar year and without regard to any net decrease in "Partner Minimum Gain" during such calendar year

4 10. Partner Minimum Gain Chargeback. Notwithstanding any other provision of this Article, if there is a net decrease in Partner Minimum Gain attributable to Partners Nonrecourse Debt during any Partnership calendar year, each Partner who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1 704-2(g)(1) of the Regulations shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to the greater of (i) the portion of such Partner's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1 704-2(g)(1) of the Regulations, that is allocable to the disposition of Partnership Property subject to such Partner Nonrecourse Debt, determined in accordance with Section 1 704-2(i)(4) of the Regulations, or (ii) if such Partner would otherwise have an Adjusted Capital Account Deficit at the end of such year, an amount sufficient to eliminate such Adjusted Capital Account Deficit This Section 4 10 is intended to comply with the minimum gain chargeback requirement in the Section 1 704-2(f) of the Regulations and shall be interpreted consistently therewith. Solely for purposes of this Section, each Partner's Adjusted Capital Account Deficit shall be determined prior to any other allocation pursuant to Section 4 15 1 with respect to such fiscal year, other than allocations pursuant to Section 4.9, above

4 11 Section 754 Adjustments To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Section 1 704-1(b)(2)(iv)(m) of the Regulations, to be taken into account in determining Capital

Accounts, the amount of such adjustment to the Capital Accounts may, in the discretion of the General Partner, be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss may, in the discretion of the General Partner, be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations

4.12 Curative Allocations The allocations set forth above are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Regulations. The Partners do hereby acknowledge and agree that the allocations may not be consistent with the manner in which the Partners intend to divide Partnership distributions. Accordingly, the General Partner is hereby authorized and directed to divide other allocations of Net Profit and Net Loss among the Partners in any reasonable manner so as to prevent the "Regulatory Allocations" (the allocations under Sections 4.4 through 4.11) from distorting the manner in which the Partnership distributions would otherwise be divided among the Partners pursuant to Section 4.1. In general, the Partners anticipate that this will be accomplished by specially allocating other Net Income and Net Loss among the Partners so that, after such offsetting special allocations are made, the amount of each Partner's Capital Account will be, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not a part of this Agreement and all Partnership items had been allocated to the Partners solely pursuant to Section 4.1.

4.13 Distributions and Allocations of Cash All Cash Available for Distribution may be distributed to the Partners in cash or in kind, as determined by the General Partner, in General Partner's sole and absolute discretion. Notwithstanding the above, General Partner of the Partnership shall be required to distribute to the Partners in proportion to their respective Partnership Units, an amount equal to the Annual Minimum Income Tax Distribution for such fiscal year, minus any portion of the Annual Minimum Income Tax Distribution for such fiscal year previously distributed to the Partners pursuant to this Section. "Annual Minimum Income Tax Distribution" shall mean an amount equal (i) to the Partnership's net taxable income (if any) for each fiscal year, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in the Partnership's taxable income or loss to calculate the Partnership's net taxable income, if any, for such fiscal year), (ii) multiplied by forty-five percent (45.00%).

However, no distribution of cash shall be made which will result in a Limited Partner having an Adjusted Capital Account Deficit and provided that any distribution allocable to Non-recourse liability proceeds shall be made in a manner consistent with the allocation required under this ARTICLE 4. Nor shall General Partner make any distribution that will impair the ability of the Partnership to pay its debts as they mature. Finally, General Partner shall not make any distribution in violation of the limitations set forth in Section 15666 of the RLPA. A Partner who receives a distribution in violation of this Agreement shall be personally liable to return that distribution, with interest, regardless of whether the Partner knew that the distribution was prohibited.

“Cash Available for Distribution” means cash funds received by the Partnership from rents or other operations or from the sale, financing or refinancing of any property of the Partnership less (i) the amount necessary for the payment of all debts and obligations of the Partnership, and (ii) amount for cash reserves retained for working capital, for future investment, or for repair and maintenance of Partnership properties, and for reasonably anticipated contingencies. Decisions regarding amounts that are reasonably necessary to be retained for the purposes set forth in the previous sentence shall be made in good faith by General Partner subject to fiduciary principles.

4.14 Allocation of Distributions to Proceeds of Nonrecourse Liabilities. The determination of whether any distribution by the Partnership is attributable to the proceeds of a nonrecourse liability of the Partnership shall be made by the General Partner under any reasonable method in accordance with Section 1.704-2(h)(2) of the Regulations which, to the extent possible, will prevent any such distributions from ultimately causing an allocation of the distribution as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt to the extent that such would cause or increase an Adjusted Capital Account Deficit.

#### 4.15 Definitions

4.15.1. Adjusted Capital Account Deficit. The “Adjusted Capital Account Deficit” of any Partner means, as of any particular date, the deficit balance, if any, in such Partner’s Capital Account as of such date with the following adjustments:

(a) Such Capital Account shall be increased to reflect any amounts, if any, which such Partner is obligated to restore to the Partnership under this Agreement or is deemed to be obligated to restore pursuant to Sections 1.704-1(b) of the Regulations,

(b) Such Capital Account shall be reduced to reflect any items described in Sections 1.704-1(b)(2)(i)(d)(4), (5) and (6) of the Regulations,

4.15.2. Partner Minimum Gain Partner Minimum Gain shall have the meaning set forth in Sections 1.704-2(g) of the Regulations

4.15.3. Partnership Minimum Gain Partnership Minimum Gain shall have the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations

4.15.4. Nonrecourse Deductions, Nonrecourse Liability, Partner Nonrecourse Debt, and Partner Nonrecourse Deductions “Nonrecourse Deductions”, “Nonrecourse Liability”, “Partner Nonrecourse Debt” and “Partner Nonrecourse Deductions” shall have the meanings giving in Sections 1.704-2(b)(3), (4), (c) and (i)(2) of the Regulations.

### **ARTICLE 5: TRANSFERS OF PARTNERSHIP UNITS**

5.1 Restriction on Transfer. Except as expressly provided in this Agreement, a Partner shall not Transfer any of the Partner’s Partnership Units in the Partnership whether now owned or hereafter acquired, without the consent of all of the Partners except as follows:

5.1.1 A transfer in accordance with the provisions of Section 5.6 through 5.8, below

5.1.2 A Transfer to a Partner;

5.1.3 A transfer to a trust which provides for one or more of JOHN B. FISCALINI, his issue, HOWARD DeMERA or ROBERT A. SCHMIDT as sole trustee and provides for JOHN B. FISCALINI and / or his issue as beneficiary ("Permitted Transferees"), provided, however, that the trustee of such trust, must agree in writing to be bound by all of the terms and conditions of this Agreement, including any amendments made on or prior to the date of such transfer

5.1.4. A transfer which is outright and free from trust to any one or more of JOHN B. FISCALINI and his issue ("Permitted Transferees").

5.1.5 A Transfer to a trust which complies with all of the following (i) names a spouse of a Permitted Transferee, (ii) provides that such spouse is to receive all income from the trust for spouse's lifetime; (iii) provides that upon spouse's death the beneficiaries that would receive the ownership interest are Permitted Transferees, and (iv) names a spouse, Permitted Transferee, a corporate fiduciary or any combination of the above as sole trustees ("Permitted Transferee")

5.1.6. A Transfer to any legal entity that is directly or indirectly controlled, or is under common control with, any of the Permitted Transferees. As used in this Agreement, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) by Permitted Transferees.

All Transfers must be by a written instrument, in a form reasonably satisfactory to the General Partner and accepted by the General Partner, which instrument has been duly executed by the transferring Partner.

5.2 No Transfer in Violation of Securities Laws or Section 708(b). The General Partner may require an opinion of counsel for the Partnership, at the cost of the transferring Partner and in form and substance satisfactory to the General Partner in its sole discretion, covering one or both of the following: (i) that such Transfer will not result in the termination of the Partnership under the Code, and (ii) that such Transfer will be in compliance with applicable securities laws, rules and regulations. In such event and notwithstanding Section 5.1, above, no transfer shall be permitted unless the transferring Partner provides evidence satisfactory to the General Partner that (i) such transfer shall not violate any applicable securities laws or (ii) cause a termination of the Partnership under Section 708(b) of the Code

5.3 No Encumbrance No Partner may encumber, permit, or suffer any encumbrance of all or any of the Partner's Partnership Units in the Partnership unless such encumbrance has been

approved in writing by all the other Partners. Any Transfer or encumbrance of Partnership Units without such approval shall be void.

5.4 No Right of Limited Partners to Withdraw. No Limited Partner may withdraw from the Partnership.

5.5. General Prohibition Against Transfer of a General Partner's Interest. The General Partner is subject to the same restrictions on transfer as are set forth in Section 5.1. The recipient of the interest of the General Partner shall be that of an Assignee with the rights set forth in Section 5.14, provided that such recipient may become a Substituted Limited Partner upon compliance with and subject to the terms of Sections 5.15.

5.6 Sale of the Partnership Units to a Third Party. If, at any time while this Agreement is in force, a Partner (hereinafter referred to as the "Offering Partner") desires to sell, exchange, encumber or transfer all or any of his / her / its Partnership Units (other than as expressly permitted pursuant to Section 5.1, above), and the Offering Partner obtains a "bona fide offer from a qualified third party purchaser" (as defined below) to purchase such Partnership Units, the Offering Partner shall first offer such Partnership Units for sale in accordance with the provisions of this Section 5.6.

5.6.1 Notice of Bona Fide Offer. If the Offering Partner desires to accept the bona fide offer from the qualified third party purchaser, the Offering Partner shall deliver a copy of such offer ("Offer") to the General Partner ("Triggering Event"), together with a written offer from the Offering Partner to sell such Partnership Units (hereinafter referred to as the "Offered Partnership Units") to the Option Holders (as defined in Section 5.7.2) in accordance with the terms and conditions of this Agreement. As used herein, a "bona fide offer from a qualified third party purchaser" shall mean a written and binding offer from any party that (i) sets forth the proposed purchase price and terms for the proposed purchase and sale of the Offered Partnership Units, and (ii) is accompanied by an earnest money deposit in an amount not less than one percent (1%) of the proposed purchase price for the Offered Partnership Units.

5.6.2 Right of First Refusal by Option Holders. The Option Holders, as defined in Section 5.7.2, shall have the right of first refusal to purchase all, but not less than all, of the Offered Partnership Units for the price and in accordance with the terms set forth in the Offer. The Option Holders shall exercise their rights in the manner set forth in Section 5.7.4. The closing of a purchase and sale of the Offered Partnership Units pursuant to this Section 5.6.2 shall occur at a reasonable time and place selected by the General Partner, which in no event shall be later than the date which is three (3) months after the date of expiration of the thirty (60) day period as set forth in Section 5.7.4, during which the Option Holders had the option to purchase the Offered Partnership Units.

5.6.3 Failure to Exercise Option. If the Option Holders fail to exercise their options to purchase all the Offered Partnership Units, the Offering Partner may sell the Offered Partnership Units to the third party purchaser specified in the written offer for the price and in accordance with the terms specified therein for a period of ninety (90) days.



following the date of the expiration of the sixty (60) day period set forth in Section 5.7.4; provided that such third party purchaser must agree in writing to be bound by all of the terms and conditions of this Agreement, including any amendments made to this Agreement on or prior to the date of such purchase, and to assume and agree to discharge any obligation, debt or liability, in accordance with the terms of such obligation, debt or liability, of the Offering Partner to the Partnership, which assumption shall not constitute a novation or release of the Offering Partner by the Partnership. At the expiration of the ninety (90) day period set forth above, the Offered Partnership Units shall again be subject to all of the applicable requirements contained in this Agreement before the Offering Partner may transfer, sell, assign, encumber, pledge, gift or otherwise dispose of the Offered Partnership Units.

5.7. Option to Purchase upon Triggering Event. Upon the happening of the Triggering Event (as defined below), the Option Holders (as defined in Section 5.7.2 and 5.7.3) shall have an option ("Option") to purchase the "Offered Partnership Units" and upon the exercise of the Option the "Selling Partner" (as defined below) shall have the obligation to sell the Offered Partnership Units to the Option Holders

5.7.1 Triggering Events The following shall be the "Triggering Events" giving rise to an option to purchase the Partnership Units held by a Partner ("Offered Partnership Units") as set forth in this Section 5.7

(a) The death of the following persons shall be a Triggering Event

(i) Death of JOHN B. FISCALINI shall be a Triggering Event only to the extent that the Partnership Units pass to a person other than a Permitted Transferee (defined in Section 5.1) in which event the "Offered Partnership Units" shall be those owned by JOHN B. FISCALINI, his estate, the JOHN FISCALINI REVOCABLE TRUST under instrument dated June 11, 2001, any other trust created by JOHN B. FISCALINI and /or his spouse during their lifetimes or as a result of their death ("Selling Partner")

(ii) Death of an issue of JOHN B. FISCALINI shall be a Triggering Event only to the extent that the Partnership Units pass to a person other than a Permitted Transferee, in which event the "Offered Partnership Units" shall be those owned by the issue of JOHN B. FISCALINI, his or her respective estate, and any trust created by issue of JOHN B. FISCALINI during his or her lifetime or as a result of his or her death ("Selling Partner").

(iii) Death of any other individual Partner only to the extent that the Partnership Units pass to a person other than a Permitted Transferee as defined in Section 5.1, in which event the "Offered Partnership Units" shall be those owned by that Partner.

(b) The merger, other reorganization or dissolution of a Partner who is a corporation, partnership or limited liability company, or any other event as a result

of which the Partner, who is a corporation, partnership of limited liability company, does not survive as an entity or the equity holders holding a majority interest in the capital of the Partner cease to be controlling owners unless those persons are Permitted Transferees

(c) In connection with the divorce or dissolution of the marriage of a Partner, issuance by any court of a decree or order that transfers, confirms, or awards Partnership Units, or any portion thereof, to that Partner's spouse who is not a Principal Owner (an Award), in which event the Option Holders will be those set forth in Section 5.7.3 For purposes of this Agreement, JOHN B FISCALINI and his issue each shall be deemed the Principal Owner.

(d) Death of a spouse of a Partner, if, by reason of the death of a spouse of a Partner, any portion of Partnership Units are transferred to a Transferee other than the Principal Owner, in which event the Option Holders will be those set forth in Section 5.7.3

5.7.2 Option Holders. Upon the happening of a Triggering Event, other than the Triggering Events set forth in Section 5.7.1(c) and 5.7.1(d), the following persons ("Option Holders") shall have the option to purchase the Offered Partnership Units at the Purchase Price and upon the terms set forth below

(a) First, JOHN B FISCALINI, the JOHN FISCALINI REVOCABLE TRUST under instrument dated June 11, 2001, or any other trust created for the benefit of JOHN B FISCALINI ("First Offeree")

(b) Second, the Partnership ("Second Offeree"). The Second Offeree shall have a right to purchase the Offered Partnership Units only to the extent that the First Offeree has not accepted the Offer within the time period set forth in Section 5.7.4 The Partnership's right to exercise any options and to redeem the Offered Partnership Units, or any portion thereof, is subject to the restrictions of any other applicable statutory restrictions on the right of a Partnership to purchase its own Partnership Units

(c) Third, the remaining Partners (the "Remaining Partners") The Remaining Partners shall have a right to purchase the Offered Partnership Units only to the extent that the First Offeree and the Second Offeree have not accepted the Offer within the time period set forth in Section 5.7.4.

5.7.3. Option Holders for Spousal Provisions. Upon the happening of a Triggering Event set forth in Section 5.7.1(c) and 5.7.1(d), the following persons ("Option Holders") shall have the option to purchase the Offered Partnership Units at the Purchase Price and upon the terms set forth below

(a) First, Principal Owner ("First Offeree")

(b) Thereafter, in the same priority as set forth in Section 5 7 2.

(c) The subordinated Offerees shall have a right to purchase the Offered Partnership Units only to the extent that the Offerees with higher priority have not accepted the Offer within the time period set forth in Section 5 7.4

5 7.4 Manner of Exercise General Partner shall provide each Option Holder with notice, in writing, of the happening of a Triggering Event and of the Option set forth above ("Triggering Event Notice") Each Option Holder desiring to exercise the Option shall exercise the Option by providing written notice of the intent to purchase all or a designated portion of the Offered Partnership Units by providing written notice of the intent to purchase all or a designated portion of the Offered Partnership Units to General Partner and the Selling Partner within the following time period:

(a) If the Triggering Event is the death, one hundred eighty (180) days from date of death, or

(b) If the Triggering Event is other than death, then sixty (60) days from the Triggering Event Notice

If an Option Holder states in the notice that the Option is exercised with respect to only a portion of the Offered Partnership Units, then that Option Holder shall only be required to purchase the portion so designated. The portion can be designated by setting forth the number of Partnership Units that the Option Holder wishes to acquire or the maximum dollar value that the Option Holder wishes to pay for the Offered Partnership Units. If an Option Holder fails to designate the portion of the Offered Partnership Units that the Option Holder wishes to acquire, then (i) if the Option Holder has a priority to purchase such Offered Partnership Units pursuant to the Section 5 7 2 or 5 7 3, then the Option Holder shall acquire all of the Offered Partnership Units, (ii) if there are several Option Holders having the same priority to purchase, then each such Option Holder shall acquire his/her/its Proportionate Share of the Offered Partnership Units For purpose of this Agreement, Proportionate Share shall be equal to the amount resulting from multiplying the number of Offered Partnership Units with a fraction, expressed as a percentage, the numerator of which is the total number of the Partnership Units held by the purchasing Option Holder and the denominator of which is the total number of the Partnership Units held by all of the Option Holders in the same priority group exercising the option to purchase

5.8 Spousal Provisions Notwithstanding any other provisions of this Agreement, in the event a Principal Owner is a party to an action for dissolution of his or her marriage, for legal separation, or for annulment, the Principal Owner spouse (as defined below) shall obtain any community share of the other spouse in such a proceeding.

5 9. Transfer in Violation of Agreement. Upon any contemplated or attempted sale, transfer, pledge, gift, encumbrance or other disposition of any Partnership Units in violation of the provisions of this Agreement, whether voluntary or involuntary (as defined below), in addition to

any other remedies available at law or in equity, the Option Holders shall have the right and option to purchase all or any of the Partnership Units transferred (or attempted to be transferred) in violation of this Agreement (hereinafter referred to as the "Offered Partnership Units") in accordance with the terms and conditions set forth in this Section 5.9, and upon exercise of such option, the holder of the Partnership Units so transferred (or attempted to be transferred) in violation of this Agreement (hereinafter referred to as the "Selling Partner") shall be obligated to sell the Offered Partnership Units to the Option Holders in accordance with the terms and conditions set forth in this Section 5.9.

5 9 1 Involuntary transfer in violation of this Agreement shall include, but not be limited to

(a) the institution by or against the Partner of a proceeding to adjudge the Partner bankrupt under the Federal Bankruptcy Act or any other applicable federal or state law; and

(b) the appointing of a receiver, liquidator, assignee, or sequestrator (or other similar official) of substantially all the assets of the Partner

5 9 2 Option Holders shall have the option to purchase all or any of the Offered Partnership Units for the price set forth in Section 5 11 and in accordance with the terms set forth in Section 5.12, or if the Offered Partnership Units were transferred (or attempted to be transferred) by sale or exchange (as opposed to a gratuitous transfer), at the option of Option Holders, for the price and in accordance with the terms for which such Offered Partnership Units were sold or exchanged (or attempted to be sold or exchanged) in violation of the provisions of this Agreement

5 9 3 Option Holders shall have a right to exercise their option in the manner set forth in Section 5 7 4 within sixty (60) days of the General Partner notifying the Option Holders of the Transfer in violation of this Agreement ("Triggering Event"). General Partner shall inform the Option Holders of the Transfer in violation within thirty (30) days after the date the General Partner first discovers the transfer in violation of the provisions of this Agreement

5 9 4 In exercising their option, Option Holders shall notify the General Partner whether they intend to purchase the Offered Partnership Units (or portion thereof) for the price and in accordance with the terms for which such Offered Partnership Units were sold or exchanged (or attempted to be sold or exchanged) in violation of the provisions of this Agreement or for the price set forth in Section 5 11 and in accordance with the terms set forth in Section 5 12

5 9 5 The closing of a purchase and sale of the Offered Partnership Units (or a portion thereof) pursuant to this Section 5.9.2 shall occur at a reasonable time and place selected by the General Partner, which in no event shall be later than three (3) months of the later of (i) the expiration of the sixty (60) day period during which the Option Holders had a right to exercise their option or (ii) determination of the Purchase Price under Section 5 11.

5 9 6 If the Option Holders fail to purchase all of the Offered Partnership Units pursuant to their respective options under this Section 5 9, the Selling Partner shall be permitted to retain all of the Offered Partnership Units and shall remain subject to all the terms and conditions of this Agreement, but the Selling Partner shall not have the option to purchase his/her/its Proportionate Share of any future Partnership Units that may become available for purchase hereunder.

5 10 Selling Partner Cannot Vote No Partner shall participate in any vote or decision in any matter pertaining to the disposition of that Partner's Partnership Units in the Partnership under this Agreement

5 11 Purchase Price for the Offered Interest The "Purchase Price" for an Offered Partnership Units shall be determined by appraisal as follows:

5 11 1 Selection of the Appraiser Within one hundred eighty five (185) days of a death under Section 5 7 1, or in the event of a purchase for a reason other than death within ten (10) days from the exercise of the option to purchase, the buying Option Holder and the Selling Partner shall mutually select a qualified and credentialed appraiser (as defined below) to appraise the Partnership Units. The value of the Partnership Units as determined by the mutually agreed upon appraiser shall be the purchase price for the Partnership Units. The Partnership shall pay the cost of the mutually agreed upon appraiser. An appraiser shall be deemed qualified and credentialed if such appraiser is certified with one of the following organizations (i) the American Institute of Certified Public Accountants (CPA/ABV); (ii) the National Association of Certified Valuation Analysts (CVA); (iii) the American Society of Appraisers (ASA); or (iv) the Institute of Business Appraisers, Inc (CBA)

5 11 2. Failure to Agree Upon Appraiser If the Option Holder and the Selling Partner cannot agree on a qualified appraiser within the time periods set forth in Section 5 11 1, they shall each have an additional ten (10) day period to appoint a qualified appraiser by providing the other with written notice of the identity of the appointed appraiser within said ten (10) day period. Each appraiser so appointed shall then have a period of sixty (60) days from the expiration of the ten (10) day period to agree upon a value of the Offered Partnership Units. If the appraisers agree upon a value, then that value shall be the Purchase Price for the Offered Partnership Units. The failure of either the Option Holder or the Selling Partner to appoint an appraiser within the ten (10) day period shall be deemed to be acceptance of the other's appraiser, in which event the opinion of that single appraiser shall be the Purchase Price for the Offered Partnership Units. The failure of one appraiser to provide its written report within the sixty (60) day period set forth above shall be deemed to be that appraiser's acceptance of the value of the Offered Partnership Units rendered by the other appraiser, in which event the other appraiser's opinion shall be the Purchase Price for the Partnership Units. Each of the Option Holder and the Selling Partner shall pay for the cost of the appraiser selected by that party

5 11 3 No Agreement Among Appraisers If the appraisers cannot agree upon a value for the Partnership Units within the sixty (60) day period set forth in the paragraph

above and the opinion of the appraiser with the lower value is no more than ten percent (10%) below the opinion of the appraiser with the higher value, then the average of the opinions of the two (2) appraisers shall be the purchase price. If the opinion of the appraiser with the lower value is more than ten percent (10%) below the opinion of the appraiser with the higher value, then upon the request of either the Option Holder and the Selling Partner the appraisers shall immediately and jointly appoint a third appraiser to determine the value of the Offered Partnership Units within sixty (60) days of the appointment of the third appraiser. In such event, the opinion of the appraiser whose opinion is neither highest nor lowest shall be the purchase price. The cost of the third appraiser shall be shared equally between the Option Holder and the Selling Partner.

5.11.4. Valuation Date The Valuation Date shall be the end of the month in which the triggering event occurred.

5.11.5. Discounts In determining the fair market value of the Partnership Units, each appraiser shall take into consideration the marketability and control represented by the Partnership Units.

5.11.6. Binding Nature of Determination The value of the Partnership Units computed according to this Section 5.11 is binding on all persons.

5.12. Terms of Payment for Purchase under Sections 5.6 through 5.8 The Purchase Price for the Selling Partner's Partnership Units for events described in Sections 5.6 through 5.8 shall be payable at the closing in the following manner:

5.12.1. Down Payment Upon the Closing, the buying Option Holder shall pay directly to Selling Partner, Ten Percent (10%) of the purchase price by a wire transfer of immediately available funds or by a certified or bank cashier's check drawn on a California bank and made payable to Selling Partner.

5.12.2. Deferred Payments The balance of the purchase price shall be payable in accordance with the terms of a promissory note substantially in the form set forth in "B" attached to this Agreement and incorporated into this Agreement by reference ("Note"), the material terms of which are as follows:

(a) The Note shall provide for monthly payments of interest and principal beginning on the first day of the month following the date of the closing of such purchase and sale and continuing on the first day of each month thereafter based on an amortization over a period of fifteen (15) years. The entire balance of income and principal on the Note shall be all due and payable fifteen (15) years from the closing.

(b) The Note shall bear interest at Prime rate. The rate shall be fixed as of the Closing.

(c) The obligations of the Purchaser or Purchasers under the promissory note shall be secured by a pledge of the Partnership Units sold to the Purchaser or the Purchasers. The Pledge Agreement contemplated hereunder shall be substantially in the form set forth in Exhibit "C" attached to this Agreement and incorporated into this Agreement by reference. Notwithstanding the above, if the Partnership has exercised its option to purchase, then the promissory note issued by the Partnership shall be secured by a security interest in the Partnership's assets.

5.12.3. Closing. The closing of the purchase under Sections 5.6 through 5.8 shall occur at a reasonable time and place selected by the Option Holder and Selling Partner, which in no event shall be later than three (3) months of the later of (i) the expiration of the period during which the Option Holders had a right to exercise their option or (ii) determination of the Purchase Price under Section 5.11.

5.13. Terms of Payment for Purchase under Section 5.9. The Purchase Price for the Selling Partner's Partnership Units for events described in Section 5.9 shall be payable in cash at closing or, at the option of the General Partner, with no cash down payment and with the balance payable without interest in equal annual installments over a period of twenty (20) years beginning on the last day of the year following the closing and continuing on the last day of each year thereafter. The obligation of the Partnership to pay the deferred portion of the purchase price shall be evidenced by a non-negotiable unsecured promissory note (or notes) bearing the terms and conditions set forth above and such other terms and conditions as are customary for similar transactions in the area, including, but not limited to, the right of prepayment without premium or penalty at any time. Such note shall be unsecured.

5.14. Rights of Assignee. A Transfer does not entitle the Assignee to become, or to exercise any rights of, a General or Limited Partner. An Assignee shall be only entitled to receive the allocations of Net Income and Net Loss and distributions attributable to the interest in the Transferred Partnership Units, from and after the effective date of the Transfer of such interest to him/her/it. Unless otherwise agreed by the General Partner, Assignee and transferor, the effective date of such Transfer shall be the effective date of the Transfer as provided in the written instrument evidencing such Transfer.

5.15. Assignee as Substitute Limited Partner. In the event a Partner transfers all or any part of his/her/its interest in the Partnership in compliance with the provisions of this ARTICLE 5, the transferee of such General or Limited Partner shall have the rights of Assignee and shall not have the right to become a Substitute Limited Partner of the Partnership unless the transferring Limited Partner has given his/her/its transferee such right and unless:

5.15.1. The transferee has executed and delivered to the General Partner an addendum to this Agreement, agreeing to be bound by all the terms and provisions hereof and to assume all the obligations of the transferor Limited Partner hereunder,

5.15.2. In the event of the transfer to a person other than to a Partner or Permitted Transferee (as defined in Section 5.1.2 and 5.1.4), the General Partner and all of the Limited

Partners consent to and approve the admission of such transferee as a Substitute Limited Partner. Any such consent and approval can be withheld, with or without cause, by each Partner of such Partner's free will, free of duress, and in each Partner's sole discretion.

5.15.3 The transferee has provided, in the case of an Assignee who is a trustee, a complete copy of the applicable trust document authorizing trustee to act as partner in a partnership or, in the alternative, a certification of trust which certifies that the trustee has the power and authority to become and act as a partner; and

5.15.4 The transferee has executed such other documents or instruments as the General Partner may reasonably require in order to effect the admission of the transferee as a Limited Partner

5.16 Life Insurance Received by Partnership. Notwithstanding anything contained in this Agreement to the contrary, in the event the Partnership receives (or will receive) life insurance proceeds under a life insurance policy (or policies) maintained by the Partnership on the life of the deceased Partner (or on the life of a person whose death triggers an obligation to purchase the interest of a Partner), the Partnership shall be required to use eighty percent (80%) of the life insurance proceeds towards as a down payment of the Purchase Price for the Offered Partnership Units. If the Purchase Price is less than eighty percent (80%) of the life insurance proceeds, the Partnership shall be required to pay no more than the amount of the Purchase Price. In the event that eighty percent (80%) of the life insurance proceeds is less than the Purchase Price, the remaining purchase price shall be paid in accordance with Section 5.12.2

5.17 Purchase of the Life Insurance by Partnership. The Partnership may in its discretion (with the approval of the General Partner), obtain and maintain policies of life insurance on the lives of the Partners (or person's whose death triggers the buy-out provisions) for the purpose of purchasing the Partnership Units of a Partner whose Partnership Units are bought out because of the death, in accordance with the provisions of Section 5.16. The premiums on such life insurance policies shall be a Partnership expense. The amount of insurance obtained hereunder, if any, shall be reviewed by the General Partner periodically to ensure that the coverage accurately reflects the purchase price to be paid for each of the Partner's Partnership Units

Each life insurance policy purchased by the Partnership pursuant to this Section 5.17 shall designate the Partnership as the beneficiary thereunder. Notwithstanding any provisions of this Agreement to the contrary, any proceeds received by the Partnership by reason of the death of a Partner (or death of a person whose death triggers an obligation to purchase the interest of a Partner), from life insurance policies purchased by the Partnership hereunder shall be allocated to the surviving Partners' Partnership Units. No portion of any life insurance proceeds received by or on behalf of the Partnership by reason of the death of a Partner (or death of a person whose death triggers an obligation to purchase the interest of a Partner), shall be allocated to the Partnership Units being subject to sale

5.18 Securities Laws The initial sale of Partnership Units in the Partnership to the initial Partners has not been qualified or registered under the securities laws of any state, or registered



under the Securities Act of 1933, as amended, in reliance upon exemptions from the registration provisions of those laws. No attempt has been made to qualify the offering and sale of Partnership Units to Partners under the California Corporate Securities Law of 1968, as amended, also in reliance upon an exemption from the requirement that a permit for issuance of securities be procured. Notwithstanding any other provision of this Agreement, Partnership Units may not be transferred or encumbered unless registered or qualified under applicable state and federal securities law or unless, in the opinion of legal counsel satisfactory to the Partnership, such qualification or registration is not required. The Partner who desires to transfer Partnership Units shall be responsible for all legal fees incurred in connection with said opinion.

#### **ARTICLE 6: DISSOLUTION OF THE PARTNERSHIP**

6.1 Death of a Partner. The Partnership shall not terminate and dissolve upon the death of any Limited Partner. A General Partner ceases to be a General Partner on his/her/its death or dissolution and his/her/its interest converts to limited Partnership Units pursuant to Section 15662 of the RLPA. Transfers by reason of the death or dissolution of any General Partner shall be subject to and in accordance with the provisions of Section 5.5 hereof.

6.2 Causes for Dissolution. The Partnership shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

6.2.1 Written consent of the General Partner, or all of the General Partners if there is more than one General Partner, and Limited Partners representing majority Limited Partnership Units,

6.2.2 When a General Partner ceases to be a General Partner under Section 15642 of the RLPA, unless the Partnership is continued pursuant to the provisions of Section 6.3 below,

6.2.3 Unanimous decision of all Limited Partners;

6.2.4 The entry of a final judgment, order or decree of a court of competent jurisdiction granting relief to the Partnership in bankruptcy or insolvency, and the expiration of the period, if any, allowed by applicable law in which to appeal therefrom, or

6.2.5. Entry of a decree by a court of competent jurisdiction pursuant to Section 15682 of the RLPA.

6.3 Continuation of Partnership Business. If a General Partner ceases to be a General Partner under Section 15642 of the RLPA, the Partnership shall be continued when either of the events set forth below occur:

6.3.1 If at the time such General Partner ceases to be a General Partner there is at least one other General Partner and the remaining General Partner, or all of the General Partners if more than one remains, continue the business of the Partnership;

6.3.2 If at the time the sole General Partner ceases to be a General Partner under Section 15642 of the RLPA, Limited Partners representing majority of Limited Partnership Units agree in writing to continue the business of the Partnership, and within six months after the last remaining General partner has ceased to be a General Partner one or more General Partners is admitted, in which event one-tenth of one Limited Partnership Unit in the Partnership of said newly appointed General Partner shall be converted to General Partnership Unit, provided that if the newly appointed General Partner does not have One Limited Partnership Unit, then each Partner shall Transfer (but only for adequate and full consideration in money or money's worth) portion of one Limited Partnership Unit so that such transferred portions of one Limited Partnership Unit when added to the Limited Partnership Units already held by such Partner totals One Limited Partnership Unit.

6.4 Distribution on Liquidation

6.4.1 Upon the dissolution of the Partnership by means of any occurrence described in Section 6.2, hereof, without a reorganization of the Partnership in accordance with Section 6.3 hereof, the Liquidating Agent shall proceed to liquidate the assets of the Partnership, wind up its affairs, and apply and distribute the proceeds in the following order of priority

(i) First, the Liquidating Agent shall pay the debts and liabilities of the Partnership then outstanding, if any, and the expenses of liquidation, in the order of priority as provided by the RLPA and any other applicable law, and establish any reserves which the Liquidating Agent shall deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Such reserves may be paid over by the Liquidating Agent to a bank or an attorney-at-law, to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities as such Liquidating Agent shall deem advisable, or distribute the balance in the manner provided in paragraphs (ii) and (iii) of this Section 6.4.1.

(ii) Next, the Liquidating Agent shall pay any balance of the proceeds to the Partners in cash or in kind pro-rata to their respective Capital Accounts to the extent thereof.

(iii) Finally, the Liquidating Agent shall pay any balance of proceeds to the Partners in cash or in kind pro-rata to their respective Capital Accounts to the extent thereof.

6.4.2. Each Partner shall make, constitute, and appoint the Liquidating Agent, with full power of substitution, as the true and lawful attorney for such Partner and in such Partner's name, place and stead and for such Partner's use and benefit, to manage the business and affairs of the Partnership, to sell, lease, convey, exchange and mortgage its property or any portion thereof, to take title to its property or any portion thereof in the name of a nominee; to execute, acknowledge and deliver deeds, with or without warranty leases, mortgages, releases, satisfactions and other instruments relating to its property or any

portion thereof; and to do and perform each and every act and thing whatsoever necessary to be done in connection with its property or any portion thereof. To evidence the appointment of the Liquidating Agent as attorney-in-fact for the Partner hereunder, each Partner shall execute and deliver such power of attorney that shall be irrevocable and durable, and shall constitute a power coupled with an interest binding on the heirs, personal representatives, successors and assigns of each partner, as the Liquidating Agent may request.

6.4.3. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of its liabilities to enable the Liquidating Agent to minimize any losses otherwise incurred upon such liquidation

6.4.4 The Liquidating Agent shall furnish each Partner with a financial statement, for the period from the date of the last reports prepared under Section 3.4 hereof to the date of the final distribution of the proceeds of liquidation to the Partners that shows the manner in which the proceeds of liquidation of the Partnership have been distributed.

6.4.5 The Partnership shall terminate when all property owned by the Partnership shall have been disposed of and the net proceeds, after satisfaction of liabilities to creditors, shall have been distributed to the Partners as aforesaid. The establishment of any reserves in accordance with the provisions of Section 6.4.1 above shall not have the effect of extending the term of the Partnership.

6.5 Gain or Loss. Any gain or loss on the disposition of Partnership properties in the process of liquidation shall be credited or charged to the Partners in proportion to their Partnership Units, provided, however, that gain or loss with respect to property contributed to the Partnership by a Partner shall be shared among the Partners so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable Treasury Regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it was sold and the cash proceeds distributed. The difference between the value of property distributed in kind and its book value shall be treated as a gain or loss on the sale of the property, and shall be credited or charged to the Partners accordingly.

6.6. Requirement of General Partners to Restore Deficit Capital Account Balance. If any General Partner has a deficit balance in his / her / its Capital Account following the liquidation of his / her / its interest in the Partnership, as determined after taking into account all capital account adjustments for the Partnership taxable year during which such liquidation occurs (other than those made pursuant to this Section 6.6), he/she/it is unconditionally obligated to restore the amount of such deficit balance to the Partnership by the end of such taxable year (or, if later, within 90 days after the date of such liquidation), which amount shall, upon liquidation of the Partnership, be paid to creditors of the Partnership or distributed to other Partners in accordance with their positive Capital Account balances in accordance with any applicable Treasury Regulations.

6.7. Partnership Assets Sole Source. The Partners shall look solely to the Partnership's assets for the payment of any debts or liabilities owed by the Partnership to the Partners and for the return of their capital contributions and liquidation amounts. If the Partnership property remaining

after the payment of discharge of all of its debts and liabilities to persons other than Partner is insufficient to return the Partners capital contributions, they shall have no recourse therefore against the Partnership or any other Partners, except to the extent that such other Partners may have outstanding debts or obligations owing to the Partnership.

## ARTICLE 7: MISCELLANEOUS

### 7.1 Definitions

7.1.1 Agreement. The "Agreement" is this Limited Partnership Agreement for the FISCALINI CHEESE COMPANY, L.P, a California limited partnership, as amended from time to time. The Agreement shall include any exhibits and schedules that may be attached to the Agreement and incorporated into the Agreement by reference as those exhibits and schedules may be amended from time to time.

7.1.2. Assignee. The term "Assignee" shall mean a person who is shown in the Partnership's records as having acquired beneficial ownership of an economic interest in the Partnership by an assignment from a Partner (the effective date of which has passed), by a Voluntary Lifetime Transfer or an Involuntary Lifetime Transfer.

7.1.3 Code. "Code" shall refer to the Internal Revenue Code of 1986 and any successor provisions.

7.1.4 Day. For purposes of this Agreement, any reference to a "day" or "days" means a calendar day, including any days which fall on legal holidays or weekends.

7.1.5 General Partner. The "General Partner" shall refer to JOHN FISCALINI MANAGEMENT COMPANY, LLC, a California limited liability company.

7.1.6. Limited Partner. A "Limited Partner" and the "Limited Partners" shall refer to Limited Partners listed in the Recitals, and any successor Limited Partner who shall become a Substituted Limited Partner pursuant to Section 5.15 hereof.

7.1.7 Liquidating Agent. The term "Liquidating Agent" shall mean the General Partner or, in the absence thereof, (a) such person who shall be designated as a liquidating agent by a declaration in writing executed by those Partners then owning at least a majority of the percentage ownership interests owned by the Partners in the Partnership following the dissolution of the Partnership hereunder and accepted by such persons, or (b) such other person shall be appointed as a liquidating agent by any court of competent jurisdiction.

7.1.8. Net Cash Flow. The term "net cash flow" shall mean all cash of the Partnership on hand as of the last day of such calendar year after the payment of all then due debts and liabilities of the Partnership and after any prepayments of any debts and liabilities of the Partnership that the General Partner, in his / her / its sole and absolute discretion, elect to cause the Partnership to make, less any reserves reasonably deemed necessary by the General Partner for (i) the repayment of any debts or liabilities of the Partnership, (ii) the

working capital requirements of the Partnership, (iii) capital improvements to the property of the Partnership, (iv) the purchase or replacement of any assets of the Partnership, and (v) any contingent or unforeseen liabilities of the Partnership

7.1.9 Offered Partnership Units The phrase "Offered Partnership Units" are all of a Partner's Partnership Units that are deemed to have been offered for sale to the Option Holders pursuant to this Agreement

7.1.10 Partnership Capital "Partnership Capital" is the total of the Partners' capital contributions

7.1.11 Partnership Units "Partnership Units" are the relative interests of the individual Partners in the Partnership, as indicated on Exhibit A

7.1.12 Regulations "Regulations" shall refer to the United States Treasury regulations enacted under the Code.

7.1.13 RLPA The term "RLPA" shall mean the California Revised Limited Partnership Act, as amended and from time to time in effect, or any succeeding limited partnership law of the State of California as from time to time in effect

7.1.14 Transfer A "Transfer", unless otherwise specifically exempted elsewhere in this Agreement, is any sale, pledge, encumbrance, gift, bequest, assignment, or other transfer of any Partnership Units, in whole or in part, made to persons other than another party to this Agreement, whether or not for value. An "Involuntary Transfer" is any Transfer made on account of a court order or otherwise by operation of law, including any Transfer incident to any divorce or marital property settlement or any Transfer pursuant to applicable community property, quasi-community property or similar state law. A "Voluntary Transfer" is any Transfer made during a Partner's lifetime that is not an Involuntary Transfer. Unless the context indicates otherwise, "Transfer" includes both Voluntary and Involuntary Transfers

7.2 Amendments Except as provided in this Section, this Agreement may be amended only by a writing signed by all of the Partners. The General Partner may amend this Agreement alone without the need for any consent or approval of Limited Partners (1) if there occurs any change in the law governing the Partnership which would make an amendment desirable to effectuate the intent of the Partners, as long as any Partner who is adversely affected in any material respect by such an amendment consents to the amendment, or (2) to make any change necessary or advisable in the discretion of the General Partner to cause the Partnership to be treated as a partnership for federal income tax purposes.

7.3 Notices Any notice given under this Agreement shall be in writing and shall be served either personally or delivered by electronic means or U. S. mail, postage prepaid, first class. Notice shall be deemed given at the time of personal delivery or delivery to a common carrier, or on deposit in the mail. Each Partner shall provide the other Partners with an address to which notices intended for that Partner may be delivered. Any Partner may change the address for notices by giving appropriate notice under this Section

7.4. Execution of Further Documents Each Partner agrees to execute, with acknowledgment or affidavit if requested, all documents and writings reasonably necessary or appropriate in the creation of the Partnership and the achievement of its purpose

7.5. Special Power of Attorney Each Limited Partner grants to the General Partner and the General Partner's successors as General Partner, a special power of attorney irrevocably making, constituting, and appointing the General Partner and such successors as the Limited Partner's attorney-in-fact, with power and authority to act in the name of the Limited Partner and on behalf of the Limited Partner to execute, acknowledge, and swear to the following (1) any Certificate of Limited Partnership, and any amendment to the Certificate, which the General Partner elects to file; (2) any other instrument or document required to be filed by the Partnership or which the General Partner elects to file with any federal, state, or other governmental agency; and (3) any instrument or document that may be necessary or desirable to effect the continuation of the Partnership, admission of Limited Partners, the dissolution and termination of the Partnership, or to reflect any change in the amount of capital contributions to the Partnership. This special power of attorney is coupled with an interest, is irrevocable, shall survive the death or incapacity of the Limited Partner granting the power of attorney, and is limited to the matters set forth in this Section 7.5

7.6. Governing Law Each of the Parties agrees that the laws of the State of California applicable to contracts, transactions, and obligations entered into and to be performed in the State of California are chosen (choice of law) to govern, enforce, determine, and construe this Agreement and the legality, validity, and performance of the terms, conditions, covenants, provisions, and restrictions of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California

7.7. Costs, Expenses and Attorneys' Fees In any dispute between the Parties concerning the enforcement or declaration of any rights under this Agreement or if any litigation is commenced between the Parties for the enforcement or declaration of any rights under this Agreement, then the prevailing Party shall be entitled to receive from the non-prevailing Party any and all of the costs, expenses and fees incurred by the prevailing Party in connection with a dispute between the Parties, including, without limitation, reasonable attorneys' and consultants' fees and expenses. This provision for costs, expenses and fees incurred in a dispute between the Parties (including, without limitation, attorneys' and consultants' fees and expenses) shall be interpreted such that the prevailing Party in any appeal is to receive from the non-prevailing Party any and all of the costs, expenses and fees incurred by the prevailing Party in connection with the appeal, including, without limitation, reasonable attorneys' and consultants' fees and expenses. Absent litigation, the prevailing Party shall be the Party whose position was most nearly adopted in the settlement of the dispute. In the event of litigation, the costs, expenses and fees of the prevailing Party shall be awarded by the court hearing the trial or appeal of the matter or by any court of competent jurisdiction in a separate action brought for the purpose of recovery of costs, expenses and fees under this Subparagraph of this Agreement.

7.8. Entire Agreement This Agreement constitutes the entire understanding of the Partners with respect to its subject matter and supersedes all prior agreements and understandings with respect to the matters provided in this Agreement

7.9. Interpretation of Agreement. All provisions of the RLPA, as amended, shall be deemed to be superseded by the express terms of this Agreement to the extent necessary to effect the intent of the as reflected by this Agreement.

7.10. Headings Subject headings are included in this Agreement for purposes of convenience only and shall not be deemed part of this Agreement.

7.11. Independent Counsel Each Partner acknowledges, understands, and agrees that Partner (i) has been advised to seek and (ii) has had an adequate opportunity to obtain independent legal, tax, and / or other counsel regarding the meaning and effect of this Agreement. Each Partner acknowledges, understands, and agrees that there are inherent conflicts of interest as between Parties to any agreement and that it is in the best interests of Partner to seek professional legal, tax, and / or other counsel to aid Partner in the preparation and negotiation of this Agreement. Each Partner warrants and represents that Partner has been represented by independent counsel solely chosen by Partner or has had an adequate opportunity to obtain and utilize the services of independent counsel solely chosen by Partner. Each Partner acknowledges, understands, and agrees that Gianelli & Associates, a Professional Law Corporation, has solely represented JOHN B. FISCALINI in the preparation and negotiation of this Agreement

(SIGNATURES FOLLOW ON NEXT PAGE) . . . . .

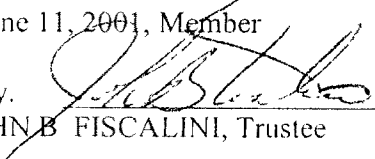
**EXECUTION**

IN WITNESS WHEREOF, the Partners have signed this agreement

**"GENERAL PARTNER"**

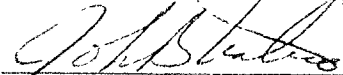
JOHN FISCALINI MANAGEMENT  
COMPANY, LLC, a California limited liability  
company

By: The JOHN FISCALINI REVOCABLE  
TRUST under instrument dated  
June 11, 2001, Member

By:   
JOHN B. FISCALINI, Trustee

**"LIMITED PARTNERS"**

The JOHN FISCALINI REVOCABLE TRUST  
under instrument dated June 11, 2001

By:   
JOHN B. FISCALINI, Trustee

The LAURA A GENASCI IRREVOCABLE  
TRUST under instrument dated September 29,  
2006

By:   
ROBERT A. SCHMIDT, Trustee

The ELAINE C. FISCALINI IRREVOCABLE  
TRUST under instrument dated September 29,  
2006

By:   
ROBERT A. SCHMIDT, Trustee

The BRIAN J. FISCALINI IRREVOCABLE  
TRUST under instrument dated September 29,  
2006

By:   
ROBERT A. SCHMIDT, Trustee