

FEB 27 3 50 PM '91
SECRETARY OF STATE

CERTIFICATE OF LIMITED PARTNERSHIP

AND

LIMITED PARTNERSHIP AGREEMENT

FOR

SMITH-SMITH LIMITED PARTNERSHIP

THIS AGREEMENT, executed the 25th day of September, 1990, by and between RICHARD C. SMITH, General Partner, and CARL H. SMITH, Limited Partner, of Ada County, Idaho, as a limited partnership agreement.

RECITALS

The Partners named below have formed this limited partnership to carry on all general business activities and to exercise any and all privileges or powers now or hereafter conferred by the laws of the State of Idaho, under the Idaho Limited Partnership Act.

In consideration of the premises and the mutual terms, provisions and conditions hereinbelow set forth, the parties hereto certify and AGREE as follows:

ARTICLE I
Formation

1.1 **Formation of Partnership.**

The parties do hereby adopt the foregoing Recitals, and do hereby form a partnership under the Idaho Limited Partnership Act.

1.2 **Name and Registered Agent.**

The name of the Partnership shall be Smith-Smith Limited Partnership and the Registered Agent of said Limited Partnership is Richard C. Smith whose address is 956 Benjamin Lane, Boise, Idaho 83704.

1.3 Term of the Partnership.

The Partnership shall commence on the date of this agreement and shall continue from such date until terminated as hereinafter provided.

1.4 Partners Designated.

The Partners of Smith-Smith shall be Richard C. Smith, General Partner, 956 Benjamin Lane, Boise, Idaho 83704, and Carl H. Smith, Limited Partner, 6808 Fairview Ave., Boise, Idaho 83704.

1.5 Purposes and Powers.

(a) General. The purpose of the Partnership, the businesses to be carried out and the objectives to be effected by it are:

(1) To own and maintain a parcel of real estate which shall be leased to Richard C. Smith and or entitles Richard C. Smith controls to conduct a business or businesses.

(2) To make, perform and carry out contracts of every kind and description made for the specific purpose as outlined in subsection 1.5 (a)(1) above, with any person, firm, association or corporation, either public or private, or with any territory or government, or any agency thereof.

(3) To have one or more offices to carry on all or part of its operation and business and to do all and everything necessary, suitable, convenient or proper for the accomplishment of the specific purpose as outlined in subsection 1.5 (a)(1) above.

(b) Other Properties. The partnership shall not acquire any additional property without the prior written consent of the partners owning at least fifty-one percent (51%) of the outstanding interest in the partnership at the time the consent is given. Further, no partner shall have the authority or power to engage the partnership in any other transaction or activity whatsoever except as may be specifically authorized pursuant hereto. In the event that a partner does so engage the partnership without proper authorization, such engagement shall be void as against the partnership and the other partner, and it shall be said partner's sole liability and responsibility, and he will protect, indemnify and save harmless the other partner from any liability obligation, expenditure or other responsibility whatsoever arising as a result of

such unauthorized acts, including all costs and attorney's fees incurred by or on behalf of the partnership in protecting itself from said unauthorized acts.

ARTICLE II
Rights, Powers & Duties of Partners

2.1 Management of Partnership Business.

Manager. Richard C. Smith shall be designated as manager of the partnership, with authority and duties as the partners shall from time to time prescribe.

2.2 Signature Authorization

It is agreed that any documents, contracts, agreements, notes, mortgages or other written agreement may be executed by the manager of the Partnership.

2.3 Salaries

None of the Partners, regardless of their various classifications and responsibilities, shall receive any salary from the Partnership. All compensation to Partners shall be in the form of a distribution of Partnership net profits, as hereinafter set forth.

2.4 Other Matters

(a) A person dealing with the Partnership may rely upon this Partnership Agreement as setting the authority forth of any Partner to take any action or make any decision hereunder, or to bind the Partnership to any agreement, arrangement or transaction.

(b) The Partners shall use their best efforts to carry out the purposes, business and objectives of the Partnership, and shall devote such time and effort as is reasonably necessary to accomplish the purposes of the Partnership. It is understood and agreed that in no event shall any Partner be expected or required to devote full time to the business of this Partnership.

ARTICLE III
Capital

3.1 Initial Capital of the Partnership

The initial capital of the Partnership will be contributed as agreed upon by the Partners and entered into the Partnership accounts as previously established. The initial contribution by Carl H. Smith shall be \$15.00 in cash. The initial contribution of Richard C. Smith shall be \$85.00 in cash.

3.2 Subsequent Changes and Determinations of Capital

(a) The capital account of each Partner shall consist of his original capital contribution, as required by paragraph 3.1, plus any additional contributions to the Partnership made thereafter (other than those transfers, if any, made by a Partner to the Partnership which would be designated as loans) plus such a Partner's share of net income, if any, as computed according to Article IV, less such Partner's share of the Partnership's net loss, if any, computed according to Article IV.

(b) The capital account of any Partner, including any additional or substitute Partner, who shall receive an interest in the Partnership or whose partnership interest shall be increased by means of transfer to him of all or part of the partnership interest of another Partner shall reflect such increase. Likewise, transfers from one Partner to another Partner, including additional or substituted Partners, shall be reflected as a decrease in the capital account of the transferor.

3.3 Additional Contributions

Additional contributions may be made as agreed upon by the partners, and the same will be reflected in the partnership accounts.

ARTICLE IV
Profits, Losses and Distributions

4.1 Determination and Allocation of Profit and Loss

(a) Net income or loss of the Partnership shall be determined by partnership accounts in accordance with generally accepted accounting principles as agreed upon by the Partners and applied on a consistent basis.

(b) The individual percentage interest of the partners in the partnership profits and losses shall be determined by dividing the total capital of the partnership into the individual partner's capital account at the time of the computation of the profits and losses. The initial individual percentage interests in the partnership shall be as set forth in the signature page to this Agreement.

(c) Subparagraphs (a) and (b) shall not be interpreted so as to preclude an election under the Internal Revenue Code of 1986, as amended.

4.2 Distributions

(a) No distribution shall be made to a partner except as authorized by the partners.

4.3 Indemnification and Partner Liability

The partners hereby agree that the liability of Carl H. Smith shall not exceed \$250,000.00 and Richard C. Smith shall hold Carl H. Smith from any liability in excess of said amount.

ARTICLE V Withdrawal, Assignments and Admissions

5.1 General

A partner shall not withdraw from the partnership, nor sell or assign his partnership interest (whether voluntary or involuntary), except under the provisions of this Article V. No additional partners shall be admitted to the partnership, except as expressly provided herein.

5.2 Authorized Transfers

(a) With the prior written consent of all of the other Partners, a Partner may sell his interest under this agreement, subject to the provisions hereof.

(b) Any assignee, distributee, legatee, transferee or other person taking an interest in the Partnership, pursuant to the provisions of subparagraph (a) hereof, shall be entitled to share in the profits, losses and management of the Partnership to the extent of the interest transferred.

(c) Notwithstanding anything contained herein, the initial partners may, by devise, gift or bequest, transfer all or a portion of their partnership interest to their respective spouses or children without first obtaining the prior written consent of the remaining partners, except that for a period of one (1) year

following any such transfer, any remaining partner may serve written notice upon the transferee and the transferor partner informing them that said remaining partner has elected to treat such transfer as an event of dissolution, within the meaning of paragraph 5.5 hereinbelow, in which case the provisions of paragraph 5.5 shall be applicable and shall permit the remaining partner to acquire the partnership interest transferred pursuant to this subparagraph.

5.3 Right of First Refusal

(a) Except as provided in this Agreement, no Partner may sell, assign or otherwise transfer all of his interest in the Partnership (whether for consideration or otherwise), nor shall any interest be pledged, hypothecated, passed by operation of law or otherwise disposed of, directly or indirectly, all stated without limitation, unless all of the Partners have agreed thereto in writing, in which case the provisions of the following subsections shall apply to such transaction. Upon the death of either partner the survivor shall have the right to purchase the deceased partner's interest in the partnership for the amount equal to the amount which the deceased partner had contributed to the partnership. Said right to purchase a deceased partner's share shall again arise upon the death of a spouse of a deceased partner if the surviving partner did not exercise such right upon the death of a deceased partner.

(b) Any partner desiring to sell all of his interest in the Partnership hereafter in this paragraph 5.3 shall, after obtaining written consent of all Partners, first by means of an offer in writing offer the interest to the other Partners hereafter in this paragraph 5.3 at the same price and term offered to or by a bona fide prospective purchaser of said offered interest; the other partners may request such reasonable evidence as they desire to establish that it is a bona fide offer at such price and terms, including but not limited to, the offeror's name and address.

(c) The other partners shall have, initially, thirty (30) days after receipt of such written offer within which to elect to purchase the offered interest, in the same ratio as their then ownership bears to the total ownership excluding the offered interest, such election to be evidenced and exercised by written notices, effective when mailed.

(d) If the other partners indicate a desire to purchase collectively less than the offered interest, then those who shall have committed to participate in the purchase shall be afforded purchase of the Offered interest. The aforementioned commitment to increase the purchase of the offered interest need not be proportionate to the selling partner's interest in the partnership. If, after such additional period, the election to purchase by the other partners is not in the aggregate an election to purchase all of the offered interest, then this right of first refusal shall expire and be voided, and no other partner (regardless of any election he shall have made) shall have any rights whatsoever to purchase all or any part of the offered interest; provided, however, that the sale of the offered interest, upon the same terms and conditions as originally set forth in the offer, must then be made to the bona fide prospective purchaser within one hundred twenty (120) days of the date of delivery of the notice set forth in subparagraph (b) above. Satisfactory evidence of said sale to the bona fide purchaser upon the same terms and conditions as originally set forth in the offer must be provided to the remaining partners. If the sale is not made to the bona fide prospective purchaser within the 120-day period, said offered interest must be re-offered to the other partners and the provisions of paragraph 5.3(a) through (e) shall again control.

(e) If the right of first refusal is thus exercised by the other partners, they shall purchase the offered interest on such offered terms and conditions within thirty (30) days after the determination is made as to who shall be the purchasers pursuant to the foregoing provisions.

5.4 Obligations and Rights of Transferees

(a) Any person or other entity who acquires in any manner whatsoever any partnership interest, irrespective of terms and provisions of the partnership agreement, shall be deemed by the acceptance of the benefit of the acquisition thereof to have agreed to be subject and bound by all the obligations of the partnership agreement with the same force and effect as any predecessor in interest of such person. Moreover, neither the Partnership nor any partner shall be bound by any sale, assignment, transfer, pledge, distribution, devise, or other means by which any person or entity acquires said interests in the Partnership, whether voluntary or by operation of law, (and any such sale, assignment, transfer or other means of

acquisition shall be void and ineffective) until said person or entity executes and delivers to the Partnership a counterpart of the Partnership Agreement.

(b) A person acquiring an interest in the Partnership, including but not limited to the personal representative and heirs of a deceased partner, shall have only such rights and shall be subject to all the obligations as provided in this agreement.

5.5 Termination and Liquidation

(a) Events Causing Termination. The Partnership shall be terminated and its affairs wound up upon:

- (1) The sale of all or substantially all of its assets; or
- (2) The bankruptcy, insolvency, death or adjudication of insanity or incompetency of a partner, and without requiring a separate court decree of dissolution; or
- (3) The mutual written consent of all of the partners; or
- (4) The occurrence of any event or the taking of any action which shall be a cause for dissolution under Idaho law at the time of such occurrence or act, unless otherwise expressly provided herein. An authorized transfer pursuant to this Agreement, or withdrawal of a Partner pursuant to this Agreement shall not constitute an event causing termination (unless only one (1) partner remains.)

(b) Actions Upon Termination

(1) Upon the termination of the Partnership, an audit shall be taken by the Partnership's designated certified public accountant, and any profits or losses incurred since the last previous valuation date shall be allocated as herein provided, and any cash flow remaining undistributed shall be distributed as herein provided. The Partners of such other person required by law to carry out the winding up, shall wind up and liquidate the Partnership by selling the Partnership's assets (unless it distributes the assets in hand) and distributing the net proceeds therefrom as provided below.

(2) If the assets of the Partnership are to be distributed as provided in this paragraph, adequate provision shall be made for the payment of the debts and obligations of the Partnership, including all expenses, costs and fees incurred in connection with the winding up, and the remaining assets of the Partnership shall be distributed in the following order of priority, and in satisfaction of all partners' interests in the partnership:

(a) First, to the setting up of any reserve which the Partners shall reasonably deem necessary to provide for any contingent or unforeseen liabilities or obligations of the Partnership. At the expiration of such period of time as the Partners shall deem advisable, the balance of such reserve remaining after the payment of such contingencies shall be distributed in the manner hereinafter set forth.

(b) Second, the balance of such assets shall be distributed to all the Partners, pro rata in accordance with their respective capital account balances as of the date of distribution.

(c) If the Partners, or such other person as is required by law to wind up the affairs, shall determine that all of the assets of the Partnership shall be distributed in kind, such assets shall be distributed on the basis of the then fair market value thereof.

(d) A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities, so as to minimize the normal losses attendant upon a liquidation.

(3) Within thirty (30) days after receipt of a copy of said audit, each remaining partner may elect to purchase all or any portion of the partnership interest of the outgoing partner, which shall be equal to the ratio between the share of such remaining partner in the profits and losses and the aggregate of the shares in the profits and losses of all the remaining partners therein.

(a) At the expiration of the first option period, there shall be a second option period of thirty (30) days during which the remaining partners may arrange among themselves to elect to purchase, in whatever proportions they may agree upon, such portions of the interest of the outgoing partner which may remain unpurchased.

(b) Exercise of any option hereunder shall be evidenced by the service of written notice upon the partnership within the option period.

(c) Each remaining partner shall be liable to pay to the outgoing partner a portion of the purchase price for the interest of the outgoing partner proportionate to the share, if any, purchased by such remaining partner.

(d) The purchase price payable for each share purchased by a remaining partner shall be paid in ten (10) semiannual installments, commencing six (6) months after said date of notice of dissolution or one (1) month after expiration of the last option whichever shall first occur. The obligation to pay such purchase price shall bear interest at the prime rate charged by West One Bank, effective on the date of the notice of dissolution; such interest shall be paid current on each installment payment date. The installments may be prepaid in whole or in part any time without penalty.

(4) In the event there is a failure on the part of the remaining partners to elect to purchase the entirety of the interest of the outgoing partner, all exercises of options, if any, made pursuant to the above provisions shall be deemed to be rescinded and to be null and void and of no effect, and the partnership shall terminate at the end of the calendar year in which notice of dissolution was received, or at the end of the calendar year in which notice of dissolution was received, or at the end of any calendar month occurring after receipt, of said notice of dissolution, not to exceed twelve (12) calendar months, whichever the remaining partners shall decide. In such event, an orderly liquidation of the partnership shall take place.

(5) In the event there shall be an exercise of options provided in subparagraph (4) above so that the entire interest of the outgoing partner in the partnership is purchased by one or more of the remaining partners, the outgoing partner shall have a security interest under the relevant sections of the Uniform Commercial Code over said interest so sold to secure payment of the purchase price, and shall look only to the respective purchasers of said interest, or portions thereof, for payment of the purchase price in accordance herewith, and shall have no further claim against the partners or the partnership. The remaining partners shall continue the business of the partnership subject to all of the terms, provisions and conditions of this Agreement, amended to give effective to the respective interests of the remaining partners in the partnership, appropriately adjusted to give effect to the foregoing.

5.6 Mandatory Sale to Offering Partner

(a) Any partner ("offering partner") may at any time deliver a notice in writing ("offering notice") to each of the other partners ("remaining partners") stating the price, terms and conditions on which said offering partner offers to sell his partnership interest to the remaining partners. Said price shall not be less than the prorated value of such interest based upon the value of the partnership last agreed upon by the partners, as provided in paragraph 5.5 above. Said offer may not be withdrawn for a period of sixty (60) days ("offer period") after delivery of the offer notice. The failure of the remaining partners to accept the offer within the offer period shall be deemed an offer by the remaining partners to sell their

interests in the partnership to the offering partner on the terms and conditions stated in the offer notice, at a price proportionately equal to the price set forth in the offer notice. The offering partner shall have a period of thirty (30) days following the expiration of the offer period within which to exercise his right to purchase the remaining partners' interests by delivering written notice of such exercise to the remaining partners.

ARTICLE VI FISCAL MATTERS

6.1 Books and Records

The Partnership shall maintain full and accurate books of the Partnership at the Partnership's principal place of business, showing all receipts and expenditures, assets and liabilities, profits and losses, and all other records necessary for recording the Partnership's business and affairs, including those sufficient to record the allocations and distributions. Each partner shall at all times during regular business hours have access to and may inspect and copy any of such books and records. All costs and expenses actually and necessarily incurred of keeping such books of account shall be treated as a Partnership expense.

6.2 Bank Accounts and Investment of Funds

All funds of the Partnership shall be deposited in its name in such checking and savings account or time deposit or certificate of deposit as shall be determined by a majority vote of the Partners.

6.3 Accounting Decisions

All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made jointly by the Partners in accordance with generally accepted accounting principles consistently applied. Such decisions must be acceptable to the certified public accountants performing any audits.

6.4 Tax Election

In the event of a transfer of all or part of the partnership interest of any partner, the partnership may elect, pursuant to Section 754 of the Internal Revenue Code of 1986, as amended (or corresponding provisions of future law) to adjust the basis of the assets of the partnership.

ARTICLE VII
General Provisions

7.1 Notices

Except as otherwise provided in this agreement, any and all notices, consents, waivers, directions, requests, votes or other instruments or communications provided for under this agreement and directed to the partnership shall be in writing, signed by the party giving the same and shall be deemed properly given if delivered or if sent by certified United States mail, postage prepaid, addressed to the partnership at the principal place of business of the partnership or if said documents are to be delivered to a partner they shall be in writing and personally delivered to the partner or shall be deemed delivered if mailed by United States mail, certified, return receipt requested and addressed to the partner's last known residential address.

Any notice so given shall be deemed to have been received as of the date on which it was mailed. Each partner may, by written notice to the partnership, specify his address for the receipt of such instruments or communications to him.

7.2 Integration

This agreement embodies the entire agreement and understanding among the partners relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter.

7.3 Applicable Law

This agreement and the rights of the partners shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.

7.4 Counterparts

This agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties hereto.

7.5 Separability

In case of one or more of the provisions contained in this agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or unenforceability of the

remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

7.6 Binding Effect

Except as herein otherwise provided to the contrary, this agreement shall be binding upon, and inure to the benefit of, the partners and their respective heirs, executors, administrators, successors and permitted assigns.

7.7 Further Assurances

The partners will execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this agreement.

7.8 Captions

Captions and headings contained in this agreement are inserted only as a matter of convenience, and in no way define, limit, extend or describe the scope of this agreement or the intent of any provision thereof.

7.9 Benefit

None of the provisions of this agreement shall be for the benefit of or enforceable by any creditors of the partnership.

7.10 Amendment

This agreement may not be modified or amended except in writing and with the written consent of all Partners.

7.11 Knowledge

Each of the Partners and their spouses hereby acknowledges that prior to their execution hereof, there has been made available to them for inspection, the various provisions and agreements referred to herein.

7.12 Titles

No agent, employee or associate of the Partners shall have any official title (e.g., President, Vice-President, General Manager, etc.) without the express written consent of the Partners.

IN WITNESS WHEREOF, the parties have executed this agreement on the date and year first above-written.

Richard C. Smith

RICHARD C. SMITH
Initial Individual Percentage: 85%

Carl H. Smith

CARL H. SMITH
Initial Individual Percentage: 15%

STATE OF IDAHO)
)
) ss.
)
County of Ada)

On this 25 day of September, 1990, before me, the undersigned, a notary public in and for the State of Idaho, personally appeared RICHARD C. SMITH, known to me to be the persons, whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Lanette Marcum

Notary Public for Idaho
Residing at Boise, Idaho
Comm exp 10/92

STATE OF IDAHO)
)
) ss.
)
County of Ada)

On this _____ day of September, 1990, before me, the undersigned, a notary public in and for the State of Idaho, personally appeared CARL H. SMITH, known to me to be the persons, whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Lanette Marcum

Notary Public for Idaho
Residing at Boise, Idaho
Comm exp 10/92

JOINDER OF SPOUSES OF PARTNERS

The undersigned, being the respective spouses of each of the partners, hereby join in executing and acknowledging this instrument for the purpose of allowing said partners and/or the partnership created by the foregoing Agreement to sell, convey and/or encumber any real estate held in the name of the partnership, it being understood and agreed that any such real estate shall constitute partnership property and not community property within the meaning of Idaho Code § 32-912. It is expressly contemplated and agreed that although a partners' partnership interest may be community property, any partnership real property shall constitute the property of the partnership and not the community property of the spouses, and only the signatures of the partners and not the signatures of their spouses shall be required on any deed, mortgage, trust deed, or other instrument encumbering or conveying partnership property. Each of the undersigned spouses does hereby release and grant to the partnership all interest and title to any real property held in the partnership name.

Jill Smith
JILL SMITH

Alma B. Smith
ALMA B. SMITH

STATE OF IDAHO, COUNTY OF *Ada*
On this *25th* day of *September*, 19*90*.
before me, a notary public in and for said State, personally
appeared *Jill Smith + Alma B. Smith*
known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to me
that *Janey* executed the same.
Janey Marcum Notary Public
Residing at *Boise*, Idaho
Comm. Expires *10/92*