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SECRETARY OF STATE

**GEOBON II ASSOCIATES LIMITED PARTNERSHIP**  
(An Idaho Limited Partnership)

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**AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP**

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**GEOBON II ASSOCIATES LIMITED PARTNERSHIP**  
(An Idaho Limited Partnership)

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**AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP**

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**THIS AGREEMENT** is made as of the 1st day of September, 1986, by and among **WESTERN HYDROPOWER CO., INC.**, an Idaho corporation, as General Partner; and the Persons listed on Exhibit 1 hereto, as Limited Partners.

**RECITALS:**

A. The parties hereto wish to create "Geobon II Associates Limited Partnership" as an Idaho limited partnership (the "Partnership");

B. The purpose of the Partnership is to acquire, own, finance, lease, manage and otherwise operate a one-megawatt low head hydroelectric facility located near Twin Falls, Lincoln County, Idaho, currently known as the "Geobon II Facility" (the "Project"), and to engage in any lawful activity related thereto; and

C. The parties hereto desire to enter into this Agreement and Certificate of Limited Partnership in order to set forth the rights and obligations of the parties hereto with respect to the Partnership;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound hereby, agree and certify as follows:

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**ARTICLE I - FORMATION AND CONTINUATION**

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**1.01 Continuation.** The parties hereto hereby form the Partnership as a limited partnership under the Act. The General Partner shall take all action required by law to perfect and maintain the Partnership as a limited partnership under the Act and under the laws of all other jurisdictions in which the Partnership may elect to conduct business. The General Partner shall also promptly register the Partnership under applicable assumed or fictitious name statutes or similar laws.

**1.02 Name.** The name of the Partnership shall be "Geobon II Associates Limited Partnership," which name may be changed by the General Partner and Notice of such change shall be given to all Partners.

**1.03 Principal Office.** The principal office of the Partnership shall be located at 1200 Quail Street, Suite 260, Newport Beach, California 92660. The

General Partner may change the location of the Partnership's principal office and may establish such additional offices of the Partnership as it may from time to time determine and Notice thereof shall be given to all Partners.

**1.04 Registered Office and Resident Agent.** The registered agent and registered office of the Partnership in the State of Idaho shall be United States Corporation Company, 1010 First Interstate Building, Boise, Idaho 83701. The General Partner may change the registered office and registered agent of the Partnership in accordance with the requirements of the Act as it may from time to time determine and Notice of such change shall be given to all Partners.

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## **ARTICLE II - INTERPRETIVE PROVISIONS**

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**2.01 Certain Definitions.** The following terms have the definitions hereinafter indicated whenever used in this Agreement with initial capital letters:

**Accountants:** The independent certified accountants for the Partnership selected by the General Partner.

**Act:** The Idaho Revised Uniform Limited Partnership Act, as it may be amended from time to time.

**Additional Limited Partners:** The Persons admitted to the Partnership pursuant to Article 4.03, and their successors who become Substitute Limited Partners.

**Affiliate:** With respect to any referenced Person, (i) such Person or a member of his immediate family, (ii) a legal representative, successor or assignee of the referenced Person in clause (i) above, (iii) a trustee of a trust for the benefit of the referenced Person in clauses (i) and (ii) above, (iv) a Person who directly, or indirectly through intermediaries, controls, is controlled by or is under control with the referenced Person in clauses (i) through (iii) above, where "control(s)(led)" means 10% or more ownership of voting power or beneficial interest, or (v) an officer, director, trustee, employee, stockholder of 10% or more of the voting stock, or partner of the referenced Person in clauses (i) through (iv) above.

**Agreement:** This Agreement and Certificate of Limited Partnership, as it may be amended from time to time.

**Bankruptcy:** With respect to any Person, (i) such Person filing a petition commencing a case as a debtor under the Bankruptcy Code, or the commencement of an involuntary case against such Person under the Bankruptcy Code and the earlier of the entry of an order for relief or the appointment of an interim trustee to take

possession of such Person's estate and/or to operate such Person's business, (ii) such Person making a general assignment for the benefit of creditors, (iii) such Person consenting to the appointment of a receiver for all or a substantial part of its property, (iv) the entry of a court order appointing a receiver or trustee for all or a substantial part of such Person's property without its consent or (v) the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of such Person's property.

**Capital Account:** The account maintained by the Partnership for each Partner in accordance with Treasury Regulation 1.704-1(b) which, as of any given date, reflects his actual Capital Contributions paid to the Partnership (which for this purpose shall include "deemed" contributions of property to the Partnership under Section 708 of the Code), less the portion thereof used to pay any selling commissions and related expenses, (i) increased to reflect his allocable share of Partnership income (including tax-exempt income), gain or profit for each Fiscal Year (or fraction thereof), and (ii) decreased to reflect his allocable share of Partnership tax losses and deductions for each Fiscal Year (or fraction thereof), his allocable share of expenditures described in Section 705(a)(2)(B) of the Code and distributions of cash or property by the Partnership to him.

**Capital Contributions:** The total amount of money or other property contributed or agreed to be contributed, as the context requires, by each Partner to the Partnership pursuant to the terms of this Agreement, including the Capital Contribution made by a predecessor holder(s) of the Interest of such Partner, unless the context requires otherwise. The term "Capital Contribution" shall not include any advances to the Partnership, whether from a Partner or otherwise.

**Capital Transaction:** A sale or other disposition of Partnership assets or a refinancing of Partnership debts.

**Cash Flow:** With respect to any Fiscal Year or other accounting period designated by the General Partner, the sum of all cash receipts of the Partnership, other than Capital Contributions and similar items, including revenues from normal operations or Capital Transactions and any reserves previously set aside from Cash Flow which are deemed available for distribution by the General Partner or Liquidator.

**Certificate:** This Agreement and Certificate of Limited Partnership, as it may be amended from time to time in accordance with this Agreement.

**Closing:** The date on which the Partnership leased the Land and acquired the Project from Conversion.

**Code:** The Internal Revenue Code of 1954, as amended from time to time, and all published rules, rulings and regulations thereunder.

**Consent:** Either the written consent of a Person or the affirmative vote of such Person at a meeting duly called and held pursuant to this Agreement, as the case may be, to do the act or thing for which the consent is required or solicited, or the act of granting such consent, as the context may require.

**Conversion:** Conversion Industries USA Inc., a California corporation.

**Counsel:** Dunnells, Duvall, Bennett & Porter, Washington, D.C., or such other attorneys selected for the Partnership by the General Partner.

**Deferred Purchase Price:** The portion of the Purchase Price payable subsequent to the Closing.

**Designated Rate:** An interest rate equal to the prime rate of United Mercantile Bank and Trust, Pasadena, California in effect from time to time for 90-day unsecured commercial loans to customers enjoying the highest credit rating.

**Enright:** Enright & Company, a New Jersey limited partnership.

**Fiscal Year:** The calendar year or such other 12-month period designated by the General Partner.

**General Partner:** Western Hydropower Co., Inc., an Idaho corporation.

**Ground Lease:** The agreement between the Partnership and Conversion for the lease of the Land and attached water rights.

**Ground Rent:** The lease payments payable under the Ground Lease.

**Interest:** The percentage of ownership interest of a Partner in the Partnership at any particular time, including the right of such Partner to share Tax Allocations, Net Cash Flow and all other benefits to which such Partner may be entitled as provided in this Agreement and in the Act, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement and of said Act, which percentage interest for voting and certain other purposes of this Agreement shall be as set forth in Exhibit 1 hereto, absent documentary proof to the contrary.

**Investor Limited Partners:** The Persons admitted to the Partnership pursuant to Article 4.02, and their successors who become Substitute Limited Partners.

**Investor Notes:** The promissory notes executed by Investor Limited Partners to evidence their deferred installments of Capital Contributions.

**IRS:** The United States Internal Revenue Service.

**Land:** The parcel of land located in Twin Falls, Lincoln County, Idaho, leased to the Partnership under the Ground Lease.

**Limited Partner(s):** The Investor Limited Partners, any Additional Limited Partners and any Substitute Limited Partners.

**Liquidator:** The General Partner or, if there is none at the time in question, such other Person who may be appointed in accordance with applicable law, who shall be responsible for taking all necessary or appropriate action to wind up the affairs of, and distribute the assets of, the Partnership upon its dissolution in accordance with this Agreement.

**Loan Closing:** The date on which the Partnership obtained the proceeds of the Mortgage Loan.

**Minimum Gain:** The excess of the outstanding principal balance of the nonrecourse debt secured by Partnership property (excluding any portion of the principal balance which would not be treated as an amount realized under Section 1001 of the Code if the debt were foreclosed upon) over the adjusted basis of such property for federal income tax purposes.

**Mortgage Loan:** The loan obtained by the Partnership secured by its assets for the purpose of acquiring the Project (and related security instruments including, without limitation, the promissory note and deed of trust); and any refinancing or modification thereof or substitution therefor.

**Mortgagee:** The mortgagee under the Mortgage Loan.

**Net Cash Flow:** Cash Flow, less expenses and expenditures payable therefrom (and not from Capital Contributions) including, without limitation, (i) Ground Rent, (ii) fees payable to the General Partner and its Affiliates, including the Partnership Management Fee and Project Management Fee, (iii) other operating expenses, (iv) principal and interest due on Partnership obligations, including the Mortgage Loan, the Deferred Purchase Price and any loans or advances by Partner(s), (v) capital expenditures in excess of available reserves, and (vi) reserves deemed reasonably necessary by the General Partner or Liquidator.

**Notice:** A writing containing the information required by this Agreement to be communicated to a Person and personally delivered to such Person or sent by registered or certified mail, postage prepaid, return receipt requested, to such Person at the last known address of such Person as shown on the books of the Partnership, the date of personal delivery, registry or of the certification receipt, as the case may be, being deemed the date of such Notice; provided, however, that any written communication containing such information actually received by a Person shall constitute Notice for all purposes of this Agreement.

**Partner(s):** The General Partner and Limited Partners.

**Partnership:** The Idaho limited partnership referred to herein as "Geobon II Associates Limited Partnership," as said limited partnership may from time to time be constituted.

**Partnership Management Fee:** The annual fee payable to Conversion (or such other Person engaged by the Partnership) for managing the affairs of the Partnership.

**Person:** Any individual, partnership, corporation, trust or other entity.

**Project:** The one-megawatt low head hydroelectric facility located on the Land and the Little Wood River in Twin Falls, Lincoln County, Idaho (and all related improvements, fixtures, personal property, appurtenant water rights and licenses and all other appurtenances used in connection therewith) currently known as the "Geobon II Facility."

**Project Management Fee:** The annual fee payable to the Project Manager for managing the Project.

**Project Manager:** Arkoosh & Zidan, Inc., or any other Person engaged by the Partnership to manage the Project.

**Purchase Price:** The purchase price payable by the Partnership to Conversion for the Project.

**Securities Act:** The Securities Act of 1933, as amended, and all rules, rulings and regulations thereunder.

**Special Limited Partner:** Any assignee of a General Partner pursuant to Articles 8.01, 9.01, 9.02 and 9.03 who is not admitted to the Partnership as a Successor General Partner, and any successor who becomes a Substitute Limited Partner.

**Substitute Limited Partner:** Any Person who is an assignee or successor of a Limited Partner and is admitted to the Partnership pursuant to Article 8.02.

**Successor General Partner:** Any Person who is admitted to the Partnership as a substitute General Partner pursuant to Article 9.05.

**Tax Allocations:** The income, gains, profits, losses, deductions and credits allocable to Partners for income tax purposes pursuant to Article 5.01.

**Tax Matters Partner:** The General Partner.

**2.02 Rules of Construction.** The following rules of construction shall apply to this Agreement:

(A) All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

(B) All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.



(C) Each provision of this Agreement shall be considered severable from the rest and if any provision of this Agreement or its application to any Person or circumstances shall be held invalid and contrary to any existing or future law or unenforceable to any extent, the remainder of this Agreement and the application of any other provision to any Person or circumstances shall not be affected thereby and shall be interpreted and enforced to the greatest extent permitted by law so as to give effect to the original intent of the parties hereto.

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### ARTICLE III - BUSINESS PURPOSE

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**3.01 Business.** The business of the Partnership shall be to (i) own, finance, manage, lease and otherwise operate the Project, (ii) dispose of the Project in appropriate circumstances and (iii) engage in any other kind of lawful activity for profit related to the foregoing.

**3.02 Authorized Activities.** In carrying out the purposes of the Partnership, but subject to all other provisions of this Agreement, the Partnership is authorized to:

(A) Enter into such contracts and take such actions as are required to acquire, own and finance the Project including, without limitation, executing documents with respect to the Closing and Loan Closing;

(B) Acquire, lease, hold, sell, transfer or otherwise dispose of the Project or any real or personal property which may be reasonably necessary to the accomplishment of the purposes of the Partnership;

(C) Operate, maintain, finance, improve, buy, own, sell, convey, assign, mortgage or lease any real estate and any personal property reasonably necessary to the accomplishment of the purposes of the Partnership;

(D) Execute all documents and perform all functions permitted or required of a general partner of the Partnership, as more particularly set forth in this Agreement;

(E) Borrow money, by assuming obligations or otherwise, and issue evidences of indebtedness in furtherance of any or all of the purposes of the Partnership, and to secure the same by mortgage, pledge or other lien on any other assets of the Partnership;

(F) Establish such reserves as the General Partner deems necessary for the conduct of the Partnership's business;

(G) Sell, exchange, dispose of, prepay in whole or part, refinance, recast, increase, modify, or extend mortgages affecting all or any part of Partnership property, and obtain additional or substitute mortgages, and in connection therewith execute any extensions, renewals or modifications of any mortgage or deed of trust;

(H) Employ Persons in the operation and management of the business of the Partnership including, without limitation, Conversion, the Property Manager, Enright, attorneys, accountants, mortgage bankers, financial advisors, insurance brokers and real estate brokers;

(I) Hold title to Partnership property in the names of nominees or trustees for any purpose convenient or beneficial to the Partnership;

(J) Enter into, perform, deliver and carry out contracts, certificates and instruments of any kind, including contracts with Affiliates of the General Partner pursuant to Article 6.03, and grant powers of attorney in connection therewith, necessary or incidental to the performance thereof and the accomplishment of the purposes of the Partnership;

(K) Bring, defend, pay, extend, renew, modify, adjust, submit to arbitration, prosecute or compromise any obligation, suit, liability, cause of action or claim with respect to the Partnership;

(L) Sell, issue, purchase, cancel, or dispose of Interests pursuant to the express provisions of this Agreement;

(M) Make interim investments in government obligations, insured obligations, certificates of deposit bankers', acceptances and other interest-bearing or non-interest bearing accounts;

(N) Lend money in furtherance of the Partnership's business; and

(O) Engage in any kind of lawful activity, and perform and carry out contracts of any kind, necessary or advisable in connection with the accomplishment of the purposes of the Partnership.

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#### **ARTICLE IV - PARTNERSHIP INTERESTS AND CAPITAL**

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**4.01 General Partner.** The General Partner, its address, Capital Contributions heretofore made in cash, and Interest are set forth in Exhibit 1 attached hereto. The General Partner is not obligated to make additional Capital Contributions to the Partnership.

#### 4.02 Investor Limited Partners.

(A) The Investor Limited Partners, their addresses, Capital Contributions and Interests are set forth in Exhibit 1 attached hereto. The aggregate Interest of the Investor Limited Partners is 99%. The Investor Limited Partners shall make \$650,000 of Capital Contributions to the Partnership. Each Investor Limited Partner shall make Capital Contributions in an amount equal to the portion of each installment below when due that his Interest bears to 99%:

<u>Date</u>	<u>Contribution</u>
(1) Upon execution of this Agreement . . . . .	\$ 65,000
(2) On June 1, 1987 . . . . .	225,000
(3) On June 1, 1988 . . . . .	120,000
(4) On June 1, 1989 . . . . .	120,000
(5) On June 1, 1990 . . . . .	<u>120,000</u>
Total . . . . .	<u>\$ 650,000</u>

(B) Upon execution of this Agreement, each Investor Limited Partner shall deliver his Investor Note to the Partnership, which evidences his obligation to make Capital Contributions (without interest) pursuant to Articles 4.02(A)(2) through (5). The Investor Limited Partners hereby (i) Consent to the assignment, hypothecation or pledge of the Investor Notes by the Partnership in payment for the Project, as security for the Mortgage Loan and/or Deferred Purchase Price or otherwise, (ii) recognize any security interest in such notes of any assignee and (iii) agree not to modify or alter such notes in any way.

**4.03 Additional Limited Partners.** If the General Partner determines that additional capital is required by the Partnership, the General Partner shall be entitled to admit Additional Limited Partners to the Partnership without the Consent of the Limited Partners; provided, however, that the Interest of each Limited Partner shall not be reduced by more than 25% as a result of the sale of such additional Interests. The General Partner shall be entitled to determine the terms and conditions of the admission of the Additional Limited Partners and shall give Notice thereof to the Limited Partners, including (i) the amount of capital to be provided by the Additional Limited Partners, (ii) the proposed uses of such capital, (iii) the Interests to be allocated to the Additional Limited Partners and (iv) the dilution of the Interests of the Investor Limited Partners. Before additional Interests are offered to any other Persons pursuant to this Article 4.03, such additional Interests shall first be offered to the Investor Limited Partners, pro rata in accordance with their Interests, for a 45-day period commencing after the General Partner provides Notice to all Investor Limited Partners of its intent to offer such additional Interests. This Agreement shall be amended from time to time as required to reflect the admission of Additional Limited Partners pursuant to this Article 4.03.

#### **4.04 Default by Investor Partners.**

(A) If an Investor Limited Partner fails to pay any Capital Contribution when due, he shall be in default. Any such Capital Contribution in default shall accrue interest from the date of default at the rate of 18% per year, or such lesser maximum interest rate permitted by applicable law. Upon the occurrence of a default pursuant to this Article 4.04(A), the General Partner or its nominee shall have the option to purchase the Interest of the defaulting Investor Limited Partner at a purchase price equal to the fair market value of such Interest as determined by the General Partner in its sole discretion. The option granted by this Article 4.04(A) may be exercised by the General Partner or its nominee by giving Notice to the defaulting Investor Limited Partner of its election to purchase the Interest of such defaulting Investor Limited Partner at any time after the expiration of 14 days from the date of default. Once the General Partner or its nominee exercises the option granted pursuant to this Article 4.04(A), the defaulting Investor Limited Partner shall have no right to cure such default without the prior written Consent of the General Partner.

(B) The purchase price received for the Interest of a defaulting Investor Limited Partner shall be applied first to the assumption by the purchaser of the defaulting Investor Limited Partner's obligation to make such installments of Capital Contributions which, if not for the default, would have been due subsequent to the date of the default. The balance of such purchase price shall be payable in cash to the Partnership and shall be applied (i) first, to the reimbursement of costs incurred by the Partnership in connection with such default and sale (including reasonable attorneys' fees), (ii) second, to the payment to the Partnership of the interest accrued on the Capital Contributions in default at the rate provided for in Article 4.04(A), (iii) third, to the payment to the Partnership of the Capital Contributions in default, (iv) fourth, to the defaulting Investor Limited Partner, an amount equal to his actual paid-in Capital Contributions and (v) fifth, the balance, if any, to the Partnership.

(C) The purchase of the Interest of the defaulting Investor Limited Partner shall occur at such time and place as determined by the General Partner, but shall occur not earlier than five days after the Notice required by Article 4.04(A) is provided. At the closing of the purchase of the Interest of a defaulting Investor Limited Partner, the purchaser shall pay the purchase price for such Interest as determined pursuant to Article 4.04(A) and the General Partner, acting as attorney-in-fact for the defaulting Investor Limited Partner, shall execute and deliver such agreements, instruments and other documents as the General Partner shall determine are necessary to transfer the Interest of the defaulting Investor Limited Partner to such purchaser. The purchaser of the Interest of a defaulting Investor Limited Partner shall become a Substitute Limited Partner only if the requirements of Article 9.02 are satisfied.

(D) Pending the sale of the Interest of a defaulting Investor Limited Partner pursuant to this Article 4.04, all Tax Allocations and Net Cash Flow allocable to such Interest for the Fiscal Year in which the default occurs and for which no tax return has been filed by the Partnership shall be allocated between the defaulting Investor Limited Partner and the purchaser of his Interest in the manner determined

by the General Partner; provided, however, that in lieu of such an allocation between the purchaser and defaulting Investor Limited Partner, the General Partner may elect to allocate all such Tax Allocations and Net Cash Flow to the remaining Investor Limited Partners not in default. In addition, a defaulting Investor Limited Partner shall have no right to vote or Consent with respect to Partnership matters or inspect the books of the Partnership.

(E) Notwithstanding the existence or exercise of the option to purchase the Interest of a defaulting Investor Limited Partner pursuant to Article 4.04(A), the defaulting Investor Limited Partner shall continue to be liable for all future installments of Capital Contributions except to the extent such installments are paid by the purchaser of his Interest. In addition, all costs and damages, including court costs and legal fees, incurred by the Partnership as a result of a default shall be reimbursed to the Partnership by the defaulting Investor Limited Partner, which obligation shall survive any transfer or purchase of his Interest.

(F) In addition to the option to purchase the Interest of a defaulting Investor Limited Partner pursuant to Article 4.04(A), the General Partner may cause the Partnership to pursue any and all other available legal remedies against such defaulting Investor Limited Partner, including any remedies available to the Partnership as a secured party under the Uniform Commercial Code as in effect in the State of Idaho.

**4.05 Interest.** Interest earned on Partnership funds shall inure to the benefit of the Partnership, and the Partners shall not receive interest on their Capital Contributions.

**4.06 Withdrawal of Capital Contributions.** Except as expressly provided otherwise in this Agreement, (i) no Partner shall have the right to withdraw or reduce his Capital Contributions, (ii) no Partner shall have the right to demand and receive property other than cash from the Partnership in return for his Capital Contributions, (iii) no Limited Partner shall have any priority over any other Limited Partner as to the return of his Capital Contributions or as to compensation by way of income, (iv) no Partner shall be entitled to demand a redemption or repurchase of his Interest and (v) any return of Capital Contributions to the Limited Partners shall be solely from the Partnership assets, and the General Partner shall not be personally liable for any such return.

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## **ARTICLE V - TAX ALLOCATIONS AND CASH DISTRIBUTIONS**

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### **5.01 Tax Allocations.**

(A) The income, profits, gains, losses, deductions and credits of the Partnership for income tax purposes shall be determined by the General Partner or

Accountants and, except as provided in Articles 5.01(B) through (H), shall be allocated (i) 1% to the General Partner and 99% to the Investor Limited Partners, pro rata in accordance with their Interests, through December 31, 1991, and (ii) 30% to the General Partner and 70% to the Investor Limited Partners, pro rata in accordance with their Interests, thereafter.

(B) Gains of the Partnership arising from a Capital Transaction which does not result in a dissolution of the Partnership shall be allocated as follows:

(1) To the Partners who have received a distribution of Net Cash Flow on account of such Capital Transaction, an amount equal to the excess, if any, of such distribution over the positive Capital Accounts of such Partners;

(2) To the Partners with negative Capital Accounts (computed after the allocation under Article 5.01(B)(1)), pro rata in accordance with such negative Capital Accounts, until the negative Capital Account of each Partner is brought to zero, but no gain shall be allocated to a Partner under this Article 5.01(B)(2) once his negative Capital Account is brought to zero; and

(3) The balance, if any, shall be allocated so as to increase each Partner's Capital Account (determined after the allocations under Articles 5.01(B)(1) and (2)) to an amount equal to the Net Cash Flow that would otherwise be distributable to him if such Net Cash Flow equalled the sum of (i) the amount of the gain being allocated pursuant to this Article 5.01(B)(3) and (ii) the aggregate positive Capital Account balances of the Partners (computed after the allocations under Article 5.01(B)(1) and (2)) as of the end of the Fiscal Year in which an event giving rise to such gain occurs.

(C) Gains of the Partnership arising from a Capital Transaction which results in a dissolution of the Partnership shall be allocated as follows:

(1) To the Partners with negative Capital Accounts, pro rata in accordance with such negative Capital Accounts, until the negative Capital Account of each Partner is brought to zero, but no gain shall be allocated to a Partner under this Article 5.01(C)(1) once his negative Capital Account has been brought to zero;

(2) To the Partners who will receive a distribution of Net Cash Flow, an amount equal to the excess, if any, of (i) the sum of the amounts which would have been distributable to them in the event giving rise to such gain had not resulted in a dissolution of the Partnership over (ii) the positive Capital Account balances of such Partners (determined after the allocation under Article 5.01(C)(1)); and

(3) The balance, if any, (i) 1% to the General Partner and 99% to the Limited Partners, pro rata in accordance with their Interests, through December 31, 1991, and (ii) 30% to the General Partner and 70% to the Limited Partners, pro rata in accordance with their Interests, thereafter.

(D) Losses of the Partnership from a Capital Transaction (whether or not resulting in a dissolution of the Partnership) shall be allocated as follows:

(1) To the Partners with positive Capital Accounts (computed prior to reduction to reflect such losses), pro rata in accordance with such positive Capital Accounts, until the positive Capital Account of each Partner is brought to zero, but no losses shall be allocated to a Partner under this Article 5.01(D)(1) once his positive Capital Account has been brought to zero; and

(2) The balance, if any, (i) 1% to the General Partner and 99% to the Limited Partners, pro rata in accordance with their Interests, through December 31, 1991, and (ii) 30% to the General Partner and 70% to the Limited Partners, pro rata in accordance with their Interests, thereafter.

(E) The following provisions shall apply notwithstanding Articles 5.01(A) through (D):

(1) Partners with negative Capital Account balances resulting in whole or in part from allocations of loss or deduction attributable to nonrecourse debt which is secured by Partnership property in excess of the Minimum Gain shall, as rapidly as possible, be allocated income in an amount not less than the lesser of (i) the amount of such negative Capital Accounts and (ii) the Minimum Gain until such negative Capital Accounts are equal to or less than such Minimum Gain;

(2) If a Partner makes loans or other advances to the Partnership to fund operating deficits at a time when all other Partners have negative Capital Accounts, (i) loss or deductions of the Partnership shall be allocated to such Partner in the amount of such advances, and (ii) upon the subsequent repayment of such advances, gross income or gain of the Partnership shall be specially allocated to such Partner in the amount of such repayment; and

(3) If a deduction is disallowed for all or part of any fee payable to the General Partner or an Affiliate from Cash Flow, there shall be a special allocation of gross income to the General Partner in the amount of such disallowed deduction.

(F) Any increase or decrease in the amount of any item of income, profit, gain, loss, deduction or credit attributable to an adjustment to the basis of Partnership assets made pursuant to a valid election under the Code, and pursuant to corresponding provisions of applicable state and local income tax laws, shall be charged or credited, as the case may be, to the Capital Accounts of those Partners entitled thereto under such laws.

(G) Income, profits, gains, losses, deductions and credits allocated to an Interest assigned or reissued during a Fiscal Year shall be allocated to the Person who was the holder of such Interest during such Fiscal Year, in proportion to the number of days that each such holder was recognized as the owner of such Interest during such Fiscal Year or in any other proportion permitted by the Code and selected

by the General Partner in accordance with this Agreement, without regard to the results of Partnership operations during the period in which each such holder was recognized as the owner of such Interest during such Fiscal Year, and without regard to the date, amount or recipient of any distributions which may have been made with respect to such Interest.

(H) It is the intent of the Partners that each Partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be allocated in accordance with this Article 5.01 to the fullest extent permitted by Section 704(b) of the Code. In order to preserve and protect the allocations provided for in this Article 5.01, the General Partner is authorized and directed to allocate income, gain, loss, deduction or credit (or item thereof) arising in any year differently than otherwise provided for in this Article 5.01 if, and to the extent that, in the opinion of its Accountants or Counsel, the allocations under this Article 5.01 would cause the allocations to violate Section 704(b) of the Code. In making any such amendment, the General Partner shall use its best efforts to minimize any changes to the economic and tax arrangements among the Partners as the General Partner shall determine in its sole discretion. Any allocation made pursuant to this Article 5.01(H) shall be deemed to be a complete substitute for any allocation otherwise provided for in this Article 5.01 and no amendment of this Agreement or approval of any Partner shall be required.

#### **5.02 Net Cash Flow.**

(A) Except as provided in Article 5.02(B), Net Cash Flow shall be distributed from time to time in the discretion of the General Partner as follows:

(1) Prior to January 1, 1992, 1% to the General Partner and 99% to the Limited Partners pro rata in accordance with their Interests; and

(2) After December 31, 1991, 30% to the General Partner and 70% to the Limited Partners, pro rata in accordance with their Interests.

(B) Net Cash Flow arising from a Capital Transaction which results in the dissolution of the Partnership shall be distributed to the Partners in accordance with their respective Capital Account balances determined after all allocations pursuant to Article 5.01(A) and distributions pursuant to Article 5.02(A), but prior to any distributions pursuant to this Article 5.02(B).

**5.03 Rules of Allocation.** Except as expressly provided otherwise in this Agreement, distributions of Net Cash Flow allocated to Partners shall be made to the Partners of record on the record date established by the General Partner without regard to the length of time the record holder has been such.

#### **5.04 Capital Accounts.**

(A) The Partnership shall maintain a Capital Account for each Partner.



(B) For purposes of Article 5.01(B) through (D), Capital Accounts shall, except as specifically provided otherwise, be determined as of the last day of the Fiscal Year in which the Capital Transaction occurs, after giving effect to allocations pursuant to Article 5.01(A) and distributions on account of such Fiscal Year under Articles 5.02, but before giving effect to allocations of gain or loss from such Capital Transaction under Article 5.01(B) through (D). If more than one Capital Transaction occurs in any Fiscal Year, the gain or loss from such Capital Transactions shall be allocated in the order in which the Capital Transactions occur.

(C) If the Partnership makes any payments which are treated as syndication expenses under Section 709 of the Code and are not amortized, such payments shall be charged against the Investor Limited Partners' Capital Accounts. If the Partnership thereafter takes a deduction for federal income tax purposes which is attributable to such payments, such deduction shall be allocated solely to the Investor Limited Partners, but no adjustment of the Limited Partners' Capital Accounts shall be made at such time.

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## ARTICLE VI - PARTNERSHIP MANAGEMENT

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### 6.01 General Partner.

(A) Subject to and limited by the provisions of this Agreement, including Article 6.02(C), the General Partner shall have full, exclusive and complete authority, discretion, obligation and responsibility with respect to the business of the Partnership. The General Partner shall manage and control the affairs of the Partnership to the best of its ability and shall use its best efforts to carry out the business of the Partnership. The General Partner shall oversee the day-to-day affairs of the Partnership and shall make all decisions and take all actions with respect thereto including, without limitation, the actions set forth in Article 3.02.

(B) The General Partner may delegate all or any of its powers, rights and obligations hereunder, and, subject to Article 11.01, may appoint, employ, contract or otherwise deal with any Person for the transaction of the business of the Partnership, which Person may, under supervision of the General Partner, perform any acts or services for the Partnership as the General Partner may approve.

(C) The General Partner shall at all times while it is a General Partner maintain such net worth and comply with such other requirements as may from time to time be necessary to assure that all provisions of the Code are met which are necessary to assure that the Partnership is classified as a partnership for federal income tax purposes.

**6.02 Limitations on General Partner.**

(A) The General Partner and its Affiliates shall not have any authority to perform (i) any act in violation of any applicable law or regulation thereunder, (ii) any act prohibited by Article 6.02(B), or (iii) any act without any Consent or ratification which is required to be consented to or ratified by the Limited Partners pursuant to Article 6.02(C) or the Act.

(B) No action shall be taken by the General Partner if it would (i) change the Partnership to a general partnership, (ii) change the Partnership to an association taxable as a corporation for federal income tax purposes, or (iii) allow the Limited Partners to take part in the control of the business of the Partnership. A determination of whether such action will have any of the above described effects shall be based upon a declaratory judgment or similar relief obtained from a court of competent jurisdiction, a favorable ruling from the IRS, or the receipt of an opinion of Counsel.

(C) The Consent of a majority in Interest of the Limited Partners shall be required prior to any action by the General Partner with respect to the following matters:

(1) The sale, exchange, other disposition or pledge of the Project;

(2) Causing the Partnership to engage in any business other than that specified in this Agreement;

(3) The admission of a Successor General Partner; and

(4) The payment of any fees or remuneration to the General Partner or its Affiliates, except as permitted by this Agreement.

(D) Consents by Limited Partners under Article 6.02(C) shall be given in the manner set forth in Article 11.03.

(E) The General Partner and its Affiliates shall not be entitled to:

(1) Cause the Partnership to make loans to the General Partner or its Affiliates;

(2) Accept rebates or give-ups or, subject to Article 6.03, engage in any reciprocal business arrangements which would circumvent this Article 6.02; or

(3) Cause the Partnership to issue senior securities, underwrite securities of other issuers, offer securities in exchange for property, or repurchase or otherwise reacquire Interests.

**6.03 Business with Affiliates.** The General Partner may cause the Partnership to transact business with itself or any Affiliate for goods or services

reasonably required in the conduct of the Partnership's business, provided that any such transaction (except transactions set forth in this Agreement) shall be (i) effected only on terms competitive with those that may be obtained from unaffiliated Persons and (ii) disclosed to Partners pursuant to Article 7.03(A).

#### **6.04 Liability for Acts and Omissions.**

(A) Neither the General Partner nor any Affiliate shall be liable, responsible or accountable in damages or otherwise to any of the Limited Partners or the Partnership for any act or omission performed or omitted by them if they determined, in good faith, that such action or omission was in the best interests of the Partnership, and such course of conduct did not constitute gross negligence or misconduct on the part of such Persons.

(B) The Partnership shall indemnify and hold harmless the General Partner and its Affiliates against any loss, damage, liability, cost or expense (including reasonable attorneys' fees) incurred by them in connection with the Partnership, provided that such loss, damage, liability, cost or expense was not the result of the gross negligence or misconduct of any such Person. Any such indemnity will be paid from, and only to the extent of, available Partnership assets and no Partners shall have any personal liability on account thereof.

(C) The General Partner shall be required to take only such actions on behalf of the Partnership as are expressly required by this Agreement and it shall not be required to take any such action requiring the expenditure of funds if Partnership funds are not available. The General Partner shall not be required to advance, contribute or provide funds to the Partnership for any purpose in excess of its Capital Contributions.

(D) No Partnership funds shall be used to purchase any insurance that insures any party against any liability that is prohibited by this Article 6.04.

#### **6.05 Tax Matters Partner.**

(A) Each Partner, by the execution of this Agreement, Consents to the appointment of the Tax Matters Partner and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent.

(B) The Tax Matters Partner shall have the following duties, to the extent and in the manner provided by the Code:

(1) Furnish the name, address, profits interest and taxpayer identification number of each Partner to the IRS;

(2) Keep each Partner informed of the administrative and judicial proceedings for the adjustment of any item required to be taken into account by a Partner for income tax purposes;

(3) Within 30 days of receiving a notice of a Partnership audit by the IRS, forward a copy of such notice to the Partners; and

(4) Register the Partnership with the IRS as a "tax shelter" if required by the Code, and deliver information with respect to such registration to the Partners.

(C) The Tax Matters Partner is hereby authorized, but not required, to:

(1) If a final administrative adjustment of a Partnership item required to be taken into account by a Partner for tax purposes is mailed to the Tax Matters Partner, seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court, the District Court of the United States for the district in which the Partnership's principal place of business is located, or the United States Claims Court;

(2) Intervene in any action brought by any other Partner for judicial review of a final adjustment; and

(3) Take any other action on behalf of the Partners or the Partnership in connection with any administrative or judicial tax proceeding to the extent permitted by applicable law or regulations.

(D) The Consent of 80% in Interest of the Limited Partners shall be required prior to any action by the Tax matters Partner with respect to the following matters:

(1) Enter into any settlement with the IRS with respect to any tax audit or judicial review, in which agreement the Tax Matters Partner may expressly state that such agreement shall bind the other Partners, except that such settlement agreement shall not bind any Partner who (within the time prescribed pursuant to the Code and regulations thereunder) files a statement with the IRS providing that the Tax Matters Partner shall not have the authority to enter into a settlement agreement on the behalf of such Partner;

(2) File a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, file a petition for judicial review with respect to such request; and

(3) Enter into an agreement with the IRS to extend the period for assessing any tax which is attributable to any item required to be taken into account by a Partner for tax purposes, or an item affected by such item.

(E) The Partnership shall indemnify and reimburse the Tax Matters Partner, with interest at the Designated Rate, for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Partners. The payment of all such expenses shall be made from first available Cash Flow. Neither the General Partner, or any Affiliate, nor any other Person shall have any

obligation to provide funds for such purpose. The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Tax Matters Partner and the provisions on limitations of liability of the General Partner and indemnification set forth in this Agreement shall be fully applicable to the Tax Matters Partner in its capacity as such.

**6.06 Partnership Expenses.**

(A) All of the Partnership's expenses shall be billed to and paid by the Partnership including, without limitation, (i) operating expenses, including costs of personnel employed by the Partnership and involved in the business of the Partnership, (ii) all costs of credit and borrowed money, (iii) legal and accounting fees, (iv) fees of bankers, consultants and other agents, and (v) costs of any litigation or regulatory proceeding involving the Partnership.

(B) Except as provided otherwise in this Agreement, the General Partner and its Affiliates shall be reimbursed, with interest at the Designated Rate, by the Partnership out of first available Cash Flow for any advances for costs actually made to or for the direct benefit of the Partnership.

**6.07 Loans to the Partnership.** If additional funds are required by the Partnership for any purpose relating to its business, the General Partner may, at its option, either (i) cause the Partnership to borrow such funds from unaffiliated lenders on the best available terms or (ii) lend such funds to the Partnership. Any loans by the General Partner pursuant to this Article 6.07 shall be repaid, with interest at the Designated Rate, from first available Cash Flow.

**6.08 Fees.** The Partnership shall pay the following amounts:

(A) A Partnership Management Fee to Conversion or its designee for services in supervising and managing the affairs of the Partnership.

(B) An Organizational Fee to the General Partner or its designee for services in organizing the Partnership.

(C) A Consulting Fee to Enright or its designee for services in arranging the debt and equity financing for the Partnership.

(D) A Project Management Fee to the Project Manager for services in managing the Project.

(E) The Purchase Price to Conversion for transferring the Project to the Partnership.

(F) The Ground Rent to Conversion for leasing the Land to the Partnership.

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## ARTICLE VII - ACCOUNTING AND REPORTS

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**7.01 Books and Records.** The General Partner shall maintain at the office of the Partnership a copy of this Agreement and full and accurate books of the Partnership showing all receipts and expenditures, assets and liabilities, profits and losses, names and current addresses of, and interests owned by, the Partners and all other records necessary for recording the Partnership's business and affairs. All Limited Partners and their duly authorized representatives shall have the right to inspect and copy any or all of the Partnership's books and records, including books and records necessary to enable a Limited Partner to defend any tax audit or related proceeding, during reasonable hours upon ten days' Notice to the General Partner, and shall have, on demand, true and full information of all matters affecting the Partnership.

**7.02 Annual Audit and Tax Matters.** The books and records of the Partnership shall be kept on the accrual basis or such other accounting method selected by the General Partner. The accounts of the Partnership shall be audited by the Accountants as of the end of each Fiscal Year and audited or reviewed at any other time that the General Partner may deem it necessary or desirable.

**7.03 Reports and Notices.** The General Partner shall provide all Partners with the following reports no later than the dates indicated or as soon thereafter as circumstances permit:

(A) By each April 30, a summary of all transactions during the Fiscal Year between the Partnership and any Affiliate of the General Partner, other than transactions already disclosed in this Agreement, including the nature of the transaction and the payments involved;

(B) By each March 31, Schedule K-1 to IRS Form 1065, or similar forms as may be required by the IRS, stating the Partner's Tax Allocations for the Fiscal Year; and

(C) By each April 30, (i) a balance sheet and the related statements of income and Partners' capital and changes in financial position, accompanied by a report of the Accountants stating that an audit of such financial statements has been made in accordance with generally accepted auditing standards and containing the opinion of the Accountants with respect to the financial statements and the accounting principles and practices reflected therein and as to the consistency of the application of the accounting principles and practices, and identifying any matters to which the Accountants take exception and stating, to the extent practicable, the effect of each such exception on such financial statement and (ii) a report on the activities of the Partnership during the prior Fiscal Year.

**7.04 Partnership Funds.** The General Partner shall have total fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in its direct or indirect possession or control. The funds of the Partnership shall not be commingled with the funds of any other Person and the General Partner shall not employ such funds in any manner except for the benefit of the Partnership. All funds of the Partnership not otherwise invested shall be deposited in one or more accounts maintained in such banking institutions as the General Partner shall determine, and withdrawals shall be made only in the regular course of Partnership business on such signatures as the General Partner may, from time to time, determine.

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## **ARTICLE VIII - TRANSFER OF PARTNERSHIP INTERESTS**

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### **8.01 Assignments.**

(A) Subject to the provisions of Article 9.04(B), the General Partner may assign its Interest, in whole or in part, if the conditions set forth in Article 8.04 are satisfied. Such assignee shall not be admitted to the Partnership as a Special Limited Partner unless he satisfies the requirements for admission as a Successor General Partner pursuant to Article 9.05.

(B) A Limited Partner may assign, transfer, alienate, hypothecate, bequeath, give or otherwise dispose of his Interest, in whole or in part, only if the conditions set forth in Articles 8.02 and 8.04 are satisfied.

(C) Any attempted assignment or other disposition which does not satisfy the requirements of Articles 8.01(A) or (B) shall not be recognized by the Partnership, any such purported assignee shall not be entitled to any allocations of Tax Allocations or Net Cash Flow, and shall not be entitled to inspect the books and records of the Partnership.

(D) An assignee of an Interest shall be entitled to Tax Allocations and Net Cash Flow only as of the date that this Agreement is amended to reflect the admission of the assignee as a Partner, or as of such other date as the General Partner shall determine.

### **8.02 Substitute Limited Partner.**

(A) Subject to the provisions of Article 8.04, a Limited Partner shall be entitled to assign or transfer its Interest, and the assignee or successor shall have the right to become a Substitute Limited Partner in place of his assignor, only if all of the following conditions are satisfied:

(1) The assignor and assignee file a transfer application or other evidence of transfer and such other information required by the General Partner, including, without limitation, names, addresses and telephone numbers of the assignor and assignee;

(2) The assignee executes, adopts and acknowledges this Agreement, or a counterpart hereto;

(3) The assignor or assignee pays all costs and fees incurred or charged by the Partnership to effect the transfer and substitution;

(4) The assignor or assignee pays all costs and fees incurred or charged by the Partnership to effect the transfer and substitution;

(5) The assignee meets the requirements for investment in the Partnership applicable to his assignor, if any, and executes and acknowledges a power of attorney, and other documents reasonably requested by the General Partner;

(6) The General Partner shall have given its Consent to the assignment and substitution, which Consent may be granted or withheld by the General Partner in its discretion;

(7) This Agreement is amended to evidence the admission of such Person as a Substitute Limited Partner; and

(8) If required by the General Partner, the assignor provides the Partnership with a legal opinion acceptable to Counsel with respect to the matters set forth in Article 8.04(A).

(B) The General Partner may elect to treat an assignee who has not become a substitute limited partner as a Substitute Limited Partner in the place of his assignor should it deem, in its sole discretion, that such treatment is in the best interest of the Partnership.

(C) The General Partner shall not be required to amend this Agreement to reflect the substitution of Limited Partners more often than once every three months. Until this Agreement is so amended, an assignee shall not become a Substitute Limited Partner.

### **8.03 Involuntary Withdrawal by Limited Partners.**

(A) Notwithstanding the provisions of Articles 8.01 and 8.02, a Limited Partner may, by written instrument, designate parents, brothers, sisters, spouse, natural or legally adopted children, a trust for the benefit of the foregoing Persons or an entity described in section 501(c)(3) of the Code to become the assignee of all or a portion of his interest immediately upon his death. Such an assignee, if then living, shall become a Substitute Limited Partner immediately upon the assignor's death without requirement of any action on the part of the legal representatives of the deceased Limited Partner, and such legal representatives and the estate of such deceased Limited Partner shall have no interest whatsoever in the Partnership;



provided, however, that the estate of the deceased Limited Partner shall remain liable for the unpaid Capital Contribution of the deceased Limited Partner. Any such designation may be made either by written instrument filed with the General Partner during such Limited Partner's lifetime, or in such Limited Partner's last will and testament. Any such lifetime designation may be revoked from time to time and a new designation made and filed with and approved in writing by the General Partner. The Partnership need not recognize such designated assignee or assignees as Substitute Limited Partners until (i) duly notified in writing of the death of the assignor Limited Partner, and (ii) furnished with a legal opinion acceptable to the General Partner to the effect that such designation is valid under the applicable laws of testate and intestate succession.

(B) If a Limited Partner does not designate a Person to become an assignee of his Interest upon his death pursuant to Article 8.03(A), then his personal representative shall have all of the rights of a Limited Partner for the purpose of settling or managing his estate, and such power as the decedent possessed to constitute a successor as a proposed assignee of his Interest in the Partnership and to join with such proposed assignee in making application to substitute such proposed assignee as a Substitute Limited Partner.

(C) Upon the Bankruptcy, insolvency, dissolution or other cessation to exist as a legal entity of a Limited Partner which is a trust, corporation, partnership or other entity, the authorized representative of such entity shall have all the rights of a Limited Partner for the purpose of effecting the orderly winding up and disposition of the business of such entity and such power as such entity possessed to constitute a successor as a proposed assignee of its Interest and to join with such proposed assignee in making application to substitute such proposed assignee as a Substitute Limited Partner.

(D) The death, Bankruptcy, insolvency, dissolution or adjudication of incompetence of a Limited Partner shall not dissolve or terminate the Partnership.

#### **8.04 Restrictions on Transfers.**

(A) No assignment, transfer, sale, exchange or other disposition of the Interest of a Partner shall be made if, in the opinion of Counsel, which may or may not be required by the General Partner, such disposition would (i) cause the Partnership to be treated as an association taxable as a corporation rather than a partnership for federal income tax purposes, (ii) cause the termination of the Partnership for federal income tax purposes, (iii) violate the provisions of any federal or state securities laws or (iv) violate the terms of (or result in a default or acceleration under) any agreement or commitment binding on the Partnership.

(B) In no event shall all or any part of a Partner's Interest be assigned or transferred to a minor, other than to a member of the Partner's immediate family pursuant to Article 8.03(A), or to an incompetent.

(C) The General Partner in its sole discretion may require, without limitation, a Partner or his proposed assignee or successor under any provisions of this Article IX to execute any documents and satisfy any other reasonable conditions or

requirements which it deems necessary prior to granting its Consent to any assignee or successor as a Substitute Limited Partner.

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## **ARTICLE IX - TENURE OF GENERAL PARTNER**

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**9.01 Voluntary Withdrawal of the General Partner.** The General Partner may voluntarily withdraw from the Partnership only upon the appointment of a Successor General Partner pursuant to Article 9.05. Upon the voluntary withdrawal of the General Partner pursuant to this Article 9.01, any Interest retained by the withdrawing General Partner shall be converted to that of a Special Limited Partner.

**9.02 Involuntary Withdrawal of the General Partner.** In the event of the involuntary withdrawal of the General Partner due to death, adjudication of incompetence, Bankruptcy or dissolution, the General Partner shall immediately cease to be a General Partner and any Interest retained by the withdrawing General Partner shall be converted to that of a Special Limited Partner.

**9.03 Removal of the General Partner.** A majority in Interest of the Limited Partners shall have the right to remove the General Partner with cause. Upon the removal of the General Partner pursuant to this Article 9.03, the General Partner shall (i) forfeit its Interest, including its right to receive Net Cash Flow, and (ii) retain its right to receive fees accrued through the date of removal, which fees shall be paid in their normal course. The election to remove under this Article 9.03 shall not limit or restrict the availability and use of any other remedy which any Partner might have with respect to the General Partner in connection with its undertakings and responsibilities under this Agreement.

**9.04 Obligations of the Prior General Partner.**

(A) If the General Partner withdraws or is removed from the Partnership under Articles 9.01, 9.02 or 9.03, it shall (i) remain liable for all obligations and liabilities (other than Partnership liabilities payable from Partnership assets) incurred by it as General Partner before the effective date of such event, (ii) pay all costs associated with the admission of a Successor General Partner and (iii) with respect to a removed, bankrupt or dissolved General Partner, shall be liable for all damages and costs to the Partnership as a result of such removal. However, any General Partner that withdraws or is removed shall be free of and held harmless by the Partnership against any obligation or liability incurred on account of the activities of the Partnership from and after the effective date of such event.

(B) Notwithstanding any other provision of this Agreement, the General Partner shall at all times maintain an Interest of at least 1% in Tax Allocations and Net Cash Flow, and it shall be the obligation of the General Partner (and its successors-in-interest) to at all times satisfy this requirement. The Interests

of the Limited Partners shall not be reduced or otherwise affected to satisfy the requirements of this Article 9.04(B).

**9.05 Successor General Partner.** A Person may be admitted to the Partnership as a General Partner only if the following conditions are satisfied:

(A) The admission of such Person shall have been Consented to by a majority in Interest of the Limited Partners;

(B) The Person shall have accepted and agreed to be bound by all the terms and provisions of this Agreement, by executing a counterpart thereof and such other documents or instruments as may be required or appropriate in order to effect the admission of such Person as a General Partner;

(C) If the Person is an entity, it shall have provided the Partnership with evidence satisfactory to Counsel of its authority to become a General Partner and to be bound by this Agreement;

(D) The Certificate evidencing the admission of such Person as a General Partner shall have been filed for recordation;

(E) Such Person has the necessary experience and financial resources to serve as General Partner; and

(F) Counsel and/or Accountants shall have rendered an opinion that the admission of the Person is in conformity with the Act and that none of the actions taken in connection with the admission of the Person will cause the Partnership to be classified other than as a partnership for federal income tax purposes or cause the termination of the Partnership.

**9.06 Remaining General Partners.**

(A) Upon the Bankruptcy, dissolution, removal, death or adjudication of incompetence of a General Partner that is not the sole General Partner, the remaining General Partner(s) shall immediately (i) give Notice to the Limited Partners of such Bankruptcy, death, dissolution, removal or adjudication of incompetence, (ii) make such amendments of this Agreement and execute and file for recordation such amendments or documents or other instruments as are necessary to reflect the termination of such General Partner, and (iii) continue the business of the Partnership in their sole discretion.

(B) Upon the Bankruptcy, dissolution, removal, death or adjudication of incompetence of a General Partner and no General Partner remains, (i) the successor-in-interest of the General Partner shall immediately give Notice to the Limited Partners of such Bankruptcy, death, dissolution, removal or adjudication of incompetence and (ii) the Partnership shall be dissolved unless a majority in Interest of the Limited Partners within 90 days after such event, elect to continue the Partnership and appoint a Successor General Partner.

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## ARTICLE X - DISSOLUTION AND LIQUIDATION

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**10.01 Term and Dissolution.** The Partnership commenced as of date of the filing of the Certificate, and shall continue until December 31, 2050, or until dissolution occurs prior to that date for any one of the following reasons:

(A) An election to dissolve the Partnership is made in writing by a majority in Interest of the Limited Partners;

(B) The final liquidation of the Partnership's assets, or the sale, exchange or other disposition of substantially all of the property of the Partnership; provided, however, if the Partnership receives a purchase money mortgage in connection with such sale, the Partnership will continue until such mortgage is satisfied, sold or otherwise disposed of;

(C) Subject to the provisions of Article 9.06, the Bankruptcy, dissolution, removal, death or adjudication of incompetence of a General Partner who is the sole remaining General Partner; or

(D) Any other event causing dissolution of the Partnership under the Act.

### **10.02 Liquidation of Partnership Assets.**

(A) In the event of dissolution and final termination of the Partnership, a full accounting of the assets and liabilities shall be taken, and the assets shall either be (i) distributed in kind or (ii) liquidated, with the Net Cash Flow thereof applied in the manner set forth in Article 5.02 within 12 months after such liquidation.

(B) The Liquidator shall file all certificates and notices of the dissolution of the Partnership required by law. The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Partnership's assets; provided, however, that if the Liquidator shall determine that an immediate sale of part or all of the Partnership property would cause undue loss to the Partners, the Liquidator may defer the liquidation except (i) to the extent provided by the Act, (ii) as required by Article 10.02(A) or (iii) as may be necessary to satisfy the debts and liabilities of the Partnership to Persons other than the Partners. Upon the complete liquidation and distribution of the Partnership assets, the Partners shall cease to be Partners of the Partnership, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Partnership.

(C) Upon the dissolution of the Partnership pursuant to Article 10.01, the Accountants shall promptly prepare, and the Liquidator shall furnish to each Partner, a statement setting forth the assets and liabilities of the Partnership.

Promptly following the complete liquidation and distribution of the Partnership's assets, the Accountants shall prepare, and the Liquidator shall furnish to each Partner, a statement showing the manner in which the Partnership's assets were liquidated and distributed.

**10.03 Capital Accounts.** The Partnership shall establish a Capital Account for each Partner. No Partner shall be required to pay the Partnership any deficit in its Capital Account upon liquidation or otherwise, except to the extent provided by the Act with respect to third party creditors. Notwithstanding the foregoing, if, upon liquidation of the Partnership, the Limited Partners have positive Capital Accounts while the General Partner has a negative Capital Account, the General Partner shall be required to make Capital Contributions to the Partnership equal to the lesser of (i) the deficit in its Capital Account and (ii) the excess of 1.01% of the total Capital Contributions of the Investor Limited Partners over the previous Capital Contributions of the General Partner.

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## **ARTICLE XI - AMENDMENTS AND MEETINGS**

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### **11.01 Amendment Procedure.**

(A) Amendments to this Agreement may be proposed by (i) a General Partner or (ii) Limited Partners owning 10% or more of the Interests of Limited Partners. A proposed amendment will be adopted and effective only if it receives the Consent of the General Partner and a majority in Interest of the Limited Partners.

(B) Within 10 days of the making of any proposal to amend this Agreement, the General Partner shall give the Partners Notice of such proposal (along with the text of the proposed amendment and a statement of its purposes). Any matter requiring the Consent of the Limited Partners may be considered at a meeting or by written ballot pursuant to Article 11.03.

### **11.02 Exceptions.** Notwithstanding the provisions of Article 11.01:

(A) No amendment shall alter the purposes of the Partnership, or amend Articles 11.01 or 9.03, without the Consent in writing of all Partners;

(B) Except as expressly provided otherwise in this Agreement, including, without limitation, Article 4.03, no amendment shall (i) increase the liability or change the Capital Contributions required of a Partner, (ii) decrease the rights and interest of a Partner in Tax Allocations or Net Cash Flow, (iii) affect voting rights of a Partner or (iv) affect the rights of a Partner in respect of liquidation of the Partnership, without the Consent of the Partners affected;

(C) No amendment shall be adopted which will directly or indirectly affect or jeopardize the status of the Partnership as a partnership for federal income tax purposes; and

(D) This Agreement (other than this Article 11.02) may be amended as required in the discretion of the General Partner, with or without the Consent of the Limited Partners, to (i) reflect the amendments for which it has a power of attorney pursuant to Article 12.04, (ii) comply with federal and state securities laws, rules and regulations and (iii) otherwise implement the provisions of this Agreement, provided that such amendments do not adversely affect the rights of the Limited Partners.

#### **11.03 Meetings and Voting.**

(A) Meetings of the Limited Partners for any purpose may be called by the General Partner and shall be called by the General Partner upon receipt of a request in writing signed by 10% or more in Interest of the Limited Partners. Notice of any meeting shall be sent to the Limited Partners within 10 days after receipt of such a request. The request shall state the purpose of the proposed meeting and the matters proposed to be acted upon. The meeting shall be held at the principal office of the Partnership. In addition, any General Partner may, and, upon receipt of a request in writing signed by 10% or more in Interest of the Limited Partners, the General Partner shall submit any matter (upon which the Limited Partners are entitled to act) to the Limited Partners for a vote by written Consent without a meeting. The General Partner will furnish the names and addresses of all Limited Partners, upon written request, to any Limited Partner who pays the reasonable expenses of the General Partner in furnishing the names and addresses.

(B) Notice of any meeting shall be given either personally or by mail, not less than 15 days nor more than 60 days before the date of the meeting, to each Limited Partner at his record mailing address. The Notice shall be in writing, and shall state the place, date, hour, and purpose of the meeting. Included with the Notice shall be a detailed statement of the action proposed including a verbatim statement of the wording of any resolution proposed for adoption by the Limited Partners and of any proposed amendment to this Agreement. If a meeting is adjourned to another time or place, and if any announcement of the adjournment of time or place is made at the meeting, it shall not be necessary to give Notice of the adjourned meeting. The presence in person or by proxy of a majority in Interest of the Limited Partners shall constitute a quorum at all meetings of the Limited Partners; provided, however, that if there is no quorum present, holders of a majority in interest of the Limited Partners present or represented may adjourn the meeting from time to time without further Notice until a quorum is obtained. No Notice of the time, place, or purpose of any meeting of Limited Partners need be given to any Investor Limited Partner who attends in person or is present by proxy (except when a Limited Partner attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business on the ground that the meeting is not lawfully called or convened), or to any Limited Partner entitled to notice who, in a writing executed and filed with the records of the meeting, either before or after the time of the meeting, waives the Notice requirement.

(C) For the purpose of determining the Limited Partners entitled to vote at any meeting of the Partnership, any General Partner or the Limited Partners requesting the meeting may fix a date, in advance, as the record date for the determination of Limited Partners entitled to vote. This date shall be not more than 60 days nor less than 10 days before any meeting.

(D) Each Limited Partner may authorize any Person to act for him by proxy in all matters in which a Limited Partner is entitled to participate, whether by waiving Notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or his attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Limited Partner executing it.

(E) At each meeting of Limited Partners, the General Partner shall appoint officers and adopt rules as it deems appropriate for the conduct of the meeting.

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## **ARTICLE XII - STATUS OF LIMITED PARTNERS**

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**12.01 Management Restrictions.** No Limited Partner shall take part in the management or control of the business of the Partnership or transact any business in the name of the Partnership. No Limited Partner shall have the power or authority to bind the Partnership or to sign any agreement or document in the name of the Partnership. No Limited Partner shall have any power or authority with respect to the Partnership except as expressly provided by this Agreement.

**12.02 Limitation on Liability.** The liability of each Limited Partner shall be limited to its Capital Contribution as and when it is payable under the provisions of this Agreement. No Limited Partner shall have any other liability to contribute money to the Partnership, nor shall any Limited Partner be personally liable for any obligations of the Partnership, except as expressly provided otherwise in this Agreement or the Act. No Limited Partner shall be obligated to make loans to the Partnership.

**12.03 Certain Voting Rights.** A majority in Interest of the Limited Partners may, without the concurrence of any General Partner:

(A) Amend this Agreement, except as provided by Article 11.02;

(B) Dissolve the Partnership pursuant to Article 10.01(A);

(C) Remove any General Partner and elect a Successor General Partner pursuant to Articles 9.03 and 9.05; or

(D) Approve or disapprove the sale of all or substantially all of the assets of the Partnership.

**12.04 Power of Attorney.**

(A) The Limited Partners hereby make, constitute and appoint the General Partner (acting through its authorized officers and agents), with full power of substitution, their true and lawful attorney-in-fact and agent in their name, place and stead to make, execute, sign, acknowledge and file the following documents, to the extent necessary or appropriate to carry out the purposes (and not inconsistent with) this Agreement:

(1) Any and all instruments necessary to issue an Interest or otherwise effect the provisions of Article VIII;

(2) Any and all instruments necessary to approve assignees or transferees as Substitute Limited Partners or otherwise effect the provisions of Article VIII;

(3) Any and all instruments necessary to effect, evidence and reflect any sales or transfers by, or the dissolution, termination and liquidation of, the Partnership; and

(4) Any and all such other instruments, documents and certificates which may from time to time be required by the IRS, the Commonwealth of Virginia or any other jurisdiction within which the Partnership conducts its business, to comply with applicable securities laws or otherwise carry out the business of the Partnership.

(B) The foregoing power of attorney is hereby declared to be irrevocable and coupled with an interest, and it shall survive the death, Bankruptcy or adjudication of incompetency of a Limited Partner, or the transfer or other disposition of his Interest, and extend to his heirs, executors, personal representatives, successors and assigns.

**12.05 Investment Representation.** Each Limited Partner hereby represents and warrants as follows:

(A) He is acquiring his Interest(s) for his own account for investment, and not with a view to distribution or resale, has not subdivided his Interest(s) with, nor is he holding all or any portion of the Interest(s) for, any other person, and agrees not to sell, hypothecate or otherwise dispose of his Interest(s) unless they have been registered under the Securities Act and applicable state securities laws or an exemption from the registration requirements of the Securities Act and such state laws is available;

(B) He is an "accredited investor" because he meets one of the following requirements --



(1) He is a natural person who had individual income (excluding income of his spouse) in excess of \$200,000 in each of the two preceding years and reasonably expects to have individual income in excess of \$200,000 in the current year. For this purpose, "income" means adjusted gross income for federal income tax purposes, plus (i) any deductions for long-term capital gains under Section 1202 of the Code, (ii) any depletion deductions under Section 611 et. seq. of the Code, (iii) any exclusion for interest under Section 103 of the Code and (iv) any partnership losses allocated to the taxpayer as reported on Schedule E of Form 1040 or any successor form (including any losses allocated with respect to his interests),

(2) He is a natural person whose net worth at the time of purchase, either individually or jointly with his spouse, exceeds \$1,000,000 (including his home, home furnishings and automobiles),

(3) He is investing at least \$150,000 in the Partnership and the aggregate amount of his investment is no more than 20% of his net worth (that is, excess of total assets over total liabilities, including his home, home furnishings and automobiles) at the time of purchase, either individually or jointly with his spouse, or

(4) He is a director or "executive officer" of either the General Partner or Conversion. For this purpose, "executive officer" means the president, any vice president in charge of a principal business unit, division or function, or any other officer, provided such person performs a policy making function for the General Partner;

(C) His overall commitment to investments which are not readily marketable is not disproportionate to his net worth, and his acquisition of his Interest(s) will not cause such overall commitment to become excessive;

(D) He has evaluated and understands the risks and terms of investing in the Partnership;

(E) He has adequate net worth and means of providing for his current needs and personal contingencies to sustain a complete loss of his investment in the Partnership, and he has no need for liquidity in his investment in his Interest(s);

(F) He has, or he and his representative have, such knowledge and experience in financial and business matters in general and in particular with respect to this type of investment that he is, or they are, capable of evaluating the merits and risks of an investment in the Partnership;

(G) The Partnership has made available to him and/or his attorney, accountant and/or representative all documents that he or they have requested relating to an investment in the Partnership and has provided answers to all of his or their questions concerning an investment in the Partnership. In evaluating the suitability of an investment in the Partnership, he has not relied upon any representations or other information (whether oral or written) other than as set forth in this Agreement or as contained in any documents or answers to questions so furnished to him by the Partnership;

(H) He recognizes that the Partnership has no financial or operating history and investment in the Partnership involves certain risks, and he has taken full cognizance of and understands all of the risks related to the purchase of his Interest(s);

(I) He has discussed with his professional legal, tax and financial advisors the suitability of an investment in the Partnership for his particular tax and financial situation. All information which he has provided to the Partnership concerning himself and his financial position is correct and complete, and if there should be any material change in such information he will immediately provide such information to the Partnership;

(J) He is acquiring his Interest(s) without being furnished any offering literature or prospectus;

(K) He has sufficient liquid assets to pay promptly when due all payments required under the Investor Note and agrees, that if he fails to make such payments when due, the Partnership and the General Partner will have all the rights set forth in the Agreement, in addition to any rights provided by law;

(L) If this Agreement is executed on behalf of a partnership, corporation, trust or other entity, the undersigned has been duly authorized to execute and deliver this Agreement and all other instruments executed and delivered on behalf of such partnership, corporation, trust or other entity in connection with the purchase of the Interest(s), the signature of the undersigned is binding upon such partnership, corporation, trust or other entity and the undersigned has delivered herewith the underlying partnership agreement, corporate charter documents or trust agreement of such entity as currently in effect;

(M) As maker of his Investor Note, he hereby acknowledges and agrees that the Investor Note may be assigned, sold or pledged by the Partnership to a third party, including, without limitation, one or more commercial banks from which the Partnership will obtain a line of credit secured by the pledge of the Principal's Investor Note. He acknowledges that such third party may rely on this Agreement, and further agrees not to modify or alter his Investor Note in any way. He further acknowledges that such third party may be a "holder in due course" under applicable commercial law, and hence certain defenses to nonpayment, which he might otherwise be able to assert directly against the Partnership, may be unavailable against such third party;

(N) He is a bona-fide resident of the state set forth in his address below;

(O) He acknowledges that (i) the Interests have not been registered under the Securities Act or under any state securities laws, (ii) the Interests may not be sold unless they are subsequently registered or an exemption from such registration is available, (iii) such registration is unlikely at any time in the future, and (iv) the Partnership is not obligated to take any action necessary to make any exemption for sale without registration available; and

(P) He agrees that he will not sell or offer to sell any portion of his Interest(s) or solicit offers to buy the same from or otherwise approach or negotiate in respect thereof with any Person, so as thereby to bring this transaction and the

offering of interests within the provisions of Section 5 of the Securities Act, or the registration requirements of any state laws or regulations applicable to him or the Partnership.

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### **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

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**13.01 Title to Property.** All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually, shall have any ownership of such property. The Partnership may hold any of its assets in its own name or in the name of its nominee, which nominee may be one or more individuals, corporations, partnerships, trusts or other entities.

**13.02 Other Activities.** Except as expressly provided otherwise in this Agreement, any of the Partners or their Affiliates may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, including, without limitation, real estate business ventures, whether or not such other enterprises shall be in competition with any activities of the Partnership; and neither the Partnership nor the other Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom.

**13.03 Dispute Procedure.** Any dispute, controversy or claim arising out of or in connection with or relating to this Agreement, or any breach or alleged breach hereof, shall be settled by any court of competent jurisdiction, unless the parties to the dispute agree otherwise.

**13.04 Applicable Law.** This Agreement, and the application or interpretation thereof, shall be governed exclusively by its terms and by the law of the State of Idaho.

**13.05 Binding Agreement.** This Agreement shall be binding upon the parties hereto, their heirs, executors, personal representatives, successors and assigns.

**13.06 Waiver of Partition.** Each of the parties hereto irrevocably waives during the term of the Partnership any right that it may have to maintain any action for partition with respect to any property of the Partnership.

**13.07 Counterparts.** This Agreement may be executed in several counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart. Any such counterpart shall be admissible into evidence as an original hereof against the Person who executed it.

**13.08 Survival of Representations.** All representations and warranties herein shall survive the dissolution and final liquidation of the Partnership.

**13.09 Entire Agreement.** This Agreement (and all Exhibits hereto) contains the entire understanding among the parties hereto and supersedes all prior written or oral agreements among them respecting the within subject matter, unless otherwise provided herein. There are no representations, agreements, arrangements or understandings, oral or written, among the Partners hereto relating to the subject matter of this Partnership Agreement which are not fully expressed herein and in said Exhibits.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

GENERAL PARTNER

WESTERN HYDROPOWER CO., INC.

Attest:

Kelli Reed  
Assistant Secretary

By:

Patrick Kueny  
Patrick Kueny, President

\* \* \* \*

CITY OF Newport Beach :

STATE OF California :

SS:

I hereby certify that on this 30 day of Sept 1986, before me in said jurisdiction personally appeared Patrick Kueny as President of Western Hydropower Co., Inc., the General Partner, who is known to me to be the person described in the foregoing instrument, and acknowledged to me that he is duly authorized to execute the same on behalf of the corporation for the purposes contained herein.

Sherril La Breck  
Notary Public

My Commission Expires:

November 28, 1986



WITNESS:

INVESTOR LIMITED PARTNER

JOHN MCGRAIN

(Signature)

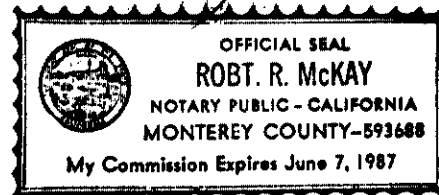
CITY OF CARMEL :  
STATE OF CALIFORNIA : SS:

I hereby certify that on this 30<sup>th</sup> day of Sept, 1986, before me in said jurisdiction personally appeared John McGrain, who is known to me to be that person described in the foregoing instrument, and acknowledged to me that he executed the same for the purposes contained herein.

Notary Public

My Commission Expires:

June 7, 1987



By initialing the applicable item(s) below, I hereby represent and warrant that I satisfy at least one of the following requirements:

John My income (excluding income of my spouse) was in excess of \$200,000 in 1984 and 1985 and I reasonably expect to have an income in excess of \$200,000 in 1986. For this purpose, "income" means adjusted gross income for federal income tax purposes, plus (i) any deductions for long-term capital gains under Code Section 1202, (ii) any depletion deductions under Code Section 611 et. seq., (iii) any exclusion for interest under Code Section 103 and (iv) any partnership losses allocated to me as reported on Schedule E of Form 1040 or any successor form (including any losses allocated with respect to my interests).

John My net worth at the time of purchase, either individually or jointly with my spouse, exceeds \$1,000,000.

John I am investing at least \$150,000 in the Partnership and the aggregate amount of my investment is no more than 20% of my net worth, either individually or jointly with my spouse.

John I am a director or an "executive officer" of either Western Hydropower Co., Inc., Conversion Industries USA, Inc. or Conversion Industries, Inc. For this purpose, "executive officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), and any other officer, provided such person performs a policy making function for Western Hydropower Co., Inc.

WITNESS:

INVESTOR LIMITED PARTNER

Marie D. Flanagan

Dennis Enright

(Signature)

CITY OF New York :

STATE OF New York :

SS:

I hereby certify that on this 30th day of September, 1986, before me in said jurisdiction personally appeared Dennis Enright, who is known to me to be that person described in the foregoing instrument, and acknowledged to me that he executed the same for the purposes contained herein.

Notary Public

My Commission Expires:

SARAH SHERRICK FAILING  
Notary Public, State of New York  
No. 31-4837091  
Qualified in New York County  
My Term Expires March 30, 1987

\* \* \*

By initialing the applicable item(s) below, I hereby represent and warrant that I satisfy at least one of the following requirements:

My income (excluding income of my spouse) was in excess of \$200,000 in 1984 and 1985 and I reasonably expect to have an income in excess of \$200,000 in 1986. For this purpose, "income" means adjusted gross income for federal income tax purposes, plus (i) any deductions for long-term capital gains under Code Section 1202, (ii) any depletion deductions under Code Section 611 et. seq., (iii) any exclusion for interest under Code Section 103 and (iv) any partnership losses allocated to me as reported on Schedule E of Form 1040 or any successor form (including any losses allocated with respect to my interests).

DE My net worth at the time of purchase, either individually or jointly with my spouse, exceeds \$1,000,000.

I am investing at least \$150,000 in the Partnership and the aggregate amount of my investment is no more than 20% of my net worth, either individually or jointly with my spouse.

I am a director or an "executive officer" of either Western Hydropower Co., Inc., Conversion Industries USA, Inc. or Conversion Industries, Inc. For this purpose, "executive officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), and any other officer, provided such person performs a policy making function for Western Hydropower Co., Inc.

WITNESS:

INVESTOR LIMITED PARTNER

PATRICK KUENY

Kelli Reed

Patrick Kueny  
(Signature)

CITY OF :  
STATE OF : SS:

I hereby certify that on this 30 day of Sept., 1986, before me in said jurisdiction personally appeared Patrick Kueny, who is known to me to be that person described in the foregoing instrument, and acknowledged to me that he executed the same for the purposes contained herein.

Sherri La Breck  
Notary Public

My Commission Expires:

November 28, 1986



\* \* \*

By initialing the applicable item(s) below, I hereby represent and warrant that I satisfy at least one of the following requirements:

PK My income (excluding income of my spouse) was in excess of \$200,000 in 1984 and 1985 and I reasonably expect to have an income in excess of \$200,000 in 1986. For this purpose, "income" means adjusted gross income for federal income tax purposes, plus (i) any deductions for long-term capital gains under Code Section 1202, (ii) any depletion deductions under Code Section 611 et. seq., (iii) any exclusion for interest under Code Section 103 and (iv) any partnership losses allocated to me as reported on Schedule E of Form 1040 or any successor form (including any losses allocated with respect to my interests).

PK My net worth at the time of purchase, either individually or jointly with my spouse, exceeds \$1,000,000.

PK I am investing at least \$150,000 in the Partnership and the aggregate amount of my investment is no more than 20% of my net worth, either individually or jointly with my spouse.

PK I am a director or an "executive officer" of either Western Hydropower Co., Inc., Conversion Industries USA, Inc. or Conversion Industries, Inc. For this purpose, "executive officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), and any other officer, provided such person performs a policy making function for Western Hydropower Co., Inc.



WITNESS:

INVESTOR LIMITED PARTNER

Marcy E. Miller

COUNTY OF Washington  
CITY OF

STATE OF

SS:

ROBERT BARBER

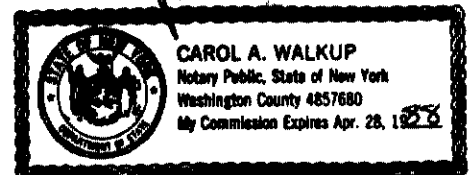
(Signature)

I hereby certify that on this 29<sup>th</sup> day of September 1986, before me in said jurisdiction personally appeared Robert Barber, who is known to me to be that person described in the foregoing instrument, and acknowledged to me that he executed the same for the purposes contained herein.

Carol A. Walkup  
Notary Public

My Commission Expires:

04/28/88



By initialing the applicable item(s) below, I hereby represent and warrant that I satisfy at least one of the following requirements:

RB My income (excluding income of my spouse) was in excess of \$200,000 in 1984 and 1985 and I reasonably expect to have an income in excess of \$200,000 in 1986. For this purpose, "income" means adjusted gross income for federal income tax purposes, plus (i) any deductions for long-term capital gains under Code Section 1202, (ii) any depletion deductions under Code Section 611 et. seq., (iii) any exclusion for interest under Code Section 103 and (iv) any partnership losses allocated to me as reported on Schedule E of Form 1040 or any successor form (including any losses allocated with respect to my interests).

RB My net worth at the time of purchase, either individually or jointly with my spouse, exceeds \$1,000,000.

I am investing at least \$150,000 in the Partnership and the aggregate amount of my investment is no more than 20% of my net worth, either individually or jointly with my spouse.

I am a director or an "executive officer" of either Western Hydropower Co., Inc., Conversion Industries USA, Inc. or Conversion Industries, Inc. For this purpose, "executive officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), and any other officer, provided such person performs a policy making function for Western Hydropower Co., Inc.

**SCHEDULE OF PARTNERS**

<u>Name and Address</u>	<u>Partnership Interest</u>	<u>Capital Contribution</u>
<b>General Partner:</b>		
Western Hydropower Co., Inc. Suite 260 1200 Quail Street Newport Beach, CA 92660	1.00%	\$ 1.00
<b>Investor Limited Partners:</b>		
John McGrain 707 Sierra Meadow Sierra Madre, CA 91024	49.50%	\$325,000.00
Dennis Enright 136 Terrace Avenue Jersey City, NJ 07307	9.9%	\$ 65,000.00
Patrick Kueny 27 Serena Irvine, CA 92715	19.80%	\$130,000.00
Robert Barber R.D. #1 Reardon Road Glens Falls, NY 12801	19.80%	\$130,000.00
<b>Totals:</b>	<u>100.0%</u>	<u>\$650,000.00</u>