

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT IN, AND
FOR MIAMI-DADE COUNTY, FLORIDA

AZURE COLLINS CORP., a Florida
corporation, and AMAZON ADVISOR,
LTD., an entity organized under the laws
of the British Virgin Islands,

Plaintiffs,

v.

Case No. _____

TRANSACTA LANAI DEVELOPERS, LTD.,
a Florida limited partnership, TRANSACTA
LANAI HOLDINGS, L.L.C., a Florida limited
liability company, and SILVIA SABETES
COLTRANE, an individual,

Defendants.

COMPLAINT

COMES NOW the Plaintiffs, AZURE COLLINS CORP., a Florida corporation (hereinafter, "Azure") and AMAZON ADVISOR, LTD., an entity formed under the laws of the British Virgin Islands (hereinafter "Amazon"), by and through their undersigned counsel, and file this Complaint against Defendants, TRANSACTA LANAI DEVELOPERS, LTD., a Florida limited partnership (hereinafter, "TLD"), TRANSACTA LANAI HOLDINGS, L.L.C., a Florida limited liability company (hereinafter, "TLIF"), and SILVIA SABETES COLTRANE (hereinafter, "Coltrane"), and, in support thereof, state the following:

PARTIES, JURISDICTION AND VENUE

1. This is an action for damages in excess of Fifteen Thousand (\$15,000.00) Dollars, exclusive of interest, costs, and attorneys' fees.

2. Plaintiff, Azure Collins Corp., is a Florida corporation with its principal office located in Miami-Dade County, Florida.

3. Plaintiff, Amazon Advisor, Ltd., is an entity formed under the laws of the British Virgin Islands, with its principal office located in Miami-Dade County, Florida.

4. Defendant, Transacta Lanai Developers, Ltd., is a Florida limited partnership with its principal office in Miami-Dade County, Florida.

5. Defendant, Transacta Lanai Holdings, L.L.C., is a Florida limited liability company with its principal office in Miami-Dade County, Florida.

6. Defendant, Silvia Sabetes Coltrane, is an individual, *sui juris*, who resides in Miami-Dade County, Florida.

7. The Circuit Court of Miami-Dade County, Florida has jurisdiction pursuant to § 26.012, Florida Statutes, and §48.193, Florida Statutes in that each Defendant has operated, conducted, engaged in, or carried on a business or business venture in this State, has an office or agency in this State, and has breached contracts in this State by failing to perform acts required, by contract, to be performed here.

8. Venue is proper in Miami-Dade County, Florida in that each Defendant either has an office or resides in Miami-Dade County Florida, conducts business in Miami-Dade County, Florida, and this cause of action, in whole or in part, arose in Miami-Dade County, Florida

GENERAL ALLEGATIONS

9. TLD was formed on or about October 28, 2004 for purposes of acquiring and developing that certain real property located at 9200 Collins Ave., Miami Beach, Florida 33139 ("Property"). In connection with the acquisition and development of the Property, TLD sought outside investment from third-party investors.

10. On or about July 10, 2007, Plaintiff, Azure, invested Sixty Thousand (\$60,000.00) Dollars ("Initial Investment" or "Initial Capital Contribution") in exchange for seven and 59/100 (7.59%) Percent of the partnership interest in TLD.

11. On the same date that Plaintiff, Azure's, Initial Investment was made, Plaintiff, Azure, was admitted as a partner of TLD and assumed the Amended and Restated Agreement of Limited Partnership of TLD, dated October 28, 2004 ("First Partnership Agreement") and executed a counterpart thereof. See Exhibit A.

12. Contemporaneously with the investment by Plaintiff, Azure, and for several years thereafter, TLD also solicited funds to acquire and develop the Property in the form of loans from Plaintiff, Azure's, parent company, Seem International, Ltd. ("Seem International"), an entity formed under the laws of the British Virgin Islands (each a "Note" and collectively, the "Notes"). Attached hereto as Exhibit B is table summary of the dates, principal amounts, interest rates and default rates of the Notes.

13. On or about July 10, 2007, Defendant, TLD, received a loan from Seem International in the amount of Three Hundred Thousand (\$300,000.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Three Hundred Thousand (\$300,000.00) Dollars, plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit C ("First July 10, 2007 Note").

14. On the same date, Defendant, TLD, received a second loan from Seem International in the amount of Seven Hundred Eighty Thousand (\$780,000.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Seven Hundred Eighty Thousand (\$780,000.00) Dollars,

plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit D ("Second July 10, 2007 Note"). Additionally, the terms of the Second July 10, 2007 Note included a provision stating that the Second July 10, 2007 Note replaced three (3) previous notes from Defendant, TLD, to Seem International in the total amount of Six Hundred Thirty Thousand (\$630,000.00) Dollars. The Second July 10, 2007 Note absorbed the previous loans but did not absorb the corresponding accrued interest for the three (3) previous notes, in the total amount of One Hundred Ninety Five Thousand, Four Hundred Sixty Two (\$195,462.00) Dollars.

15. On the same date, Defendant, TLD, received a third loan from Seem International in the amount of Sixty Thousand (\$60,000.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Sixty Thousand (\$60,000.00) Dollars, plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit E (Third July 10, 2007 Note").

16. On or about October 30, 2008, Defendant, TLD, received a loan from Seem International in the Amount of Fifty Eight Thousand, Four Hundred Seventy Six (\$58,476.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Fifty Eight Thousand, Four Hundred Seventy Six (\$58,476.00), plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit F ("October 30, 2008 Note").

17. On or about May 22, 2010, Defendant, TLD, received a loan from Seem International in the amount of Seventy Eight Thousand Seven Hundred (\$78,700.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD,

promised to pay Seem International the principal sum of Seventy Eight Thousand Seven Hundred (\$78,700.00) Dollars, plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit G ("May 22, 2010 Note").

18. On or about May 18, 2011, Defendant, TLD, received a loan from Seem International in the amount of Eighty Eight Thousand (\$88,000.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Eighty Eight Thousand (\$88,000.00) Dollars, plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit H ("May 18, 2011 Note")

19. On or about December 29, 2011, Defendant, TLD, received a loan from Seem International in the amount of Seventy Nine Thousand (\$79,000.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Seventy Nine Thousand (\$79,000.00) Dollars, plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit I ("December 29, 2011 Note").

20. On or about May 9, 2012, Defendant, TLD, received a loan from Seem International in the amount of Thirty Seven Thousand Four Hundred (\$37,400.00), personally guaranteed by Defendant, Coltrane, and executed and delivered to Seem International a promissory note under which Defendants, TLD and Coltrane, promised to pay Seem International the principal sum of Thirty Seven Thousand Four Hundred (\$37,400.00), plus interest at the rate of eighteen (18%) percent per annum. A copy of the promissory note is attached hereto as Exhibit J ("First May 9, 2012 Note").

21. On or about the same date, Defendant, TLD, received an additional loan from Seem International in the amount of Thirty Seven Thousand Four Hundred (\$37,400.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Thirty Seven Thousand Four Hundred (\$37,400.00) Dollars, plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit K ("Second May 9, 2012 Note").

22. On or about June 5, 2012, Defendant, TLD, received a loan from Seem International in the amount of Forty Six Thousand Eight Hundred (\$46,800.00) Dollars, personally guaranteed by Coltrane, and executed and delivered to Seem International a promissory note under which Defendants, TLD and Coltrane, promised to pay Seem International the principal sum of Forty Six Thousand Eight Hundred (\$46,800.00) Dollars, plus interest at the rate of eighteen (18%) percent per annum. A copy of the promissory note is attached hereto as Exhibit L ("First June 5, 2012 Note").

23. On or about the same date, Defendant, TLD, received an additional loan from Seem International in the amount of Forty Six Thousand Eight Hundred (\$46,800.00) Dollars and executed and delivered to Seem International a promissory note under which Defendant, TLD, promised to pay Seem International the principal sum of Forty Six Thousand Eight Hundred (\$46,800.00) Dollars, plus interest at the rate of twelve (12%) percent per annum. A copy of the promissory note is attached hereto as Exhibit M ("Second June 5, 2012 Note").

24. On or about November 29, 2012, Defendant, TLD, received a loan from Seem International in the amount of Seventy Seven Thousand One Hundred (\$77,100.00) Dollars, personally guaranteed by Coltrane, and executed and delivered to Seem International a promissory note under which Defendants, TLD and Coltrane promised to pay to Seem International on the

principal sum of Seventy Seven Thousand One Hundred (\$77,100.00) Dollars, with interest at the rate of eighteen (18%) percent per annum. A copy of the promissory note is attached hereto as Exhibit N ("November 29, 2012 Note").

25. Defendant, Coltrane, personally guaranteed the repayment of the First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note.

26. Pursuant to Section 1 of the Notes, the "Maturity Date" of each Note was the date that Defendant, TLD, sold or disposed of all of its real property.

27. On November 8, 2013, Defendant, TLD, sold or otherwise disposed of all of its real property, to wit: the Property located at 9200 Collins Ave., Miami Beach, Florida 33139, by means of that certain Special Warranty Deed from TLD, as Grantor, to HDP-TLD Partners, LLC, a Delaware limited liability company ("Deed"). A copy of the Deed is attached hereto as Exhibit O.

28. Accordingly, on or before November 18, 2013, Defendant, TLD, was obligated to repay the Aggregate Principal Debt plus interest accruing thereon.

29. On or before November 18, 2013, Defendant, Coltrane, was obligated to repay the principal amount of the First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note plus interest thereon.

30. Pursuant to Section 6.01 of each of the Notes, Defendants TLD's and Coltrane's failure to pay the Aggregate Principal Amounts plus interest accrued thereon within ten (10) days from the Maturity Date was considered an event of Default. Pursuant to Section 1 of each of the Notes, the Post Default Rate increased to eighteen (18%) percent per annum on November 19, 2013.

31. Defendants TLD and Coltrane failed to repay Seem International within ten (10) days of the Maturity Date of each Note.

32. The total principal amount of the Notes owed by Defendant, TLD, to Seem International as of the date of this Action is One Million, Six Hundred Eighty-Nine Thousand, Six Hundred Seventy-Six (\$1,689,676.00) Dollars ("Aggregate Principal Debt").

33. As of April 30, 2018, the total amount due and owing to Seem International on the Notes, including the Aggregate Principal Debt and interest accrued, was Five Million Seventy One Thousand Six Hundred Sixty Six (\$5,071,666.00) Dollars ("Total Aggregate Debt").

34. In or about March of 2016, Seem International, Ltd. was dissolved and transferred its assets, including the Notes and its interest in Azure Collins Corp., to its successor company, Amazon Advisor, Ltd.

35. On or about May 2, 2018, Plaintiff, Amazon, delivered notice, pursuant to Section 15 of the Notes, to TLD that the new holder thereof is Amazon Advisor, Ltd., as successor in interest to Seem International, and advised Defendant, TLD, to update the Registry (as such term is defined therein) to reflect Amazon Advisor, Ltd. as the holder of the Notes. Such notice was sent via certified mail. A copy of the notice and certified mail receipt is attached hereto as Exhibit P. As such, Plaintiff, Amazon, has standing to enforce the Notes.

36. With specific regard to the First Partnership Agreement, according to Section 11.3 thereof, unanimous consent of the Limited Partners (as such term is defined therein) is needed in order to (i) require any Limited Partner to make any contribution to the capital of Transacta Lanai Developers, Ltd. or (ii) assign the rights of the partnership in specific partnership property, other than for a Transacta Lanai Developers, Ltd. partnership purpose.

37. Furthermore, Section 19.3 of the First Partnership Agreement requires the consent of a minimum of eighty (80%) percent of the Limited Partners in order to make any amendments thereto.

38. However, without obtaining the vote of the Limited Partners as required by Section 19.3 of the First Partnership Agreement, on or about April 9, 2014, Defendant, TLD, by and through the actions of its General Partner, Defendant TLH, purported to amend and restate the First Partnership Agreement, titling the new partnership agreement “Second Amended and Restated Agreement of Limited Partnership of Transacta Lanai Developers, Ltd.” (“Second Partnership Agreement”). A copy of the Second Partnership Agreement is attached hereto as Exhibit Q.

39. The Second Partnership Agreement purported to, *inter alia*, (i) change the respective rights and remedies of the Limited Partners, (ii) increase Plaintiff, Azure’s, Partnership Interest, as such term is defined therein, to fourteen and 50/100 (14.5%) percent of the Partnership; (iii) increase Plaintiff, Azure’s, “Priority Amount” (as such term is defined therein) to Six Hundred Sixty Eight Thousand Nine Hundred Thirty Four (\$668,934.00) Dollars; and (iv) admit new Limited Partners.

40. Plaintiff, Azure, neither signed, acknowledged or agreed to the Second Partnership Agreement nor consented to Defendant, TLH’s, amendment to the First Partnership Agreement.

41. In the Second Partnership Agreement, Defendants TLD and TLH changed the purpose of the Partnership to “becoming a partner in HDP-TLD Partners, LLC, an entity formed for the acquisition of the Property from Transacta Lanai Developers, Ltd.”, which constitutes an admission that the Property had, in fact, been sold (emphasis added).

42. The Second Partnership Agreement also unilaterally purported to eliminate certain loans, including but not limited to a portion of the Notes set forth herein (in the amount of One Million One Hundred Forty Thousand [\$1,140,000.00] Dollars) and capitalize them as part of the Percentage Interest in the Partnership. See Schedule “2” of the Second Partnership Agreement.

43. Defendant, TLH's, unilateral and unlawful adjustment of Plaintiff, Azure's, percentage interest in Transacta Lanai Developers, Ltd. is also reflected in Schedule K-1 to the 2015 Partnership Return of Transacta Lanai Developers, Ltd., a copy of which is attached hereto as Exhibit R.

44. Defendants TLD and TLH breached both Florida Law and the First Partnership Agreement by amending it to the prejudice of Plaintiff, Azure.

45. Defendants TLD and TLH have breached the Notes and the First Partnership Agreement by attempting to eliminate the debt owed to Plaintiff, Amazon, by capitalizing it to equity in Transacta Lanai Developers, Ltd.

46. Plaintiffs have retained the undersigned firm and have agreed to pay reasonable attorneys' fees and costs in connection with its representation herewith.

47. Section 11 of the Notes permits Plaintiff, Amazon, to recover its attorneys' fees and costs in collection with the enforcement and collection of any debt due to the holder of the Notes.

COUNT I – BREACH OF CONTRACT
(Plaintiff, Azure, Against Defendant, TLD)

48. Plaintiff, Azure, incorporates by reference the allegations contained in paragraphs 1 through 47 as if set forth verbatim herein.

49. The First Partnership Agreement is a valid and enforceable contract.

50. Plaintiff, Azure, has fully performed or tendered all performance required under the First Partnership Agreement.

51. Defendant, TLD, has breached its obligations to Plaintiff, Azure, as set forth in the First Partnership Agreement, by failing to obtain the written consent or approval or vote of eighty (80%) percent of the Limited Partners, as required by Section 19.3 of the First Partnership

Agreement, before amending the First Partnership Agreement—in a manner not permitted by Florida law or the First Partnership Agreement—and attempting to replace it with the Second Partnership Agreement to the detriment of Plaintiff, Azure.

52. Defendant, TLD, has breached its obligations to Plaintiff, Azure, as set forth in the First Partnership Agreement, by unilaterally and unlawfully adjusting Plaintiff, Azure's, percentage of ownership of Transacta Lanai Developers, Ltd.

53. Defendant, TLD, has breached its obligations to Plaintiff, Azure, as set forth in the First Partnership Agreement, by attempting to eliminate certain loans and capitalize them, either in priority return amounts or as percent interest in the partnership, without consent.

54. Defendant, TLD, has breached its obligations to Plaintiff, Azure, as set forth in the First Partnership Agreement, by failing to disperse the proceeds from the sale of the Property in accordance with Sections 10.1 and 10.2 of the First Partnership Agreement.

55. Plaintiff, Azure, is entitled to recover damages resulting from Defendant, TLD's breach of the First Partnership Agreement.

WHEREFORE, Plaintiff, Azure, respectfully requests that this Honorable Court enter a judgment against Defendant, TLD, as follows:

- a. For an award of damages, including but not limited to the return of Plaintiff, Azure's, Initial Capital Contribution, payment of Plaintiff, Azure's, *pro rata* share of the proceeds from the sale of the Property, and other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief as the Court deems proper and just.

**COUNT II – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR
DEALING**
(Plaintiff, Azure, Against Defendant, TLD)

56. Plaintiff, Azure, incorporates by reference the allegations contained in paragraphs 1 through 47 as if set forth verbatim herein.

57. An implied covenant of good faith and fair dealing exists in virtually all contractual relationships. See § 671.203, Fla. Stat. (2007).

58. Plaintiff, Azure, entered into a valid contract upon execution of the First Partnership Agreement.

59. Plaintiff, Azure, fully performed all or substantially all of its obligations as required by the First Partnership Agreement.

60. All conditions required for Defendant, TLD's, performance of the First Partnership Agreement have occurred.

61. Defendant, TLD, by failing to obtain the requisite consent before amending the First Partnership Agreement, adjusting the percentage of ownership in the company held by Plaintiff, Azure, attempting to eliminate investor loans and capitalize them into partnership interest, and failing to disperse the proceeds from the sale of the Property in accordance with Sections 10.1 and 10.2 of the First Partnership Agreement, acted in a manner to unfairly interfere with Plaintiff, Azure's, receipt of its benefits and rights as granted to it in the First Partnership Agreement.

62. Defendant, TLD's, failure to comply with the consent requirements of the First Partnership Agreement did not comport with Plaintiff, Azure's, reasonable contractual expectations under the terms of First Partnership Agreement.

63. Plaintiff, Azure, was harmed by Defendant, TLD's, conduct.

WHEREFORE, Plaintiff, Azure, respectfully requests that this Honorable Court enter a judgment against Defendant, TLD, as follows:

- a. For an award of damages, including but not limited to the return of Plaintiff, Azure's, Initial Capital Contribution, payment of Plaintiff, Azure's, *pro rata* share of the proceeds from the sale of the Property, and other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- a. For an award of such further relief as the Court deems proper and just.

COUNT III – BREACH OF CONTRACT
(Plaintiff, Azure, Against Defendant, TLH)

64. Plaintiff, Azure, incorporates by reference the allegations contained in paragraphs 1 through 55 as if set forth verbatim herein.

65. Pursuant to Section 620.1404 of the Florida Statutes, as a general partner of Transacta Lanai Developers, Ltd., Defendant, TLH, is liable for all of Defendant, TLD's, obligations, including, but not limited to, Defendant, TLD's, obligations under the First Partnership Agreement.

66. Plaintiff, Azure, is entitled to recover damages from Defendant, TLH, resulting from Defendant, TLD's, breach of the First Partnership Agreement.

WHEREFORE, Plaintiff, Azure, respectfully requests that this Honorable Court enter a judgment against Defendant, TLH, as follows:

- a. For an award of damages, including but not limited to the return of Plaintiff, Azure's, Initial Capital Contribution, payment of Plaintiff, Azure's, *pro rata* share of the proceeds from the sale of the Property, and other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief as the Court deems proper and just.

COUNT IV – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Plaintiff, Azure, Against Defendant, TLH)

67. Plaintiff, Azure, incorporates by reference the allegations contained in paragraphs 1 through 63 as if set forth verbatim herein.

68. An implied covenant of good faith and fair dealing exists in virtually all contractual relationships. See § 671.203, Fla. Stat. (2007).

69. Pursuant to Section 620.1404 of the Florida Statutes, as a general partner of Transacta Lanai Developers, Ltd., Defendant, TLH, is liable for all of Defendant, TLD's, obligations, including, but not limited to, Defendant, TLD's, obligations under the First Partnership Agreement.

70. Plaintiff, Azure, is entitled to recover damages from Defendant, TLH, resulting from Defendant, TLD's, breach of its implied covenant of good faith and fair dealing by violating its duty to act in good faith and fairly under the First Partnership Agreement.

WHEREFORE, Plaintiff, Azure, respectfully requests that this Honorable Court enter a judgment against Defendant, TLH, as follows:

- a. For an award of damages, including but not limited to the return of Plaintiff, Azure's, Initial Capital Contribution, payment of Plaintiff, Azure's, *pro rata* share of the proceeds from the sale of the Property, and other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief as the Court deems proper and just.

COUNT V – BREACH OF CONTRACT
(Plaintiff, Amazon, Against Defendant, TLD)

71. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 47 as if set forth verbatim herein.

72. Each of the Notes constitutes a valid and enforceable contract.

73. Seem International properly assigned each of the Notes to its successor in interest, Plaintiff, Amazon Advisor, Ltd.

74. Seem International and Plaintiff, Amazon, have fully performed or tendered all performance required under each of the Notes.

75. Defendant, TLD, has breached its obligations as set forth in each of the Notes by failing to repay to the holder of the Notes the principal sum—plus interest accrued—within ten (10) days of each Note's respective maturity date.

76. Defendant, TLD, has breached its obligations as set forth in the Notes by attempting to eliminate certain loans and capitalize them, either in priority return amounts or as percent interest in Transacta Lanai Developers, Ltd., without the consent of the holder of the Notes.

77. Plaintiff, Amazon, is entitled to recover the total principal sum plus all accrued interest, including but not limited to interest accrued after April 30, 2018, as well as damages resulting from Defendant, TLD's, failure to repay the loans and interest accrued for each of the Notes within ten (10) days of each Note's respective maturity date.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, TLD, as follows:

- a. For an award of damages, including but not limited to the payment of the Total Aggregate Debt amount plus any interest accrued after April 30, 2018, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

COUNT VI – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Plaintiff, Amazon, Against Defendant, TLD)

78. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 47 as if set forth verbatim herein.

79. An implied covenant of good faith and fair dealing exists in virtually all contractual relationships. See § 671.203, Fla. Stat. (2007).

80. Each of the Notes is a valid contract by which Defendant, TLD, is bound.

81. Plaintiff, Amazon, fully performed all or substantially all of its obligations as required under each of the Notes.

82. All conditions required for Defendant, TLD's, performance under the Notes were complete at the time the Notes matured.

83. Defendant, TLD, by failing to repay the loans and interest accrued for each of the Notes within ten (10) days of each Note's respective maturity date, acted in a manner to unfairly interfere with Plaintiff, Amazon, 's receipt of its benefits and rights as defined by the terms of each of the Notes.

84. Defendant, TLD's, failure to repay the loans and interest accrued for each of the Notes within ten (10) days of each Note's respective maturity date did not comport with Plaintiff, Amazon's, reasonable contractual expectations under the terms of each of the Notes.

85. Plaintiff, Amazon, was harmed by Defendant, TLD's, conduct.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, TLD, as follows:

- a. For an award of damages, including but not limited to the payment of the Total Aggregate Debt amount plus any interest accrued after April 30,2018, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

COUNT VII – UNJUST ENRICHMENT
(Plaintiff, Amazon, Against Defendant, TLD)

86. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 47 as if set forth verbatim herein.

87. Defendant, TLD, accepted a loan and retained a total principal sum of One Million, Six Hundred Eighty-Nine Thousand, Six Hundred Seventy-Six (\$1,689,676.00) Dollars from Plaintiff, Azure, as set forth in the Notes.

88. Defendant, TLD, failed to repay the principal sum and the interest accrued within ten (10) days of the maturity date of each Note. Accordingly, all Notes were in default on November 19, 2013.

89. Defendant, TLD, knowingly benefited by accepting the loan, failing to repay the principal amount, and failing to pay the interest on the loan amount.

90. It would be inequitable and unjust to allow Defendant, TLD's, to retain the benefits conferred by Plaintiff, Amazon.

91. As a result of Defendant, TLD's, unjust enrichment, Plaintiff, Amazon, has suffered economic loss.

92. By reason of the actions alleged in this Count, Defendant, TLD, is liable to Plaintiff, Amazon, for monetary damages arising from Defendant, TLD's, failure to repay the principal amounts plus the interest accrued.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, TLD, as follows:

- a. For an award of damages, including but not limited to the payment of the Total Aggregate Debt amount plus any interest accrued after April 30, 2018, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;

- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

COUNT VIII – BREACH OF CONTRACT (GUARANTY)
(Plaintiff, Amazon, Against Defendant Coltrane)

93. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 47 as if set forth verbatim herein.

94. As a guarantor of the First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note, Defendant, Coltrane, is liable to Plaintiff, Amazon, for Defendant, TLD's, failure to repay the principal amount, and interest accrued, for each of the three Notes within ten (10) days of each Note's respective maturity date.

95. Plaintiff, Amazon, is entitled to recover damages resulting from Defendant, Coltrane's, failure to failure to repay the loans and interest accrued for the First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note within ten (10) days of each Note's respective maturity date.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, Coltrane, as follows:

- a. For an award of damages, including but not limited to the payment of the total principle sum plus all accrued interest on the First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;

- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

COUNT IX – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Plaintiff, Amazon, Against Defendant Coltrane)

96. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 47 as if set forth verbatim herein.

97. An implied covenant of good faith and fair dealing exists in virtually all contractual relationships. See § 671.203, Fla. Stat. (2007).

98. The First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note are all valid contracts by which Defendant, Coltrane, is bound.

99. Plaintiff, Amazon, fully performed all or substantially all of its obligations as required under each of the Notes.

100. As a guarantor of the First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note, Defendant, Coltrane, is liable for Defendant, TLD's, failure to repay the principal amount, and interest accrued, for each of the three Notes within ten (10) days of each Note's respective maturity date.

101. All conditions required for Defendant, Coltrane's, performance had occurred upon the sale of the Property and Defendant, TLD's, failure to repay the loan.

102. Defendant, Coltrane, by failing to repay the loans and interest accrued for each of the Notes, acted in a manner to unfairly interfere with Plaintiff, Amazon's, receipt of its benefits and rights as defined by the terms of each of the Notes.

103. Defendant, Coltrane's, failure to repay the First May 9, 2012 Note, First June 5, 2012 Note, November 29, 2012 Note and interest accrued for each of these three (3) Notes did not comport with Plaintiff, Amazon's, reasonable contractual expectations under the terms of each of the Notes.

104. Plaintiff, Amazon, was harmed by Defendant, Coltrane's, conduct.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, Coltrane, as follows:

- a. For an award of damages, including but not limited to the payment of the total principle sum plus all accrued interest on the First May 9, 2012 Note, First June 5, 2012 Note and November 29, 2012 Note, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

COUNT X – BREACH OF CONTRACT
(Plaintiff, Amazon, Against Defendant, TLH)

105. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 77 as if set forth verbatim herein.

106. Pursuant to Section 620.1404 of the Florida Statutes, as a general partner of Transacta Lanai Developers, Ltd., Defendant, TLH, is liable for all of Defendant, TLD's, obligations, including, but not limited to, Defendant, TLD's, obligations under each of the Notes.

107. Plaintiff, Amazon, is entitled to recover damages from Defendant, TLH, resulting from Defendant, TLD's, breach of contract by failing to repay the principal amount and interest accrued for each of the Notes within ten (10) days of each Note's respective maturity date.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, TLH, as follows:

- a. For an award of damages, including but not limited to the payment of the Total Aggregate Debt amount plus any interest accrued after April 30, 2018, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

COUNT XI – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Plaintiff, Amazon, Against Defendant, TLH)

108. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 85 as if set forth verbatim herein.

109. An implied covenant of good faith and fair dealing exists in virtually all contractual relationships. See § 671.203, Fla. Stat. (2007).

110. Pursuant to Section 620.1404 of the Florida Statutes, as a general partner of Transacta Lanai Developers, Ltd., Defendant, TLH, is liable for all of Defendant, TLD's, obligations, including, but not limited to, Defendant, TLD's, obligations under each of the Notes.

111. Plaintiff, Azure, is entitled to recover damages from Defendant, TLH, resulting from Defendant, TLD's breach of its implied covenant of good faith and fair dealing by violating its duty to act in good faith and fairly under each of the Notes.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, TLH, as follows:

- a. For an award of damages, including but not limited to the payment of the Total Aggregate Debt amount plus any interest accrued after April 30, 2018, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

COUNT XII – UNJUST ENRICHMENT
(Plaintiff, Amazon, Against Defendant, TLH)

112. Plaintiff, Amazon, incorporates by reference the allegations contained in paragraphs 1 through 95 as if set forth verbatim herein.

113. Pursuant to Section 620.1404 of the Florida Statutes, as a general partner of Transacta Lanai Developers, Ltd., Defendant, TLH, is liable for the damages caused by Defendant, TLD's, unjust enrichment resulting from its failure to repay the loans for each of the Notes.

114. Defendant, TLH, is liable to Plaintiff, Amazon, for monetary damages arising from Defendant, TLD's, failure to repay the principal amount and interest accrued on each of the Notes within ten (10) days of each Note's respective maturity date.

WHEREFORE, Plaintiff, Amazon, respectfully requests that this Honorable Court enter a judgment against Defendant, TLH, as follows:

- a. For an award of damages, including but not limited to the payment of the Total Aggregate Debt amount plus any interest accrued after April 30, 2018, any other compensatory damages and punitive damages in amounts to be determined by the finder of fact;
- b. For an award of prejudgment interest;
- c. For an award of reasonable attorneys' fees, costs and expenses of litigation; and
- d. For an award of such further relief, including equitable relief, as the Court deems proper and just.

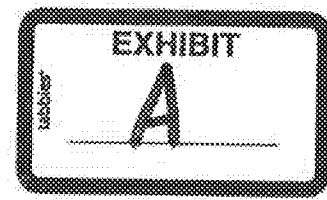
Dated this 22nd day of May, 2018.

Respectfully submitted,

By: /s/Christopher A. DiSchino/
Christopher A. DiSchino
Florida Bar No. 084127

By: /s/Brenda J. Schamy/
Brenda J. Schamy
Florida Bar No. 102829

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**AMENDED AND RESTATED
AGREEMENT OF LIMITED
PARTNERSHIP OF
TRANSACTA LANAI DEVELOPERS,
LTD.**

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**AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP OF
TRANSACTA LANAI DEVELOPERS, LTD.**

This Amended and Restated Agreement of Limited Partnership ("Agreement") dated _____, _____, by and among those parties listed on Exhibit "A" attached hereto.

B A C K G R O U N D

A. The General Partner, Silvia Sabates Coltrane and Thomas D. Coltrane executed an Agreement of Limited Partnership of Transacta Lanai Developers, Ltd. on or about October 28, 2004, ("Partnership Agreement").

B. Each of the above named Limited Partners that was not an original party to the Partnership Agreement was or is being admitted as a Limited Partner to the Partnership subsequent to its formation and the execution of the Agreement and agreed to be bound by the terms and conditions of the Partnership Agreement.

C. The capital requirements of the Partnership have changes so the percentage interest of the Partners has been adjusted accordingly.

D. The General Partner and the Limited Partners desire to amend and restate the Partnership Agreement.

1. Formation. TRANSACTA LANAI DEVELOPERS, LTD. is a limited partnership under the Revised Uniform Limited Partnership Act of Florida ("Act"), pursuant to the filing of the Certificate of Limited Partnership with the Florida Secretary of State by the General Partner. Except as otherwise provided in this Agreement, the Act shall govern the rights and liabilities of the Partners.

2. Name. The name of the Partnership is TRANSACTA LANAI DEVELOPERS, LTD. The General Partner may, in its discretion, change the name of the Partnership and adopt such trade or fictitious names as it may deem appropriate.

3. Definitions. In this Agreement, the following terms have the following meanings unless the context otherwise requires:

3.1 "Act" means the Revised Uniform Limited Partnership Act of Florida, as amended from time to time.

3.2 "Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

3.2.1 Credit to such Capital Account any amounts which such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and

1.704-2(i)(5); and

3.2.2 Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(i)(d)(5), and 1.704-1(b)(2)(i)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(i)(d) of the Regulations and shall be interpreted consistently therewith.

3.3 "Affiliates" means any Person that directly or indirectly controls, is controlled by, or is under common control with, another Person.

3.4 "Aggregate Capital Contribution" means the net fair market value of all contributions made to the capital of the Partnership by a Partner pursuant to Section 7.

3.5 "Agreement" means this Agreement of Limited Partnership, as amended and restated this date and as it may be amended from time to time.

3.6 "Capital Account" means, with respect to any Partner, the Capital Account maintained for such Partner in accordance with the following provisions:

3.6.1 To each Partner's Capital Account there shall be credited such Partner's Capital Contributions, such Partner's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any Partnership liabilities assumed by such Partner or which are secured by any Partnership property distributed to such Partner.

3.6.2 To each Partner's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Partnership property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any liabilities of such Partner assumed by the Partnership or which are secured by any property contributed by such Partner to the Partnership.

3.6.3 In the event all or a portion of an Interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

3.6.4 In determining the amount of any liability for purposes of Sections 3.5.1, and 3.5.2 hereof, there shall be taken into account Code Section 752(e) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital

Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Partnership, the General Partner, or Partners), are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it is not likely to have a material effect on the amounts distributable to a Partner pursuant to Section 10.3 hereof upon the dissolution of the Partnership. The General Partner also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Partnership of oil or gas properties) might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

3.7 "Capital Contributions" means, with respect to a Partner, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Partnership with respect to the Partnership interest held by such Partner. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note (or a person related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Partner until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

3.8 "Certificate" means the certificate of limited partnership required by the Act to be filed with the Secretary of State of Florida, as it may be amended from time to time.

3.9 "Code" means the Internal Revenue Code of 1986, as amended, or subsequent revenue laws.

3.10 "Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

3.11 "Event of Withdrawal" means an event described as such in Fla. Stat. §620.124, or successor provision thereto, except as agreed to by all Partners at the time of the event.

3.12 "Fiscal Year" means (i) the period commencing on the effective date of this Agreement and ending on the last day of the Partnership's taxable year, (ii) any subsequent twelve (12) month period commencing on day after the last day of the partnership's taxable year and ending on the last day of the partnership's taxable year, or (iii) any portion of the period described in clause (ii) for

which the Partnership is required to allocate Profits, Losses, and other items of Partnership income, gain, loss, or deduction pursuant to Section 9 hereof.

3.13 "General Partner" means TRANSACTA LANAI HOLDINGS, LLC, and its successors as provided herein.

3.14 "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

3.14.1 The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the General Partner, provided that, if the contributing Partner is a General Partner, the determination of the fair market value of a contributed asset shall be determined by appraisal;

3.14.2 The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times: (a) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Partnership to a General Partner or Partner of more than a *de minimis* amount of Partnership property as consideration for an interest in the Partnership; and (c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the General Partner and Partners in the Partnership;

3.14.3 The Gross Asset Value of any Partnership asset distributed to a Partner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the General Partner, provided that, if the distributee is a General Partner, the determination of the fair market value of the distributed asset shall be determined by appraisal; and

3.14.4 The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 3.27.6 and 9.3.7 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section 3.14.4 to the extent the General Partner determines that an adjustment pursuant to Section 3.14.2 hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 3.14.4.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 3.14.1, Section 3.14.2, or Section 3.14.4 hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

3.15 "Involuntary Transfer" means any involuntary sale, transfer, encumbrance or other

disposition, by or in which any Partner or assignee of a Partnership Interest shall be deprived or divested of any right, title or interest in or to any Partnership Interest, or portion thereof, to any Person or governmental entity other than a Partner, including, without limitation: (i) any sale in connection with the execution of a judgment pursuant to court order, (ii) a transfer or sale in connection with a bankruptcy or a transfer or sale by a receiver, (iii) any transfer to a judgment creditor pursuant to court order, (iv) any transfer in connection with a reorganization, insolvency or similar proceeding, (v) any transfer to a public officer or agency pursuant to any abandoned property or escheat law, or (vi) any transfer to the spouse or former spouse of a Partner or assignee of a Partnership Interest as the result of or incident to any dissolution of marriage, marital separation, or similar event (notwithstanding such transfer is pursuant to a marital or property settlement agreement).

3.16 "Limited Partners" means those Persons identified on the Signature Pages of this Agreement as limited partners and all other Persons who shall be admitted to the Partnership as Substitute Limited Partners as provided in this Agreement, and no other Persons.

3.17 "Net Cash From Operations" means the gross cash proceeds from Partnership operations (excluding sales and dispositions of condominium units whether or not in the ordinary course of business) less the portion thereof used to pay or establish reserves for all Partnership expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the General Partner. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this Section 3.17 and Section 3.18 hereof. Net Cash from Operations shall include income-type items derived from Partnership investment assets (e.g., dividends, interest, and partnership operating distributions).

3.18 "Net Cash From Sales or Refinancings" means the net cash proceeds from all sales and other dispositions (including sales and dispositions of condominium units whether or not in the ordinary course of business, proceeds of any insurance and proceeds from any eminent domain or similar proceeding) and all refinancings of Partnership property, less any portion thereof used to establish reserves, all as determined by the General Partner. "Net Cash From Sales or Refinancings" shall include all principal and interest payments with respect to any note or other obligation received by the Partnership in connection with sales and other dispositions (other than in the ordinary course of business) of Partnership property.

3.19 "Partner Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

3.20 "Partner Nonrecourse Debt Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

3.21 "Partner Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

3.22 "Partners" means collectively the General Partner and all Limited Partners.

3.23 "Partnership" means TRANSACTA LANAI DEVELOPERS, LTD.

3.24 "Partnership Interest" means a Partner's percentage interest in the profits, losses, and property of the Partnership, which percentage is to be determined in accordance with the relative contributions to the capital of the Partnership as made by the Partner and the other Partners from time to time.

3.25 "Partnership Minimum Gain" has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d).

3.26 "Person" means an individual, corporation, partnership, association, trust, estate or any other entity.

3.27 "Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

3.27.1 Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 3.27 shall be added to such taxable income or loss;

3.27.2 Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 3.27 shall be subtracted from such taxable income or loss;

3.27.3 In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.14.2 or Section 3.14.3 hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

3.27.4 Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

3.27.5 In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 3.10 hereof;

3.27.6 To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section

1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's Interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses;

3.27.7 Notwithstanding any other provision of this Section 3.27, any items which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Sections 9.3 or Section 9.4 hereof shall be determined by applying rules analogous to those set forth in Sections 3.27.1 through 3.27.6 above.

3.28 "Property" means the property described in Schedule "A", and such other property as the Partners shall agree or have agreed to submit to Partnership ownership, including specifically the real property described on Exhibit "A".

3.29 "Regulatory Allocations" has the meaning set forth in Section 9.4 hereof.

3.30 "Special Limited Partners" has the meaning set forth in Section 16.5.2.

3.31 "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and who have been substituted for such Limited Partners as provided in this Agreement. Solely for purposes of determining those Persons who are entitled to distributions and allocations under Sections 9 and 10, "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and Special Limited Partners and their assignees, whether or not such Persons have been substituted as provided herein.

3.32 "Transfer" means the mortgage, pledge, hypothecation, transfer, gift, bequest, sale, assignment or other disposition of any part or all or any Partnership Interest including a general partnership interest in the Partnership, whether voluntarily, by operation of law or otherwise.

4. Principal Place of Business and Recordkeeping Office and Agent for Service of Process. The principal place of business and recordkeeping of the Partnership is at 9380 Collins Avenue, Suite 1, Surfside, Florida 33154, or at such other location as the General Partner, in its discretion, may determine. M & W AGENTS, INC., Boca Corporate Center, 2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431, shall act as agent for service of process on the Partnership.

5. Term. The Partnership shall continue until December 31, 2025, unless sooner terminated as provided in Section 18.

6. Business and Purposes. The purpose and business of the Partnership shall be the acquisition, development, construction of buildings and improvements, leasing, ownership, management and sale of all or a portion of the Property, including without limitation the creation of a condominium project and the sale of units in that project, and to conduct such other activities as may be necessary or appropriate to promote such business and purposes, it being agreed that each of the foregoing is an

ordinary part of the Partnership's business. The Partnership shall not engage in any other business without the prior consent of Limited Partners owning (in the aggregate) at least eighty (80%) percent of the limited Partnership Interests owned by the Limited Partners.

7. Capital Contributions and Capital Accounts.

7.1 Contribution of General Partners. The General Partner shall, as soon as practicable after the execution of this Agreement, contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of said capital contribution shall be allocated to the capital account of the General Partner. In addition, the General Partner shall contribute its efforts as managing partner and shall be subject to unlimited liability.

7.2 Contribution of Limited Partners. The Limited Partners shall contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of each such contribution shall be allocated to the respective capital accounts of the Limited Partners as reflected on Schedule "A."

7.3 Withdrawal of Capital. Except as specifically provided in this Agreement, no Partner shall be entitled to withdraw any part of his capital account or to receive any distribution from the Partnership, and no Partner shall be required to make any additional capital contribution to the Partnership.

7.4 Partner's Loans. Loans by any Partner to the Partnership shall not be considered contributions to the capital of the Partnership and shall not increase the capital account of the lending Partner.

7.5 Interest on Capital Contribution. No interest shall be paid on any capital contributed to the Partnership.

8. Compensation and Expenses of General Partner.

8.1 Compensation and Reimbursement. The Partnership shall pay to the General Partner a development fee of \$240,000, payable in the amount of \$8,000 per month for a period of thirty (30) months commencing one (1) month from the date hereof, and reimbursement for sums advanced. The Partnership is also authorized to enter into the brokerage agreement attached hereto as Exhibit "B" with an affiliate of the General Partner and an affiliate of the General Partner shall be entitled to receive mortgage brokerage fees from purchasers of condominium units. With the consent of a majority in interest of the Limited Partners other than the General Partner or its affiliates, the General Partner may also enter into business agreements, contracts, and other transactions with the General Partner or its affiliates and is authorized to pay fees, commissions or other consideration to the General Partner, or its affiliates on an arms length basis.

8.2 Expenses. The General Partner may charge the Partnership for any reasonable expenses actually incurred by it in connection with the Partnership's business and all allocable portions of expenses incurred in connection with both Partnership and other activities, such allocation to be

determined on any equitable basis selected by the General Partner consistent with generally accepted accounting principles. Such expenses shall include, but are not limited to, payment of fees and expenses to attorneys, accountants, property managers and property management companies and other consultants. The General Partner shall not be reimbursed any amount for its general overhead.

9. Allocations of Profit and Loss, Cash Distributions.

9.1 Allocations of Profits. After giving effect to the special allocations set forth in Sections 9.3 and 9.4 hereof, Profits for any Fiscal Year shall be allocated in the following order and priority:

9.1.1 First, to the Partners an amount equal and in proportion to the excess, if any, of (i) the cumulative Losses allocated pursuant to Section 9.2.2 hereof for the current and all prior Fiscal Years, over (ii) the cumulative Profits allocated pursuant to this Section 9.1.1 for the current and all prior Fiscal Years;

9.1.2 The balance, if any, to all Partners based on each Partner's Partnership Interest; provided, however, to the extent the General Partner receives any disproportionate distributions under Sections 10.1 or 10.2.2, a corresponding amount of Profit shall first be specifically allocated to the General Partner equal to such distributions.

9.2 Allocation of Losses. After giving effect to the special allocations set forth in Sections 9.3 and 9.4, Losses for any Fiscal Year shall be allocated as set forth in Section 9.2.1 below, subject to the limitations in Section 9.2.2 below.

9.2.1 To all Partners based on each Partner's Partnership Interest.

9.2.2 The Losses allocated pursuant to Section 9.2.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Partner who is not a General Partner to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Partners who are not General Partners would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 9.2.1, the limitation set forth in this Section 9.2.2 shall be applied on a Partner by Partner basis so as to allocate the maximum permissible Losses to each Partner who is not a General Partner under Section 1.704-1(b)(2)(ii)(d) of the Regulations. All Losses in excess of the limitation set forth in this Section 9.2.2 shall be allocated to the General Partner.

9.3 Special Allocations. The following special allocations shall be made in the following order:

9.3.1 Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partnership Minimum Gain during any Partnership Fiscal Year, each Partner shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be

allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(6) and 1.704-2(j)(2) of the Regulations. This Section 9.3.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

9.3.2 Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Fiscal Year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.3.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

9.3.3 Qualified Income Offset. In the event any Partner who is not a General Partner unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), Regulations Section 1.704-1(b)(2)(ii)(d)(5), or Regulations Section 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Partner as quickly as possible, provided that an allocation pursuant to this Section 9.3.3 shall be made if and only to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.3 were not in the Agreement.

9.3.4 Gross Income Allocation. In the event any Partner who is not a General Partner has a deficit Capital Account at the end of any Partnership Fiscal Year which is in excess of the sum of (i) the amount such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise), and (ii) the amount such Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.3.4 shall be made if and only to the extent that such Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.4 and Section 9.3.3 hereof were not in the Agreement.

9.3.5 Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated to the Partners in accordance with their respective Partnership Interests.

9.3.6 Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for

any Fiscal Year shall be specially allocated to the General Partner or Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

9.3.7 Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a General Partner or Partner in complete liquidation of his Interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the General Partner and the Partners in accordance with their Interests in the Partnership in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Partners to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

9.3.8 Allocations Relating to Taxable Issuance of Partnership Interests. Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of an Interest in the Partnership by the Partnership to a Partner (the "Issuance Items") shall be allocated among the Partners so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Partner, shall be equal to the net amount that would have been allocated to each such Partner if the Issuance Items had not been realized.

9.4 Curative Allocations. The allocations set forth in Sections 9.2.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5, 9.3.6 and 9.3.7 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 9.4. Therefore, notwithstanding any other provision of this Section 9 (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such General Partner or Partner would have had if the Regulatory Allocations were not part of the Agreement and all Partnership items were allocated pursuant to Sections 9.1, 9.2.1, 9.3.8, and 9.5. In exercising its discretion under this Section 9.4, the General Partner shall take into account future Regulatory Allocations under Sections 9.3.1 and 9.3.2 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 9.3.5 and 9.3.6.

9.5 Other Allocation Rules.

9.5.1 Generally, unless otherwise explicitly provided, all Profits and Losses allocated to the Partners shall be allocated among them in proportion to the Partnership Interest held by each. In the event additional Limited Partners are admitted to the Partnership on different dates during any Fiscal Year, the Profits (or Losses) allocated to the Partners for each such Fiscal Year shall be allocated among the Partners in proportion to the Partnership Interest each holds from time to time

during such Fiscal Year in accordance with Code Section 706, using any convention permitted by law and selected by the General Partner.

9.5.2 The Partners are aware of the income tax consequences of the allocations made by this Section 9 and hereby agree to be bound by the provisions of this Section 9 in reporting their shares of Partnership income and loss for income tax purposes.

9.5.3 Solely for purposes of determining a General Partner's or Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), the Partner's Interests in Partnership profits are as follows: Limited Partners one hundred percent (100%) (in proportion to their Partnership Interests).

9.5.4 To the extent permitted by Sections 1.704-2(h)(3) of the Regulations, the General Partner shall endeavor to treat distributions of Net Cash From Operations or Net Cash From Sales or Refinancings as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Partner who is not a General Partner.

9.6 Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the General Partner and Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 3.14.1 hereof). In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.14.2 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 9.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

9.7 Portfolio Debt. Notwithstanding the foregoing allocations under this Section 9 and distributions under the following Section 10, no allocation or distribution shall be made (unless waived by the affected Partner or otherwise required by law) which would cause a foreign lender making a loan that is related to a Partner to have an interest (after application of rules constructive of attribution or constructive ownership provided under the Code) in the capital or profits of the Partnership which would disqualify the interest on such loan for the portfolio interest exemption from U.S. tax if it would otherwise qualify for such exemption based on the Partner's stated Partnership Interest. The Partnership shall make allocations, to the extent permitted by law, to avoid disqualifying any interest on loans from the portfolio interest exemption if such loans are intended to qualify for that exemption by the lender.

10. Distributions.

10.1 Net Cash From Operations. Except as otherwise provided in Section 10.3 hereof, Net Cash From Operations not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed to the Partners in proportion to their respective Partnership Interests; provided, however, the General Partner shall first be distributed an amount equal to the amount of interest paid or payable to a Limited Partner or its affiliates from the Partnership (or from the General Partner arising from a loan which was used by the General Partner to make capital contributions or loans to the Partnership). Nothing herein shall be construed to make any interest on any obligation contingent on profits and said interest shall be payable in all events. To the extent such cash is comprised in whole or in part of nonrental income-type items derived from Partnership passive investment assets (e.g., dividends, interest, and partnership operating distributions), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

10.2 Net Cash From Sales or Refinancings. Except as otherwise provided in Section 10.3 hereof, Net Cash From Sales or Refinancings not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed in the following order and priority:

10.2.1 First, proportionally to the Partners until their aggregate Capital Account balances are reduced to zero; and

10.2.2 thereafter, to the Partners in proportion to their Partnership Interests, provided, however, the General Partner shall first be distributed an amount equal to the amount of interest paid or payable to a Limited Partner or its affiliates from the Partnership (or from the General Partner arising from a loan which was used by the General Partner to make capital contributions or loans to the Partnership) and the distribution to each such Limited Partner shall be first reduced accordingly. Nothing herein shall be construed to make any interest on any obligation contingent on profits and said interest shall be payable in all events. To the extent such cash is comprised in whole or in part of nonrental income-type items derived from Partnership passive investment assets (e.g., dividends, interest, and partnership operating distributions), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

To the extent such cash is comprised in whole or in part of cash from the sale of Partnership non-real property passive investment assets (e.g., marketable securities), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

10.3 Liquidating Distributions. Liquidating distributions of the partnership, including all distributions made pursuant to a liquidation described in Regulations Section 1.704-1(b)(2)(i)(g), shall be distributed as provided in Section 10.2.

It is intended that the foregoing distributions shall be in compliance with Regulations Section 1.704-1(b)(2)(i)(b)(2), and subsequent to a revaluation of Partnership property and corresponding

adjustment of Capital Accounts under Treas. Regs. 1.704-1(b)(2)(iv)(f) and if not in compliance, the General Partner shall have the authority to make allocations of Profit and Loss to the extent it deems necessary to be in compliance. If any General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such General Partner shall contribute to the capital of the Partnership the amount necessary to restore such deficit balance to zero in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3). If any Limited Partner who is not a General Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Limited Partner shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever. In the discretion of the General Partner, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to this subsection may be (a) distributed to a trust established for the benefit of the General Partner and Limited Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the General Partner, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Subsection 10.3; or (b) withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld amounts shall be distributed to the Partners as soon as practicable.

10.4 Division Among Partners. Except as otherwise provided above, allocations in Section 9 and distributions to the Partners pursuant to this Section 10 shall be divided among them in proportion to the Partnership Interest held by each.

10.5 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution, or allocation to the Partnership, the General Partner, or the Partners shall be treated as amounts distributed to the General Partner and the Partners pursuant to this Section 10 for all purposes under this Agreement. The General Partner is authorized to withhold from distributions, or with respect to allocations, to the General Partner and Partners and to pay over to any federal, state, or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, or local law and shall allocate such amounts to the General Partner and Partners with respect to which such amount was withheld.

10.6 Special Tax Elections. At the written request of any Partner the Partnership shall make an election pursuant to Section 754 of the Code upon a distribution of property described in Code Section 734 or a transfer described in Code Section 743 of a Partnership Interest in accordance with this Agreement. Each Partner shall, upon request, supply the General Partner with the information necessary to make such election.

10.7 General Elections and Limitations. The General Partner is authorized, in its sole

discretion, to make any other elections required or permitted with respect to Federal or state taxes in any Partnership tax return; provided, however, no election shall be made by either the Partnership or the Partners to be excluded from the application of the provisions of Subchapter K, Chapter I of Subtitle A of the Code or from any similar provisions of any state tax laws.

10.8 Distribution in Kind. If any assets of the Partnership are distributed in kind, such assets shall be distributed to the Partners entitled to participate in the distribution as tenants-in-common in the same proportions as such Partners would have been entitled to cash distributions.

10.9 Rights of Partners to Property. No Partner shall have the right to withdraw or reduce his capital contribution to the Partnership except as a result of the dissolution of the Partnership. No Partner shall be entitled to demand and receive property other than cash in return for his capital contribution to the Partnership, and, to the maximum extent permissible under applicable law, each Partner hereby waives all right to partition the Partnership property.

10.10 Priorities of Limited Partners. No Limited Partner shall have any priority over any other Limited Partner as to the return of his contribution to the capital of the Partnership or as to compensation by way of income.

10.11 Minimum Interest of General Partner. Notwithstanding the allocations contained in these Sections 9 and 10, it is the intent of this Agreement that in no event shall the General Partner be allocated less than 1% of Profits, Losses, Net Cash from Operations or Net Cash from Sales or Refinancings allocated to the Partners.

10.12 Limitation on Distributions. No distribution shall be made to the Partners in their capacity as such under Sections 10.1, 10.2 and 10.3, or elsewhere provided in this Agreement, until all loans made by the Limited Partners (or their affiliates, including foreign corporations) to the Partnership have been satisfied in full; provided, however, the General Partner shall be permitted but shall not be required to make distributions to the Partners as provided in Section 10.1 and 10.2 in an amount determined by the General Partner sufficient for the Partners to satisfy any federal income tax allocable to them with respect to allocations of income of this Partnership, assuming this income is the only income of such persons and is taxable at the highest marginal tax rate. All payments on any loans due to the Partners or their affiliates, shall be made *pari passu*.

11. Rights, Duties and Powers of the General Partner and Limited Partners.

11.1 Management. The General Partner shall be solely responsible for the management of and shall use its best efforts to manage and control the Partnership business with all rights and powers generally conferred by law or necessary, advisable or consistent with such responsibility.

11.2 Rights. In addition to any other rights and powers which it may possess, the General Partner shall have all specific rights and powers required or appropriate to the management of the Partnership business which, by way of illustration, but not by way of limitation, shall include the right and power:

11.2.1 To evaluate, select, negotiate for, acquire, purchase, operate, hold, trade, sell, exchange, convey or lease the Partnership property, and any real property which is or may become a part of the Partnership property, as well as personal or other property connected with it, and except as may be limited by this Agreement to acquire or grant options for the purchase or sale of or sell the Partnership property from or to any Person, including, without limitation, the General Partner for such price, cash or otherwise, and upon such terms as the General Partner in its sole discretion deems to be in the best interests of the Partnership.

11.2.2 To manage, develop, improve, maintain and service Partnership properties; to form corporations or acquire shares of stock in corporations to carry out any of the purposes of the Partnership and to acquire title to property in the name of such corporations and to guarantee or otherwise secure the obligations of such corporations in furtherance of Partnership purposes.

11.2.3 To borrow and lend money and, if security is required for a borrowing, to mortgage or subject to any other security device any portion of the property of the Partnership, to execute replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify and consolidate such indebtedness as determined in their discretion to be in the best interest of the Partnership.

11.2.4 To place of record, title to, or the right to use, Partnership assets in the name or names of a nominee or nominees, including, but not limited to, the General Partner, or a land trustee, for any purpose convenient or beneficial to the Partnership.

11.2.5 To acquire and to enter into any contract of liability and other insurance which the General Partner deems necessary and proper for the protection of the Partners and Partnership, for the conservation of its assets or for any purpose convenient or beneficial to the Partnership.

11.2.6 To employ from time to time persons, firms or corporations for the operation and management of the Partnership business, including, but not limited to, attorneys, accountants, advisors, administrators, property managers and personnel, managing and supervising agents, construction, maintenance and repair contractors, independent contractors furnishing full service components, architects, land planners, financial consultants, engineers, insurance brokers, real estate brokers and loan brokers on such terms and for such compensation as the General Partner may determine. The General Partner is hereby specifically authorized in its sole discretion to employ the General Partner as provided in, and subject to, the provisions of this Agreement. Compensation connected with any such employment shall be an expense of the Partnership.

11.2.7 To make elections under the tax laws of the United States or any state as to the treatment of Partnership income, gain, loss, deduction and credit, and as to all other relevant matters.

11.2.8 To determine the Profits, Losses, Net Cash from Operations and Net Cash from Sales and Refinancings of the Partnership for any period and from any transaction.

11.2.9 To transfer all or part of the real or personal property belonging to the Partnership to one or more general or limited partnerships or corporations in exchange for

partnership interests or shares of stock which the Partnership may hold or distribute among the Partners in accordance with their respective Interests in the Partnership.

11.2.10 To perform any and all other acts or activities customary or incidental to the Partnership purposes and businesses.

11.2.11 Adjust Partner capital account balances to reflect a revaluation of Partnership property on the books of the Partnership in accordance with and as permitted by the provisions of Treas. Regs. §1.704-1(b)(2)(iv)(f).

11.2.12 Admit additional Limited Partners, provided, however, the such admission shall not dilute the Partnership Interest (strictly as a percentage) of the Limited Partners other than SILVIA COLTRANE or such other Limited Partners consenting to such dilution unless it relates to additional capital in excess of the amount initially required.

11.3 Certain Limitations. The General Partner shall have all of the rights and powers and be subject to all of the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent of all of the Limited Partners as provided in this Agreement, or as otherwise provided by law, the General Partner shall not have authority to do any of the following:

11.3.1 Any act in contravention of the Certificate or this Agreement.

11.3.2 Confess a judgment against the Partnership.

11.3.3 Possess Partnership property, or assign the rights of the Partnership in specific Partnership property, for other than a Partnership purpose.

11.3.4 Admit a Person as a General Partner, except as otherwise provided in this Agreement.

11.3.5 Require any Limited Partner to make any contribution to the capital of the Partnership not provided in Section 7.

11.4 Other Interests. Any of the Partners and any affiliates of the Partners, or any shareholder or any other Person holding a legal or beneficial interest in an entity which is a Partner or an affiliate of the General Partner, may engage in or possess an interest in other business ventures which may be competitive with the business of, or which may transact business with, the Partnership. Neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived from them.

11.5 Agreement Beyond the Partnership Term. Agreements entered into by the Partnership, including, but not limited to, security agreements, mortgages and leases, may extend for terms in excess of the term of the Partnership.

11.6 General Partner as Limited Partner. The General Partner or its affiliates may acquire

and own interests as Limited Partners, in addition to its interest as General Partner. In addition, the General Partner may become a Limited Partner in accordance with the provisions of Section 16.5.2.

11.7 Time Devoted to Partnership Business. The General Partner shall devote only such time to the business of the Partnership as it, in its sole discretion, shall deem to be necessary to manage and supervise the Partnership business.

11.8 General Partner's Liability. The General Partner shall not be liable for the return of any portion of the Aggregate Capital Contributions of the Limited Partners.

11.9 Exculpation and Indemnification of General Partner. No General Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or any other Partner for any act performed or failure to act by it unless such act or failure to act is attributable to willful misconduct or gross negligence. The Partnership shall indemnify and hold harmless the General Partner from and against any and all loss, damage, liability, cost or expense, including reasonable attorneys' fees, arising out of any act or failure to act by the General Partner if such act or failure to act is in good faith within the scope of this Agreement and is not attributable to willful misconduct or gross negligence. The General Partner shall indemnify and hold harmless the Partnership and the Partners for any loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any act or failure to act by the General Partner, where such act or failure to act is attributable to willful misconduct or gross negligence.

11.10 Tax Matters Partner. TRANSACTA LANAI HOLDINGS, LLC shall be the Tax Matters Partner; provided, however, if it is no longer General Partner then it shall be a successor appointed by Limited Partners owning in the aggregate 51% of the Limited Partnership Interest. The Tax Matters Partner shall notify all Partners as to the beginning of any administrative proceedings at the Partnership level with respect to Partnership items and shall further notify the Partners as to any final Partnership administrative adjustment resulting from any such proceeding. The Tax Matters Partner shall be entitled to reimbursement for all costs and expenses incurred in connection with its services to the Partnership as Tax Matters Partner, and shall be indemnified and held harmless by the Partners with respect to such services, except with respect to willful misconduct or gross negligence.

11.11 Powers of Limited Partners. The Limited Partners shall take no part in or interfere in any manner with the conduct or control of the Partnership business and shall have no right or authority to act for or to bind the Partnership. The Partnership may engage Limited Partners or persons associated with them for specific purposes and may otherwise deal with such Limited Partners on terms and for compensation to be agreed upon by any such Limited Partner and the Partnership. The exercise of any of the rights and powers of the Limited Partners pursuant to the terms of this Agreement shall not be deemed taking part in the day-to-day affairs of the Partnership or the exercise of control over Partnership affairs.

11.12 Liability of Limited Partners. A Limited Partner shall not be bound by, or personally liable for, any of the debts, contracts, liabilities, or other obligations of the Partnership or the General Partner, or for any losses of the Partnership in excess of their required capital contribution, and the liability of each Limited Partner shall be limited solely to the amount of his contribution to the