

SAMPLE SPECIAL PURPOSE/LIMITATION LANGUAGE

The following is sample language to be added to the Certificate of Limited Partnership for the Borrower:

The partnership agreement limits the purpose of the company to acquiring, developing, and selling the Project and all related purposes thereof as more particularly described in the partnership agreement. The partnership agreement also contains provisions, among others, limiting the authority of the General Partner on behalf of the Partnership, or the Partnership to (a) dissolve or liquidate, (b) consolidate with another entity; (c) institute or consent to a bankruptcy or insolvency proceeding, (d) sell, convey, lease, exchange, encumber, mortgage, hypothecate, transfer or otherwise dispose of the Project, or any part thereof, or (e) amend its organizational documents.

The following is sample language to be added to the Limited Partnership Agreement for the Borrower:

1. Restrictions. Without the written consent of _____, a _____ (the “Lender”), at all times while the Loan is outstanding, the Partnership shall not (i) admit in writing its inability to pay its debts, (ii) while the Loan is outstanding and prior to the dissolution and liquidation of the Partnership, enter into any merger, consolidation, or reorganization and shall not liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), (iii) discontinue its business or sell, convey, lease, exchange, encumber, mortgage, hypothecate, transfer or otherwise dispose of all or any substantial part of the Partnership’s business or property, including, without limitation, the Project or any part thereof.

2. Separateness Covenants. For so long as the Loan is outstanding, the Partnership shall observe the following covenants and conditions:

A. The purpose for which the Partnership is organized is limited solely to: (i) owning the Project, constructing the Project and selling the Units of the Project, (ii) entering into and being the borrower under the Loan with Lender and the Construction Loan with Senior Lender, (iii) transacting any and all lawful business for which a limited partnership may be organized under the Act that is incident, necessary and appropriate to accomplish the foregoing.

B. The Partnership’s ability to incur indebtedness other than the Loan is limited to incurring liabilities in the ordinary course of its activities that are related to the ownership, development, and operation of the Project.

C. The Partnership is prohibited from engaging in any dissolution, liquidation, consolidation, merger or sale of assets.

D. The Partnership shall maintain an arm’s length relationship with its affiliates and its ability to enter into transactions with affiliates is limited only to transactions on an arm’s length basis and on commercially reasonable terms.

E. The Partnership shall:

1. Maintain books and records separate from any other person or entity;
2. Maintain its bank accounts separate from any other person or entity;
3. Not commingle its assets with those of any other person or entity and shall hold all of its assets in its own name;
4. Conduct its own affairs in its own name;
5. Maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity and not to have its assets listed on the financial statement of any other entity;
6. File its tax returns separate from those of any other entity and not to file a consolidated federal income tax return with any other entity;
7. Pay its own liabilities and expenses only out of its own funds;
8. Observe all limited partnership and other organizational formalities;
9. Pay the salaries of its own employees (if any) from its own funds;
10. Maintain a sufficient number of employees (if any) in light of its contemplated activities;
11. Not guarantee or become obligated for the debts of any other person or entity;
12. Not hold out its credit as being available to satisfy the obligations of any other person or entity;
13. Not acquire the obligations or securities of its affiliates or owners, including partners, members or shareholders, as appropriate;
14. Not make loans to any other person or entity or buy or hold evidence of indebtedness issued by any other person or entity (except for cash and investment-grade securities);
15. Allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;
16. Use separate stationery, invoices, and checks bearing its own name;
17. Not pledge its assets for the benefit of any other person or entity (other than with respect to the Loan and the Construction Loan);
18. Hold itself out as a separate entity;
19. Correct any known misunderstanding regarding its separate identity;

20. Not identify itself as a division of any other person or entity; and
 21. Maintain adequate capital in light of its contemplated activities.
- F. The Partnership shall not amend the Limited Partnership Agreement without the consent of Lender.
- G. The Partnership shall continue its existence (and not dissolve) for so long as a solvent Partner exists.
- H. The unanimous consent of all Partners and Lender is required for the Partnership to:
1. File or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek relief under any Laws relating to the relief from debts or the protection of debtors generally;
 2. Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Partnership or a substantial portion of its properties;
 3. Make any assignment for the benefit of the Partnership's creditors; or
 4. Take any action in furtherance of any of the foregoing.

The following is sample language relating to UCC Article 8 to be added to the Limited Partnership Agreement for the Borrower:

UCC Article 8 Provisions.

1. Irrevocable Proxy. Solely with respect to any action, decision, determination or election by Borrower or its Partners that the Partnership interests or other equity interests in Borrower, be, or cease to be, a "security" as defined in and governed by California Uniform Commercial Code § 8-101, et seq., and Revised Article 8 - Investment Securities, 1994 Official Text, as approved by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, as enacted in any relevant jurisdiction, with any non-uniform provisions as enacted in any such jurisdiction, all as amended from time to time ("UCC Article 8 Matters") the Partners hereby irrevocably grant and appoint Lender, at all times while the Loan is outstanding, as Partners' true and lawful proxy, for and in Partners' name, place and stead to vote the Pledged Interest (as defined in the Loan Documents) in the Partnership by Partners, whether directly or indirectly, beneficially or of record, now owned or hereafter acquired, with respect to such UCC Article 8 Matters (as defined in the Loan Documents). The proxy granted and appointed herein shall include the right to sign Partners' name (as a Partner of the Partnership) to any consent, certificate or other document relating to an UCC Article 8 Matter and the Pledged Interest that applicable law may permit or require,

to cause the Pledged Interest to be voted in accordance with the preceding sentence. The Partners hereby represent and warrant that there are no other proxies and powers of attorney with respect to a UCC Article 8 Matter and the Pledged Interest that any Partner may have granted or appointed. Partners will not give a subsequent proxy or power of attorney or enter into any other voting agreement with respect to the Pledged Interest with respect to any UCC Article 8 Matter and any attempt to do so with respect to an UCC Article 8 Matter shall be void and of no effect.

THE PROXIES AND POWERS GRANTED BY THE PARTNERS PURSUANT TO THIS AGREEMENT ARE COUPLED WITH AN INTEREST AND ARE GIVEN TO SECURE THE PERFORMANCE OF THE PLEDGORS' OBLIGATIONS UNDER THIS AGREEMENT.

2. Article 8 Opt-In. Partners, as all of the Partners of the Partnership, hereby elect, pursuant to UCC Article 8-103(c), that Partners' Partnership in the Partnership is a "security" governed by UCC Article 8, and that any certificate evidencing Partners' interest in the Partnership is a "certificated security" within the meaning of UCC Article 8-102(a)(4). The Limited Partnership Agreement of the Partnership and any related organizational documents shall be and are hereby deemed amended in effectuation hereof, and Partners hereby waive any and all preconditions, formalities, or other provisions of the Limited Partnership Agreement which would operate to limit or prevent the effectiveness of the foregoing amendment to the Limited Partnership Agreement and any such related organizational documents.

3. Registration of Pledge. In the event that at any time after the date hereof the Pledged Interest shall be evidenced by an instrument or a certificate, Partners shall or shall cause the Partnership to:

(a) promptly deliver any such instrument or certificate, duly endorsed or subscribed by Partners or accompanied by appropriate instruments of transfer or assignment duly executed in blank by Partner, to the Lender as additional Collateral. Any such instruments or certificates received by any Partner shall be held by such Partner in trust, as agent for the Lender.

(b) Mark each instrument or certificate with a legend reading as follows:

"THE PARTNERSHIP INTERESTS EVIDENCED HEREBY ARE SUBJECT TO A PLEDGE AND SECURITY AGREEMENT WHICH CONTAINS A GRANT OF IRREVOCABLE PROXY. BY ACCEPTING ANY INTEREST IN SUCH PARTNERSHIP INTERESTS THE PERSON HOLDING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID AGREEMENT."

Partners shall cause the Partnership to agree that, during the term of this Agreement, it will not remove, and will not permit to be removed (upon registration of transfer, reissuance or otherwise), the legend from any such instrument or certificate and will place or cause to be placed the legend on any new instrument or certificate issued to represent the Pledged Interest theretofore represented an instrument or certificate carrying a legend.

4. Power of Attorney. Partners hereby irrevocably appoint the Lender, with full power of substitution and revocation by the Lender, as Partners' true and lawful attorney-in-fact, for the purpose from time to time upon the occurrence and during the continuance of an Event of Default of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Lender deems necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to affix to certificates and documents representing any Collateral the endorsements or other instruments of transfer or assignment delivered with respect thereto and to transfer or cause the transfer of the Collateral, or any part thereof, on the books of the Partnership. The power of attorney granted herein and all authority hereby conferred are granted and conferred solely to protect the Lender's interest in the Collateral and shall not impose any duty upon the Lender to exercise any power. This power of attorney shall be irrevocable as one coupled with an interest until the Obligations have been paid in full.