I. ORGANIZING A PARTNERSHIP

A. General Partnerships

Unlike the North Carolina Business Corporation Act, which more precisely defines the relationships between various parties and the operation of the corporation, the North Carolina Uniform Partnership Act generally leaves these issues to the agreement of the parties. Under North Carolina law a partnership is merely “an association of two or more persons to carry on as co-owners a business for profit.” N.C.G.S. § 59-36(a). It does not even require any written document for its existence. Another important distinction between corporations and general partnerships is the unlimited liability of partners for partnership debts. For these reasons, a well-drafted general partnership agreement is essential.

General partnership agreements should be tailored to fit the specific circumstances, needs and understandings of the prospective partners. The drafter should consider these items in preparing a partnership agreement:

- Name of the partnership (an assumed name certificate will often be required);
- Names and capacities of the partners (whether partners will have differing rights, powers, or obligations from the others);
- Principal place of business of the partnership;
- Duration of the partnership;
- Authorized business purpose and activities of the partnership (limitation is important among the partners because of the unlimited liability of partners for the partnership’s liabilities);
- Capital contributions and distributions (initial capitalization, voluntary or mandatory contributions, subsequent allocation of profits and losses, and distributions from the partnership);
- Partnership’s books and accounting methods;
- Management of the affairs of the partnership (where the partners might not all participate in the day-to-day management);
- Whether one partner alone may contractually bind the partnership (the assumed name certificate may provide public notice of each partner’s apparent authority);
- Provisions for the sale or transfer of a partner’s interest at withdrawal, retirement, or death of a partner;
- Establishing a value or means to value a partnership interest upon the sale or transfer of partnership interest;
• Income tax issues (beyond the scope of this material); and
• Dissolution and liquidation of the partnership.

A sample partnership agreement is included in this summary. However, this partnership agreement is included as an example only, and any partnership agreement drafted by the attorney should be carefully tailored to address the circumstances relating to the particular client’s business. In addition, in forming a partnership and drafting partnership agreements, the general practitioner must be particularly aware of important tax issues related to the formation and operation of partnerships. Such tax issues are beyond the scope of this summary, and the practitioner is encouraged to consult more detailed sources.
Sample Partnership Agreement

NORTH CAROLINA PARTNERSHIP AGREEMENT

____________ COUNTY

THIS PARTNERSHIP AGREEMENT OF SJ PARTNERS (this “Agreement”) is made this ___ day of ____________, 20__, by and between John A. Smith and Robert B. Jones (“Partners”).

RECITALS

The parties have been and are conducting business as a general partnership at __________ Street, __________, North Carolina, using the name SJ PARTNERS under an oral agreement entered into on ____________ 20__. This agreement reduces to writing and supersedes the oral understandings of the parties.

AGREEMENTS OF THE PARTIES

In consideration of their mutual promises and covenants, the parties agree as follows:

Article I.

Name and Place of Business

§1.1 The name of the partnership is SJ PARTNERS.

§1.2 The principal place of business of the partnership shall be 321 Maple Street, High Point, North Carolina, or any other place subsequently agreed upon by the partners.

Article II.

Purpose

§2.1 The partnership may own, hold, sell, subdivide, invest in, lease, rent, mortgage, maintain, transfer and otherwise deal with or manage property of every kind and character, real and personal, and in particular that real property now owned by the partnership known as “________________________, North Carolina” and described in a deed recorded at Deed Book XX, Page XXX, ______________ County Registry.

§2.2 The partnership may engage in such other activities or businesses as may be agreed upon by all of the partners.
Article III.  
Duration

§3.1 The partnership began on ________________, 20__, and shall continue in existence until terminated as provided by law or this agreement.

Article IV.  
Capital Contributions

§4.1 [Prior to] OR [ As of] the date of this Agreement, each of the initial partners of the partnership [has made] OR [agrees that he shall make] capital contribution of [cash] in the amount of __________ dollars ($________). The part of the capital of the partnership owned by each partner is as follows:

John A. Smith 50 percent  
Robert B. Jones 50 percent

§4.2 An individual capital account shall be maintained for each partner, in accordance with the principles set forth in section 1.704-1(b) of the United States Department of Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended.

§4.3 Except by unanimous agreement of the partners, or upon dissolution of the partnership, capital contributions of a partner shall not be subject to withdrawal.

§4.4 The partners agree to make additional capital contributions as provided in §5.4.

§4.5 If any partner shall loan or advance money to or on behalf of the partnership, the loan or advance shall not increase the capital account of the lending partner unless otherwise specifically provided in this agreement, and the amount of any such loan or advance shall be considered a debt from the partnership to the lending partner, repayable upon such terms and conditions as may have been agreed upon by the partner and the partnership.

Article V.  
Distributions, Profits and Losses

§5.1 The partners shall share in the Net Cash Flow and in the profits and losses of the partnership in proportion to their ownership of partnership capital as set out in §4.1.

§5.2 “Net Cash Flow” of the partnership, for the purposes of this Agreement, is defined as net profits of the partnership determined in accordance with cash method of accounting consistently applied except that: (a) depreciation or amortization of fixed assets shall not be taken into account; (b) mortgage payments or payments to amortize partnership indebtedness
shall be considered a deduction; and (c) amounts expended by the partnership for the purchase of property or for capital improvements or set aside as reserves for anticipated future expenses or contingencies shall be considered a deduction.

§5.3 Net Cash Flow of the partnership shall be determined and distributed to the partners as soon as practicable after the close of each fiscal year. Interim distributions of Net Cash Flow may be made during each fiscal year in such amounts and at such times as the partners may agree.

§5.4 To the extent that Net Cash Flow of the partnership is negative, the partners agree to advance to the partnership, in proportion to their respective shares of Net Cash Flow, the excess of the deficiency over undistributed Net Cash Flow from prior periods, if any. Any amounts so advanced shall be considered capital contributions. A partner who fails to make an additional capital contribution needed to cover such a deficiency shall be conclusively deemed to have offered his partnership interest as provided in §8.2 below, and the partnership or remaining partners shall be entitled to acquire his partnership interest as provided in Article VIII, based upon values determined immediately prior to the due date of the additional capital contribution.

Article VI.
Management [Option 1]

§6.1 Each partner shall have an equal voice in the management and conduct of the partnership business. Except as otherwise specified in this Agreement, all decisions shall be by majority vote of the partners.

§6.2 The partners agree to devote such time and attention to the partnership business as may be necessary to conduct the affairs of the partnership in an efficient and businesslike manner, but each partner is free to devote his time and attention to other business affairs and ventures.

§6.3 No partner shall be entitled to receive a salary or fee for services provided to the partnership, unless otherwise agreed upon by the partners.

§6.4 Notwithstanding anything to the contrary elsewhere contained in this Agreement, ________________ shall have the authority to execute deeds, deeds of trust, leases, or other conveyances of partnership property, and to execute notes, loan agreements, and any other instruments and documents which may be necessary or desirable for the purpose of closing loans upon partnership property. All third parties shall be entitled to rely upon the authority herein granted to ________________ as being authorized by the partnership and pursuant to the conduct in the ordinary course of partnership business; however, as among the partners, ________________, shall be bound by the provisions of the partnership agreement.