

MAY 4 1987 SA 7-1045

FIRST AMENDMENT TO AGREEMENT AND  
CERTIFICATE OF LIMITED PARTNERSHIP  
OF BSA ASSOCIATES LIMITED PARTNERSHIP

FIRST AMENDMENT TO AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP dated as of October 15, 1986 by and among KELLY & PICERNE VENTURE CORP., a Rhode Island corporation ("KPVC"), DAVID R. PICERNE, ROBERT M. PICERNE and KENNETH A. PICERNE, as General Partners, (hereinafter referred to collectively as the "General Partners" and individually as a General Partner) and THOMAS R. BROUSSARD as the Limited Partner.

Preliminary Statement

BSA ASSOCIATES (the "Partnership") was formed as a limited partnership pursuant to a Limited Partnership Agreement dated December 1, 1983 by and among KPVC, DAVID R. PICERNE, ROBERT M. PICERNE and KENNETH A. PICERNE as General Partners and THOMAS R. BROUSSARD as Limited Partner and a Certificate of Limited Partnership of even date therewith (such Agreement and Certificate is herein referred to as the "Original Partnership Agreement") and a Certificate of Limited Partnership of BSA Associates Limited Partnership dated as of January 23, 1984 and filed with the Office of Secretary of State of the State of Rhode Island on January 31, 1984 (herein referred to as the "Certificate").

The purposes of this amendment are to make certain revisions with respect to the distribution of net profits and the allocation of taxable income and loss among the Partners, and the treatment of certain advances.

Now, therefore, it is hereby agreed that the Original Partnership Agreement, as amended by the Certificate, is amended as follows:

1. Paragraph 9 of the Original Partnership Agreement as amended is restated in its entirety to read as follows:

"9. PROFITS, LOSSES, AND CASH PROCEEDS. Except as provided in Paragraph 12 with respect to certain advances and in Paragraph 13 with respect to distribution of Gross Syndication Proceeds, the net profits of the Partnership from all sources and the net proceeds, resulting from the ordinary and regular operations and/or the sale, mortgage, refinancing or condemnation of any property held by the Partnership and/or Associates, shall be divided among and any losses shall be

borne by, each of the Partners in accordance with such Partner's interest in the Partnership as set forth in Schedule A, subject, however, insofar as the Limited Partner is concerned, to the limitation set forth in Paragraph 10 hereof.

The term "net profits" of the Partnership as used herein shall mean net profits derived by the Partnership from its general partner's interest in Associates less the costs and expenses of the Partnership. The net profits of Associates and the Partnership shall be ascertained through the use of standard accounting practices, except that (a) depreciation of buildings, improvements, furniture, fixtures, furnishings and equipment shall not be taken into account, (b) mortgage amortization paid in the discretion of the general partners of the Partnership for capital improvements shall be considered a deduction, and (c) if the general partners of Associates and/or the Partnership shall so determine, a reasonable reserve shall be deducted to provide funds for improvements or for any other contingencies of the Partnership. Subject to any applicable regulations of FHA and/or the Authority, the net profits of the Partnership for each fiscal year shall be distributed to the Partners within a reasonable time after the end of such year.

Taxable income and taxable loss (and each item thereof) of the Partnership as computed for federal income tax purposes shall be allocated among the Partners in accordance with each such Partner's interest in the Partnership as set forth in Schedule A, provided, however, that (i) such taxable income of the Partnership (and items thereof) attributable to Gross Syndication Proceeds shall be allocated among the Partners in accordance with the taxable and non-taxable amounts distributable to them for each year as set forth in Schedule B, and, with respect to the General Partners, as set forth in Paragraph 13, and (ii) any tax deduction available to the Partnership as a result of advances made by the General Partners other than those specifically agreed upon in Paragraph 12 hereof shall be allocated to the General Partners."

2. Paragraph 12 of the Original Partnership Agreement is amended by adding thereto the following paragraphs at the end of the second paragraph of said Paragraph 12.

"The parties have agreed that the General Partners have made certain advances to the Partnership in the aggregate amount of \$168,059, and that such advances shall be repaid to the General Partners out of the non-taxable portions of Gross Syndication Proceeds as set forth on Schedule B. Such

advances shall bear interest from the date hereof at the prime rate of interest of Fleet National Bank, which interest shall be payable out of cash flow (as hereinafter defined) generated by Associates to the extent paid to the Partnership and not from Gross Syndication Proceeds, or from the proceeds of sale or refinancing to the extent not sooner paid.

Advances of the General Partners in respect of Partnership obligations made after the date hereof shall bear interest at the prime rate of interest of Fleet National Bank and shall be payable, together with any interest thereon not previously paid, out of the proceeds of sale or refinancing prior to making any distributions to the Partners. Interest on such amounts shall be payable out of cash flow generated by Associates to the extent paid to the Partnership and not from Gross Syndication Proceeds. For this purpose, "cash flow" shall have the meaning set forth in Associates' limited partnership agreement or in the Offering Memorandum pursuant to which limited partnership interests in Associates were offered to investors.

The General Partners shall not be entitled to reimbursement of, or interest on, any advances made prior to the date hereof and not specified in this Paragraph 12, notwithstanding the allocation to the General Partners of certain tax deductions set forth in clause (ii) of the last paragraph of Paragraph 9.

3. Paragraph 13 of the Original Partnership Agreement as amended is restated in its entirety to read as follows:

"13. SYNDICATION OF LIMITED PARTNER INTERESTS. Each Partner acknowledges his interest in syndicating limited partner interests in Associates to investor limited partners as expeditiously as possible, subject to such terms and conditions as may be imposed by the Authority, any lender or applicable local, state or federal agency or authority with respect to any such syndication. Accordingly, each Partner shall cooperate with the General Partners to enable the Partnership to syndicate limited partner interests in Associates at the earliest possible date and upon the most favorable terms, taking into account the need for the earliest repayment of advances. Upon such syndication, the General Partners and the Limited Partners shall, subject to the provisions of this Agreement, share in the Gross Syndication Proceeds, as follows: The amounts set forth on Schedule B hereto as "Broussard's Share" shall be distributed to Thomas R. Broussard as the Limited Partner. The balance of the

Gross Syndication Proceeds in excess of "Broussard's Share" denominated on Schedule B as "taxable" shall be distributed to the General Partners in proportion to their relative interests in the Partnership as set forth on Schedule A. The balance of the Gross Syndication Proceeds in excess of "Broussard's Share" denominated on Schedule B as "non-taxable" shall be distributed to KPVC.

Notwithstanding the foregoing, if Gross Syndication Proceeds are less than projected because investor limited partners in Associates do not make their capital contributions when required, the General Partners will use their best efforts to pursue collection efforts and, when paid, will remit to Thomas Broussard as Limited Partner his pro rata portion of the amount collected based on Broussard's percentage interest in the Gross Syndication Proceeds as set forth on Schedule B, less Broussard's pro rata share of the reasonable expenses of collection, also based on Broussard's percentage interest in the Gross Syndication Proceeds as set forth on Schedule B. Alternatively, the General Partners may elect not to pursue collection efforts, in which case the General Partners will pay to Broussard his pro rata portion of the defaulted capital contribution, based on the formula set forth in the preceding sentence, as if collected. The General Partners will either commence legal proceedings to collect such capital contributions or pay Broussard his pro rata portion of such capital contributions within 75 days after the date on which any such capital contributions should have been received. If an investor fails to pay and thereafter establishes that his failure to pay results from an act of the General Partners or his/their agents or representatives, then the General Partners shall be liable to Broussard for the payment not so made."

4. In all other respects, the Original Partnership Agreement as amended is hereby ratified, confirmed and approved.

IN WITNESS WHEREOF, the said Kelly & Picerne Venture Corp., David R. Picerne, Robert M. Picerne, Kenneth A. Picerne and Thomas R. Broussard have caused this Agreement to be executed on the day, month and year first above written.

GENERAL PARTNERS

Kelly & Picerne Venture  
Corp.

By   
Ronald R.S. Picerne

LIMITED PARTNER

\_\_\_\_\_  
Thomas R. Broussard

  
\_\_\_\_\_  
David R. Picerne

  
\_\_\_\_\_  
Robert M. Picerne

  
\_\_\_\_\_  
Kenneth A. Picerne

SCHEDULE A TO CERTIFICATE  
AND AGREEMENT OF LIMITED PARTNERSHIP  
OF BSA ASSOCIATES LIMITED PARTNERSHIP

<u>General Partner:</u>	<u>Interest in BSA Associates Limited Partnership:</u>
Kelly & Picerne Venture Corp. 75 Lambert Lind Highway Warwick, Rhode Island 02886	39.49%
Robert M. Picerne 75 Lambert Lind Highway Warwick, Rhode Island 02886	4.00%
David R. Picerne 5314 N. 12th Street, Suite 100 Phoenix, Arizona 85014	4.00%
Kenneth A. Picerne 5314 N. 12th Street, Suite 100 Phoenix, Arizona 90036	2.00%
 <u>Limited Partner:</u>	
Thomas R. Broussard 5757 Wilshire Boulevard Los Angeles, California 90036	50.51%

SCHEDULE B

TO CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP OF  
BSA ASSOCIATES LIMITED PARTNERSHIP

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>Total</u>
<b>BURRITT SCHOOL</b>								
Total Capital Contributions	470,000	400,000	370,000	310,000	275,000	125,000		1,950,00
Third Party Payments	160,000	95,000	90,000	0	15,000	35,000		395,00
Taxable	131,317	294,310	255,973	310,000	260,000	90,000		1,341,60
Non-Taxable	178,683	690	24,027	0	0	0		203,40
<b>Total</b>	<b>470,000</b>	<b>390,000</b>	<b>370,000</b>	<b>310,000</b>	<b>275,000</b>	<b>125,000</b>	<b>0</b>	<b>1,940,00</b>
<b>Broussard Share</b>								
Taxable	65,665	147,169	127,999	155,015	130,013	45,004		670,86
Non-Taxable	5,313	345	12,015	0	0	0		17,67
<b>Total</b>	<b>\$70,977</b>	<b>\$147,514</b>	<b>\$140,014</b>	<b>\$155,015</b>	<b>\$130,013</b>	<b>\$45,004</b>		<b>688,53</b>
<b>Percent of Total to Broussard</b>	<b>15.10%</b>	<b>36.88%</b>	<b>37.84%</b>	<b>50.00%</b>	<b>47.28%</b>	<b>36.00%</b>		<b>35.46%</b>

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Taxable income and taxable loss (and each item thereof) of the Partnership as computed for federal income tax purposes shall be allocated among the Partners in accordance with each such Partner's interest in the Partnership as set forth in Schedule A, provided, however, that (i) such taxable income of the Partnership (and items thereof) attributable to Gross Syndication Proceeds shall be allocated among the Partners in accordance with the taxable and non-taxable amounts distributable to them for each year as set forth in Schedule B, and, with respect to the General Partners, as set forth in Paragraph 13, and (ii) any tax deduction available to the Partnership as a result of advances made by the General Partners other than those specifically agreed upon in Paragraph 12 hereof shall be allocated to the General Partners."

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