

This instrument was prepared  
by Andres L. Witcher  
2222 Arlington Avenue South  
Birmingham, Alabama 35205

STATE OF ALABAMA )

SHELBY COUNTY )

CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
CVS OF CLANTON, LTD.

We, the undersigned, desiring to form a Limited Partnership, pursuant to the laws of the State of Alabama, certify as follows:

1. The name of the Limited Partnership is CVS of Clanton, Ltd.

2. The general character of the business of the Limited Partnership is to acquire, own and operate a retail food and grocery store.

3. The street address of the principal office of the Limited Partnership is 2652 Valleydale Road, Birmingham, Alabama 35244, and the name and street address of the Limited Partnership's agent for service of process is Charles Culotta, 2652 Valleydale Road, Birmingham, Alabama 35244.

4. (a) The name and the mailing address of the General Partners in the Limited Partnership are as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
CVS, Inc.	2652 Valleydale Road Birmingham, Alabama 35244
Charles Culotta Investment Company, Inc.	2652 Valleydale Road Birmingham, Alabama 35244
Vincent Culotta Investment Company, Inc.	2652 Valleydale Road Birmingham, Alabama 35244
Sam Culotta, Jr. Investment Company, Inc.	2652 Valleydale Road Birmingham, Alabama 35244

(b) The name and mailing address of the Limited Partner in the Limited Partnership is as follows:

BOOK 26 PAGE 872

*Andres L. Witcher*

NAME

MAILING ADDRESS

Culotta's, Inc.

2652 Valleydale Road  
Birmingham, Alabama 35244

5. The amount of cash paid and a description and statement of the agreed value of the other property conveyed or services rendered, and of any promissory note or other binding obligation to pay cash, to convey property or render services in the future, contributed by each Partner, in his capacity as Partner, to the capital of the Limited Partnership are set forth beside the name of each Partner on Exhibit "A," attached hereto and incorporated herein as if fully set forth.

6. The times at which or events on the happening of which any promissory note or other obligation to pay cash, convey property, or render services which any Partner, in his capacity as Partner, has contributed as capital to the Limited Partnership, is to be paid or performed and any additional contributions agreed to be made by each Partner are set forth beside the name of each Partner on Exhibit "A," attached hereto and incorporated herein as if fully set forth.

7. No Limited Partner may assign his interest in the Limited Partnership without the written consent of the General Partners, which written consent shall be at the sole and absolute discretion of the General Partners. No assignee of a limited partnership interest shall have a right to become a Limited Partner unless the following conditions are met:

(a) His assignor has filed with the Limited Partnership a written instrument setting forth his intention that such assignee become a Limited Partner;

(b) All parties execute and acknowledge such further instruments as the General Partners may deem necessary or desirable to effect the admission of such assignee as a Limited Partner;

(c) The written consent of the General Partners to the admission of the assignee as a Limited Partner shall be obtained, the granting of which consent is within the sole and absolute discretion of the General Partners; and

(d) An appropriate transfer fee is paid to the Limited Partnership.

8. (a) No Limited Partner may withdraw from the Limited Partnership or terminate his membership in the Limited Partnership without the consent of the General Partners.

(b) The General Partners may not, whether voluntarily or involuntarily, or by dissolution, operation of law or otherwise, (i) withdraw or resign from the Limited Partnership or (ii) transfer, convey, sell, alienate or assign all of its interest in the Limited Partnership during the first year of the Limited Partnership's operation, and, after such period of time, only with the prior written consent of the Limited Partners who hold, in the aggregate, a majority of the Units of Participation. If any withdrawal, resignation, transfer, conveyance, sale, alienation or assignment should occur as to any General Partner, or if any Event of Withdrawal (as defined hereinafter) should occur as to any General Partner, the same shall not release such General Partner from any liability to the Limited Partnership or any other Partners.

9. The rights of a Partner to receive distributions of cash and/or property from the Limited Partnership and each Partner's share of such distributions from the Limited Partnership are set forth beside its name on Exhibit "A", attached hereto and incorporated herein as if fully set forth.

10. No Partner has the right to receive, nor does a General Partner have an obligation to make, distributions to a Partner which include a return of all or any part of the Partner's contribution except:

(a) upon withdrawal of a Partner as provided in Section 8 above;

(b) upon dissolution of the Limited Partnership as set forth in Section 11 below; and

(c) as otherwise provided in Exhibit "A" attached hereto.

11. (a) The Limited Partnership shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(i) the termination of the Limited Partnership as provided in Section 13 hereof;

(ii) the written consent of all Partners;

(iii) the entry of a decree of judicial dissolution; or

(iv) an Event of Withdrawal of a General Partner (as defined hereinafter) unless at the time of the Event of Withdrawal there is at least one other General Partner and such other General Partner has the right to continue the business of the Limited Partnership, or unless within 90 days of the date of withdrawal all Partners agree in writing to continue the business of the Limited Partnership and to the appointment of one or more additional General Partners.

(b) An Event of Withdrawal of a General Partner shall be deemed to occur upon the happening of any of the following events:

(i) the General Partner makes an assignment for the benefit of creditors; files a voluntary petition of bankruptcy; is adjudicated a bankrupt or insolvent or is the subject of an order for relief under the bankruptcy laws; files a petition or answer seeking for itself any reorganization, arrangement or similar relief under any statute, law or regulation; files an answer or other pleading admitting or failing to contest material allegations of a petition filed against him or it in any proceeding of this nature; or seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of all or any substantial part of his or its properties;

(ii) the failure to dismiss within 120 days after the commencement of any proceeding against the General Partner to attach or charge his or its partnership interest or seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, or if within 90 days after a court order attaching or charging his or its partnership interest or the appointment without his or its consent or acquiescence of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of his or its properties, the order or appointment is not vacated or stayed, or within 90 days after the expiration of such stay, the order or appointment is not vacated;

(iii) if any General Partner should at any time be a natural person, then upon his death or the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(iv) if any General Partner should at any time be acting as a General Partner by virtue of being a

BOOK 26 PAGE 875

trustee of a trust, the termination of such trust (but not merely the substitution of a new trustee);

(v) in the case of current General Partners and any future general partner which is a separate partnership, the dissolution and commencement or winding up the affairs of such separate partnership;

(vi) if any General Partner should at any time be a corporation, the filing of a Certificate of Dissolution, or its equivalent, for the corporation or the revocation of its charter;

(vii) if any General Partner should at any time be an estate, the distribution by the fiduciary of the estate's entire interest in the Partnership; or

(viii) the transfer by any General Partner of all of his or its interest in the Limited Partnership.

12. In the event a General Partner withdraws from the Limited Partnership when there is no other General Partner, the Limited Partnership shall be dissolved, unless within a period of ninety days of such withdrawal, all Partners agree in writing to continue the business of the Limited Partnership and to the appointment of one or more successor General Partners.

13. The term for which the Limited Partnership is to exist is from the date of the filing of the original Certificate of Limited Partnership of CVS of Clanton, Ltd. in the Office of the Judge of Probate until the close of business on December 31, 2034; provided, however, the Limited Partnership shall be dissolved prior to such date (a) upon the sale or other disposition of the assets of the Limited Partnership unless prohibited from dissolving by law or by prior agreement of the Limited Partnership; or (b) as may be

BOOK 26 PAGE 876

required by the Alabama Limited Partnership Act of 1983, as the same may be changed from time to time.

IN WITNESS WHEREOF, the undersigned, on behalf of themselves or by and through their duly authorized officers or other persons authorized and empowered to sign on their behalf, have hereunto subscribed their hands and seals on this 5<sup>th</sup> day of November, 1984.

GENERAL PARTNERS:

CVS, INC.

By: Charles Culotta  
Charles Culotta  
Its President

ATTEST:

By: Sam A. Culotta, Jr.  
Sam A. Culotta, Jr.  
Its Secretary

CHARLES CULOTTA  
INVESTMENT COMPANY, INC.

By: Charles Culotta  
Charles Culotta  
Its President

ATTEST:

By: Charles Culotta  
Its Secretary

BOOK 26 PAGE 878

VINCENT CULOTTA INVESTMENT, INC.

By: Vincent Culotta  
Vincent Culotta  
Its President

ATTEST:

By Vincent Culotta  
Its Secretary

SAM CULOTTA, JR.  
INVESTMENT COMPANY, INC.

By: Sam Culotta, Jr.  
Sam Culotta, Jr.  
Its President

ATTEST:

By Sam Culotta, Jr.  
Its Secretary

LIMITED PARTNER:

CULOTTA'S, INC.

By: Sam A. Culotta, Sr.  
Sam A. Culotta, Sr.  
Its President

ATTEST:

Charles Culotta  
Charles Culotta  
Its Secretary

Ref: CPJ/A981840815A

EXHIBIT "A"

TO

CERTIFICATE OF LIMITED PARTNERSHIP

BOOK 26 PAGE 879

<u>Limited Partner</u>	<u>Mailing Address</u>	<u>Total Capital Contributions</u>	<u>Percentage of Profits and Losses</u>
Culotta's, Inc.	2652 Valleydale Road Birmingham, Alabama 35244	*	**
<u>General Partner</u>	<u>Mailing Address</u>	<u>Total Capital Contributions</u>	<u>Percentage of Profits and Losses</u>
CVS, Inc.	2652 Valleydale Road Birmingham, Alabama 35244	*	**
Charles Culotta Investment Company, Inc.	2652 Valleydale Road Birmingham, Alabama 35244	*	**
Vincent Culotta Investment Company, Inc.	2652 Valleydale Road Birmingham, Alabama 35244	*	**
Sam Culotta, Jr. Investment Company, Inc.	2652 Valleydale Road Birmingham, Alabama 35244	*	**

\* See Section 4 of the Limited Partnership Agreement attached hereto.

\*\* See Section 5 of the Limited Partnership Agreement attached hereto.



ATTACHMENT

4. Capital Contributions:

(a) General Partner: The General Partners of the Limited Partnership, shall contribute the following cash or properties to the capital of the Limited Partnership for their respective Partnership interests, upon the filing of the Certificate of Limited Partnership. The mailing address of the General Partner is 2652 Valleydale Road, Birmingham, Alabama 35244.

CVS, Inc.	\$100.00
Charles Culotta Investment Company, Inc.	\$100.00
Vincent Culotta Investment Company, Inc.	\$100.00
Sam Culotta, Jr. Investment Company, Inc.	\$100.00

(b) Limited Partner:

(i) Culotta's, Inc. is hereby named as the Limited Partner of the Limited Partnership, and shall contribute \$300,000.00 to the capital of the Limited Partnership for its partnership interest, payable in full in cash upon the filing of the Certificate of Limited Partnership. The address of the Limited Partner is 2652 Valleydale Road, Birmingham, Alabama 35244.

(ii) Any additional Limited Partner who makes a capital contribution to the Limited Partnership as set forth in Section 4 hereof and who is admitted to the Limited Partnership after the execution of this Limited Partnership Agreement shall sign an amendment to this Limited Partnership Agreement and to the Certificate of Limited Partnership, evidencing the consent and agreement of such additional Limited Partner to the terms set forth herein. The said amendment to the Certificate of Limited Partnership shall be duly filed in the Office of the Judge of Probate of Shelby County, Alabama. Additional Limited Partners may be admitted to the Limited Partnership only with the consent of the General Partner, which consent may be withheld without cause or reason.

(c) Summary of Capital Contributions: For the purposes of this Agreement, the capital of the Limited Partnership shall be deemed to include the initial capital contributions to the Limited Partnership made by the Partners and any other amounts subsequently contributed to the capital by the Limited Partner or the General Partners.

(d) Capital Accounts: An individual capital account shall be maintained for each Partner (General as well as Limited Partner). The capital account of each Partner shall consist of such Partner's original contribution of capital, increased by (1) additional capital contributions by such Partner, and (2) such Partner's distributive share of taxable income and gains, and decreased by (a) distributions of cash or other property to such Partner, and (b) such Partner's distributive share of taxable losses.

(e) Capital Held in Trust: All capital contributed to the Limited Partnership shall be held in trust to be applied solely for the purposes set forth in this Limited Partnership Agreement.

5. Distribution of Cash Flow and Net Proceeds and Allocation of Taxable Income and Losses:

(a) Cash Flow:

(i) Definition: For purposes of this Agreement, the term "Cash Flow" of the Limited Partnership shall mean, for any year, the gross cash receipts of the Limited Partnership for the year from all sources (including, without limitation, capital contributions and proceeds of any loans to the Limited Partnership except the proceeds of any loans for the purpose of refinancing existing debt, but excluding proceeds from any sale, exchange or other disposition of its assets and proceeds from condemnation awards or casualty insurance), less the sum of: (A) all cash expenditures of the Limited Partnership for that year (including, without limitation, all amounts expended by the Limited Partnership for the purchase or construction of capital assets and all payments on the indebtedness of the Limited Partnership for borrowed money); and (B) all reasonable additions to reserves for taxes, insurance, future repairs, improvements, property replacements, and similar anticipated future expenses (including reserves to be established as required by any lending institution) and accruals for expenses. The proceeds of any capital contributions or loans received by the Limited Partnership during a year for the purpose of paying obligations of the Limited Partnership incurred or expected to be incurred shall be deemed expended in the year of receipt for the purposes of determining Cash Flow for that year whether actually expended during that year or during the subsequent year.

(ii) Allocation and Distribution of Cash Flow: The "Cash Flow" of the Limited Partnership during each calendar year shall be allocated and distributed, to the extent available for the year, as follows:

(A) 100% to the Limited Partner until such time as the Limited Partner has received for each year of the Limited Partnership, solely from such allocation and distributions of Cash Flow, an amount equal to 12% of its initial capital account as increased by any and all future additional capital contributions by the Limited Partner. The amount of this allocation shall be prorated to reflect any partial year of operations of the Limited Partnership. In the event the amount of Cash Flow during any year is less than 12% of such capital account of the Limited Partner, then all such Cash Flow for such year shall be allocated to the Limited Partner. To the extent that such allocations and distributions of Cash Flow to the Limited Partner during any year is less than such 12% amount, such deficit in the allocation and distribution of Cash Flow for any year shall be cumulative, from year to year, and shall be paid in the first subsequent year in which Cash Flow or other funds are available prior to the distribution of any other Cash Flow or other available funds to the General Partner.

BOOK

(B) Thereafter, the "Cash Flow" of the Limited Partnership shall be allocated and distributed to the extent available for the year, as follows:

<u>NAME</u>	<u>PERCENTAGE INTEREST</u>
CVS, Inc.	2%
Charles Culotta Investment Company, Inc.	26%
Vincent Culotta Investment Company, Inc.	26%
Sam Culotta Investment Company, Inc.	26%
Culotta's, Inc.	20%

(b) Net Proceeds:

(i) Definition: As used herein, the term "Net Proceeds" shall be defined as the net amount (gross proceeds plus purchase money indebtedness less expenses of any sale, exchange or other disposition) received by the Limited Partnership resulting from any: (a) sale, exchange, or other disposition of the property of the Limited Partnership or a substantial portion thereof (the net amount received from such sale, exchange, or disposition less all indebtedness of the Limited Partnership); (b) condemnation award; (c) casualty insurance proceeds in excess of the amount needed to restore the property of the Limited

Partnership; or (d) refinancing of the indebtedness of the Limited Partnership less the amount of other indebtedness determined by the General Partner to be repaid out of such proceeds.

(ii) Allocation and Distribution of Net Proceeds: The Net Proceeds of the Limited Partnership shall be allocated and distributed in the following priorities:

(A) To the Partners (pro rata up to the maximum amounts each would be entitled to receive under this subsection if the amount available is less than the maximum hereunder) until such time as each Partner has received, solely from distributions of the Net Proceeds as defined in Section 5(b)(i) hereinabove, an amount equal to its capital contributions to the Limited Partnership.

(B) Thereafter, as follows:

<u>NAME</u>	<u>PERCENTAGE INTEREST</u>
CVS, Inc.	2%
Charles Culotta Investment Company, Inc.	26%
Vincent Culotta Investment Company, Inc.	26%
Sam Culotta Investment Company, Inc.	26%
Culotta's, Inc.	20%

(c) Allocation of Taxable Income and Taxable Losses for Tax Purposes:

(i) Taxable Income and Taxable Losses in General: All taxable income and taxable losses of the Limited Partnership (other than income and losses resulting from the sale, exchange or other disposition of the assets of the Limited Partnership), and each item of income, gain, loss, deduction, or credit entering into the computation thereof, shall be allocated as follows:

<u>NAME</u>	<u>PERCENTAGE INTEREST</u>
CVS, Inc.	2%
Charles Culotta Investment Company, Inc.	26%
Vincent Culotta Investment Company, Inc.	26%
Sam Culotta Investment Company, Inc.	26%
Culotta's, Inc.	20%

(ii) Taxable Income From the Sale, Exchange or Other Disposition of Limited Partnership Assets:  
All taxable income resulting from the sale, exchange or other disposition of the assets of the Limited Partnership (ordinary income and capital gain) shall be allocated among the Partners in the following order of priority to the extent of such taxable income prior to any distribution of Net Proceeds:

(A) Any ordinary income, to the extent of the aggregate Capital Account Reductions (as hereinafter defined) in the Partners' capital accounts, as of the time of the allocation, shall be allocated among the Partners in the same ratio that the Capital Account Reduction in each Partner's capital account bears to the aggregate Capital Account Reductions in the capital accounts of all Partners. Thereafter any remaining ordinary income shall be allocated among the Partners as follows:

<u>NAME</u>	<u>PERCENTAGE INTEREST</u>
CVS, Inc.	2%
Charles Culotta Investment Company, Inc.	26%
Vincent Culotta Investment Company, Inc.	26%
Sam Culotta Investment Company, Inc.	26%
Culotta's, Inc.	20%

(B) If, after the allocation provided in subparagraph (A) above, there remains any Capital Account Reduction in the capital account of any Partner, any capital gain to the extent of the aggregate remaining Capital Account Reductions in the Partners' capital accounts, shall be allocated, among the Partners, in the same ratio as the remaining Capital Account

Reduction in such Partner's capital account bears to the aggregate remaining Capital Account Reductions of all Partners. Any remaining capital gain shall be allocated among the Partners as follows:

<u>NAME</u>	<u>PERCENTAGE INTEREST</u>
CVS, Inc.	2%
Charles Culotta Investment Company, Inc.	26%
Vincent Culotta Investment Company, Inc.	26%
Sam Culotta Investment Company, Inc.	26%
Culotta's, Inc.	20%

(C) The Capital Account Reduction of any partnership interest shall be deemed to be the difference between (i) the aggregate of all capital contributions to the Limited Partnership with respect to that partnership interest, and (ii) the capital account balance of the partnership interest at the time of the computation, taking into full account the extent, if any, to which the capital account of the Partner is below zero.

(iii) Taxable Losses From the Sale, Exchange or Other Disposition of Limited Partnership Assets: For purposes of reporting income taxes, any losses to the Limited Partnership resulting from the sale, exchange or other disposition of the assets of the Limited Partnership shall be allocated in the following order to the extent of such losses:

(A) To the Partners to the extent of their capital accounts, if any, at the time such loss is incurred, and, if such loss is less than the aggregate capital accounts of the Partners at such time, in the same ratio that the capital account of each Partner bears to the aggregate capital accounts of the Partners at that time; and

(B) To the extent not allocated under subparagraph (A) above, then as follows:

26 PAGE 886

BOOK

Ref: CPJ/A981840815B

<u>NAME</u>	<u>PERCENTAGE INTEREST</u>
CVS, Inc.	2%
Charles Culotta Investment Company, Inc.	26%
Vincent Culotta Investment Company, Inc.	26%
Sam Culotta Investment Company, Inc.	26%
Culotta's, Inc.	20%

(d) Timing of Distributions: The General Partner shall distribute the Cash Flow and Net Proceeds of the Limited Partnership as the Managing General Partner, in its sole and absolute discretion, shall deem advisable to the operation of the Limited Partnership, and at such time or times as it shall deem advisable; provided, however, that in no event shall any distributions be made which would, after giving effect to such distributions, result in the liabilities of the Limited Partnership exceeding the fair value of the assets of the Limited Partnership.

STATE OF ALABAMA  
I CERTIFY THAT  
INSTRUMENT NO. 15111

1984 NOV 28 AM 8:22

*Thomas H. Thompson, Jr.*  
JUDGE OF PROBATE

Rec. 3750  
Ind 100  
3850