

1897

STATE OF ALABAMA )  
 )  
 COUNTY OF SHELBY )

CERTIFICATE AND AGREEMENT  
 OF LIMITED PARTNERSHIP OF  
BRECKENRIDGE PARK ASSOCIATES II, LTD.

THESE ARTICLES OF LIMITED PARTNERSHIP are made and entered into by and between Houston South Development, Inc., a corporation, as the General Partner, Kathleen Triplett Kark, as the Initial Limited Partner, and each of those persons listed on Exhibit A hereto as Limited Partners.

ARTICLE I  
 FORMATION OF PARTNERSHIP

Section 1.01: The parties hereby enter into a limited partnership under the provisions of the Alabama Limited Partnership Act of 1983, Sections 10-9A-1, et seq., Code of Alabama 1975, and the rights and liabilities of Partners shall be as provided in that Act except as herein otherwise expressly provided.

ARTICLE II  
 NAME OF PARTNERSHIP

Section 2.01: The business of the Partnership shall be conducted under the firm name of Breckenridge Park Associates II, Ltd., or such other name as the General Partner shall hereafter designate in writing to the Limited Partners.

ARTICLE III  
 CERTIFICATE OF LIMITED PARTNERSHIP

Section 3.01: On the execution hereof, the General Partner shall cause to be filed and published in Shelby County, Alabama, this Certificate and Agreement of Limited Partnership for the Partnership.

*David Dickson*  
*and Richard P. ...*  
*B. Ham* *Ex. 2.44*

ARTICLE IV  
REGISTERED OFFICE AND AGENT

Section 4.01:

(a) The Partnership shall maintain its office in Alabama pursuant to Section 103 of the Act [Section 10-9A-3 of the Code of Alabama 1975] at 300 Wadsworth Street, Montevallo, Alabama 35115. All of the records required to be maintained by Section 104 of the Act [Section 10-9A-4 of the Code of Alabama 1975] shall be kept at said office.

William D. Nichols with an address of 300 Wadsworth Street, Montevallo, Alabama 35115 shall be the designated agent for service of process on the Partnership as required by Section 103 of the Act [Section 10-9A-3 of the Code of Alabama 1975].

(c) The Partnership may have one or more other offices at such other places as may be determined by the General Partner; provided that the General Partner shall have caused to be filed such certificates, and shall have taken such further action as may be required, to provide that the Partnership shall be treated as a limited partnership under the laws of each state or other jurisdiction in which the Partnership conducts its business.

ARTICLE V  
DEFINITIONS

Section 5.01: As used in this Certificate and Agreement of Limited Partnership, the following terms shall have the following respective meanings (unless otherwise specifically indicated):

(a) Act: The Alabama Limited Partnership Act of 1983, Section 10-9A-1, et seq., Code of Alabama 1975, as amended.

(b) Affiliate: (1) Any person directly or indirectly controlling, controlled by or under common control with another person, (2) a person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other person, (3) any officer, director, partner or employee of such person and (4) if such other person is an officer, director, partner or employee, any company for which such person acts in any such capacity.

(c) Capital Contributions: Any capital contribution made by the Limited Partners pursuant to Section 8.04 hereof.

(d) Cash Flow: Partnership cash receipts (without deduction ~~for~~ depreciation) from operations after deducting all cash receipts used to pay Operating Expenses, Debt Service, Reserves, and capital expenditures with respect to Project (except to the extent paid from Reserves therefor) for the applicable period. Net cash proceeds realized on Sale or Refinancing of Partnership investments will not be included in the definition of Cash Flow.

(e) Certificate: This Certificate and Agreement of Limited Partnership which shall be filed with the Office of the Judge of Probate of Shelby County, Alabama pursuant to the Act [Section 10-9A-20 Code of Alabama 1975], and all amendments to the Certificate.

(f) Code. The Internal Revenue Code of 1954, as amended.

(g) Debt Service: Payments of principal and interest when due under the terms and conditions of such loan(s) as may be incurred by the General Partner under the provisions of the Certificate.

(h) Distributions. The sum of cash distributions by the Partnership to any Partner.

(i) General Partner: Houston South Development, Inc., a corporation, or any person or persons, who at the time of reference thereto, has been admitted, as herein provided, as a successor to the interest of the corporation or as an additional General Partner, in each such person's capacity as a General Partner.

(j) Initial Limited Partner: Kathleen Triplett Kark who shall, until the date of the Amendment to this Certificate and Agreement of Limited Partnership admitting any additional Limited Partners, be a Limited Partner herein for her Capital Contribution of \$10.00 shall be deemed to own one limited Partnership Unit. On the date of the Amendment admitting additional Limited Partners, the Initial Limited Partner shall tender her interest in the Partnership to the Partnership and the Partnership shall distribute her Capital Contribution to her and she shall thereupon and thereafter have no interest in the Partnership.

(k) Limited Partners: The persons named in Section 7.03 hereof as Limited Partners, the Initial Limited Partner, or any person who at the time of reference thereto has been admitted, as herein provided, as a substituted Limited

Partner for any such person or as an additional Limited Partner.

(l) Minimum Gain. The excess of the outstanding principal balance of Partnership nonrecourse indebtedness secured by Properties (but excluding the amount of any such indebtedness which would not be taken into account as an amount realized under the Code upon foreclosure of such indebtedness) over the Partnership's adjusted basis in the Properties as determined in accordance with the applicable provisions of the Code.

(m) Operating Expenses: The amount of cash disbursed (except to the extent paid with cash withdrawn from Reserves therefor) for all, direct and indirect, normal operating expenses of the Partnership including, but not limited to the following: municipal assessments; liability, fire and extended coverage insurance; costs of personnel employed by the Partnership or involved in the conduct of operations of the Partnership; accounting, monitoring and audit fees; attorneys' fees relating to Partnership operations; franchise and other taxes payable in respect of capital of the Partnership; taxes assessed upon or payable in respect of personal and/or real property of the Partnership; travel and telephone expenses; fees payable to the General Partner or its affiliates as provided in Section 10.03(c) hereof; and other disbursements incident to the normal operation of residential real property similar to the Properties.

(n) Partners. The General Partner and all Limited Partners where no distinction is required by the context in which the term is used.

(o) Partnership. Breckenridge Park Associates II, Ltd., an Alabama Limited Partnership formed pursuant to the Act and governed by the terms and conditions of this Certificate.

(p) Project. The Property, together with the apartment complex to be developed thereon and all structures and improvements constructed or to be constructed on the Property, and all personal property used in connection with the operation thereof, and owned by the Partnership.

(q) Property. That tract of land or parcel of land lying and being located in Helena, Alabama, on which the Project shall be located and which is more particularly described as follows:

A parcel of land situated in the SE 1/4 of the SE 1/4 of Section 28, Township 20 South, 3 West of the Huntsville Meridian located in Shelby County, Alabama, and being more particularly described as follows:

Begin at the SE corner of said 1/4-1/4 section and thence run in a northerly direction along and with the east margin of said 1/4-1/4 section 886.96 feet to a point, thence with a deflection of 89 degrees 03 minutes 11 seconds left run 548.62 feet to a point, thence proceed 776.94 feet to the point of beginning, thence turn 80 degrees 46 minutes 30 seconds left and proceed 75.98 feet along the easterly right-of-way line of Shelby County Highway 17 to a point, thence turn 99 degrees 13 minutes 30 seconds left and run easterly 226.24 feet to a point, thence turn 90 degrees 00 minutes 00 seconds left and run northerly 75.00 feet to a point, thence turn 90 degrees 00 minutes 00 seconds left and run easterly 214.26 feet to the point of beginning, said parcel of land being located in Shelby County, Alabama.

(r) Reserves. Payments made or amounts allocated during the applicable fiscal period to reserves which shall be maintained in amounts deemed sufficient by the General Partner for working capital and to pay taxes, insurance, repairs, replacements or renewals or other costs and expenses incident to the ownership and operation of the Project.

(s) Sale or Refinancing. Any Partnership transaction (other than the proceeds of purchase money mortgage loans and the receipt of Capital Contributions) not in the ordinary course of business, including, without limitation, sales, exchanges or other dispositions of real or personal property, condemnation, recoveries of damage awards and insurance proceeds (other than business or rental interruption insurance proceeds) or any borrowings or mortgage refinancing in excess of 50% of the fair market value of the Project as determined by an independent appraisal.

(t) Sale or Refinancing Proceeds. All cash receipts arising from a Sale or Refinancing less the following: (i) the amount of cash paid or to be paid in connection with such Sale or Refinancing (which shall include with regard to damage recoveries or insurance or condemnation proceeds, cash paid or to be paid in connection with repairs, replacements, or renewals, in the discretion of the General Partner relating to damage or partial condemnation of the affected property); (ii) the amount necessary for the payment of all debts and

28 PAGE 363  
BOOK

obligations of the Partnership due or becoming due as a result of such Sale or Refinancing; and (iii) the amount considered appropriate by the General Partner to provide reserves to pay taxes, insurance, Debt Service, repairs, replacements, or renewals or other costs and expenses of the Partnership (including costs of improvements or additions in connection with the Properties).

#### ARTICLE VI PURPOSE

Section 6.01: The primary business and purpose of the Partnership is to acquire, hold, maintain, operate, sell, lease, dispose of and otherwise invest in and deal with improved and unimproved real property, and to engage in any and all activities related or incidental thereto. The principal investment objective of the Partnership shall be to develop an eight unit apartment project in Helena, Alabama, and to engage in any and all activities related or incidental to the accomplishment of said objective.

#### ARTICLE VII NAMES AND ADDRESSES OF PARTNERS

Section 7.01: The name and address of the General Partner is:

Houston South Development, Inc.  
300 Wadsworth Street  
Montevallo, Alabama 35115

Section 7.02: The Limited Partners shall be the persons who purchase Partnership Units authorized under Section 8.02 hereof. The names and addresses of the Limited Partners and the number of Partnership Units owned by each of them shall be set forth on Exhibit A to this Certificate.

Section 7.03: The name and address of the Initial Limited Partner is: Kathleen Triplett Kark, 300 Wadsworth Street, Montevallo, Alabama 35115. The Initial Limited Partner has contributed \$10.00 to the capital of the Partnership. Upon the date of the admission of additional Limited Partners, Mrs. Kark shall tender her interest in the Partnership to the Partnership and the Partnership shall distribute her Capital Contribution to her and she shall thereupon and thereafter have no interest in the Partnership.

ARTICLE VIII  
CAPITAL CONTRIBUTIONS

Section 8.01: Capital Contributions of the General Partner. The General Partner, as such, shall not make any contribution of cash to the capital of the Partnership on its formation.

Section 8.02: Initial Limited Partner. The Initial Limited Partner shall not make a nominal contribution of cash to the capital of the Partnership.

Section 8.03: Capital Contribution of the Limited Partners. The Partnership shall have outstanding thirty-five (35) Partnership Units which shall be sold by the Partnership to persons acceptable to the General Partner, in its sole discretion. Each purchaser of a Partnership Unit will be required (i) to make an initial Capital Contribution in cash in the amount of \$2,000 per Unit and (ii) to deliver his unconditional promissory note in principal amount of \$3,000 per Unit which note shall not bear any interest and be payable on July 1, 1987. In addition, each Limited Partner shall be obligated to pay an assessment upon the call of the General Partner, which assessment shall equal the Limited Partner's pro rata share of the unpaid balance of the mortgage on the Partnership Property and shall only be made in the event of threatened foreclosure by the mortgage lender. Each Limited Partner shall be required to execute a subscription agreement in form satisfactory to the General Partner in order to purchase a Partnership Unit. The cash contribution and the promissory note shall be paid and delivered to the Partnership on the date of execution of the Subscription Agreement. All subscriptions for Partnership Units are subject to acceptance by the General Partner. As a condition to the acceptance of a subscription for Partnership Units, the General Partner, in its sole discretion, may require security for the payment of the promissory note in the form of a letter of credit issued by a financial institution satisfactory to the General Partner in an amount equal to the principal amount of the note. The General Partner may in its sole discretion accept subscriptions for less than one whole Partnership Unit.

Section 8.04: Additional Capital Contributions. The Limited Partners shall not be required to make any additional capital contributions to the Partnership except for: (i) contributions made pursuant to Section 8.04; (ii) contributions to the capital of the Partnership as a result of the allocation to such Partners of their proportionate share of Partnership profits in the manner referred to in Section



9.01 below; (iii) payments representing the obligation of Partners set forth in Section 21.03 to restore their negative capital accounts; and (iv) payments representing the assessment, if any, made pursuant to Section 24.01 below.

Section 8.05: Loans to the Partnership. Any contribution to the capital of the Partnership by a Partner except as provided for above in Section 8.04 hereof, shall be treated as a loan to the Partnership and such Partner shall be entitled to repayment of funds so contributed by the Partnership.

Section 8.06: Capital Accounts. An individual Capital Account shall be maintained in the name of each Partner. The Capital Account shall reflect the capital interest of each Partner as defined below and shall be maintained in accordance with federal income tax principles. The capital contributions actually paid in to the Partnership (which for this purpose shall include "deemed" contributions of property to the Partnership under Section 708 of the Code) shall be credited to each Partner's Capital Account. Profits and losses of the Partnership as defined in Section 9.01 below shall as soon as practicable be credited or debited to the Capital Accounts of the Partners after the close of each fiscal year. Withdrawals from the Capital Account by the Partners shall be made in accordance with Sections 9.04 and 9.05. The amount of each Partner's distribution from the capital of the Partnership shall be debited to his respective Capital Account.

#### ARTICLE IX PROFITS AND LOSSES

Section 9.01: Allocation of Profits and Losses. Profits and losses of the Partnership shall be determined each year in accordance with the accounting methods followed for federal income tax purposes. Profits and losses shall be shared by the Partners as herein specified without regard to the amounts in their respective Capital Accounts. Except as provided in Sections 9.02 and 9.03 below, the determination of each Partner's distributive share of any Partnership item of income, gain, loss, deduction, credit or allowance for any Partnership accounting period shall be made in accordance with the following allocations:

(a) For until such time as the sum of the Distributions to the Limited Partners is less than the sum of the Capital Contributions of the Limited Partners, plus an additional six percent (6%), the allocation of profits shall be:

ninety-eight (98) percent to the Limited Partners and two percent (2%) to the General Partner and the amounts so allocated shall be credited to their respective Capital Accounts; and ninety-eight percent (98%) of the losses shall be allocated to the Limited Partners and two percent (2%) to the General Partner and the amounts so allocated shall be debited to their respective Capital Accounts.

(b) At such time as the sum of the Distributions to the Limited Partners equals the sum of the Capital Contributions of the Limited Partners, plus an additional six percent (6%), the allocation of profits shall be: ninety percent (90%) to the Limited Partners and ten percent (10%) to the General Partner and the amounts so allocated shall be credited to their respective Capital Accounts; and ninety percent (90%) of the losses shall be allocated to the Limited Partners and ten percent (10%) to the General Partner and the amounts so allocated shall be debited to their respective Capital Accounts.

Section 9.02: Allocation of Gain and Loss on Sale or Refinancing.

(a) The taxable income or gain from a Sale or Refinancing shall be allocated among the Partners for the taxable years during which such income or gains shall be recognizable as follows:

(i) The gain shall first be allocated to the Partners, if any, who then have a negative balance in their respective Capital Accounts in the same ratio that the negative Capital Account of each Partner bears to the sum of the negative Capital Accounts of all Partners until the Capital Accounts of all Partners having negative Capital Accounts have been restored to zero;

(ii) The balance of the gain, if any, shall be allocated to the Partners in the same ratio that the Sale or Refinancing Proceeds distributed to each Partner bears to the total Sale or Refinancing Proceeds distributed to all Partners; provided that, if there are no Sale or Refinancing Proceeds available for distribution to the Partners, the balance of the gain, if any, shall be allocated to the Partners in the percentages set forth in Section 9.01 hereof.

(b) The taxable loss from a Sale or Refinancing shall be allocated among the Partners for the taxable years during which such loss shall be recognizable as follows:

(i) The loss shall first be allocated to the Partners, if any, who then have a positive balance in their respective Capital Accounts in the same ratio that the positive Capital Account of each Partner bears to the sum of the positive Capital Accounts of all Partners until the Capital Accounts of all Partners having positive Capital Accounts have been restored to zero;

(ii) The balance of the loss, if any, shall be allocated to the Partners in the percentages set forth in Section 9.01 hereof.

Section 9.03: Certain Special Allocations. Notwithstanding the provisions of Sections 9.01 and 9.02 above, the following allocations shall be made to the Partners:

(a) In the event that all or any of the Partners have negative Capital Accounts resulting in whole or in part from allocations of loss attributable to non-recourse indebtedness secured by Partnership Properties, then all profits (including gains on a Sale or Refinancing) of the Partnership shall first be allocated to such Partners under this subparagraph in an amount equal to the lesser of (i) the amount of deficit balances in the negative Capital Accounts or (ii) the amount by which the sum of the deficit balances in the negative Capital Accounts exceeds the Minimum Gain. Any such allocation shall be made among the Partners in the ratio that the deficit balance in a partner's negative Capital Account bears to the sum of the deficit balances in all negative Capital Accounts of the Partners.

(b) In the event a Partner makes advances to the Partnership to fund operating deficits at a time when all other Partners have negative Capital Accounts, any loss of the Partnership for the period in which such advances were made shall be allocated to such Partner in the amount of such advances. Upon the repayment of such advances, any profits of the Partnership shall be allocated to such Partner in the amount of such repayment.

(c) It is the intent of the Partners that each Partner's distributive share of income, gain, loss, deduction or credit (or item thereof) shall be determined and allocated to the Partners in accordance with the provisions of this Certificate to the fullest extent permitted by Section 704(b) of the Code. In order to preserve and protect the determinations and allocations provided for in this Certificate, the General Partner is authorized and directed to allocate income, gain, loss, deduction, or credit (or item thereof)

28 PAGE 368

BOOK

arising in any year differently than otherwise provided for herein to the extent that, allocating income, gain, loss, deduction, or credit (or item thereof) in the manner provided for herein would cause the determinations and allocations of each Partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) not to be permitted by Section 704(b) of the Code and Treasury Regulations promulgated thereunder. Any allocation made pursuant hereto shall be deemed to be a complete substitute for any allocation otherwise provided for in this Certificate and no amendment of this Certificate or approval of any Partner shall be required. In making any allocation (the "new allocation"), the General Partner is authorized to act only after having been advised by counsel to the Partnership and its accountants that under Section 704(b) of the Code and the Treasury Regulations thereunder, (i) the new allocation is necessary, and (ii) the new allocation is the minimum modification of the allocations otherwise provided for herein necessary in order to assure that, either in the then current year or in any preceding year, each Partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined and allocated in accordance with this Certificate to the fullest extent permitted by Section 704(b) of the Code and Treasury Regulations thereunder. New allocations made by the General Partner in reliance upon the advice of counsel to the Partnership and its accountants shall be deemed to be made pursuant to the fiduciary obligation of the General Partner to the Partnership and the Limited Partners, and no such allocation shall give rise to any claim or cause of action by any Limited Partner.

Section 9.04: Distributions of Cash Flow. The Cash Flow of the Partnership shall be applied and distributed annually for the first and second years and semi-annually each year thereafter by the General Partner to the extent funds are available to the Partners in the proportion of each respective Partner's interest in the profits and losses of the Partnership as provided in Section 9.01 above.

Section 9.05: Distribution of Sale or Refinancing Proceeds. All Sale or Refinancing Proceeds shall be distributed in the following order of priority:

(a) First, to the repayment of all loans made to the Partnership by the Partners under Section 8.06 hereof and if funds are insufficient therefor then pro rata based on the ratio that each Partner's loan bears to the sum of all Partners' loans;

(b) Second, to the payment to the Partners with positive Capital Accounts to the extent of, and in proportion to, such positive Capital Account balances and if funds are insufficient therefor, then pro rata to the Partners in the ratio that the positive Capital Account of each Partner bears to the sum of positive Capital Accounts of all Partners;

(c) Third, to the Partners in proportion of each respective Partner's interest in the profits and losses of the Partnership as provided in Section 9.01(a) and Section 9.01(b) above.

Section 9.06: Record Date. Holders of Partnership Units as of a date designated by the General Partner from time to time, will be recognized as record holders for purposes of distributions.

#### ARTICLE X RIGHTS AND POWERS OF THE GENERAL PARTNER

Section 10.01: Management. The General Partner shall be responsible for the management of the Partnership business with all rights and powers generally conferred by law or necessary, advisable or consistent in connection therewith, and any action taken by the General Partner shall constitute the act of and serve to bind the Partnership. In dealing with the General Partner acting on behalf of the Partnership, no person shall be required to inquire into the authority of such Partner or such individual to bind the Partnership. Persons dealing with the Partnership are entitled to rely conclusively on the power and authority of the General Partner as set forth in the Certificate.

Section 10.02: Powers. Subject to the provisions of Section 10.04 hereof, in addition to any other rights and powers which he may possess, the General Partner shall have all specific rights and powers necessary or appropriate to the management of the Partnership business which, by way of illustration but not by way of limitation, include the following rights and powers:

(a) The General Partner shall receive from the Partnership the distributions of profits, losses, depreciation, cash flow and Sale or Refinancing Proceeds provided for in the Certificate.

(b) To acquire by purchase, lease, exchange or otherwise any real or personal property which may be necessary,

convenient, or incidental to the accomplishment of the purposes of the Partnership; provided that real property shall not be acquired from the General Partner or an Affiliate except as provided in Section 10.04 hereof and that no real property shall be acquired at a cost to the Partnership in excess of its market value as determined by an appraisal prepared by an independent appraiser.

(c) To operate, maintain, finance, improve, own, grant options with respect to, sell, convey, assign, mortgage, exchange or lease and to cause to have constructed any real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Partnership.

(d) To borrow money and issue evidences of indebtedness necessary, convenient or incidental to the accomplishment of the purposes of the Partnership, including any borrowing that may be deemed to have been incurred by the Partnership in connection with the acquisition of the Property subject to existing financing and/or the assumption of such existing financing in connection therewith, and to secure the same by mortgage, pledge or other lien on the Property or other assets of the Partnership provided, however, that in connection with the borrowing of money recourse for the repayment of which is limited solely to the property of the Partnership, no lender shall be granted or acquire, at any time as a result of making such loan, any direct or indirect interest in the profits, capital or property of the Partnership other than as a secured creditor;

(e) To execute in furtherance of the purposes of the Partnership, any deed, mortgage, mortgage note, bill of sale contract or other instrument purporting to convey, exchange, or encumber real or personal property of the Partnership;

(f) To prepay in whole or in part, refinance, recast, increase, modify or extend any indebtedness of the Partnership whether or not secured by mortgages affecting the Properties and in connection therewith to execute any extensions or renewals on notes and mortgages on any of the Properties;

(g) To place record title to, or the right to use, Partnership assets in the name or names of a nominee or nominees for any purpose convenient or beneficial to the Partnership;

(h) To acquire and enter into any contract of insurance which the General Partner deems necessary and proper for the protection of the Partnership, for the conservation

BOOK 28 PAGE 371



of its assets, or for any purpose convenient or beneficial to the Partnership;

(i) To employ, engage or contract with persons in the operation and management of the Partnership business, including but not limited to, supervisory managing agents, building management agents, accountants, insurance brokers, real estate brokers and loan brokers on such terms and for such compensation as the General Partner shall determine. (The cost for such services shall be competitive. The General Partner is empowered to employ in such capacity an affiliate of the General Partner.);

(j) To employ attorneys, accountants, and other legal and financial advisors to represent the Partnership;

(k) To engage in any kind of activity and to perform and carry out contracts of any kind necessary to or in connection with, or incidental to the accomplishment of the purposes of the Partnership as may be lawfully carried on as performed by a partnership under the laws of each state in which the Partnership is formed or qualified.

(l) To make an assessment of each Limited Partner equal to the unpaid balance of the mortgage loan in the sole event of threatened foreclosure by the mortgage lender.

Section 10.03: Certain Transactions with Affiliates.

(a) The General Partner or an Affiliate of the General Partner will be engaged by the Partnership for the purpose of managing the Project once construction is complete and rental of the Project has commenced and said Affiliate shall receive a Fee of 7% of the gross revenue from such property as compensation. This fee may be adjusted based on the average fee charged for such services in the general area.

(b) The General Partner may employ, engage or contract with person(s) to manage, supervise and administer the development and construction of the Project for such fees as are customary in the area in which the Project is located, if deemed necessary by the General Partner.

(c) The General Partner may be engaged to perform normal property management services for the Project for fees based on such percentage of gross rental receipts as is customary in the location of the Project.

(d) The validity of any transactions, agreement or payment involving the Partnership and any Affiliate of the General Partner otherwise permitted by the terms of the Certificate shall not be affected by reason of the relationship between the General Partner and such Affiliate.

Section 10.04: Restriction on Powers. The General Partner shall have all 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 the General Partner shall not have authority to, except as otherwise provided herein:

- (a) Do any act in contravention of the Certificate;
- (b) Do any act which would make it impossible to carry on the ordinary business of the Partnership;
- (c) Confess a judgment against the Partnership;
- (d) Possess Partnership property or assign the rights of the Partnership in specific Partnership property for other than a Partnership purpose;
- (e) Admit a person as a general partner except as provided in the Certificate;
- (f) Admit a person as a limited partner except as provided in the Certificate;
- (g) Perform any act that would subject any Limited Partner to liability as a general partner in any jurisdiction;
- (h) Loan any sum of money to the General Partner or any of its Affiliates or pledge or encumber any of the assets of the Partnership for the benefit of the General Partner or its Affiliates, except as expressly provided herein;
- (i) Receive rebates or kickbacks or participate in any reciprocal business arrangement whereby it profits from activities in connection with the Partnership which are contrary to the interests of the Partnership;
- (j) Sell or exchange substantially all of the Properties of the Partnership at a single sale or exchange which takes place at one time or from time to time or in multiple sales at one time, without the prior approval of the Partners entitled to allocation of more than fifty percent (50%) of the profits and losses of the Partnership.



Section 10.05: Competition. The General Partner, or any of its Affiliates, may form other partnerships and may engage in other forms of real estate syndications and real estate investment trusts. Any of the Partners, or any shareholder, officer, director, employee, or other person holding a legal or beneficial interest in an entity which is a Partner, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property; and neither the Partnership nor the Partners shall have any right by virtue of the Certificate in and to such independent ventures or to the income of profits derived therefrom.

#### ARTICLE XI STATUS OF LIMITED PARTNERS

Section 11.01: Management. The Limited Partners shall not participate in the management or control of the Partnership's business, nor shall they transact any business for the Partnership, nor shall they have the power to sign for or bind the Partnership, said powers being vested solely and exclusively in the General Partner.

Section 11.02: Liability. The Limited Partners shall not be bound by nor be personally liable for, the expenses, liabilities or obligations of the Partnership except to the extent of their Capital Contributions to the Partnership, their obligation to restore their negative Capital Accounts as provided in Section 21.03 hereof and the satisfaction of an assessment called for by the General Partner pursuant to Section 24 hereof.

Section 11.03: Rights. The Limited Partners shall have the following rights, powers, privileges, duties and liabilities:

(a) The Limited Partners shall have the right to obtain from the General Partner upon reasonable demand full and true information regarding the affairs of the Partnership as is just and reasonable, and shall be entitled to such reports as are set forth in Article XIII of the Certificate.

(b) The Limited Partners shall receive from the Partnership the distributions of Cash Flow and Sale or Refinancing Proceeds provided for in the Certificate. No Limited Partner has any priority over any of the other Limited Partners with

respect to any such distribution except as prescribed in Article IX hereof.

(c) A Limited Partner shall not have the right to withdraw from the Partnership and shall not have the right to demand the return of his Capital Contribution except as provided in Article XXI hereof. No Limited Partner shall have the right to demand and receive property other than cash for his Capital Contribution or to bring an action for partition against the Partnership.

(d) Limited Partners or their duly authorized representatives shall be entitled, at reasonable times and at the office designated in Section 4.01 hereof to inspect and copy, at their expense, (i) a current list of the full name and last known business or residence street address of each Partner; (ii) a copy of the Certificate and all amendments thereto together with executed powers of attorney pursuant to which any such certificates have been executed; (iii) copies of the Partnership's federal, state, and local tax returns and reports for the three most recent years; and (iv) copies of the financial statements of the Partnership for the three most recent years.

#### ARTICLE XII RESTRICTIONS ON INVESTMENTS

Section 12.01: All deposits and other funds not needed in the operation of the business of the Partnership may be invested in U.S. government securities, securities issued or guaranteed by U.S. government agencies, securities issued or guaranteed by states or municipalities, certificates of deposit and time or demand deposits in commercial banks, banker's acceptances, savings and loan association deposits or deposits in members of the Federal Home Loan Bank System.

#### ARTICLE XIII BOOKS OF ACCOUNT AND REPORT

Section 13.01: Books and Records. The proper books of accounts shall be kept wherein shall be entered all transactions, matters and things relating to the Partnership's business as are usually entered into books of account by persons engaged in a business of like character. The General Partner shall select the accounting method for the Partnership with the advice of the independent certified public accountants retained by the Partnership. The books of account shall be kept at the office of the Partnership set forth in Section 4.01 above.

Section 13.02: Reports to Limited Partners.

(a) The Partnership shall furnish each Limited Partner on or before April 1 each year annual financial statements of the Partnership prepared by an independent certified public accountant in accordance with the accounting method adopted by the Partnership pursuant to Section 13.01 above consistently applied. In addition, the Partnership shall use its best efforts to cause the accountants to furnish such other information as shall be necessary for the Limited Partners to complete their federal income tax return with respect to their participation in the Partnership within seventy-five days of the close of each year.

(b) The Partnership shall furnish each Limited Partner within thirty days after the expiration of each six month period unaudited financial statements of the Partnership which shall include a balance sheet as of the end of the preceding six month period and a statement of operations and for the six month period just ended and for the period of the current year just ended.

ARTICLE XIV  
FISCAL YEAR

Section 14.01: The fiscal year of the Partnership shall begin on the first (1st) day of January and end on the thirty-first (31st) day of December of each year.

ARTICLE XV  
PARTNERSHIP FUNDS

Section 15.01: All funds of the Partnership shall be deposited in its name in such checking and savings accounts or time certificates as shall be designated or authorized by the General Partner. Withdrawals therefrom shall be made upon such signature or signatures as the General Partner may designate.

ARTICLE XVI  
TRANSFER OF PARTNERSHIP INTEREST

Section 16.01: In General. A partner may not sell, assign, transfer, or otherwise dispose of or pledge, hypothecate or in any manner encumber his interest in the Partnership or any part thereof except as permitted in this Article XVI,

and any act in contravention of this Article XVI, shall be null and void as against the Partnership.

Section 16.02: General Partners.

Except as otherwise permitted in the event of the withdrawal of a General Partner under Article XVII of the Certificate, a General Partner shall not have the right to sell, assign or transfer any or all of his interest as General Partner in the Partnership, to substitute one or more General Partners to act in his place, nor to admit additional General Partners, without the prior approval of one hundred percent (100%) of the Limited Partners; provided, however, that nothing in this Certificate shall be deemed to prevent the merger, reorganization, or consolidation of the General Partner into or with any other corporation, or the transfer of all of the capital stock of the General Partner, and the assumption of the rights and duties of the General Partner by, in the case of a merger, reorganization, or consolidation, the surviving corporation by operation of law. Upon the transfer of all of the interest of the General Partner to a successor General Partner who is accepted by approval of one hundred percent (100%) of the Limited Partners, the transferring General Partner shall no longer have any further duties and obligations under this Certificate and the successor to the interest of the General Partner shall agree in writing to be bound by the provisions of the Certificate and to assume the duties and obligations of the General Partner as provided in the Certificate.

Section 16.03: Transfer of a Limited Partnership Interest.

(a) Restrictions on Transfer.

A Limited Partner shall not have the right to assign the whole or any portion of his interest in the Partnership for such period of time as may be required by federal and applicable state securities laws as a result of the offer and sale of Limited Partnership interests without registration thereunder. After the expiration of said period of time, a Limited Partner shall have the right to assign the whole or any portion of his interest in the Partnership only upon compliance with the terms of this Section 16.03.

(b) Option to Purchase.

A Limited Partner shall not have the right to assign the whole or any portion of his interest in the

Partnership without first giving written notice to the other Partners of his desire to sell or otherwise dispose of all or a portion of his Partnership Units. Such written notice shall constitute an offer to sell the Partnership Units described in the notice under the terms and conditions set forth in subparagraphs (i)-(iv) below.

(i) The General Partner shall have the option to purchase all or any portion of the Partnership Units offered by the selling Partner by exercising his rights under said option within thirty (30) days after the delivery notice. Upon exercising his rights under the option provided for in this subparagraph (i), the General Partner shall be entitled to purchase all or any portion of the Partnership Units offered by the selling Partner.

(ii) In the event that the General Partner should fail to exercise his rights to purchase the Partnership Units or any portion thereof of the selling Limited Partner, as provided in subparagraph (i) above, then each of the Limited Partners shall have the option to purchase his proportionate share of the Partnership Units offered by selling Limited Partner (and not purchased by the General Partner) by exercising his right to purchase such Partnership Units within thirty (30) days after the expiration of the period specified therein. Upon exercising his rights under the option provided for in this subparagraph (ii), each Limited Partner shall be entitled to purchase his proportionate share of the Partnership Units offered by the selling Partner. The proportionate share of each of the Limited Partners shall be determined by using a fraction in which the numerator is the percentage share of the Partnership profits and losses specified in Section 9.01 above for each Limited Partner exercising the option to purchase, and the denominator is the sum of the percentage shares of the Partnership profits and losses as described in Section 9.01 above for all of the Limited Partners who exercise the option to purchase such Partnership Unit granted hereunder.

(iii) Upon the exercise of the options as provided in subparagraph (i) or (ii) above, the selling Limited Partner shall be obligated to sell, and the Partner(s) having exercised said

option shall be obligated to purchase, all of the Partnership Units so offered by the selling Limited Partner at the purchase price and on the terms and conditions set forth in subparagraph (v) below. Notwithstanding any of the foregoing to the contrary, the Partners may, by agreement among themselves, determine the proportions in which some or all of their number may exercise the options granted in this subparagraph (b); provided that the Partners must purchase, as between themselves, all of the Partnership Units so offered for sale by the selling Partner.

(iv) Upon the delivery of the notice, the Partners shall promptly make proper adjustment to the capital accounts of each Partner and the net profit or net loss of the Partnership from the date of the last previous accounting to the date of delivery of the notice. The value of the interest of the selling Partner shall be determined as of the date of delivery of the notice and shall be an amount equal to the sum of (i) his Capital Account; and (ii) his proportionate share of accrued net profits or losses of the Partnership; less the amount of any liability which the selling Partner may have to the Partnership; provided that if the aforesaid sum is zero or negative after the adjustment set forth below, then the selling Limited Partner shall convey his interest in the Partnership to the Partner(s) having exercised his rights hereunder without charge.

(v) The value of the interest of the selling Limited Partner as determined in accordance with the foregoing shall be increased or decreased by his proportionate share of the difference, if any, of the fair market value of the Project on the date of delivery of the notice and the amount at which the Project is carried on the books of the Partnership, as adjusted to the date of the notice. The fair market value shall be determined by negotiation between the selling Partner and the Purchasing Partner(s). In the event no agreement can be reached on the fair market value, then the fair market value shall be determined by a composite appraisal prepared and submitted by an appraiser selected by the selling Partner and an appraiser selected by the Partner(s) having exercised the option; provided that if the previously mentioned

appraisers are not able to agree as to the fair market value of the Project, said appraisers shall select an additional appraiser and the fair market value shall be the value agreed to by a majority of said appraisers. The cost of such appraisal shall be evenly divided between the Partners as follows: fifty percent (50%) to the selling Limited Partner and fifty percent (50%) to the Partner(s) having exercised the option.

(vi) The value of the interest of a selling Partner shall be determined under the supervision of the accounting firm engaged to maintain books and records of the Partnership on the date of the notice, and all adjustments required to be made in the various Partnership accounts pursuant to the terms of this Certificate shall be made by or under the direct supervision of said accounting firm. For purposes of this paragraph, the selling Partner's capital account shall be taken as shown on the books of the partnership as adjusted to the date of delivery of the notice without any allowance for goodwill, trade name, or other intangible assets.

(vii) The purchase price for the interest of the selling Partner shall be paid in cash at the closing. The closing shall be at such time and place as may be mutually agreed upon by the Partners; provided that the closing date of any such purchase and sale shall be on a date not later than ninety (90) days after date of delivery of the notice.

(c) Assignment.

In the event that the General Partner or the remaining Limited Partners do not elect to purchase all of the Partnership Units offered for sale by the selling Limited Partner on or before sixty (60) days after the date of delivery of the notice (being the aggregate sum of the two thirty day periods specified in subparagraph (b) above), then the selling Limited Partner may assign all of his Partnership Units to any other person, at such price and on such terms and conditions as the selling Limited Partner may in his sole discretion determine. The assignment of the Partnership Units shall be made by a written assignment, the terms of which are not in contravention of any of the provisions of this Certificate, which assignment has been duly executed by the assignor and



the assignee and received by the General Partner and recorded on the books of the Partnership subject to the requirements of the Act; provided, however, any such assignment shall have the prior written approval of the General Partner and such approval shall be at the sole and absolute discretion of such General Partner, which approval shall not be unreasonably withheld. The General Partner may require as a condition to its approval for any such assignment an opinion of legal counsel, satisfactory to the General Partner, that such assignment is not in violation of the registration requirements of the federal and applicable state securities laws; that the assignment shall not cause the Partnership to be terminated under Section 708 of the Code; and that such assignment will not cause the Partnership to be classified as an association and not a partnership under the Code. An assignment of a Partnership Unit is also subject to the following:

(i) An assignee of a Limited Partner is an individual or legal entity who has not become a substituted Limited Partner pursuant to subsection (d) below. An assignee has no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books, but only shall be entitled to receive the share of profits or other compensation by way of income or the return of capital contribution, to which his assignor would otherwise be entitled as set forth in Section 16.03(c)(v) hereof. An assignee shall not become a substituted Limited Partner except as provided in Section 16.03(d) of this section.

(ii) An assignee of a Limited Partner's interest in the Partnership shall be entitled to receive distributions of cash or other property from the Partnership attributable to the interest acquired by reason of such assignment as the record holder from and after the effective date of assignment. The effective date of an assignment of a Partnership interest as used in this paragraph shall be the last day of the month of receipt and approval by the General Partner of the written instrument of assignment and recording on the books of the Partnership.

(iii) The net profits and net losses attributable to the Partnership Units acquired by reason of such assignment shall be divided among

BOOK 28 PAGE 381



and allocated between the assignor and assignee of such interest as of the effective date of the assignment of such interest and in accordance with Section 16.03(c)(v) hereof.

(iv) Anything herein to the contrary notwithstanding, both the Partnership and the General Partner shall be entitled to treat the assignor of such interest as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made in good faith to him, until the last day of the month during which the written assignment has been received and approved by a General Partner, and recorded on the books of the Partnership.

(v) The division and allocation of net profits and net losses attributable to the Partnership interest which is the subject of such assignment between assignor and assignee during any fiscal year of the Partnership shall be based to the extent determinable upon the date or dates during such fiscal year on which income was earned or losses were incurred by the Partnership.

(d) Substitution. A substituted Limited Partner is a person admitted to all the rights of a Limited Partner. No assignee of the whole or any portion of a Limited Partner's Partnership Unit shall have the right to become a substituted Limited Partner in place of his assignor unless all of the following conditions are satisfied:

(i) The written consent of the General Partner to such substitution shall be obtained, the granting or denial of which shall be within the sole and absolute discretion of the General Partner.

(ii) The assignor and assignee execute and acknowledge a written instrument of assignment which sets forth the intention of the assignor that the assignee become a substituted Limited Partner in his place, and file such instrument with the General Partner.

(iii) The assignor and assignee execute and acknowledge such other instruments as the General Partner may deem necessary or desirable to effect such admission, including the written acceptance

BOOK  
28 PAGE 382

and adoption by the assignee of the provisions of the Certificate and his execution, acknowledgment and delivery to the General Partner of a power of attorney, the form and content of which are more fully described in Article XXII.

(iv) A transfer fee has been paid to the Partnership which is sufficient to cover all reasonable expenses connected with such assignment and substitution.

(e) Any person admitted to the Partnership as a general or limited partner shall be subject to all the provisions of the Certificate as if originally a party to them.

(f) The General Partner may elect to treat an assignee who has not become a Substituted Limited Partner as a Substituted Limited Partner in the place of his assignor should either or both of them deem, in his sole discretion, that such treatment is in the best interest of the Partnership for any of its purposes or for any of the purposes of the Certificate.

Section 16.04: Involuntary Transfer of a Limited Partnership Interest.

(a) Upon the death or legal incompetency of an individual Limited Partner, his personal representative shall have all of the rights of a Limited Partner for the purpose of settling or managing his estate, and such power as the decedent or incompetent possessed to constitute a successor as an assignee of its interest in the Partnership and to join with such assignee in making application to substitute such assignee as a Limited Partner.

(b) Upon the bankruptcy, insolvency, dissolution or other cessation to exist as a legal entity of a Limited Partner not an individual, the authorized representative of such entity shall have all the rights of a Limited Partner for the purpose of effecting the orderly winding up and disposition of the business of such entity and such power as such entity possessed to constitute a successor as an assignee of its interest in the Partnership and to join in with such assignee on making application to substitute such assignee as a Limited Partner.

ARTICLE XVII  
WITHDRAWAL OF GENERAL PARTNER

Section 17.01: Event of Withdrawal. A General Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any of the following with respect to such General Partner:

(a) The voluntary withdrawal of such General Partner as provided in Section 17.02 hereof;

(b) In the case of a General Partner who is a natural person, the death of such General Partner or the entry of a judgment by a court of competent jurisdiction adjudicating such General Partner to be incompetent to manage his person or estate;

(c) In the case of a General Partner which is a corporation, partnership, trust or other entity, the dissolution upon termination of such entity;

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

(e) Such General Partner fails, within 120 days after commencement, to cause the dismissal of any proceeding to attach or charge his 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 partnership interest or appointing, without his consent or acquiescence, a trustee, receiver or liquidator of such General Partner, the order or appointment is not vacated or stayed, or within ninety days after the expiration of any such stay, the order or appointment is not vacated; or

(f) Such General Partner is removed by the Limited Partners as provided in Section 17.03 hereof.

Section 17.02: Voluntary Withdrawal of a General Partner. From and after June 15, 1990, the General Partner shall have the right to retire or withdraw voluntarily from the Partnership by giving the Limited Partners sixty (60) days prior written notice of his intention to retire or withdraw. The effective date of such withdrawal shall be the date stated in the notice unless the Limited Partners elect, in their sole discretion, to have the withdrawal effective at the expiration of said sixty (60) day period. In the event that the General Partner retires or voluntarily withdraws prior to June 15, 1990, the Partnership may recover damages for breach of the Certificate by the withdrawing General Partner and offset the damages against the amount otherwise distributable to him.

Section 17.03: Removal of a General Partner. In the event that a General Partner is in material default of his obligations under the Certificate, and such default is not cured within ninety days after written notice of such default given by any of the Limited Partners, then the Limited Partners having a majority of the percentage for the sharing of profits and losses to which the Limited Partners as a group are entitled as set forth in Section 9.01 hereof may remove the General Partner.

Section 17.04: Continuation on Withdrawal. In the event of the withdrawal of the General Partner, the business of the Partnership shall be continued if within ninety days from the date of withdrawal the Limited Partners elect a new General Partner by the affirmative vote or written consent of 100% of the Limited Partners and the new General Partner agrees in writing to be bound by the terms of this Certificate and to assume the duties and obligations of the General Partner hereunder. In such event, at the option of the new General Partner, the entire interest of the withdrawing General Partner shall be either (i) converted into the interest of a Limited Partner, or (ii) purchased by the new General Partner or the Partnership on the terms and conditions herein set forth. In the event the new General Partner elects to purchase the interest of the withdrawing General Partner, the new General Partner shall have an option to purchase all or any portion of the interest of the withdrawing General Partner and the Partnership shall be obligated to purchase the balance of such interest, if any. The purchase price for the interest of the withdrawing General Partner shall be the agreed or market value of such interest. The market value shall be determined in accordance with the following procedure. Each of the withdrawing General Partner and new General Partner shall select a qualified independent appraiser who shall agree on the market value of the interest.

If the appraisers are unable to agree, they shall select a third appraiser and the market value shall be determined by using the average of the values of the two appraisers whose appraisals have the lesser difference in amount. The purchase price shall be paid in cash on or before sixty days from the date of determination of the price.

ARTICLE XVIII  
AMENDMENT OF CERTIFICATE AND AGREEMENT  
OF LIMITED PARTNERSHIP

Section 18.01: Adoption Procedures.

(a) The Certificate may be amended by adoption of an amendment hereto by the affirmative vote of the Partners entitled to allocation of at least fifty percent (50%) of the Partnership profits and losses at a meeting thereof held in accordance with Article XIX, subject to the provisions of Sections 18.01(b), 18.02 and 18.03 below.

(b) Notwithstanding anything in this Article XVIII to the contrary, the Limited Partners shall not have the right to amend Articles IX, X, XVII, XVIII, and XXIII of the Certificate without first obtaining the prior written consent of the General Partner.

Section 18.02: Unanimous Written Consent for Certain Amendments. Notwithstanding Section 18.01 hereof, without the approval of such amendment by the written consent of all Partners, no amendment shall:

(a) Change the Partnership to a general partnership or change the limited liabilities of the Limited Partners; or

(b) Change the amount or character of the Capital Contribution of any Partner or the obligation of a Partner to make any type of contributions to the capital of the Partnership;

(c) Increase or decrease the allocation for the sharing of profits or losses in the Partnership;

(d) Change the manner in which distributions of Cash Flow or Sale or Refinancing Proceeds are to be distributed to the Partners;

(e) Authorize the General Partner to do any of the following acts unless the amendment requires such specific act to be approved or ratified by the written consent of all

of the Limited Partners: (1) do any act in contravention of the Certificate; (2) do any act which would make it impossible to carry on the ordinary business of the Partnership; (3) confess judgment against the Partnership; (4) possess Partnership property, or assign a Partnership's rights to specific Partnership property, other than for a Partnership purpose; (5) admit a person as an additional Limited Partner other than as provided in Sections 8.04 and 16.03 hereof; or (6) admit a person as a General Partner other than as provided in Sections 16.02 and 17.04 hereof. The General Partner or any successor General Partner may not do any of such acts without such amendment and such approval or ratification of the specific act by written consent of all of the Limited Partners.

Section 18.03: Certain Amendments Required by Law. Notwithstanding Section 18.01, appropriate amendments to the Certificate shall be made by a General Partner with respect to the following: (a) the admission of a substituted Limited Partner; (b) the withdrawal of a General Partner; (c) change in the name of the Partnership; (d) change in the name or address of a Partner; or (e) receipt of an opinion of legal counsel that such amendment is necessary to obtain a ruling from the Internal Revenue Service that the Partnership will be treated as a partnership and not as an association under the Code. Such amendments shall not require the approval of the Limited Partners.

Section 18.04: Effectiveness of Amendments. As soon as possible after the adoption of an amendment, but no later than thirty (30) days thereafter, the General Partner shall execute, acknowledge, record, and if required, file such amendments and any other required certificates, amended certificates or other documents with the Judge of Probate of Shelby County, Alabama and the appropriate offices in each state in which the Partnership is qualified. The Certificate of Amendment to be filed with the Judge of Probate of Shelby County, Alabama, shall also be executed by each person who is designated therein as a substituted or additional Partner or whose capital contribution is described as having been modified; provided that a General Partner may execute any such certificate on behalf of such persons pursuant to a power of attorney specifically describing such admission or change in capital contribution. Such amendment shall become effective when the Certificate of Amendment is filed in the Office of the Judge of Probate of Shelby County, Alabama.



ARTICLE XIX  
MEETINGS AND VOTING RIGHTS OF PARTNERS

Section 19.01: Matters to be Considered. Any matters as to which Partners are authorized to take action or consent under the Certificate or under law, including, without limitation, amending the Certificate as provided in Article XVIII (subject to the requirements of Sections 18.01 and 18.02) may be taken or made by the Partners in accordance with the following procedure.

Section 19.02: Call and Notice of Meetings. Meetings of the Partners to vote upon any matters as to which the Partners are authorized to take action under the Certificate may be called at any time by the General Partner or by one or more Limited Partners having not less than fifty percent of the then outstanding percentage interest in the Partnership as set forth in Section 9.01 hereof by delivering written notice of such call to the General Partner. Upon the call of a meeting, the General Partner forthwith shall cause notice to be given to the Limited Partners entitled to vote on such matters that a meeting will be held at a time and place fixed by the General Partner which is not less than ten nor more than fifty days after the giving of notice of the meeting. If notice of the meeting is not given by the General Partner within fifty days after the date of the request of a meeting by the Limited Partners, the Limited Partners who call the meeting may fix the time and place for the meeting and give notice thereof provided the time of the meeting shall be not less than ten (10) and no more than fifty (50) days after the giving of notice of the meeting. Meetings of Partners may be held at any place within or without the State of Alabama which may be designated by persons calling the meeting provided that all such meetings shall be held within the continental United States. In the absence of any such designation, meetings shall be held at the office of the Partnership designated in Section 4.01 hereof. Notice of meetings shall be in writing, shall set forth the place, the day and hour of the meeting, and shall be given to each person who is a Partner entitled to vote on the date of giving of the notice, either personally or by United States mail, postage prepaid, certified mail, return receipt requested, addressed to such person at his address as provided in the Certificate or subsequent amendments hereto. Notice shall be deemed given when mailed or delivered. Included with the notice of a meeting shall be a detailed statement of the action proposed, including a verbatim statement of the wording of any resolution proposed for adoption by the Limited Partners and of any proposed amendment to the Certificate, and in the case of proposals for Amendment of the

BOOK 28 PAGE 388

Certificate, an opinion of counsel as to the legality of such amendment. In addition, if such notice is given by the General Partner, it shall include a statement of its recommendation as to the action proposed.

Section 19.03. Quorum for Meetings. There shall be deemed to be a quorum at any meeting of the Partners at which the voting power of the Partners attending such meeting constitutes the necessary majority of the voting power of the Partners entitled to vote at such meetings, which is required to approve the matters considered at the meeting.

Section 19.04: Voting Power. The voting power of a Partner on any matter shall be equal to his percentage for the allocation of profits and losses as provided in Section 9.01 hereof. The voting power of all of the Partners on any matter shall be the sum of the voting powers of each of the Partners on such matter. The voting power of the Partners for all purposes of the Certificate shall be determined as of the date of giving of notice of meeting or proposed action without a meeting, as the case may be.

Section 19.05: Action by Partners at Meetings. Any action or consent which may be taken or made by the Partners under the Certificate may be taken at a meeting by the affirmative vote or written consent of Partners entitled to the allocation of more than fifty percent (50%) of the Partnership profits and losses as set forth in Section 9.01 hereof unless otherwise specified herein (subject to the requirements of Section 18.02 above).

Section 19.06: Action by Partners Without A Meeting. Any matters as to which the Partners are authorized to take action or consent under the Certificate or under all, including without limitation amending the Certificate as provided in Article XVIII, may be taken or made by written consent of the required majority of the Partners without a meeting. In addition, the General Partner may, after having called a meeting for that purpose at which a quorum did not exist, deliver in person or mail to the Limited Partners entitled to vote on any matter, a notice stating (1) that a meeting was duly called and noticed to consider the action proposed by the General Partner; (2) that a quorum did not attend the meeting; (3) that the General Partner recommends adoption of the proposal set forth in the notice; and (4) that if written objections to adoption of the proposal are not filed by the Partners entitled to receipt of fifty percent (50%) or more of the profits and losses hereof, said proposal shall for all purposes be deemed adopted and approval by the



Partnership. If written objection is not received by the General Partner from Partners entitled to receipt of fifty percent (50%) or more of the profits and losses of the Partnership within ten (10) days of mailing or delivery of said notice, then said proposal shall for all purposes be deemed adopted and approved by the Partnership.

#### ARTICLE XX TERM

Section 20.01: The term for which the Partnership is to exist shall commence on the date the Partnership is formed pursuant to the Act to and through December 31, 2025, unless sooner dissolved pursuant to the provisions of Article XXI of the Certificate or as otherwise provided by law.

#### ARTICLE XXI TERMINATION AND DISSOLUTION

Section 21.01: Terminating Events. The Partnership shall be terminated and dissolved upon the happening of any of the following events:

- (a) The disposition for cash of the Project;
- (b) December 31, 2025;
- (c) The Partners entitled to the allocation of more than seventy-five percent (75%) of the profits and losses of the Partnership as set forth in Section 9.01 determine that the Partnership shall be dissolved;
- (d) The withdrawal of the sole General Partner under Section 17.01 and the failure of the Limited Partners to elect to continue the business of the Partnership under Section 17.04; or
- (e) The Partnership becomes insolvent or bankrupt.

Section 21.02: Terminating Distributions. Upon a dissolution and termination of the Partnership, the General Partner or in its absence, a representative of the Limited Partners entitled to more than fifty percent (50%) of the profits and losses of the Partnership shall take full account of the Partnership assets and liabilities and the assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom together with assets distributed in kind, to the extent sufficient

therefor, shall be applied and distributed in the following order in lieu of the order provided for in Section 804 of the Act [Section 10-9A-143 Code of Alabama 1975]:

(a) to the payment of debts and liabilities of the Partnership (except for any loans or advances that may have been made by the Partners to the Partnership in accordance with the terms of this Certificate) and expenses of litigation;

(b) to the setting up of any reserves which the General Partner (or the representative of the Limited Partners) may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership or of the Partners arising out of or in connection with the Partnership; and

(c) to the Partners in the manner provided for the distribution of Sale or Refinancing Proceeds under Section 9.05 above.

Section 21.03: Restoration of Deficit in Adjusted Capital Account. In the event any Partner shall have a negative balance in his Capital Account (except to the extent that any such deficit results from a loss incurred other than in the ordinary course of business, which for this purpose, shall include any judgment or settlement in lieu thereof obtained against the Partnership), after adding thereto all profits (including gains) allocated to such Partner under Article IX in connection with the liquidation and winding up of the Partnership which negative balance is in excess of such Partners' share of Minimum Gain, such Partner shall be required to restore and pay over to the Partnership upon demand an amount of cash equal to the amount by which the negative balance in such Partner's Capital Account exceeds his proportionate share of Minimum Gain (as herein determined).

#### ARTICLE XXII POWER OF ATTORNEY

Section 22.01: Form. Concurrently with the written acceptance and adoption of the provisions of the Certificate, each Limited Partner shall execute and deliver to the Partnership a power of attorney in which the General Partner is constituted and appointed as the attorney-in-fact for such Partner with power and authority to act in his name and on his behalf in the execution, acknowledgment and filing of documents, which will include, but not be limited to the following:

(a) Any such amendment to the Certificate as may be required under the laws of the State of Alabama, or the laws of any other state in which a Certificate is required to be filed, to admit such person as a Limited Partner;

(b) Any other instrument which may be required to be filed by the Partnership under the laws of any state or by any governmental agency, or which the General Partner deems it advisable to file; and

(c) Any amendment to the Certificate or other documents which may be required to effect the continuation of the Partnership, the admission of an additional or substituted Limited Partner, or the dissolution and termination of the Partnership, provided such continuation, admission or dissolution and termination are in accordance with the terms of the Certificate.

Section 22.02: Scope. The power of attorney to be concurrently granted by each Limited Partner to the General Partner:

(a) Is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death of the Limited Partner;

(b) May be exercised by the General Partner for each Limited Partner by listing all of such Partners executing any instrument with a signature of said General Partner acting as attorney-in-fact for all of them; and

(c) Shall survive the delivery of an assignment by a Limited Partner of the whole or any portion of his interest in the Partnership; except that where the assignee thereof has been approved by a General Partner for admission to the Partnership as a Substituted Limited Partner, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

#### ARTICLE XXIII PARTNERSHIP LIABILITIES

Section 23.01: General. Except as provided in Section 24 and herein, no Limited Partner shall be liable (a) to Partnership creditors as a general partner unless, in addition to the exercise of his rights and powers as a Limited Partner, he takes part in the control of the Partnership's business;

or (b) to the Partnership or to the General Partner unless a liability of the Partnership or of the General Partner, as the case may be, is founded upon the unauthorized activity of such Limited Partner in attempting to take part in the control of the Partnership's business.

Section 23.02: Payment of Partnership Liabilities.

The General Partner is hereby authorized to prosecute, defend, settle, or compromise actions or claims by or against the Partnership at the Partnership's expense, as may be necessary or proper to enforce or protect the Partnership's interests. The General Partner shall satisfy any judgment, decree or decision of any court, board or authority having jurisdiction or any settlement of any suit or claim prior to the judgment or final decision thereon, first, out of any insurance proceeds available therefor, next, out of Partnership's assets and income, and, finally, out of the assets and income of the General Partner.

Section 23.03: Indemnification of General Partner.

Except in the case of gross negligence or willful misconduct, the General Partner (including its Affiliates and the officers, directors and employees of such Affiliates) shall not be liable, responsible, or accountable in damages or otherwise to the Partners for any act or the failure to act which may cause or result in loss or damage to the Partnership, if done pursuant to the advice of legal counsel employed by the General Partner on behalf of the Partnership or if done in good faith to promote the best interests of the Partnership. The General Partner (including its Affiliates and officers, directors and employees of such Affiliates) or any Partnership employee or agent shall be entitled to be indemnified by the Partnership from the assets of the Partnership or as an expense of the Partnership against any loss or threat of loss, as a result of any claim or legal proceeding relating to the performance or non-performance of any act concerning the activities of the Partnership, except in the case where the General Partner (including its Affiliates and the officers, directors, and employees of such Affiliates) is guilty of gross negligence, or willful misconduct. The indemnification authorized by this section shall include the payment of reasonable attorney's fees and other expenses incurred in settling or defending any claims, threatened action, or finally adjudicated legal proceedings.

Section 23.04: No Liability for Return of Capital.

The General Partner shall not be personally liable for the return of all or any part of the Capital Contributions of the Limited Partners.

ARTICLE XXIV  
ASSESSMENTS

Section 24.01: Liability for Assessment. Limited Partners shall be liable to pay to the Partnership an assessment equal to their pro rata share of the outstanding balance of the mortgage loan on the Partnership Property within thirty (30) days after receipt of Notice by the General Partner. Upon threatened foreclosure by the mortgage lender, the General Partner shall be authorized to make said assessment upon each of the Limited Partners. Upon payment of the assessment a Limited Partner's capital account shall be adjusted to reflect such payment.

Section 24.02: Default. If, upon the making of the assessment and the giving of Notice therefor by the General Partner, any Limited Partner shall fail within thirty (30) days to make full payment of the assessment, the General Partner shall immediately give such Limited Partner further Notice of such failure and of the provisions of this Section 24.02; provided, however, that failure of the General Partner to give such further Notice or of the Limited Partner to receive such further Notice, shall not affect the liabilities of the Limited Partner hereunder. If any Limited Partner shall fail to make full payment of the assessment within thirty (30) days after the time such assessment is due and payable in accordance with Section 24.01 hereof (or within such additional time as the General Partner may, in its sole discretion, determine), such Limited Partner shall be in default of his obligation hereunder. Such default may be cured by making such payment, with interest at the rate that is the greater of twelve percent (12%) per annum or two percentage points above the prime rate of interest then charged by The First National Bank of Columbiana, Columbiana, Alabama, but in no event higher than the highest interest rate then permitted under the laws of the State, calculated from the date the defaulted assessment was first due and payable pursuant to Section 24.01, plus an additional payment to the Partnership for its reasonable expenses incurred in connection with taking action under this Section by reason of the default, as determined by the General Partner. All payments described in the preceding sentence to cure the default must be made prior to the exercise of the options provided for under Sections 24.04 or 24.05 or the making of any Capital Contribution by a purchaser of a defaulting Limited Partner's Interest pursuant to Section 24.06.

24.03: Forfeiture Upon Default. In the event of any such default, if such default shall not have been timely cured, and without any Consent or other action on the part of

the defaulting Limited Partner (and each Limited Partner, by execution of this Agreement, expressly Consents to the operation of the provisions of Sections 24.03 and 24.04, and 24.05 hereof), (i) the defaulting Limited Partner shall not receive any cash attributable to his interest which has not previously been distributed to such defaulting Limited Partner, or any profits and losses attributable to his Interest which have not previously been allocated to such defaulting Limited Partner; (ii) the defaulting Limited Partner's Interest in the Partnership, including all such cash not theretofore distributed and all such profits and losses for the current fiscal year, subject to any applicable requirements of the Internal Revenue Code, not theretofore allocated, may be purchased as provided in Section 24.04; and (iii) the defaulting Limited Partner's Interest, including the right to all such cash not theretofore distributed and, subject to any applicable requirements of the Internal Revenue Code, all such profits and losses for the current fiscal year not theretofore allocated, shall be acquired by, and inure to the benefit of, his successor.

**24.04: General Partner's Rights Upon Default.** The General Partner has the option to purchase or resell to others (including non-defaulting Limited Partners) the Interest of a defaulting Limited Partner upon the terms and conditions set forth in this Section 24.04 upon the expiration of thirty (30) days following the sending of a Notice from the General Partner to the defaulting Limited Partner. In order to exercise the option granted by this section, the General Partner or the Person exercising the option shall have:

(a) paid the Partnership (A) assessment or assessments then required to be made by the defaulting Limited Partner, and (B) the reasonable expenses of the Partnership in connection with taking action under this Section XXIV and transferring the Interest of the defaulting Limited Partner to the purchaser;

(b) agreed to pay to the Partnership any additional installments of the Capital Contribution of the defaulting Limited Partner, if any, as the same become due and payable by executing an appropriate Note or Notes prepared by the General Partner; and

(c) paid to the defaulting Limited Partner an amount equal to the defaulting Limited Partner's previously paid-in Capital Contribution, reduced by the sum of (A) all cash attributable to the Interest of such defaulting Limited Partner which has theretofore been distributed to such defaulting Limited Partner, (B) an amount equal to 70% of the amount of all losses attributable to his Interest which has theretofore been allocated to such defaulting Limited Partner,



(C) all reasonable expenses of the purchaser of the Interest of the defaulting Limited Partner in connection with such purchase; (D) all reasonable expenses of the Partnership in connection with taking action under this Section 24 and the transfer of the Interest from the defaulting Limited Partner to the purchaser, (E) the interest on the unpaid assessment giving rise to the default that would have been paid if the defaulting Limited Partner had cured the default pursuant to Section 24.02, and (F) an amount equal to 25% of the defaulting Limited Partner's previously paid-in Capital Contribution.

24.05: Sale of Defaulting Limited Partner's Interest to Others. In the event that neither the non-defaulting Investor Limited Partners nor the General Partner purchases the defaulting Limited Partner's Interest in the Partnership upon the terms and conditions specified in Section 24.04, then the Partnership may, subject to the provisions of Section 16.03, offer the defaulting Limited Partner's entire Interest to any other Person or Persons (who may be non-defaulting Limited Partners or the General Partner or their designees) on such terms and conditions as the General Partner deems most favorable in the circumstances. Any amounts which the Person or Persons so acquiring the Interest of the defaulting Investor Limited Partner shall pay in consideration of the acquisition of such Interest shall be applied: first, to the payment of the assessment to the Partnership then required to be made by the defaulting Limited Partner; second, to the payment of any additional installments of the Capital Contribution of the defaulting Limited Partner as the same become due in accordance with the applicable terms of this Agreement; third, to the payment to the Partnership of the amounts set forth in Sections 24.02 and 24.04; fourth, to the payment of any other reasonable fees and expenses of the purchaser and others incurred in connection with such default and sale; and fifth, any balance to the defaulting Investor Limited Partner.

24.06: Liability of Defaulting Limited Partner. Notwithstanding the foregoing, the obligations of the defaulting Limited Partner to the Partnership hereunder shall not be extinguished by the existence of any option to purchase the Interest of the defaulting Limited Partner, or by its exercise, or by any agreement by any Person to acquire such Interest, except to the extent of the payment of an assessment actually made in the defaulting Limited Partner's stead by any purchaser of such defaulting Limited Partner's Interest under this Section XXIV. When any such purchaser pays the assessment of a defaulting Limited Partner, the obligation of such defaulting Limited Partner corresponding to such assessment shall be cancelled.

ARTICLE XXV  
MISCELLANEOUS

Section 25.01: Notices. All notices, except for reports to be provided Limited Partners under Article XIII hereof, under the Certificate shall be in writing and shall be given to the Partner entitled thereto by personal service to the address set forth in the Certificate for the General Partner, or to the address set forth in any Amendment to the Certificate for any additional Limited Partners, or at such other addresses such Partner may specify in writing; except that notices to an executor, administrator, representative, successor or assign of a Partner shall be mailed or assign at the address to which notices to such Partner would have been mailed unless the executor, administrator, representative, successor or assign shall have designated a different address in writing. All notices shall be deemed to have been delivered when deposited in the mail as specified in this paragraph; provided that a notice or demand not given as above, if it is in writing, shall be deemed to have been given if and when actually received by the Partner to whom it is required or permitted to be given.

Section 25.02: Headings. Section titles or captions contained in the Certificate are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of the Certificate or the intent of any provisions hereof.

Section 25.03: Words. Whenever the singular number is used in the Certificate and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and the word "person" shall include corporation, firm, partnership, or other form of association.

Section 25.04: Counterparts. The Certificate may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the counterparts.

Section 25.05: Successors and Assigns. The terms and provisions of the Certificate are specifically accepted and adopted by each Limited Partner who executes a subscription agreement for Partnership Units, and shall be binding upon and inure to the benefit of the successor and assigns of each Limited Partner upon acceptance of his subscription agreement by the General Partner.



Section 25.06: Governing Law. The Certificate and all amendments hereto shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties hereunto set their respective hands and seals as of this 10<sup>th</sup> day of July, 1985.

GENERAL PARTNER:

HOUSTON SOUTH DEVELOPMENT, INC.

By: *William D. Nichols*  
Its President

INITIAL LIMITED PARTNER:

*Kathleen Triplett Kark*  
Kathleen Triplett Kark

BOOK 28 PAGE 338

STATE OF ALABAMA DEPT. OF REVENUE  
I CERTIFY THIS  
INSTRUMENT IS VALID.

1985 JUL 11 PM 12:43

*Thomas J. ...*  
JUDGE OF THE COURT

RECORDING FEES

|               |                  |
|---------------|------------------|
| Recording Fee | \$ <u>100.00</u> |
| Index Fee     | <u>1.00</u>      |
| TOTAL         | \$ <u>101.00</u> |

(147)

.....