

CERTIFICATE OF FORMATION AND
LIMITED PARTNERSHIP AGREEMENT

OF

FPI BIRMINGHAM, LTD.

THIS CERTIFICATE OF FORMATION AND LIMITED PARTNERSHIP AGREEMENT is made and entered into at Memphis, Tennessee, as of the 1st day of August, 1985, among AVRON B. FOGELMAN ("General Partner"), and AVRON B. FOGELMAN and MORRIS J. KRIGER, ("Limited Partners");

W I T N E S S E T H:

NOW, THEREFORE, intending to be legally bound hereby the parties hereto hereby agree to form a Limited Partnership under the Limited Partnership Act of 1983, Alabama Acts 1983, No. 83-513, codified as Section 10-9A-1, et seq., Code of Alabama 1975, as amended ("the Act"), upon the following terms and conditions:

Article I.

ORGANIZATION

Section 1.1. Formation and Name. The parties hereto hereby form a Limited Partnership under the Act under the name and style of FPI Birmingham, Ltd. (hereinafter called the "Partnership").

Section 1.2. Certificate of Limited Partnership. The parties hereto shall forthwith cause this Certificate of Limited Partnership (the "Certificate") to be filed in the office of the Judge of Probate of Shelby County, Alabama, in accordance with the Act.

Article II.

CHARACTER, PLACE OF BUSINESS AND TERM OF PARTNERSHIP

Section 2.1. Character of Business. The business of the Partnership shall be to acquire, own, hold, develop, improve, maintain, repair, manage, lease, sell, convey, mortgage and otherwise deal with or dispose of an apartment project located on the real estate in Shelby County, Alabama, more particularly described on Exhibit A attached hereto and by reference made a part hereof and other facilities necessary or related thereto (the "Property").

Section 2.2. Office and Resident Agent; Place of Business. The principal place of business of the Partnership shall be at the property in Shelby County, Alabama. The mailing address of the Partnership shall be 5400 Poplar Avenue, Memphis, Tennessee, 38119, or at such other substituted or additional places of business as may be designated by the General Partner. Pursuant to Section 10-9A-3 and 10-9A-4 of the Act, as codified, the Partnership shall maintain an office in Alabama at 312 North 23rd Street, Birmingham, Alabama 35203, and the Partnership's resident agent for service of process thereat shall be J. Michael Rediker. The General Partner shall notify all Partners of any change of address of the Partnership.

Section 2.3. Term. This Agreement shall become effective on the date of the filing of the Certificate and the Partnership shall continue thereafter for a term ending December 31, 2035, unless earlier dissolved and terminated pursuant to the Act or pursuant to any other provisions of this Agreement.

Section 2.4. Name and Address of General Partner. The General Partner of the Partnership and his address is as follows:

Avron B. Fogelman

5491 Shady Grove Road
Memphis, Tennessee 38119

LAND TITLE
317 NORTH 20th ST.
B'ham 35203

Section 2.5. Name and Addresses of Limited Partners. The Limited Partners and their addresses are as follows:

Avron B. Fogelman	5491 Shady Grove Road Memphis, Tennessee 38119
Morris J. Kriger	355 Shady Woods Cove Memphis, Tennessee 38119

Section 3.1. Capitalization. The capital of the Partnership shall be 100 Partnership Units consisting of Ten (10) General Partnership Units ("General Partnership Units"), and Ninety (90) Limited Partnership Units ("Limited Partnership Units"), all of which are hereinafter collectively referred to as "Units" and sometimes, where the context so admits, individually, as a "Unit."

Section 3.2. Payment for Units. The Partners (as a group) will contribute in cash to the capital of the Partnership, in the aggregate, the sum of \$10,000.00 to be represented by the Units. Each Partner will contribute in cash to the capital of the Partnership the sums in full payment for the Units hereinafter set forth:

<u>Name</u>	<u>Amount</u>	<u>General Partnership Units</u>	<u>Limited Partnership Units</u>
Avron B. Fogelman	\$1,000	10	
Avron B. Fogelman	\$8,500		85
Morris J. Kriger	\$ 500		5

Contributions to the capital of the Partnership shall not bear interest.

In addition, even though it is not contemplated nor anticipated, the Partners recognize that from time to time operational expenses and capital expenditures possibly may exceed the Partnership's operational income derived from the Property. In such event, the General Partner may require additional contributions to the capital of the Partnership. All additional capital contributions shall be made in the proportion that the number of units owned by a partner bears to the total number of outstanding units in the Partnership.

The Partners will contribute said capital within Ten (10) days after demand therefor by the General Partner. In the event a partner fails to contribute said capital as required hereunder the interest of said Partner shall be sold by the General Partner on such terms and conditions as he shall deem appropriate and the proceeds of such sale shall be applied toward such capital contribution and any excess shall be distributed to the former partner whose interest was sold.

Except as expressly provided herein, no Limited Partner shall be obligated to make additional contributions to the capital of the Partnership. The provisions of this article shall be for the sole benefit of the Partnership and not for the benefit of any creditors of the Partnership or for the benefit of any other party and may only be enforced by the Partnership.

ARTICLE IV.

PROFIT AND LOSS

Section 4.1. Allocation of Profit and Loss. The Partnership's profits and losses for Federal income tax purposes shall be allocated among the Partners as follows:

The Partners shall receive all profits or losses in the proportion that the number of Units owned by each bears to the total number of Units then outstanding.

Section 4.2. Accounting. The Partnership books shall be kept in accordance with generally accepted accounting principles consistent with those employed by the Partnership for determining its income for Federal income tax purposes. The fiscal year of the Partnership is the calendar year. The General Partner shall cause the Partnership to have prepared and to distribute to the holders of Units the following reports:

- (a) Within sixty (60) days after the end of the Partnership's fiscal year, all information reasonably necessary for the preparation of the Partner's Federal income tax returns.
- (b) Within sixty (60) days after the end of the Partnership's fiscal year, an annual report containing a statement of financial condition as of the year then ended, an operating statement for the year then ended, a statement of sources and application of funds and a cash flow statement.

Section 4.3. Determination of Profit and Loss. Profits and losses shall be considered to have been earned ratably over the period of the fiscal year of the Partnership, except that profits and losses arising from the disposition of assets shall be taken into account as of the date thereof.

Section 4.4. Partners' Accounts.

(a) There shall be maintained a capital account and an income account for each Partner. The amount of each Partner's capital contribution to the Partnership shall be credited to his capital account. From time to time, but not less often than annually, the share of each Partner in profits and losses shall be credited or charged to his income account. Any negative balance in the income account of a partner shall be charged to his capital account.

(b) If at any time the Partnership shall suffer a loss as a result of which the capital account of any Partner shall be a negative amount, such loss shall be carried as a charge against his capital account, and his share of subsequent profits of the Partnership shall be applied to restore such deficit in his capital account, but, except for payment of the capital contribution required to be made by each Limited Partner as provided in Section 3.2, no Limited Partner shall be required to make any further contribution to the capital of the Partnership to restore a loss, to discharge any liability of the Partnership, or for any other purpose, except as may be required by the Act, nor shall any Limited Partner be personally liable for any liabilities of the Partnership or the General Partner except as otherwise provided by the Act.

Article V.

DISTRIBUTION OF CASH FLOW

Section 5.1. Definition of Cash Flow. "Cash Flow" shall be net profits of the Partnership determined in accordance with Section 4.2 hereof except that (i) depreciation and amortization shall not be taken into account; (ii) mortgage amortization shall be considered a deduction; (iii) any amounts reasonably expended by the Partnership in the discretion of the General Partner for capital improvements shall be considered a deduction; and, (iv) if the General Partner shall so determine, a reasonable reserve shall be deducted to provide funds for improvements or for any other reasonable contingencies of the Partnership.

Section 5.2. Distribution of Cash Flow. The cash flow, if any, shall be divided monthly, on the fifteenth day of each month, among the Partners, in the proportion that the number of Units owned by each bears to the total number of Units then outstanding.

Article VI.

POWERS, DUTIES, LIABILITIES
AND COMPENSATION OF GENERAL PARTNERS

Section 6.1. Powers and Duties of General Partner. The General Partner shall be solely responsible for the management of the Partnership business. The General Partner, without the approval or consent of any Limited Partners, shall have the full and absolute authority and discretion to deal with the property as fully and as completely as if he were the sole owner thereof, including, without limitation, all rights and powers generally conferred by law or necessary, advisable or consistent in connection therewith, except as provided herein. The General Partner may act individually or through an attorney-in-fact for himself as General Partner or an attorney-in-fact for the Partnership.

Section 6.2. Specific Rights of General Partner. In addition to any of the rights and powers which he may possess by virtue of Section 6.1 hereof or by law or otherwise, the General Partner shall, without the approval and consent of any of the Limited Partners, have all specific rights and powers required or appropriate to his management of the Partnership business and his full and absolute authority to deal with the Property as if he were the sole owner which, by way of illustration but not by way of limitation, shall include the following rights and powers:

(a) To acquire, hold, lease, mortgage or otherwise encumber, sell or otherwise dispose of the Property, any interest therein, or appurtenance thereto, as well as any personal or mixed property in connection therewith.

(b) 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.

(c) To employ persons in the operation and management of the Partnership business, including but not limited to, supervisory managing agents, building management agents (including Fogelman Management Corporation), insurance brokers, real estate brokers and loan brokers, agents, accountants and attorneys on such terms and for such compensation as the General Partner shall determine, notwithstanding that any Partner, General or Limited or a firm or corporation of which a General or Limited Partner is a partner, member, officer, director or stockholder, be such agent, broker, manager, attorney or accountant. All fees and charges shall be reasonable and competitive. Fogelman Management Corporation's fee shall not exceed 6% of gross revenues or commercially competitive rate, whichever is greater.

(d) To participate, as a general or limited partner, in any partnership(s), general or limited, or as shareholder, director, officer, consultant or employee in any corporation(s), as a joint venturer in any joint venture(s) of whatsoever nature or purpose, notwithstanding that such venture does or may compete with the Partnership, or may result in conflict of interest. Any such participation shall not create any rights in the Partnership or the Limited Partners in or to such other endeavors or the income or profits therefrom.

(e) To pay any and all expenses incurred in the creation of the partnership, the acquisition of the Property and the sale of the Units.

(f) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing.

Section 6.3. Admission of Limited Partners. The General Partner has the right to admit Limited Partners only in substitution of Limited Partners disposing of their interest in the Partnership.

Section 6.4. Devotion of General Partner's Time to Partnership. The General Partner shall be required to devote only such time and effort to the Partnership business as shall be necessary for its orderly operation and shall not be required to devote his full time and effects to the Partnership business, it being understood that the principal occupation of the General Partner is not the operation of the Partnership business.

Section 6.5. Prohibitions and Restrictions on the Actions of the General Partner. The General Partner shall not:

- (a) Do any act in contravention of the Certificate and this Agreement;
- (b) Possess Partnership property or assign the rights of the Partnership in specific Partnership property for other than a Partnership purpose; and,
- (c) Admit a person as a Limited Partner except as otherwise provided in this Agreement.

Section 6.6. Compensation of General Partner. The General Partner shall be entitled to compensation for acting as General Partner hereunder and he shall be entitled to reimbursement for any reasonable out-of-pocket expenses incurred by him.

Section 6.7. Reliance on Act of General Partner. No financial institutions or any other person, firm or corporation dealing with the General Partner shall be required to ascertain whether the General Partner is acting in accordance with this Agreement, but such financial institution or such other person, firm or corporation shall be protected in relying solely upon the deed, transfer, or assurance of and the execution of such instrument or instruments by the General Partner.

Section 6.8. Indemnification of General Partner.

(a) The Partnership shall indemnify the General Partner if he was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is the General Partner of the Partnership, against reasonable expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith, and in a manner he reasonably believed to be in or not opposed to the best interests of the Partnership and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful except that no indemnification shall be made in respect of any claim, issue or matter as to which he shall have been adjudged to be liable for gross neglect or willful misconduct in the performance of his duty

to the Partnership. Otherwise, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the General Partner did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Partnership, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The provisions of this Article shall not impose any liability upon the Limited Partners in their individual capacities but only upon their interest in the Partnership.

(b) Reasonable expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Partnership in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the General Partner to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Partnership as authorized by this Article.

Article VII.

RIGHTS AND PROHIBITIONS OF LIMITED PARTNERS

Section 7.1. Rights of Limited Partners.

(a) Limited Partners shall not in any way be prohibited from or restricted in engaging or owning an interest in any other business venture of any nature, including any venture which might be competitive with the business of the Partnership, and the Partnership may engage Limited Partners or persons or firms associated with them for specific purposes and may otherwise deal with such Limited Partners on terms and for compensation to be agreed upon by any such Limited Partners and the Partnership; provided, however, that Limited Partners shall not be entitled to participate in the control of the business of the Partnership.

(b) Each Limited Partner shall be entitled to (i) have the Partnership books kept at the principal place of business of the Partnership, and at all times, during reasonable business hours, inspect and copy any of them; (ii) have on demand true and full information of all matters affecting the Partnership and a formal account of Partnership affairs whenever circumstances render it just and reasonable and (iii) have dissolution and winding up of the Partnership by decree of court as provided by the Act.

(c) Each Limited Partner shall be entitled to cast one vote for each Limited Partnership Unit held by him on all matters with respect to which Limited Partners are given the right to vote pursuant to this Agreement.

Section 7.2. Prohibitions with Respect to Limited Partners. No Limited Partner shall have the right:

(a) To take part in the control of the Partnership business or to sign for or to bind the Partnership.

(b) To have his capital contribution repaid except to the extent provided in this Agreement or to demand property other than cash in payment of his Partnership capital contributions.

(c) To require partition of Partnership property or to compel any sale or inventory or appraisal of Partnership assets or sale of a deceased Partner's interests therein, notwithstanding any provisions of law to the contrary, the right thereto being hereby waived and relinquished.

(d) To constitute the vendee or assignee of his interest in the Partnership a substituted Limited Partner, except as provided in Article IX hereof.

Article VIII.

RIGHT OF LIMITED PARTNERS TO CONTINUE THE BUSINESS OF THE PARTNERSHIP

Section 8.1. Replacement of General Partners. In the event of the retirement, death or adjudication of bankruptcy of a General Partner, the Limited Partners may, by agreement of the holders of not less than 80% of the Partnership Units within Ninety (90) days after notice of any such event, elect a new General Partner or General Partners, if he or they shall consent to and accept such designation or designations. In the absence of such election and consent and acceptance, and there being no remaining General Partners, the Partnership shall be dissolved on such Ninetieth (90th) day, or such subsequent day (within one hundred eighty (180) days), after notice of any such event. In such event, the Limited Partners shall designate from among them one or more Limited Partners to wind up and liquidate the Partnership as provided in Article X hereof.

Section 8.2. Retirement of the General Partner. The General Partner may elect to retire from the Partnership upon giving at least Ninety (90) days' notice in writing of its intention to do so.

Section 8.3. Partnership Interest of Withdrawing General Partner. In the event that the election to continue the Partnership is exercised upon the retirement, death, or adjudication of bankruptcy of the General Partner, the General Partnership Units of the Withdrawing General Partner shall become Limited Partnership Units.

Article IX.

TRANSFER OF INTERESTS

Section 9.1. General Partner. The General Partnership Units shall be transferable as General Partnership Units and may also be assigned as security.

Section 9.2. Limited Partners.

(a) No Limited Partner shall have the right to sell, assign, hypothecate or otherwise transfer his interest in the Partnership unless:

- (i) No Limited Partner shall have the right to sell, transfer or assign his interest as a Limited Partner in the Partnership to a minor or to any person who for any reason lacks the capacity to contract for himself under applicable laws. However, such limitation shall not restrict the right of a Limited Partner to sell, transfer or assign to a custodian or trustee for such a person.
- (ii) Prior to the consummation thereof, all assignees and/or transferees with respect thereto shall have delivered to the Partnership a writing making all of the representations set out in the agreement governing subscriptions for Units and shall have executed an appropriate power of attorney.

BOOK 28 PAGE 718

- (iii) The Partnership shall have been provided with an opinion of its counsel (or other counsel satisfactory to its counsel whose opinion shall be satisfactory to the Partnership's counsel) stating that such assignment, transfer, encumbrance or other disposition is exempt from registration under the Securities Act of 1933 and is permissible under all applicable federal and state securities laws without registration or qualification of any security or person.
- (iv) The Partnership shall have been provided with an opinion of its counsel to the effect that such assignment, transfer, encumbrance or other disposition will not result in the termination of the Partnership's status as a partnership for purposes of the then applicable provisions of the Internal Revenue Code as amended.
- (v) The fully executed instrument of assignment (the terms of which must be consistent with the provisions of this Agreement and satisfactory to the General Partner) shall have been filed with the Partnership and indemnify the Partnership against loss or liability arising out of such assignment. Such instrument shall contain the agreement of the assignee to be bound by all the terms and provisions of this Agreement with respect to the Units acquired.
- (vi) Such assignment shall not be contrary to or in breach of any agreement, deed of trust, instrument or other document binding on the Partnership or any of its Property.
- (vii) The General Partner shall have consented thereto in writing, which consent may be granted or withheld in his sole discretion.
- (viii) All reasonable expenses, including attorney's fees, incurred by the Partnership in connection therewith shall have been paid by the assigning Partner.

The General Partner may in his sole and absolute discretion waive any of the aforesaid requirements.

(b) Subject to the provisions of subparagraph (a) of this Section 9.2 the entire interest of a Limited Partner shall be assignable, but the assignee shall not become a substituted Limited Partner, except pursuant to the provisions of Section 9.3. An assignee who does not become a substituted Limited Partner is entitled to receive the share of the cash flow, profits and losses and return of the contribution to which his assignor would otherwise be entitled in respect to the interest so assigned but has no right to approve amendments pursuant to Section 11.1 or to participate in the election of a new General Partner or Partners pursuant to Section 8.1, or to require any information or account of the Partnership transactions or in respect to the Partnership transactions or in respect to the Partnership books.

(c) A Limited Partner who has assigned his entire interest in the Partnership, whether or not the assignee has become a substituted Limited Partner, shall not thereafter be entitled to any rights of a Limited Partner nor shall he have any obligations as Limited Partner except as otherwise provided by the Act.

Section 9.3. Substitution of a Limited Partner. The assignee of an interest of a Limited Partner who has complied with the provisions of Section 9.2 hereof may become a substituted Limited Partner only when the assignee shall have become a party of this Agreement, such certificates or instruments as are required by law shall have been executed and filed.

Article X.

TERMINATION OF THE PARTNERSHIP AND
DISTRIBUTION OF THE PROCEEDS OF SALE AND REFINANCING

Section 10.1. Termination. The Partnership shall be dissolved upon the retirement, death or bankruptcy of the General Partner (unless the Limited Partners determine to continue the Partnership as herein provided in Article VIII), the expiration of the term specified in Section 2.3, or the sale of substantially all of the assets of the Partnership and the collection of the proceeds resulting therefrom. Upon dissolution of the Partnership, the General Partner or the Limited Partners or Partner designated in accordance with the provisions of Section 8.1 hereof, as the case may be, shall wind up and liquidate the Partnership by selling the Partnership's assets and distributing the net proceeds therefrom as hereinafter set forth in Section 10.2. Upon completion of the liquidation, the Partnership shall be deemed completely dissolved and terminated.

Section 10.2. Distribution. The net proceeds available to the Partnership resulting from the refinancing of any mortgage on the Property, from the proceeds of an eminent domain or similar proceeding or from the sale of the Property shall be distributed and applied in the following order of priority:

(a) To the payment of the debts and liabilities of the Partnership (other than (i) any loans or advances that may have been made by the General and Limited Partners to the Partnership, and (ii) at the discretion of the then General Partner or Limited Partners(s) designated in accordance with Section 8.1 other than debts for which neither the Partnership nor any Partner is personally liable) and the expenses of liquidation.

(b) To the setting up of any reserves which the General Partner may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partners arising out of or in connection with the Partnership. Said reserves shall be paid over by the General Partners to an attorney at law of the State of Tennessee, as escrowee, to be held by him for the purpose of disbursing such reserves in payment of any of the aforementioned contingencies, and, at the expiration of such period as the General Partners shall deem advisable, to distribute the balance thereafter remaining in the manner hereinafter provided in this Section 10.2 in the order named.

(c) To the repayment of any loans or advances that may have been made by the Partners to the Partnership, but if the amount available for such repayment shall be insufficient, then pro rata on account thereof.

(d) Any balance remaining shall be distributed among Partners, in the proportion that the number of Units owned by each of them bears to the total number of all Units then outstanding.

A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities to creditors so as to enable the General Partners to minimize the normal losses attendant upon a liquidation.

Section 10.3. Final Accounting. Each of the Partners shall be furnished with a statement certified by the Partnership's accountants, which shall set forth the assets and liabilities of the Partnership as of the date of the complete liquidation. Upon the compliance by the General Partner with the foregoing distribution plan, the Limited Partners shall cease to be such, and the General Partner, as the sole remaining Partner of the Partnership, shall execute and cause to be filed a Certificate of

Cancellation of the Partnership and any and all other documents necessary with respect to termination and cancellation.

Article XI.

AMENDMENTS

Section 11.1. Authority to Amend.

(a) This Agreement may be amended by the General Partner and without the approval of any Limited Partner if such amendment is (i) for the purpose of clarification and does not change the substance hereof and the Partnership has obtained the opinion of its counsel to that effect; (ii) is for the purpose of substituting or adding Limited Partners; (iii) in the opinion of counsel for the Partnership, necessary or appropriate to satisfy requirements of any federal or state securities law or regulations; or (iv) is any amendment which would not adversely affect the liabilities of Limited Partners, nor change the method of allocation of profit and loss. Any amendment which would adversely affect such liabilities or change such method of allocation shall require the approval of the holders of all of the Limited Partnership Units. Any amendments made pursuant to Section 11.1(a)(iii) may be made effective as of the date of this Agreement.

(b) Except as otherwise specifically provided in this Agreement, amendments to this Agreement shall require the approval of the General Partner and Limited Partners holding Eighty (80%) of the General and Limited Partnership Units of the Partnership.

Section 11.2. Notice of Amendments. A copy of any amendment to be approved by the Limited Partners pursuant to Section 11.1(a) or (b) shall be mailed to the Limited Partners not less than fourteen (14) days in advance of any meeting called for the purpose of voting on such amendment. Limited Partners shall be notified as to the substance of any amendment pursuant to Section 11.1 and upon request shall be furnished a copy thereof. In lieu of a meeting, the Limited Partners may act in respect to any matter on which they are empowered to vote by the written consent of such percentage thereof as are required to act in respect to such matter.

Article XII.

POWER OF ATTORNEY

Section 12.1. Power. Each of the Limited Partners irrevocably constitutes and appoints Avron B. Fogelman his true and lawful attorney in his name, place and stead to make, execute, swear to, acknowledge, deliver and file:

(a) Any instrument which may be deemed by the General Partner to be required in connection with the acquisition of the Property, including, without limitation, notes, deeds of trust, security agreements, assignments of rents and leases, financing statements and other closing documents.

(b) Any certificates or other instruments which may be required to be filed by the Partnership under the laws of the State of Kentucky, or of any other state or jurisdiction in which the Partnership shall transact business or in which the General Partner shall deem it advisable to file.

(c) Any document, certificates or other instruments including, without limitation to the generality of the foregoing, any and all amendments and modifications of this Agreement or of the instruments described in Section 12.1(a) which may be required or deemed desirable by the General Partner to effectuate the provisions of any part of this Agreement, and by way of extension and not in limitation, to do all such other things as shall be necessary to continue and to carry on the business of the Partnership.

(d) All documents, certificates or other instruments which may be required to effectuate the dissolution and termination of the Partnership.

The power of attorney granted hereby shall not constitute a waiver of, or be used to avoid, the rights of the Limited Partners to approve certain amendments to this Agreement pursuant to Sections 11.1(a) and 11.1(b) or be used in any other manner inconsistent with the status of the Partnership as a Limited Partnership.

Section 12.2. Survival of Power. It is expressly intended by each of the Limited Partners that the foregoing power of attorney is coupled with an interest, is irrevocable and shall survive the death, incompetence or adjudication of insanity of each such Limited Partner. The foregoing power of attorney shall survive the delivery of an assignment by any of the Limited Partners of his entire interest in the Partnership, except that where an assignee of such entire interest has become a substitute Limited Partner, then the foregoing power of attorney of the assignor Limited Partner shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any and all instruments necessary to effectuate such substitution.

Article XIII.

MISCELLANEOUS

Section 13.1. Governing Laws. The Partnership and this Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

Section 13.2 Agreement for Further Execution. At any time or upon the request of the General Partner, the Limited Partners agree to sign and swear to or acknowledge any amendment or cancellation of such certificate whenever such amendment or cancellation is required by law, and cause the filing of any of the same for record wherever such filing shall be required by law. This Section 13.2 shall not prejudice or affect the rights of Limited Partners to approve certain amendments to the Agreement pursuant to Sections 11.1(a) and 11.1(b).

Section 13.3. Entire Agreement. This Agreement contains the entire understanding among the parties and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

Section 13.4. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations of the jurisdiction in which the Partnership does business. If any provisions of this Agreement, or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the

application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

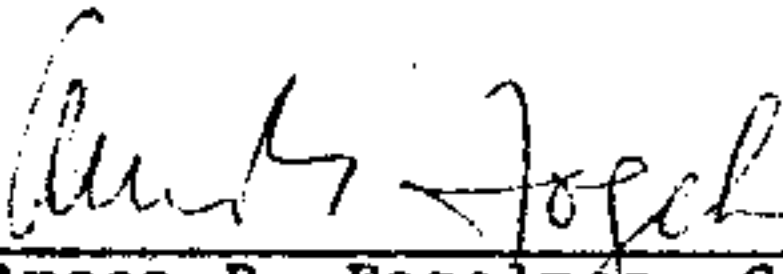
Section 13.5. Notices. Notices to Partners or to the Partnership shall be deemed to have been given when mailed, by prepaid registered or certified mail, addressed as set forth in this Agreement, or as set forth in any notice of change of address previously given in writing by the addressee to the addressor.

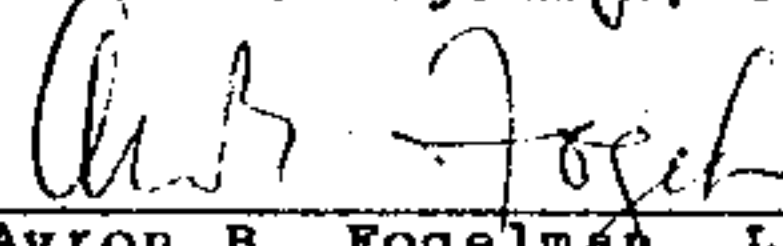
Section 13.6. Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart.

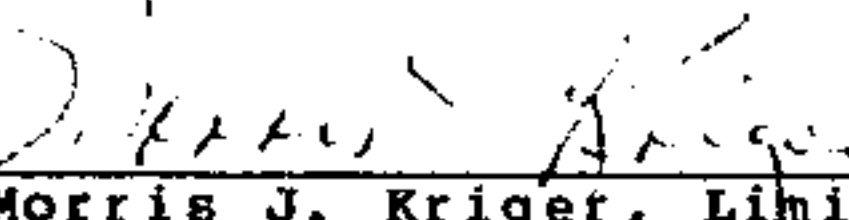
Section 13.7. Meetings and Proxies. Meetings of the Partnership may be called by the General Partner or by Limited Partners holding more than ten percent (10%) of the then outstanding Limited Partnership Units for any matters for which Limited Partners may vote as set forth in this Agreement. A list of the names and addresses of all Limited Partners shall be maintained by the General Partner as part of the books and records of the Partnership. Upon receipt of a written request either in person or by registered mail stating the purpose or purposes of the meeting, the General Partners shall provide all Limited Partners within ten (10) days after receipt thereof with a written notice of a meeting and the purpose of such meeting to be held on a date not less than fifteen (15) days, nor more than thirty (30) days after receipt of said request. Each Limited Partner is hereby authorized to appoint an agent or proxy to vote the number of Limited Partnership Units then owned by him at any such meeting or to evidence his own affirmative or negative vote on any proposal to be acted on at such meeting through appropriate instructions in writing to such agent, or proxy. Each such appointment shall be in writing and may be revoked at any time by such Limited Partner prior to the time that the proxy or agent has cast a vote pursuant to such authorization. Any such vote shall be as valid and binding as if such Limited Partner had personally cast such vote.

Section 13.8 Tax Elections. All elections required or permitted to be made by the Partnership under applicable tax laws shall be made by the General Partner in such manner as he sees fit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


Avron B. Fogelman, General Partner


Avron B. Fogelman, Limited Partner


Morris J. Kriger, Limited Partner

STATE OF TENNESSEE)
COUNTY OF SHELBY)

On this 4th day of September, 1985, before me, a Notary Public duly commissioned and qualified, personally appeared AVRON B. FOGELMAN to me known and known to me to be the person who executed the within and foregoing instrument and acknowledged under oath that he executed the same as General Partner and as a Limited Partner of FPI LOUISVILLE, LTD., as his free and voluntary act and deed for the uses and purposes therein contained.

GIVEN, under my hand and Official Seal at office in Memphis, Tennessee, on the day and year first above written.



James M. Miller
NOTARY PUBLIC

My Commission Expires:

MY COMMISSION EXPIRES DEC 31, 1988

BOOK
28 PAGE 723

STATE OF TENNESSEE)
COUNTY OF SHELBY)

On this 4th day of September, 1985, before me, a Notary Public duly commissioned and qualified, personally appeared MORRIS J. KRIGER to me known and known to me to be the person who executed the within and foregoing instrument and acknowledged under oath that he executed the same as a Limited Partner of FPI LOUISVILLE, LTD., as his free and voluntary act and deed for the uses and purposes therein contained.

GIVEN, under my hand and Official Seal at office in Memphis, Tennessee, on the day and year first above written.



James M. Miller
NOTARY PUBLIC

My Commission Expires:

MY COMMISSION EXPIRES DEC 31, 1988

VERIFICATION

Avron B. Fogelman, after being first duly sworn, stated that he has reviewed the contents of the Certificate of Formation and Agreement of Limited Partnership, and that the same is true, to the best of his knowledge, information and belief.

Avron B. Fogelman

Sworn to and subscribed
before me, this 4th day
of September, 1985.

Notary Public

My Commission Expires:
MY COMMISSION EXPIRES FEB. 28, 1987.

VERIFICATION

Morris J. Kriger, after being first duly sworn, stated that he has reviewed the contents of the Certificate of Formation and Agreement of Limited Partnership, and that the same is true, to the best of his knowledge, information and belief.

Morris J. Kriger

Sworn to and subscribed
before me, this 5th day
of September, 1985.

Notary Public

My Commission Expires:
MY COMMISSION EXPIRES FEB. 28, 1987.

PREPARED BY:

Morris J. Kriger, Esq.
5400 Poplar Avenue
Memphis, Tennessee 38119
Telephone: (901) 767-6500

EXHIBIT A

East half of the northeast quarter, section 36, township 18 south, range 2 west except that part south and east of Shelby County Highway 17, all in Shelby County, Alabama.

BOOK 28 PAGE 725

STATE OF ALABAMA
NOTARY PUBLIC
1985 SEP 12 PM 3:47

RECORDING FEES
Recording Fee \$ 37.50
Index Fee 1.00
TOTAL \$ 38.50