

997

CAHABA VENTURE  
PARTNERSHIP AGREEMENT

Samuel R. Flowers, Donald N. Guthrie, and D. Frank Davis, who are residents of Jefferson County, Alabama (hereinafter referred to as the "Partners"), agree as follows:

PARTNERSHIP - TYPE OF BUSINESS

1. The Partners hereby voluntarily associate themselves together as general Partners to form a Partnership for the purpose of conducting business in the name of the partnership and for the purchase of real estate, the sale of real estate, the development and management of real estate, and such other activities as may be agreed upon by the partners.

NAME OF PARTNERSHIP

2. The name of the Partnership shall be Cahaba Venture. However, it may from time to time operate in various trade names and building or property names.

TERM OF PARTNERSHIP

3. Said Partnership shall commence on the execution of this Agreement and shall continue at will until dissolved by the parties or terminated as herein provided.

PLACE OF BUSINESS

4. The principal place of business of the Partnership shall be at 3932 Crosshaven Drive, Birmingham, Jefferson County, Alabama, 35243, and such other place or places as may be mutually agreed upon by the parties hereto.

BOOK 032 PAGE 509

*Carroll Dawson*

#### INITIAL CAPITAL

5. The initial capital of said Partnership shall be the sum of \$1500.00, of which each Partner shall contribute:

Samuel R. Flowers	\$500.00
D. Frank Davis	\$500.00
Donald N. Guthrie	\$500.00

#### DEVELOPMENT CAPITAL

6. It is anticipated that various business projects which are the subject of this Partnership may require equity over and above loans from third parties to develop and operate until income becomes sufficient to pay the debt, service, and operating expenses. The projected sum is to be funded for each business project in such manner as is agreed by the Partners at the time to be appropriate. Any capital requirement in excess of a sum agreed upon among the Partners for each project may be contributed by capital contribution by some or all of the Partners ("excess capital contribution") or by a loan from all or some of the Partners or a loan from a third party or institution.

Additional capital and loans which may be required from time to time may be contributed equally or unequally among the Partners with or without affecting the allocation of profits or losses or the distribution of surplus cash, according to their agreement.

#### WITHDRAWAL OF CAPITAL

7. No Partner shall withdraw any portion of the capital of the Partnership without the express written consent of the other Partners, except as provided in paragraph 10.

#### THE BUSINESS OF THE PARTNERSHIP

8. The initial purpose of the Partnership is to develop a mini-storage business and retail center in Cahaba Heights, Birmingham, Alabama. In the future it is anticipated that other properties will be purchased or developed.

#### PURCHASE AND SALE OF LAND

9. In the event the Partnership shall purchase land and sell it without developing it, then the net proceeds of the sale may be either retained in the Partnership and credited equally to each Partner's capital account or distributed equally among the Partners. The term "net proceeds of the sale" shall be any cash remaining after all mortgages on the property have been satisfied or assumed by the purchaser, all expenses of sale have been paid, all monies spent to market the property or spent in an attempt to develop the property have been paid, any loans in connection with the property have been paid, and any capital of the Partnership or of any Partner invested in the property has been reimbursed to the Partnership or distributed to the Partner who contributed the capital.

#### CASH AVAILABLE FOR DISTRIBUTION

10. From time to time, the Partnership may distribute available cash to its Partners and charge distribution to the Partner's capital account. Any such distribution, except in those arising from sale of undeveloped land as described in Section 9, "Purchase and Sale of Land," shall be equally divided among the Partners, provided, however, that any "excess capital

contributions" or loans from a Partner will be repaid first, if requested.

Cash available after paying all current operating expenses, debt service, and necessary reserves, will be retained in the Partnership unless otherwise agreed among the Partners.

#### PROFITS AND LOSSES

11. Any net profits or losses that may accrue to the Partnership shall be distributed to or borne by the Partners in equal proportions.

#### BOOKS OF ACCOUNT

12. At all times during the continuance of the Partnership, the Partners shall keep accurate books of account in which all matters relating to the Partnership, including all income, expenditures, assets, and liabilities thereof, shall be entered. Said books shall be kept on a cash basis and shall be open to examination by any Partner at any time.

#### FISCAL YEAR

13. The fiscal year of the Partnership shall end on the 31st day of December each year.

#### ACCOUNTING

14. A complete accounting of the Partnership affairs as of the close of business on the last day of December of each year shall be rendered to each Partner within 90 days. On each such accounting being made, the net profits of the Partnership shall be accumulated in the Partnership until such time as the Partners shall elect to distribute to the Partners, in equal proportions

to each Partner, to the extent that cash is available for such distribution.

#### TIME DEVOTED TO PARTNERSHIP

15. Each Partner shall devote reasonable time and attention and use the utmost of his skills and ability in furtherance of the Partnership business.

#### MANAGEMENT AND AUTHORITY

16. Each Partner shall have an equal voice in the management of the Partnership and shall have authority to bind the Partnership in making contracts and incurring obligations in the name and on the credit of the firm. However, no Partner shall incur any obligations in the name of or on the credit of the firm exceeding \$500.00 without the express consent of another Partner, or in excess of \$10,000.00 without the express consent of each Partner. Any obligation incurred in violation of this provision shall be charged to and collected from the individual Partner incurring such obligation.

#### SALARIES OF PARTNERS

17. As compensation for his services with respect to the Partnership business, each Partner shall be entitled to a salary which shall be deducted by the Partnership as an ordinary and necessary expense of business before determination of net profits. The salary of any Partner shall be set and may be increased or reduced at any time by mutual agreement of all the Partners.

#### DEVELOPMENT FEE

18. With respect to any activity, the Partners may agree that one or more Partners may receive a fee for their work. This fee may be paid to an individual or to a company designated.

#### NET PROFITS DEFINED

19. The term "net profits or losses" as used in the Agreement shall mean the net profits or losses of the Partnership as determined by generally accepted accounting principles for each accounting period provided for in this Agreement.

#### WITHDRAWAL OF PARTNER

20. Any Partner may withdraw from the Partnership by giving the other Partners 180 days' written notice of his intention to do so.

#### OPTION TO PURCHASE TERMINATED INTEREST

21. On dissolution of the Partnership by the withdrawal or other act of a Partner, the remaining Partner(s), on written notice to the other Partner(s) within 10 days of such dissolution, may continue the Partnership business by purchasing the interest of the other Partner(s) in the assets and goodwill of the Partnership, and the remaining Partner(s) shall have the option to purchase such interest of the withdrawing Partner(s) by paying to such Partner(s) or his personal representative the value of such interest determined as provided in Section 25 of this Agreement.

#### PURCHASE PRICE OF PARTNERSHIP AGREEMENT

22. On exercise of the option described in Section 21 of this Agreement to purchase the Partnership interest of a

withdrawing or terminated Partner, the remaining Partner(s) shall pay to the person legally entitled thereto the fair market value of such interest as determined by (1) an agreement of all the Partners; (2) as established by determining the Fair Market Value of the real estate and Book Value of other assets as of the date of dissolution.

#### BUY-SELL ON DEATH OF PARTNER

23. If the Partnership is dissolved by the death of a Partner, the remaining Partner(s) shall either agree with the estate of the deceased Partner to substitute the estate or heir for the deceased Partner, or the remaining Partner(s) shall have the obligation within 180 days from the date of death of the deceased Partner to purchase the interest of the deceased Partner in the Partnership and to pay to the personal representative of such deceased Partner the value thereof as provided in Section 25 of this Agreement. During such 180-day period following the death of a Partner, the remaining Partner(s) may continue the business of the Partnership but the estate or personal representative of the deceased shall not be liable for any obligation incurred in the Partnership business beyond the amount includable in the estate of the deceased Partner already invested or involved in the Partnership on the day of the deceased Partner's death. The estate of the deceased Partner shall be obligated to sell as provided herein and shall be entitled to one-third of the net profits earned by the Partnership business during such 180-day period.

#### DUTIES OF PURCHASING PARTNER

24. On any purchase and sale being made pursuant to the provisions of Sections 21, 22, and 23 of this Agreement, the remaining Partners shall assume all obligations of the Partnership and shall hold the withdrawing Partner, the personal representative and estate of a deceased Partner, and the property of any such withdrawing or deceased Partner free and harmless from all liability for such obligations. Further, the remaining Partner(s), at his own cost and expense, shall immediately cause to be prepared, filed, served, and published all such notices as may be required by law to protect the withdrawing Partner or the personal representative or estate of a deceased Partner from liability for the future obligations of the Partnership business.

#### FAIR MARKET VALUE

25. As used in Sections 21, 22, and 24, the Fair Market Value of Real Estate shall be established by agreement of the Partners, but in the event they shall not be able to agree, the Fair Market Value shall be established by an independent appraisal made by an appraiser agreeable to all of the Partners.

In the event the Partners are unable to agree on an appraiser, then the dissenting Partner (or the estate of a deceased Partner) shall select an appraiser and the remaining Partners shall select an appraiser. The two appraisers shall then select a third appraiser. Each appraiser shall make his appraisal independently of the others. The high and low appraisal shall be discarded and the middle appraisal shall



establish the Fair Market Value. The appraiser fee shall be an expense of the party hiring the appraiser, except the appraiser's appraiser shall be paid by the Parntership.

#### DISSOLUTION

26. On dissolution of the Partnership other than as provided in Sections 21, 22, and 23 of this Agreement, the affairs of the Partnership shall be wound up, the assets of the Partnership liquidated, the debts paid, and the surplus divided or the deficit borne equally among the Partners.

#### NOTICES

27. Any and all notices between the parties provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to a Partner, or, in lieu of such personal service, when deposited in the United States mail, certified, postage prepaid, addressed to such Partner or the Partnership at the address set forth herein or the Partnership at the principal place of business of the Partnership or to such other place as may from time to time be specified in a notice given pursuant to this paragraph as the address for service notice on such Partner.

D. Frank Davis  
3000 SouthTrust Tower  
Birmingham, Alabama 35203

Samuel R. Flowers  
4224 Harpers Ferry Road  
Mountain Brook, Alabama 35223

Donald N. Guthrie  
3140 Woodclift Circle  
Birmingham, Alabama 35243

Cahaba Venture  
3932 Crosshaven Drive  
Birmingham, Alabama 35243

### CONSENTS AND AGREEMENTS

28. Any and all consents and agreements provided for or permitted by this Agreement shall be in writing and a signed copy thereof shall be filed and kept with the books of the Partnership.

### SOLE AND ONLY AGREEMENT

BOOK 032 PAGE 518  
29. This instrument contains the sole and only Agreement of the parties relating to their Partnership and correctly sets forth the rights, duties, and obligations of each to the other in connection therewith as of its date. Any prior agreement, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

Executed on this the 15 day of Aug, 1983  
at Jefferson County, Alabama.

Samuel R. Flowers  
Samuel R. Flowers

Donald N. Guthrie  
Donald N. Guthrie

D. Frank Davis  
D. Frank Davis

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1987 FEB 12 AM 11:16

Thomas A. Anderson, Jr.  
JUDGE OF PROBATE

1. Recording Fee \$25.00

2. Indexing Fee 1.00

TOTAL \$26.00