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AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP

OF

TC, LIMITED PARTNERSHIP
(An Alabama Limited Partnership)

THE PARTNERSHIP INTERESTS IN TC, LIMITED PARTNERSHIP REPRESENTED BY THIS AGREEMENT (THE "INTERESTS") ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER TERMS AND CONDITIONS SET FORTH IN ARTICLE XI OF THIS AGREEMENT. THE INTERESTS HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER (i) ANY STATE SECURITIES LAWS, OR (ii) UNDER THE SECURITIES ACT OF 1933, AS AMENDED FROM TIME TO TIME (THE "1933 ACT"). NEITHER THE INTERESTS NOR ANY PART THEREOF MAY BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF ARTICLE XI OF THIS AGREEMENT AND (i) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER ANY APPLICABLE STATE SECURITIES LAWS OR IN A TRANSACTION WHICH IS EXEMPT FROM REGISTRATION UNDER SUCH SECURITIES LAWS OR WHICH IS OTHERWISE IN COMPLIANCE WITH SUCH SECURITIES LAWS AND (ii) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE 1933 ACT OR IN A TRANSACTION WHICH IS EXEMPT FROM REGISTRATION UNDER THE 1933 ACT OR WHICH IS OTHERWISE IN COMPLIANCE WITH THE 1933 ACT.

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BALCH BINGHAM

P.O. Box 306

BIRMINGHAM AL 35201

ATTN WENDY HSDOWELL

TC, LIMITED PARTNERSHIP

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AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP

OF

**TC, LIMITED PARTNERSHIP
(An Alabama Limited Partnership)**

This Agreement and Certificate of Limited Partnership of TC, Limited Partnership is entered into as of April 30, 1988, by and among Harbert Land Corporation, an Alabama corporation, as the General Partner, and those persons named in Schedule A hereto, as Limited Partners.

R E C I T A L

WHEREAS, the parties hereto desire to form a limited partnership under the laws of the State of Alabama for the purpose and on the terms herein provided.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I

Defined Terms

1.1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Act" means the Revised Alabama Limited Partnership Act, §§ 10-9A-1, et seq., Code of Alabama, 1975 (Supp. 1986), as it may be amended from time to time, and any successor to such Act.

"Agreement" means this Agreement and Certificate of Limited Partnership, as it may be amended, supplemented or restated from time to time.

"Capital Account" means the capital account established and maintained for a Partner pursuant to Section 4.4.

"Capital Contribution" means any cash which a Partner contributes to the Partnership pursuant to Article IV.

"Certificate of Limited Partnership" means the Certificate of Limited Partnership filed with the Judge of Probate of Shelby County, Alabama, as it may be amended or restated from time to time.

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"Code" means the Internal Revenue Code of 1986, as amended from time to time or any successor to such Code. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"Fiscal Year" means the twelve (12) months ending January 31 of each year.

"General Partner" means Harbert Land Corporation, an Alabama corporation, or any successor general partner admitted as such pursuant to the provisions of this Agreement.

"Initial Capital Contribution" with respect to a Partner means the amount set forth on Schedule A attached hereto.

"Interest" shall have the meaning set forth on the front page of this Agreement.

"Joint Venture" means the joint venture formed pursuant to the Joint Venture Agreement.

"Joint Venture Agreement" means the Joint Venture Agreement by and between USR and Harbert Properties Corporation, an Alabama corporation, dated as of December 24, 1986.

"Joint Venture Interest" means the interest held by Harbert Properties Corporation under the Joint Venture Agreement.

"Legal Representative" has the meaning specified in Section 11.2(b)(i).

"Limited Partner" means any Person who is a limited partner of the Partnership (whether an initial Limited Partner, an additional Limited Partner or a substituted Limited Partner), and shown as a Limited Partner on the books and records of the Partnership.

"Liquidator" has the meaning specified in Section 12.3.

"Majority Interest" means more than fifty percent (50%) of all Percentage Interests issued as shown on the books and records of the Partnership.

"Non-Remitting Partner" has the meaning specified in Section 4.3(b).

"Notifying Partner" has the meaning specified in Section 11.2(a)(i).

"Option Agreement" means the Option Agreement by and between USR and the Joint Venture.

"Option Land" has the meaning specified in Article III.

"Partner" means the General Partner or a Limited Partner.

"Partnership" means the limited partnership formed pursuant to this Agreement, as said limited partnership may from time to time be constituted.

"Percentage Interest" means, as to any Partner, the percentage interest set forth opposite said Partner's name on Schedule A attached hereto. The Percentage Interest shall be adjusted to reflect transfers of Interests, in whole or in part, and as provided in Article IV of this Agreement.

"Person" means an individual, or a partnership, corporation, trust, estate, unincorporated organization, association or other entity.

"Reconstituted Partnership" means the new limited partnership formed in the manner described in Section 12.2.

"Remaining Partners" has the meaning specified in Section 11.2(a)(1).

"Remitting Partner" has the meaning specified in Section 4.3(b)(1).

"Selling Partner" has the meaning specified in Section 11.3.

"Surviving Partner" has the meaning specified in Section 11.2(b)(1).

"USR" means USR Realty Development, a division of U. S. Diversified Group, USX Corporation, a Delaware corporation.

"Valuation Date" has the meaning specified in Section 11.3.

ARTICLE II

Formation

2.1. Formation. The parties hereto agree that TC, Limited Partnership, shall, from and after the acceptance for filing of the initial Certificate of Limited Partnership by the Judge of Probate of Shelby County, Alabama, be a limited partnership formed under and pursuant to the provisions of the Act. The rights and liabilities of the Partners and the administration and termination of the Partnership shall be governed by the Act, except as herein otherwise expressly provided.

2.2. Name, Principal Place of Business, Registered Office and Registered Agent. The business of the Partnership shall be conducted under the name "TC, Limited Partnership". The Partnership's business may be conducted under any other name or names deemed necessary or appropriate by the General Partner. The address of the principal place of business of the Partnership shall be One Riverchase Parkway South, Birmingham, Alabama 35244. The registered office of the Partnership shall be One Riverchase Parkway South, Birmingham, Alabama 35244, and the registered agent for the service of process on the Partnership at such registered office shall be J. William Powers, III. The General Partner may at any time change the location of the Partnership's principal place of business and may establish additional offices. Notification of any change in the facts set forth in this Section 2.2 shall be given to the Limited Partners within thirty (30) days after such change.

2.3. Names and Addresses of Partners.

(a) The name and address of the General Partner is as follows:

Harbert Land Corporation
One Riverchase Parkway South
Birmingham, Alabama 35244

(b) The name and address of each Limited Partner is set forth on Schedule A attached hereto.

2.4. Term. The Partnership shall commence upon the acceptance for filing of this initial Agreement and Certificate of Limited Partnership and shall continue in existence until the close of Partnership business on December 31, 2047, or until terminated prior thereto pursuant to the provisions hereof.

2.5. Organization Certificate. Upon the request of the General Partner, the parties hereto will execute all certificates and other documents conforming hereto as may be necessary for the General Partner to accomplish all filing, recording, publishing and other acts appropriate to comply with all requirements for the formation and operation of a limited partnership under the laws of the State of Alabama. The parties hereto also agree upon the request of the General Partner to execute any certificates and other documents conforming hereto as may be necessary for the General Partner to effect any filing, recording, publishing or other acts as may be appropriate to comply with requirements of law for the formation, qualification and operation of a limited partnership, or a partnership in which the limited partners have limited liability, in all other jurisdictions where the Partnership shall propose to conduct business.

ARTICLE III

Purpose

The purpose of the Partnership is to acquire the Joint Venture Interest and thereafter to participate in the Joint Venture. The Partnership's acquisition of the Joint Venture Interest shall be effective as of January 1, 1988, and all profits and losses during the period January 1, 1988 to the closing date of transfer shall be allocated to the Partnership.

Pursuant to the terms of the Option Agreement, the Joint Venture has an option with USR (the "Option") to purchase approximately thirteen hundred (1,300) acres of land in Jefferson and Shelby Counties, Alabama (the "Option Land") through a series of conveyances over a term of twenty (20) years. The Joint Venture will develop the Option Land for various commercial and residential uses in accordance with a Master Land Use Plan. The Joint Venture will develop the land in subdivisions of approximately fifty (50) acres. The Joint Venture will acquire the acreage from USR, develop the land, sell the lots, and then proceed with developing a new subdivision. It is anticipated that acreage for a new subdivision will be acquired every ten (10) months and that it will take three (3) years from the time the acreage is acquired until all the lots are sold.

The Joint Venture will acquire the acreage for each subdivision through partial exercises of the Option. Upon exercise, USR will convey the land on which the Option is exercised to the Joint Venture. The Partnership will be required to pay USR an amount equal to fifty percent (50%) of the Option

purchase price as follows: seventy percent (70%) of the Partnership's payment shall be in cash at the time the Option is exercised, and the remaining thirty percent (30%), plus interest at ten percent (10%) per annum from the date the Option is exercised, shall be paid by the Partnership when the acreage is developed and sold. The purchase price is Eight Thousand Five Hundred Dollars (\$8,500.00) per acre and increases during the term of the Option Agreement.

The development of the Option Land will be financed by a non-recourse real estate loan from First Commercial Bank in the amount of Three Million Dollars (\$3,000,000.00). The principal amount of the loan may be increased in the future, depending on the requirements of the development. The Joint Venture will be able to borrow up to Thirty Thousand Dollars (\$30,000.00) per acre for development costs.

The Partnership will be required to make cash payments to USR at the time a portion of the Option is exercised. The Partnership may also be required to advance funds for development costs in the event said costs exceed the amount of the Joint Venture's loan from First Commercial Bank. It is also anticipated that the Joint Venture will borrow funds on an existing Five Hundred Thousand Dollar (\$500,000) line of credit it has with First Commercial Bank. It is critical to an understanding of the purpose and operation of the Partnership to recognize that the Partnership's financial obligations to the Joint Venture are not limited to any dollar amount. The Partnership and the General Partner will be required to pay additional funds, and the Limited Partners will be called upon to participate in their share of those additional costs. Section 4.4 describes how Partners will be required to contribute additional capital to the Partnership.

The Joint Venture may acquire and develop additional real estate if agreed to by the Partnership and USR.

ARTICLE IV

Capital Contributions

4.1. Initial Contribution of the General Partner. The General Partner shall contribute the amount of the Initial Capital Contribution set forth opposite its name on Schedule A attached hereto.

4.2. Initial Contributions of the Limited Partners. The amount of the Initial Capital Contribution of each Limited Partner is set forth on Schedule A attached hereto. Each Limited Partner shall tender such amount to the Partnership in cash upon execution of this Agreement.

4.3. Additional Capital Contributions.

(a) Upon partial exercise of the Option, the General Partner may call for the Limited Partners to make additional Capital Contributions. Such amounts will be called for by a written notice of assessment sent by the General Partner to each Limited Partner, which shall specify the due date, the amount of the assessment, and the purpose for which the assessment will be used; provided, however, that the amount of a Partner's assessment shall not exceed such Partner's Percentage Interest of the total assessment as of the date of the written notice.

(b) If a Limited Partner fails to make full payment of his assessment (a "Non-Remitting Partner"), the General Partner may employ either of the following:

(i) The General Partner may elect to pay all or any portion of the unpaid assessment. If the General Partner does not elect to pay all of the unpaid assessment, each Limited Partner who pays his assessment in full (a "Remitting Partner") shall have the right to pay the unpaid portion of the Non-Remitting Partner's assessment in a ratio equal to the amount by which each such Remitting Partner's Percentage Interest bears to the Percentage Interest of all of the Partners other than the Non-Remitting Partner. If any Remitting Partner does not pay his full proportionate share of the unpaid portion of the Non-Remitting Partner's assessment, then the remaining unpaid portion of such Non-Remitting Partner's assessment may be paid by those Remitting Partners who wish to pay the balance of such assessment in a ratio equal to the amount by which each such Remitting Partner's Percentage Interest bears to the total Percentage Interest owned by all of the Partners who wish to pay the balance of such assessment. In any event, after the assessment has been paid in full, the General Partner shall reduce the Non-Remitting Partner's Percentage Interest to a percentage equal to the amount of all Capital Contributions received from the Non-Remitting Partner divided by the total amount of all Capital Contributions received from all Partners. The Percentage Interests of each of the other Partners shall likewise be recalculated by the General Partner by dividing the amount of all Capital Contributions received from such Partner by the total amount of all Capital Contributions received from all Partners. (See Example in Attachment 2 of the Information Statement pertaining to the Partnership), or

(ii) The General Partner may pay all of the assessment the Non-Remitting Partner has failed to pay and may retain and distribute to the General Partner an amount equal to two hundred percent (200%) of the amount the Non-Remitting Partner failed or refused to contribute from the distributions that otherwise would have been made to the Non-Remitting Partner. Until the General Partner has received the aggregate sum in cash equal to two hundred percent (200%) of the sum the Non-Remitting Partner failed or refused to contribute, all cash that would have been paid to the Non-Remitting Partner pursuant to this Agreement shall instead be paid to the General Partner. If the General Partner elects this alternative, the assessment shall be deemed to have been paid by the Non-Remitting Partner.

4.4. Capital Accounts.

(a) The Partnership shall establish and maintain for each Partner a separate Capital Account. Such Capital Account shall be:

(i) increased by (A) the amount of all Capital Contributions made by such Partner to the Partnership pursuant to this Agreement and (B) all items of Partnership income and gain (including income and gain exempt from tax) allocated to such Partner, and

(ii) decreased by (A) the amount of all actual and deemed distributions made to such Partner pursuant to this Agreement and (B) all items of Partnership deduction and loss allocated to such Partner.

(b) The provisions of Section 4.4(a) above and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with, and carry out the purposes of, Treasury Regulation Section 1.704-1(b)(2)(iv), as from time to time amended or revised and any successor thereto; accordingly, in construing any provision of this Agreement related to Capital Accounts, such provision shall be interpreted to comport with such Regulation so that all Capital Accounts are maintained in a manner consistent therewith.

4.5. Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Partner's Capital Accounts.

4.6. No Withdrawal. No Partner shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Partnership, except as provided herein.

4.7. Loans from Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

ARTICLE V

Allocations and Distributions

5.1. Distribution of Available Cash. From time to time and not less often than quarterly, the General Partner will review the Partnership accounts to determine whether cash distributions are appropriate. The Partnership will distribute to the Partners, in proportion to their respective Percentage Interests, funds received by the Partnership and allocated to their Capital Accounts which the General Partner deems unnecessary to retain in the Partnership, after taking into account any anticipated future receipts, for the purpose of paying or serving debt incurred by the Partnership.

5.2. Allocation of Costs and Revenues and Related Items of Income, Gain, Loss, Deduction and Credit.

(a) The costs and revenues and related items of income, gain, loss, deduction and credit of the Partnership shall be determined and allocated with respect to each Fiscal Year of the Partnership as of, and within ninety (90) days after, the end of such Fiscal Year.

(b) All Partnership costs and all items of loss, deduction and credit arising therefrom in any Fiscal Year shall be allocated and charged in proportion to each Partner's respective Percentage Interest.

(c) All deductions and credits allowable for federal income tax purposes and all recapture of any such deductions and credits shall be allocated and charged to the Partners in the same manner that the costs or expenses giving rise to such deductions or credits are allocated and charged. Each Partner allocated and charged a particular cost or expense shall bear the consequences of the recapture of such deductions or credits that are attributable to such cost or expense in computing his taxable income or tax liability.

(d) All Partnership revenues and receipts and all items of income and gain arising therefrom in any Fiscal Year shall be allocated and credited

in proportion to each Partner's respective Percentage Interest.

(e) In the event of a sale or assignment of an Interest, the income, gains, losses, deductions and credits of the Partnership for the Fiscal Year in which such sale or assignment is recognized shall be allocated pro rata between the assignor and assignee based on the periods of time during such Fiscal Year that such Interest was owned by each without regard to the periods during such Fiscal Year in which such income, gains, losses, deductions and credits of the Partnership were actually realized.

ARTICLE VI

Management and Operation of Business

6.1. Management.

(a) Except as otherwise expressly provided in this Agreement, all decisions respecting any matter set forth herein or otherwise affecting or arising out of the conduct of the business of the Partnership shall be made by the General Partner, and the General Partner shall have the exclusive right and full authority to manage, conduct, control and operate the Partnership's business and effect the purposes and provisions of this Agreement. Except as otherwise expressly provided in this Agreement, the General Partner shall have full authority to do all things it deems necessary or desirable:

(i) in the conduct of the business of the Partnership, including, without limitation, (A) the right to enter into and perform contracts of all kinds, including without limitation any contract for sale of any or all of the assets of the Partnership and amendments to the Joint Venture Agreement, (B) to lend or borrow money, (C) to assume, guarantee or otherwise contract for indebtedness and other liabilities, (D) to issue evidences of indebtedness and secure the same by mortgage, deed of trust or other lien or encumbrance, (E) to bring and defend actions at law or in equity, (F) to indemnify any Person against liabilities and contingencies to the extent permitted by applicable laws, and (G) to buy, own, manage, sell, lease or otherwise acquire or dispose of Partnership assets; and

(ii) in connection with the Partnership's participation in the Joint Venture.

(b) The General Partner shall cause the Agreement and Certificate of Limited Partnership to be filed as required by the Act and such other certificates or filings as may be required for the formation and operation of a limited partnership in the State of Alabama or any other state in which the Partnership elects to do business. The General Partner shall thereafter file any necessary amendments to the Agreement and Certificate of Limited Partnership, including, without limitation, amendments to reflect additional or successor Partners, and shall otherwise use its best efforts to do all things (including the appointment of registered agents of the Partnership and maintenance of registered offices of the Partnership) requisite to the maintenance of the Partnership as a limited partnership under the laws of the State of Alabama or any other state in which the Partnership may elect to do business.

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6.2. Reliance by Third Parties. Notwithstanding any other provisions of this Agreement to the contrary, no lender, purchaser or other Person shall be required to verify any representation by the General Partner as to the extent of the interest in Partnership assets that the General Partner is entitled to encumber, sell or otherwise use, and any such lender, purchaser or other Person shall be entitled to rely exclusively on the representations of the General Partner as to its authority to enter into such financing or sale arrangements and shall be entitled to deal with the General Partner, without the joinder of any other Person, as if it was the sole party in interest therein, both legally and beneficially.

6.3. Outside Activities of the General Partner. Neither the General Partner nor any of its affiliates shall be expressly or implicitly restricted or proscribed under this Agreement from engaging in other activities for profit, whether in direct or indirect competition with the Partnership, the Joint Venture, or otherwise. The General Partner shall not be required under this Agreement to devote its financial, personnel and other resources exclusively for the benefit or on behalf of the Partnership or on activities in which the Partnership is participating or will participate, but only so much of such resources as may be necessary to promote in good faith the business of the Partnership and to exercise in an adequate manner its responsibilities. Neither the General Partner nor any of its affiliates shall have any obligation to allow the Partnership to invest in any property or business activity or venture of the General Partner or any of its affiliates. Neither the Partnership nor any Limited Partner shall by virtue of this Agreement have any right or title to, or interest in, such permitted independent activities or ventures of the General Partner.

6.4. Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner and shall not be commingled with the funds of, or used as compensating balances on behalf of, the General Partner or any of its affiliates; provided, however, that nothing in this Section 6.4 shall be construed as preventing the General Partner or any of its affiliates from maintaining deposit and other accounts at the same financial institution at which the Partnership maintains such accounts. All withdrawals from or charges against the Partnership's accounts shall be made by the General Partner or by its agents. Temporary surplus funds of the Partnership may be invested as determined by the General Partner.

6.5. Loans to or from the General Partner.

(a) The General Partner or any of its affiliates may lend funds to the Partnership needed by the Partnership for such periods of time as the General Partner may determine; provided, however, that

(i) interest on such indebtedness shall not exceed the actual interest cost (including points or other financing charges or fees, if any) that the General Partner or an affiliate thereof is required to pay on funds borrowed by it or the highest lawful rate, whichever is less, and

(ii) in no event shall such indebtedness be on terms and conditions less favorable than those that the Partnership could obtain from unaffiliated third parties or banks for the same purpose.

(b) No loans shall be made by the Partnership to the General

Partner or any of its affiliates.

6.6. Indemnification of the General Partner.

(a) To the fullest extent permitted by law, the General Partner, its affiliates and their respective officers, directors, employees and agents (individually, an "Indemnitee") shall each be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint and several, expenses (including legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise by reason of its status as (i) the General Partner or an affiliate thereof, (ii) an officer, director, employee or agent of the General Partner or an affiliate thereof, or (iii) a Person serving at the request of the Partnership in another entity in a similar capacity, which relate to or arise out of the Partnership, its property, business or affairs, regardless of whether the Indemnitee continues to be the General Partner or an affiliate thereof, or an officer, director, employee or agent of the General Partner or an affiliate thereof at the time any such liability or expense is paid or incurred, if:

(A) the Indemnitee acted in good faith and in a manner it believed to be in, or not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful, and

(B) the Indemnitee's conduct did not constitute gross negligence or willful or wanton misconduct.

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 Indemnitee acted in a manner contrary to that specified in (A) or (B) above.

(b) To the fullest extent permitted by law, expenses (including reasonable legal fees) incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Section 6.6 shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that such Indemnitee is not entitled to be indemnified as authorized in this Section 6.6.

(c) The indemnification provided by this Section 6.6 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, vote of the Partners, as a matter of law or otherwise, both as to an action in the Indemnitee's capacity as the General Partner or an affiliate thereof, or as an officer, director, employee or agent of the General Partner or an affiliate thereof, and to an action in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and

shall inure to the benefit of the heirs, executors, successors, legal representatives, assigns and administrators of the Indemnatee.

(d) To the extent commercially reasonable, the Partnership may purchase and maintain insurance on behalf of the General Partner and such other Persons as the General Partner shall determine against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) Any indemnification hereunder shall be satisfied solely out of the assets of the Partnership. In no event may an Indemnatee subject the Partners to personal liability by reason of these indemnification provisions.

(f) The indemnification provided in this Section 6.6 is for the benefit of the Indemnitees and shall not be deemed to create any right to indemnification for any other Persons.

6.7. Special Prohibition. Without the prior written consent or vote of a Majority Interest, the General Partner shall not sell, exchange or otherwise dispose of all or substantially all of the Partnership assets in a single transaction or a series of related transactions (other than a sale or exchange of the Partnership assets in connection with a liquidation following dissolution); provided, however, the General Partner shall have the authority to take any such action required in order to avoid the Partnership breaching the Joint Venture Agreement.

6.8. Reimbursement of the General Partner.

(a) The General Partner shall be reimbursed for all expenses, disbursements and advances incurred or made in connection with the organization of the Partnership.

(b) The General Partner shall be reimbursed on a monthly basis, or on such other basis as the General Partner determines in its sole discretion, for all direct expenses it incurs or pays on behalf of the Partnership (including amounts paid to any Person to perform services for the Partnership). The General Partner shall determine the expenses which are allocable to the Partnership in any reasonable manner. Such reimbursements shall be in addition to any reimbursement to the General Partner pursuant to Section 6.8(a) or as a result of indemnification pursuant to Section 6.6.

6.9. Liability of the General Partner.

(a) Neither the General Partner and its affiliates nor the directors, officers, employees or agents of the General Partner and its affiliates shall be liable to the Partnership, the Limited Partners, or any assignees thereof, whether as Limited Partners, assignees or otherwise, for errors in judgment or for any acts or omissions taken in good faith.

(b) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the General Partner shall not

be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

6.10. Other Matters Concerning the General Partner.

(a) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner reasonably believes to be within such Person's professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(c) Anything in this Agreement to the contrary notwithstanding, the General Partner represents, covenants, warrants and agrees with the Limited Partners and the Partnership that the General Partner shall not permit any Person who makes a non-recourse loan to the Partnership to acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership, other than as a secured creditor.

(d) The General Partner shall have the right, in respect to any of its powers or obligations hereunder, to act through a duly appointed attorney- or attorneys-in-fact. Each such attorney shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform each and every act and duty which is permitted or required to be done by the General Partner hereunder. Each such appointment shall be evidenced by a duly executed power of attorney giving and granting to each such attorney full power and authority to do and perform each and every act and thing requisite and necessary to be done by the General Partner in connection with the Partnership.

6.11. Title to Partnership Assets. All Partnership assets, whether real, personal or mixed, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner or assignee, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. The Partnership shall hold all Partnership assets in its own name.

ARTICLE VII

Rights and Obligations of the Limited Partners

7.1. Limitation of Liability. The Limited Partners shall have no liability under this Agreement except as provided in this Agreement or in the Act.

7.2. Management of Business. No Limited Partner or assignee thereof (other than the General Partner, an affiliate thereof or their respective directors, officers, employees, shareholders, direct or indirect, or agents in their capacities as such), shall take part in the operation, management or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by a director, officer, employee, shareholder, direct or indirect, or agent of the General Partner or an affiliate thereof in its capacity as such shall not affect, impair or eliminate the limitations on the liability of any Limited Partner under this Agreement.

7.3. Outside Activities of the Limited Partners. Each Limited Partner shall have the right to engage in and possess an interest in other business ventures of each and every type and description, independently or with others, including business interests and activities in direct or indirect competition with the Partnership or the Joint Venture. Neither the Partnership nor any Partner shall by virtue of this Agreement have any right, title or interest in or to such independent activities or ventures of any Limited Partner.

7.4. Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of his Capital Contributions, except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement. Except as may be provided herein to the contrary, no Limited Partner shall have priority over any other Limited Partner either as to the return of Capital Contributions or as to profits, losses or distributions.

7.5. Rights of the Limited Partners Relating to the Partnership. In addition to other rights provided by this Agreement or required by applicable law, and except as limited by Section 7.5(b), the Limited Partners shall have the following rights relating to the Partnership:

(a) Each Limited Partner, and each Limited Partner's duly authorized representatives, shall have the right during ordinary business hours and at the Limited Partner's own expense, but only upon their written request and for a valid business purpose related to the conduct of the Partnership's business,

(i) to obtain true and full information regarding the status of the business and financial condition of the Partnership,

(ii) to inspect and copy the books of the Partnership and other reasonably available records and information concerning the operation of the Partnership, including copies of the Partnership's federal, state and

local income tax returns, and

(iii) to have furnished to him, on demand, a current list of the full name and last known business, residence or mailing address of each Partner set forth in alphabetical order, as well as a copy of the Certificate of Limited Partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any such certificate has been executed.

(b) Notwithstanding Section 7.5(a), the General Partner may refuse access to any information, the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or by agreements with third parties to keep confidential.

ARTICLE VIII

Withdrawal of the General Partner; Admission of Successor General Partner

8.1. Withdrawal of the General Partner.

(a) The General Partner covenants and agrees that it will not withdraw as the General Partner of the Partnership, within the meaning of § 10-9A-101 of the Act, effective at any time prior to December 31, 2007; provided, however, that the General Partner may at any time without the consent of the Limited Partner assign its interest in the Partnership and withdraw in favor of such assignee. At any time on or after December 31, 2007, the General Partner may voluntarily withdraw from the Partnership, without any liability on account of such withdrawal, effective on at least ninety (90) days' advance written notice to the Limited Partners; provided, however, the General Partner shall not withdraw from the Partnership unless:

(i) the Partnership shall have received an opinion of counsel to the Partnership to the effect that such withdrawal will not constitute a termination of the Partnership or otherwise materially adversely affect the status of the Partnership for federal income tax purposes;

(ii) a successor General Partner shall have been selected which (A) shall have stated a willingness to be admitted, (B) shall satisfy the then applicable provisions of the Code and any applicable procedures, regulations, rules and rulings (including published private rulings) thereunder, and (C) shall have received the affirmative vote of the Limited Partners with more than fifty percent (50%) of the Percentage Interests of all Limited Partners with respect to such admission; and

(iii) such withdrawal would not violate the Joint Venture Agreement.

(b) Notwithstanding the provisions of Section 8.1(a), the rights of the Limited Partners under Section 8.1(a) shall not be exercised until such time as the Partnership has received an opinion of independent legal counsel that the action in question (i) may be taken without concurrence of all Partners, (ii) would not cause the loss of limited liability of any Limited

Partner, and (iii) would not cause the Partnership to be treated as an association taxable as a corporation for federal income tax purposes.

(c) This Agreement and Certificate of Limited Partnership shall be amended to reflect the withdrawal and succession of a General Partner.

8.2. Interest of Withdrawing General Partner and Successor. The withdrawing General Partner shall, as of the effective date of its withdrawal, cease to share in any allocations or distributions with respect to its Interest.

8.3. Withdrawal of the Limited Partners. No Limited Partner shall have any right to withdraw from the Partnership; provided, however, that upon a transfer of a Limited Partner's Interest, such Limited Partner shall cease to be a Limited Partner with respect to the Interest so transferred.

ARTICLE IX

Books, Records, Accounting and Reports

9.1. Records and Accounting. The General Partner shall keep or cause to be kept complete and accurate books with respect to the Partnership's business, which books shall at all times be kept at the principal office of the Partnership. The books of the Partnership shall be maintained, for financial reporting purposes, on the accrual basis in accordance with generally accepted accounting principles. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the General Partner in its sole and complete discretion.

9.2. Reports.

(a) As soon as practicable, but in no event later than one hundred twenty (120) days after the close of each Fiscal Year, the General Partner shall cause to be mailed to each Limited Partner as of the last day of that Fiscal Year reports containing financial statements of the Partnership for the Fiscal Year, including a balance sheet, a statement of income, a statement of Partners' equity, and a statement of changes in financial position, all of which shall be prepared in accordance with generally accepted accounting principles and shall be audited by a firm of independent certified public accountants selected by the General Partner.

(b) As soon as practicable after the close of each calendar quarter, except the last calendar quarter of each Fiscal Year, the General Partner shall cause to be mailed to each Limited Partner as of the last day of such calendar quarter a quarterly report for the calendar quarter containing such financial and other information (which need not be audited) as the General Partner deems appropriate.

9.3. Other Information. The General Partner may release such information concerning the operations of the Partnership to such sources as is customary in the industry, required by applicable law or regulation, or otherwise deemed necessary or appropriate by the General Partner. For the term of the Partnership and for a period of six (6) years thereafter, the General Partner shall maintain and preserve all Partnership books of account

and other relevant documents.

9.4. Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and complete discretion, determine whether to make any available election pursuant to the Code.

9.5. Tax Matters Partner. The General Partner is hereby designated as the "tax matters partner" pursuant to Section 6231(a)(7) of the Code. In connection with acting as the tax matters partner, the General Partner shall make such decisions and provide such notices to the Partners as it deems advisable and necessary.

ARTICLE X

Investment Representations of Limited Partners

10.1. Investment Intent. Each Limited Partner hereby represents and warrants to the Partnership and the General Partner that he has acquired his Interest for investment solely for his own account with the intention of holding such Interest for investment, without any intention of participating directly or indirectly in any distribution of any portion of such Interest, and without the financial participation of any other Person in acquiring his Interest.

10.2. Unregistered Limited Partnership Interest. Each Limited Partner hereby acknowledges that he is aware that his Interest has not been registered (i) under federal securities laws, or (ii) under any state securities laws. Each Limited Partner further understands and acknowledges that his representations and warranties contained in this Article X may be relied upon by the Partnership and by the General Partner as the basis for the exemption of the Interest from the registration requirements of any applicable federal and state securities laws. Each Limited Partner further acknowledges that the Partnership will not, and has no obligation to, recognize any sale, transfer or assignment of all or any part of his Interest to any Person unless and until the provisions of this Agreement have been fully satisfied.

10.3. Nature of Investment. Each Limited Partner hereby acknowledges that prior to his execution of this Agreement he has received a copy of this Agreement and information on the Joint Venture and the Partnership, and that he has examined such Agreement and information, or caused such Agreement and information to be examined by his attorney or other qualified representative. Each Limited Partner hereby acknowledges that he or his representative is familiar with such documents and that he does not desire any further information or data relating to the Partnership, the General Partner, or the Joint Venture. Each Limited Partner hereby acknowledges that he understands that the purchase of his Interest is a speculative investment involving a high degree of risk of financial exposure and represents that he has a net worth sufficient to bear the economic risk and any loss related thereto.

10.4. Legend on Agreement and Certificate. Each Limited Partner hereby acknowledges and agrees that a legend reflecting the restrictions imposed upon the transfer of his Interest under Article XI, under federal securities laws, and under any applicable state securities laws has been placed on the front page of this Agreement and on any certificate representing his Interest.

ARTICLE XI

Transferability of Interest

11.1. General Prohibition.

(a) No Limited Partner shall assign, pledge, transfer, give, convey or otherwise dispose of any Interest now or hereafter owned by him prior to said transaction, except as hereinafter provided in this Article XI.

(b) Notwithstanding anything in this Agreement to the contrary, a Limited Partner may not assign, pledge, transfer, give, convey or otherwise dispose of his Interest without the prior written consent of the General Partner; provided, however, that no such assignment, pledge, transfer, gift, conveyance or otherwise shall be made except in compliance with applicable federal and state securities laws, and no such assignment, pledge, transfer, gift, conveyance or otherwise shall release the Limited Partner so transferring his Interest from his obligations under this Agreement.

(c) No sale or assignment of any Interest by a Limited Partner shall be effective until the assignor and assignee provide and execute all certificates and other documents, including, but not limited to, a written opinion of legal counsel acceptable to the Partnership as to the availability of an exemption for the proposed transfer from the registration provisions of federal securities laws and any applicable state securities laws or regulations, and perform all acts that the General Partner may deem appropriate to preserve the limited liability and tax status of the Partnership after the completion of such sale or assignment, and to assume compliance with any applicable federal or state securities laws. Upon the request of any Limited Partner, the General Partner will provide appropriate forms for the assignment.

11.2. Death, Disability or Termination of Employment.

(a) (i) If a Limited Partner dies, ceases to be employed by Harbert Corporation or any affiliate of Harbert Corporation, or becomes physically or mentally disabled so that he is no longer capable of performing the duties performed by him prior to the onset of the disability, then the General Partner and the remaining Limited Partners shall purchase, and the Limited Partner or his successors and representatives shall sell, the entire Interest held by such Limited Partner, pursuant to this Section 11.2. Each of the remaining Partners (including the General Partner and the Limited Partners) shall have the right to purchase part of such Interest in a ratio equal to that which such remaining Partner's Percentage Interest bears to the total Percentage Interest owned by all of the remaining Partners. If any remaining Partner does not purchase his full share of the selling Limited

Partner's Interest, the portion of such Interest not purchased may be purchased proportionately by the other remaining Partners, and any amount not so purchased shall be purchased by the General Partner.

(ii) A Limited Partner will be considered disabled for purposes of this Agreement only if the General Partner has been furnished the opinion of two licensed physicians that such Limited Partner is prevented from performing his former duties and that his condition is likely to result in death or to be for a continuous period in excess of eighteen (18) months or for an indefinite duration.

(iii) If a Limited Partner's Interest is held in joint tenancy, with or without right of survivorship, the death, termination of employment or disability of the Limited Partner shall cause the purchase and sale of such Interest pursuant to this Section 11.2.

(b) In any purchase pursuant to this Section 11.2, the purchase price shall be equal to fair market value of the Limited Partner's Interest as of the close of business on the date of the death, disability or termination of employment of such Limited Partner. Such fair market value shall be as agreed upon by the seller, the General Partner and any purchasing Limited Partners. In the event such parties are not able to agree upon a fair market value, then fair market value shall be equal to the fair market value of such Interest determined by the award of three arbitrators, one to be selected by the selling Limited Partner or his legal representative, one by the General Partner and one by the two arbitrators so selected. Any award made by the majority of such arbitrators shall be final, binding and conclusive on all parties hereto for all purposes. The expense of arbitration shall be borne one-half by the selling Limited Partner and one-half by the purchasing parties.

(c) Payment for any Interest transferred pursuant to Section 11.2 shall be made in accordance with Section 11.4.

11.3. Optional Sale by Limited Partner.

(a) If any Limited Partner shall wish to sell his Percentage Interest in a transaction not covered by Section 11.2, then such Limited Partners shall give notice of his intention to sell all of his Percentage Interest. A sale of part of a Percentage Interest shall not be permitted. Each of the remaining Partners (including the General Partner and the Limited Partners) shall have the right to purchase part of such Interest in a ratio equal to that which each such remaining Partner's Percentage Interest bears to the total Percentage Interest owned by all of the remaining Partners. If any remaining Partner does not purchase his full share of the selling Limited Partner's Interest, the portion of such Interest not purchased may be purchased proportionately by the other remaining Partners, and any amount not so purchased shall be purchased by the General Partner.

(b) In any purchase pursuant to this Section 11.3, the purchase price of the Limited Partner's Interest shall be equal to the net book value of the Partnership (as described in this Section 11.3) multiplied by the Limited Partner's Percentage Interest on the Valuation Date (as hereinafter defined). For this purpose, "net book value" shall mean the excess of assets over liabilities reflected in the equity section of the balance sheet of the

Partnership, calculated by the Partnership's regular independent certified public accountants as of the Valuation Date. There is no intent to impute any additional value to the Limited Partner's Interest because of any future profit potential. The Valuation Date shall be date the Limited Partner gives irrevocable notice of his intention to sell his Interest in the Partnership. Such determination of net book value by the Partnership's independent certified public accountants shall be binding on the Partnership and all of its Partners and any others affected by this Agreement. Such determination shall be made in accordance with the generally accepted accounting principles consistent with those applied in prior periods, and the cost of determining net book value shall be paid by the Partnership.

(c) Payment for any Interest transferred pursuant to this Section 11.3 shall be made in accordance with Section 11.4.

11.4. Payment of Purchase Price.

(a) Payment for an Interest transferred pursuant to Section 11.03 shall be made in cash within ninety (90) days after the purchase price has been established.

(b) Payment for an Interest transferred pursuant to Section 11.02 shall be made in two components. First, an amount equal to the net book value of the Interest as of the date of the employee's death, disability or termination of employment shall be made in cash within ninety (90) days after the purchase price has been established. Net book value shall be calculated using the method described in Section 11.03. Second, the balance of the purchase price shall be paid by promissory notes of the purchasers, delivered at the same time as the cash payment. The promissory notes shall provide (i) for equal payments of principal and interest over a period of sixty (60) months, (ii) that the unpaid balance shall bear simple interest at eight percent (8%) per annum, and (iii) that the note may be prepaid at any time without penalty. Notwithstanding the above, at the election of the General Partner, the full purchase price shall be paid in cash within ninety (90) days after the purchase price has been established. This election shall be binding on the General Partner and any purchasing Limited Partner.

(c) Notwithstanding any other provision of this Agreement, there shall be deducted from such payment (i) any amounts due the General Partner pursuant to Section 4.3(b)(ii) on account of any failure of the Limited Partner to pay an assessment, and (ii) any amounts owed to the Partnership by the Limited Partner for any reason.

11.5. Transfer of the General Partner's Interest.

(a) The General Partner's Interest shall be freely transferable upon receipt by the Partnership of an opinion of legal counsel that (i) the transfer of the General Partner's Interest does not violate any applicable provision of federal or state securities law or the Act, (ii) the transfer would not result in loss of limited liability of any Limited Partner, (iii) the Partnership would not be treated as an association taxable as a corporation for federal income tax purposes as a result of the transfer, (iv) the transfer of the Interest will not result in a termination of the Partnership within the meaning of Section 708(b)(1)(B) of the Code, and (v)

the transfer would not violate the Joint Venture Agreement.

(b) Notwithstanding the foregoing, as a condition precedent to the transfer of the General Partner's Interest to any Person that is not then a Partner, such transferee must agree in writing, in a manner satisfactory to independent legal counsel to the Partnership, to be bound by all of the terms and conditions of this Agreement.

ARTICLE XII

Dissolution and Liquidation

12.1. Events Causing Dissolution.

(a) Except as provided to the contrary in Section 12.1(b), the Partnership shall dissolve, and its affairs shall be wound up, only if such dissolution and winding up would not violate the Joint Venture Agreement upon:

- (i) an event of withdrawal of the General Partner;
- (ii) the sale of all or substantially all the assets of the Partnership;
- (iii) an election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of the Limited Partners with more than fifty percent (50%) of the Percentage Interests of all Limited Partners at the time of said vote;
- (iv) the expiration of the term of the Partnership as provided in Section 2.4, unless all Partners unanimously agree to extend the term of the Partnership past the date set forth in Section 2.4;
- (v) the entry of a decree of judicial dissolution under Section 10-9A-141 of the Act; or
- (vi) any other event that, under the Act, would cause its dissolution.

(b) The Partnership shall not be dissolved upon the occurrence of the event described in Section 12.1(a)(i) if, within ninety (90) days after the occurrence of the effective date of such event, all Partners agree in writing to continue the business of the Partnership and to the appointment of a successor General Partner. If such an election to continue the Partnership is made, then a successor General Partner shall be selected by the Limited Partners with more than fifty percent (50%) of the Percentage Interests of all Limited Partners immediately prior to the occurrence of the event described in Section 12.1(a)(i), and the Partnership shall continue until dissolved in accordance with this Article XII; provided, however, the rights of the Limited Partners shall not be exercised until such time as the Partnership has received an opinion of legal counsel that the action in question (i) may be taken without concurrence of all Partners, (ii) would not cause the loss of limited liability of any Limited Partner, (iii) would not cause the

Partnership to be treated as an association taxable as a corporation for federal income tax purposes, and (iv) would not violate the Joint Venture Agreement.

12.2. Continuation of the Business of the Partnership After Dissolution. Upon dissolution of the Partnership in accordance with Section 12.1(a)(i), and failure of all Partners to agree to continue the business of the Partnership and appoint a successor General Partner as provided in Section 12.1(b), then within an additional ninety (90) days, the Limited Partners holding more than fifty percent (50%) of the Percentage Interests held by all Limited Partners immediately prior to the occurrence of the event described in Section 12.1(a)(i) may elect to reconstitute the Partnership and continue its business on the same terms and conditions set forth in this Agreement by forming a new partnership on terms identical to those set forth in this Agreement and having as general partner a Person elected by such Limited Partners. Upon any such election, all Limited Partners shall be bound thereby and shall be deemed to have consented thereto. Unless such an election is made within one hundred eighty (180) days after dissolution, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is made within one hundred eighty (180) days after dissolution, then:

(a) the Reconstituted Partnership shall continue until the end of the term set forth in Section 2.4, unless earlier dissolved in accordance with this Article XII;

(b) if the successor General Partner is not the former General Partner, then the former General Partner shall become a Limited Partner; and

(c) all necessary steps shall be taken to cancel this Agreement and Certificate of Limited Partnership and to enter into a new partnership agreement and certificate of limited partnership, and the successor General Partner may for this purpose exercise the powers of attorney granted the General Partner pursuant to Section 15.11;

provided, however, that the right of such Limited Partners to select a successor General Partner and to reconstitute and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an opinion of independent legal counsel that (i) the exercise of the right would not result in loss of limited liability of any Limited Partner and (ii) neither the Partnership nor the reconstituted Partnership would be treated as an association taxable as a corporation for federal income tax purposes upon the exercise of such right to continue.

12.3. Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under an election to reconstitute and continue the Partnership pursuant to Section 12.2, the General Partner, or if the dissolution shall occur pursuant to Section 12.1(a)(i), an individual or entity selected by the Limited Partners with more than fifty percent (50%) of the Percentage Interests of all Limited Partners immediately prior to the occurrence of an event described in Section 12.1(a)(i), shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by such Limited Partners. Except as expressly provided in this Article XII, the Liquidator shall have and may exercise, without further authorization and

consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual or otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 6.7) to the extent necessary or appropriate in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided for herein. The Liquidator shall liquidate the assets of the Partnership, and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law or by Section 12.8 herein:

(a) to the payment of creditors of the Partnership, including Partners, in order of priority provided by law, and the creation of a reserve of cash or other assets of the Partnership for contingent liabilities in an amount, if any, determined by the Liquidator to be necessary or appropriate for such purposes;

(b) to the Partners in proportion to and to the extent of the positive balances in their respective Capital Accounts; and

(c) then to the Partners in accordance with their respective Percentage Interests.

In accordance with Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(2), the distribution to the Partners as provided in Section 12.3(b) and 12.3(c) shall be made by the end of the year of liquidation or, if later, within ninety (90) days after the date of such liquidation.

12.4. Distribution in Kind. Notwithstanding the provisions of Section 12.3 which require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if upon dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidator may, in its sole and complete discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) or may, in its sole and complete discretion, distribute to the Partners, in lieu of cash, in accordance with the provisions of Section 12.3(b) and 12.3(c), such Partnership assets as the Liquidator deems not suitable for liquidation. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

12.5. Cancellation of Certificate of Limited Partnership. Upon the completion of the distribution of Partnership property as provided in Sections 12.3 and 12.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and the Limited Partners, if necessary) shall cause the cancellation of the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Alabama and shall take such other actions as may be necessary to terminate the Partnership.

12.6. Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of business and affairs of the Partnership and the liquidation of its assets pursuant to Section 12.3 in order to minimize any losses otherwise attendant upon such winding up, and the provisions of this Agreement shall remain in effect among the Partners during the period of liquidation.

12.7. No Liability for Return of Capital. The General Partner shall not be personally liable for the return of the Capital Contributions of the Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

12.8. Capital Account Restoration. In the event any Partner unexpectedly receives an adjustment, allocation or distribution described in clauses (4), (5) and (6) of Regulation § 1.704-1(b)(2)(ii)(d) promulgated under the Code, that results in such Partner having a negative balance in its Capital Account in excess of the amount it is required to restore on a liquidation of the Partnership (or of the Partner's Interest), such Partner shall be allocated income and gain prior to the allocations pursuant to Section 5.2 in an amount and manner sufficient to eliminate such excess as promptly as possible.

12.9. Title to Joint Venture Agreement. Notwithstanding anything contained in this Agreement, the Partnership's interest in the Joint Venture Agreement may not be distributed to any Partner or transferred to any person or entity, other than Harbert Land Corporation, without the prior written consent of USR.

ARTICLE XIII

Voting and Amendments

13.1. Voting Rights. This Agreement may be amended by vote of both the General Partner and a Majority Interest of Limited Partners, provided such amendment does not violate the Joint Venture Agreement.

13.2. Proposal and Adoption of Amendments Generally.

(a) Amendments to this Agreement to reflect the election of a successor General Partner upon the withdrawal of the General Partner shall be made in accordance with Articles XIII and XIV. Any amendment to this Agreement may be proposed by the General Partner or by the holders of ten percent (10%) of the Percentage Interests. The Partner or Partners proposing such amendment shall submit (i) the text of such amendment, (ii) a statement of the purpose of such amendment, and (iii) an opinion of legal counsel obtained by the Partner or Partners proposing such amendment to the effect that such amendment is permitted by the Act, and will not adversely affect the limited liability of any Limited Partner or the classification of the Partnership as a partnership for federal income tax purposes. The General Partner shall, as soon as practicable after receipt of any proposal under this Section 13.2(a), give notice to all Partners of such proposed amendment, such statement of purpose, and such opinion of legal counsel, together, in the case of an amendment proposed by Limited Partners, with the views, if any, of the General Partner with respect to such proposed amendment.

(b) The General Partner shall, within a reasonable time after the adoption of any amendment to this Agreement, make any filings or publications required or desirable to reflect such amendment.

13.3. Amendments on Withdrawal of the General Partner.

(a) If this Agreement shall be amended to reflect a successor General Partner, such amendment shall be signed by the original General Partner and such successor General Partner.

(b) If this Agreement shall be amended to reflect the withdrawal of the General Partner and the continuation of the business of the Partnership, such amendment shall be signed by the successor General Partner.

ARTICLE XIV

Consents and Meetings

14.1. Method of Giving Consent. Any consent required by this Agreement may be given:

(i) by a written consent given by the consenting Partner at or prior to the doing of the act or thing for which the consent is solicited, provided that such consent shall not have been nullified by either (1) notification to the General Partner by the consenting Partner at or prior to the time of, or the negative vote of such consenting Partner at, any meeting held to consider the doing of such act or thing, or (2) notification to the General Partner by the consenting Partner prior to the doing of any act or thing the doing of which is subject to approval at such a meeting; or

(ii) by the affirmative vote by the consenting Partner to the doing of the act or thing for which the consent is solicited at any meeting called and held pursuant to Section 14.2 to consider the doing of such act or thing.

14.2. Meetings of Partners. Any matter requiring the consent of a Majority Interest of the Limited Partners may be considered at a meeting of the Partners held not less than five (5) nor more than thirty (30) days after notification thereof shall have been given by the General Partner to all Partners. Such notice (i) may be given by the General Partner, in its discretion, at any time, and (ii) shall be given by the General Partner as soon as practicable after receipt by the General Partner of a written request for such a meeting made by holders of ten percent (10%) of the Percentage Interests. Such meeting shall be held either at the principal office of the General Partner or such other location as shall be specified by the General Partner.

14.3. Submissions to the Limited Partners. The General Partner shall give all the Limited Partners notice of any proposal or other matter required by any provision of this Agreement or by law to be submitted for the

consideration and approval of the Limited Partners. Such notice shall include any information required by the relevant provisions of this Agreement or by law.

ARTICLE XV

Miscellaneous Provisions

15.1. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if and when mailed from within the United States by first class United States mail, postage prepaid, or if telegraphed, by prepaid telegram, and addressed, if to the General Partner, to Harbert Land Corporation, One Riverchase Parkway South, Birmingham, Alabama 35244, and if to a Limited Partner, to the address set forth on the records of the Partnership. Any Limited Partner may change his address by giving notice in writing, stating his new address, to the General Partner and the General Partner may change its address by giving such notice to all Limited Partners. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be such Partner's address for the purpose of all notices or other communications required or permitted to be given pursuant to this Agreement.

15.2. Binding Provisions. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

15.3. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama, without regard to the principles of conflicts of law.

15.4. Execution and Counterparts. This Agreement may be executed in several counterparts, all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the same counterpart, except that no counterpart shall be binding unless signed by the General Partner.

15.5. Severability of Provisions. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

15.6. Entire Agreement. This Agreement constitutes the entire agreement among the parties. This Agreement supersedes any prior agreement or understanding among the parties and may not be modified or amended in any manner other than as set forth herein.

15.7. Articles and Sections. Titles of Articles and Sections are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

15.8. Number and Gender. Whenever the context requires, references in this Agreement to the singular number shall include the plural, the plural

number shall include the singular, and words denoting gender shall include the masculine, feminine and neuter.

15.9. Partition. Each party waives the benefit of any provisions of law which may provide for partition of real or personal property and agrees that he will not resort to any action at law or in equity to partition any property subject to this Agreement.

15.10. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Partnership or of any Partner, except to the extent provided by § 10-9A-122 of the Act.

15.11. Power of Attorney. Each Limited Partner by the execution of this Agreement, does irrevocably constitute and appoint the General Partner, and any successor thereto by merger, consolidation or otherwise, with full power of substitution, as his true and lawful attorney-in-fact and agent, with full power and authority in his name, place and stead, to:

(a) execute, acknowledge, swear to, deliver, file and record in the appropriate public offices

(i) all certificates and other instruments (including counterparts of the Agreement and amendments thereto) which the General Partner deems appropriate to form, qualify or continue the Partnership as a limited partnership in all jurisdictions in which the Partnership may conduct business,

(ii) all instruments that the General Partner deems appropriate to reflect any amendment, change or modification of the Partnership in accordance with the terms of this Agreement,

(iii) all conveyances and other instruments that the General Partner deems appropriate to reflect the dissolution and termination of the Partnership pursuant to the terms of this Agreement, and

(iv) instruments relating to the admission of any successor General Partner or any additional or substituted Limited Partner; and

Each Limited Partner hereby agrees to execute and deliver to the General Partner, within five (5) days after receipt of the General Partner's written request therefor, such other and further statements of interest and holdings, designations, powers of attorney and other instruments as the General Partner deems necessary. The Power of Attorney granted herein is hereby declared irrevocable and a power coupled with an interest, shall survive the death or disability of a Limited Partner, if an individual, or the dissolution or other termination of a Limited Partner, if a corporation, trust or partnership, and shall extend to such Limited Partner's heirs, successors and assigns. Each Limited Partner hereby agrees to be bound by any representations made by the General Partner acting in good faith pursuant to this Power of Attorney, and each Limited Partner hereby waives any and all defenses that may be available to contest, negate or disaffirm any action of the General Partner taken in good faith under this Power of Attorney.

TC. LIMITED PARTNERSHIP

Agreement and Certificate of Limited Partnership

Schedule A

	<u>Residence Address</u>	<u>Percentage Interest</u>	<u>Initial Capital Contribution</u>
<u>General Partner</u>			
Harbert Land Corporation	One Riverchase Parkway South Birmingham, Alabama 35244	70.0%	\$ 240,975.00
<u>Limited Partner</u>			
Donald L. Cook	1104 Water Edge Court Birmingham, Alabama 35244	5.0	17,212.50
Howard E. Dyer-Smith	3345 Sandhurst Circle Birmingham, Alabama 35223	7.5	25,818.75
James O. Rein	1517 Yorkmont Circle Birmingham, Alabama 35226	7.5	25,818.75
Wayne B. Nelson, III	1187 Riverchase Parkway West Birmingham, Alabama 35244	7.5	25,818.75
Joseph E. McKay	1916 Riverwoods Road Birmingham, Alabama 35244	2.5	8,606.25
		<hr/>	<hr/>
	TOTAL	100.0%	\$ 344,250.00

IN WITNESS WHEREOF, the General Partner and the initial Limited Partners have executed this Agreement as of the date first above written.

GENERAL PARTNER:

ATTEST:

HARBERT LAND CORPORATION

By: 

Its: Vice President

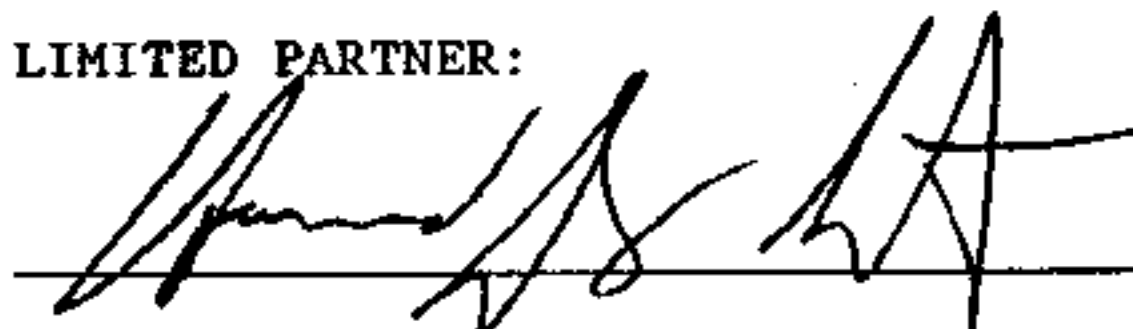
By: 

Its: Vice President

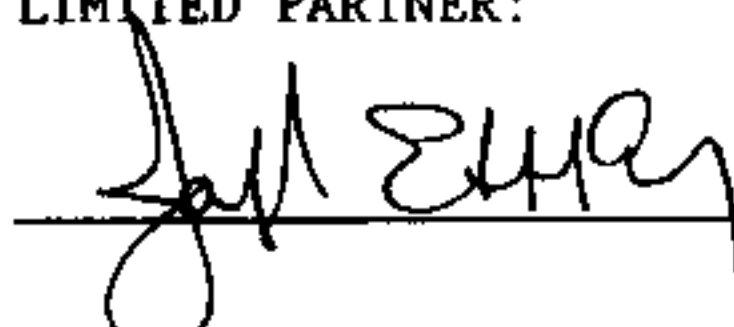
LIMITED PARTNER:



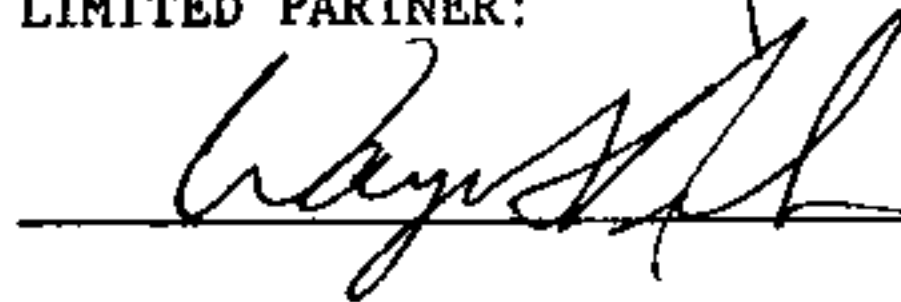
LIMITED PARTNER:



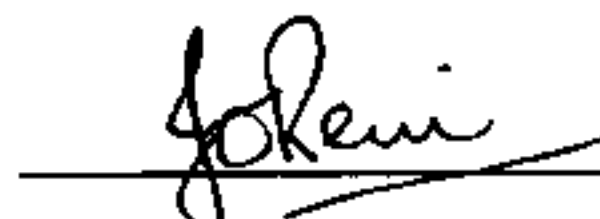
LIMITED PARTNER:



LIMITED PARTNER:



LIMITED PARTNER:



STATE OF ALABAMA)

) SS:
COUNTY OF SHELBY)

I, Barbara A. Wenning, a Notary Public in and for said County in said State, hereby certify that Bill L. Harbert, whose name as Vice President of Harbert Land Corporation, an Alabama corporation, is signed to the foregoing Partnership Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Partnership Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 28 day of April, 1988.

Barbara A. Wenning

Notary Public

My commission expires: 2-27-91

NOTARIAL SEAL

STATE OF ALABAMA)

) SS:
COUNTY OF SHELBY)

I, Barbara A. Wenning, a Notary Public in and for said County in said State, hereby certify that Donald L. Cook, whose name is signed to the foregoing Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 28 day of April, 1988.

Barbara A. Wenning

Notary Public

My commission expires: 2-27-91

NOTARIAL SEAL

BOOK 035 PAGE 883

STATE OF ALABAMA)

) SS:

COUNTY OF SHELBY)

I, Barbara A. Wenning, a Notary Public in and for said County in said State, hereby certify that Howard Dyer-Smith, whose name is signed to the foregoing Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 28 day of April, 1988.

Barbara A. Wenning

Notary Public

My commission expires: 2-27-91

NOTARIAL SEAL

STATE OF ALABAMA)

) SS:

COUNTY OF SHELBY)

I, Barbara A. Wenning, a Notary Public in and for said County in said State, hereby certify that Joseph E. McKay, whose name is signed to the foregoing Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 28 day of April, 1988.

Barbara A. Wenning

Notary Public

My commission expires: 2-27-91

NOTARIAL SEAL

STATE OF ALABAMA)

) SS:
COUNTY OF SHELBY)

I, Barbara A. Wenning, a Notary Public in and for said County in said State, hereby certify that Wayne B. Nelson, whose name is signed to the foregoing Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 28 day of April, 1988.

Barbara A. Wenning
Notary Public

NOTARIAL SEAL

My commission expires: 2-27-91

STATE OF ALABAMA)

) SS:
COUNTY OF SHELBY)

I, Barbara A. Wenning, a Notary Public in and for said County in said State, hereby certify that James O. Rein, whose name is signed to the foregoing Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 28 day of April, 1988.

Barbara A. Wenning
Notary Public

NOTARIAL SEAL

My commission expires: 2-27-91

STATE OF ALA. SHELBY
I CERTIFY THIS
INSTRUMENT WAS FILED

88 MAY -5 AM 10:46

James O. Rein
JUDGE OF PROBATE

Rec 87.50
Jud 1.00
88.50

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