

THIS INSTRUMENT PREPARED BY:
C. Patterson Cron
Gordon & Bottorff, P.C.
5201 Maryland Way
Brentwood, TN 37027

1277

FOURTH AMENDMENT TO
BROOKLINE, LTD.

AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP

THIS FOURTH AMENDMENT to the Agreement and Certificate of Limited Partnership of Brookline, Ltd. (the "Partnership") entered into this 28th day of July, 1989, by the undersigned parties, being all of the partners, general and limited, in and of the Partnership.

W I T N E S S E T H:

WHEREAS, the Limited Partnership Agreement of Brookline, Ltd., dated August 14, 1987, (the "Agreement") sets forth all of the terms and provisions governing the operation of the Partnership, including the rights and obligations of the partners; and

WHEREAS, the Partnership's Certificate of Limited Partnership (the "Certificate") dated September 17, 1987, was filed of record on September 17, 1987, in the Register's Office of Williamson County, Tennessee, at Book 693, page 532; and

WHEREAS, the Certificate was amended by a First Amendment which was filed of record on October 21, 1987, in Vol. 699, page 66, (the "First Amendment"); and a Second Amendment which was filed of record on February 19, 1988, in Vol. 716, page 996 (the

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"Second Amendment"); and a Third Amendment which was filed of record on July 19, 1988, in Vol. 742, page 827, and re-recorded on August 3, 1988, in Vol. 745, page 885, all in the Register's Office of Williamson County, Tennessee; and

WHEREAS, the Partnership has agreed to purchase certain real property (the "Thompson Property") situated in the City of Helena, County of Shelby, State of Alabama, which real property adjoins the Property of the Partnership, as described in the Certificate; and

WHEREAS, as part of the consideration paid for the General Partner and all of the Limited Partners have consented to the admission of the said Dorothy P. Thompson as a Special Limited Partner having special allocations as to profits and losses with respect to operations and capital transactions and distributions of Cash Flow and Net Capital Proceeds of the Partnership, as hereinafter set forth; and

WHEREAS, the said Dorothy P. Thompson has conveyed the Thompson Property to the Partnership by a deed of even date herewith, pursuant to the agreement with the Partnership; and

WHEREAS, the said Dorothy P. Thompson desires to be admitted as a Special Limited Partner and the Partnership desires to admit her as such; and

WHEREAS, the parties hereto agree to be bound by the Agreement and Certificate as previously amended and as further amended by this Fourth Amendment;

NOW, THEREFORE, in consideration of the premises, the undersigned parties agree, as follows:

1. The Agreement and the Certificate (as previously amended by the First Amendment, Second Amendment and Third Amendment) are hereby amended by admitting Dorothy P. Thompson as a Special Limited Partner in and of the Partnership, pursuant to the terms and provisions herein set forth.
 2. The undersigned parties hereto acknowledge that the value of the consideration given by Dorothy P. Thompson for her interest in the Partnership is equal to One Hundred Five Thousand Nine Hundred Eighty-Nine Dollars and 51/100 (\$105,989.51) and said amount shall be considered her Contributed Capital.
 3. Section 1.21 of the Agreement is amended by deleting same and substituting the following: The term "Partners" shall mean and include all General and Limited Partners and the Special Limited Partner.
- As a result of the admission of Dorothy P. Thompson as Special Limited Partner, ARTICLE 4, ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS, as set forth in the Agreement, is hereby amended by deleting same and substituting in lieu thereof the following:

Section 4.01. Net Operating Profit or Loss. The Net Operating Profit or Loss of the Partnership for each fiscal year of the Partnership (and each item of income, gain, deduction and loss comprising such Net Operating Profit or Loss) shall be allocated as follows:

(a) In the case of a Net Operating Profit:

- (i) First, ninety-nine percent (99%) to the Limited Partners* and one percent (1%) to the General

* and the Special Limited Partner in proportion to to each Partner's respective contributed capital

Partner until each Limited Partner has been allocated Three Thousand Dollars (\$3,000.00) per Unit (which constitutes twelve percent (12%) of the purchase price of a Unit) under this subsection (a) (i) in such fiscal year (which amount shall not be cumulative from year to year) and until the Project has attained an Occupancy Rate of eighty percent (80%); then

- (ii) Second, ten percent (10%) to the Special Limited Partner, sixty-three percent (63%) to the Limited Partners, and twenty-seven percent (27%) to the General Partner.
- (b) In the case of a Net Operating Loss, ten percent (10%) to the Special Limited Partner, eighty-nine and one-tenths percent (89.1%) to the Limited Partners and nine-tenths percent (0.9%) to the General Partner.

Section 4.02. Net Gain or Loss from Capital Transactions.
The Net Gain or Loss from Capital Transactions for the Partnership for each fiscal year (and each item of income, gain, deduction and loss comprising such Net Gain or Loss) shall be allocated as follows:

- (a) In the case of a Net Gain from Capital Transactions:
 - (i) First, to the Partners who have negative Capital Account balances to the extent of and in proportion to such negative Capital account balances; then
 - (ii) Second, to the Partners proportionately to the extent of any excess of each Partner's respective amount of Contributed Capital over his respective Capital Account balance; then
 - (iii) Third, ten percent (10%) to the Special Limited Partner, forty-five percent (45%) to the Limited Partners and forty-five percent (45%) to the General Partner.
- (b) In the case of a Net Loss from Capital Transactions, ten percent (10%) to the Special Limited Partner, eighty-nine and one-tenth percent (89.1%) to the Limited Partners and nine-tenths percent (0.9%) to the General Partner.
- (c) The allocations provided for in this Section 4.02 shall be made after the Partners' Capital Accounts have been adjusted for all distributions made during the fiscal

year and for all allocations of Net Operating Profit or Loss for the fiscal year.

Section 4.03. Special Allocations. Notwithstanding any of the above provisions of this Article 4, all items of income, expense, loss and deduction of the Partnership for any fiscal year shall be allocated as follows:

- (a) In the event that during the fiscal year there is a net decrease in the Partnership Minimum Gain, as defined in Treasury Regulation §1.704-1(b)(4)(iv), then all Limited Partners with negative capital account balances (adjusted as provided in said Treasury Regulation) shall be allocated items of income and gain for such year (and if necessary for subsequent years) in the amount and in the proportions needed to eliminate such adjusted negative capital account balances as quickly as possible for each such Limited Partner. Such allocations shall be made in accordance with Treasury Regulation §1.704-1(b)(4)(iv)(e).
- (b) No items of loss or deduction for any fiscal year of the Partnership shall be allocated to a Limited Partner which would cause the Limited Partner's capital account balance (as adjusted as hereinafter described) to be less than zero (0) at the end of such fiscal year. In the event that any Limited Partner unexpectedly receives such adjustment, allocation or distribution described in Treasury Regulation §1.704-1(b)(2)(d)(4), (5) and (6) which causes such Limited Partner's capital account balance (as so adjusted) to be less than zero (0), then all such Limited Partners shall be allocated items of income and gain (consisting of a pro rata portion of each item of Partnership income, including gross income, and gain) in the amount and in the proportions needed to eliminate such negative capital account balance as quickly as possible for each such Partner. Solely for the purposes of this subsection (b), a Limited Partner's capital account balance at the end of any fiscal year of the Partnership shall be reduced by the adjustments, allocations and distributions described in Treasury Regulation §1.704-1(b)(2)(d)(4), (5) and (6) that as of the end of each such fiscal year are reasonably expected to be made and shall be increased by the sum of (i) any amount which such Partner is unconditionally obligated to restore to the Partnership upon the dissolution or liquidation of the Partnership or upon such Partner's withdrawal from the Partnership, (ii) a Limited Partner's share of the Partnership's Minimum Gain as determined under Treasury Regulation §1.704-1(b)(4)(iv)(f), (iii) the Limited Partner's share (as determined under Code Section 752)

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of any recourse indebtedness of the Partnership to the extent that such indebtedness could not be repaid out of the Partnership's assets if all of the Partnership's assets were sold at their respective adjusted bases as of the end of the fiscal year or other period and the proceeds from the sale were used to pay the Partnership's liabilities, and (iv) the amount of any nonrecourse loans to the Partnership by a Limited Partner [or a person related to such Limited Partner to the extent provided in Treasury regulations under Code Section 704(b)] to the extent that such loans were sold at their respective adjusted bases as of the end of the fiscal year or other period and the proceeds from such sales were used to pay the Partnership's liabilities.

Any special allocations under this Section 4.03 shall be taken into account in computing subsequent allocations of income, expense, loss and deduction pursuant to Sections 4.01 and 4.01, in each case so that the amounts allocated under such Sections and the capital account balances of the Partners shall, to the extent possible, be equal to the amounts which would have been allocated and the capital account balances which would have resulted if such special allocations had not been made.

Section 4.04. Tax Incidents. Except as otherwise provided in this Limited Partnership Agreement, for federal and state income tax purposes, all items of Partnership income, gain, loss, deduction, credit and any other allocations not otherwise provided for shall be allocated among the partners in the same manner as the corresponding item of income, gain, loss or deduction was allocated pursuant to Sections 4.01 through 4.03.

Section 4.05. Distributions of Cash Flow. All Cash Flow distributions for each fiscal year shall be made to the Partners as follows: (a) First, to the Partners proportionately to the extent of their share of the cumulative and previously undistributed Net Operating Profit allocable under Section 4.01, if any, of the Partnership for all prior fiscal years; (b) Second, ninety-nine percent (99%) to the Limited Partners* and one percent (1%) to the General Partner until each Limited Partner has received a distribution of Three Thousand Dollars (\$3,000.00) per Unit (which constitutes twelve percent (12%) of the purchase price of a Unit) under this subsection (b) in such fiscal year (which amount shall not be cumulative from year to year) and until the Project has attained an Occupancy Rate of eighty percent (80%); and (c) Third, ten percent (10%) to the Special Limited Partner, sixty-three percent (63%) to the Limited Partners and twenty-seven percent (27%) to the General Partner.

Section 4.06. Distributions of Net Capital Proceeds. All Net Capital Proceeds distributions for each fiscal year shall be made to the Partners as follows: (a) First to the Special

*and Special Limited Partner in proportion to each Partner's respective capital account

Limited Partner to the extent of the Special Limited Partner's amount of Contributed Capital (and in reduction of her amount of Contributed Capital); (b) Second, to the other Partners proportionately to the extent of each Partner's respective amount of Contributed Capital (and in reduction of his respective amount of Contributed Capital); and (c) Third, ten percent (10%) to the Special Limited Partner, forty-five percent (45%) to the Limited Partners and forty-five percent (45%) to the General Partner.

Section 4.07. Equality of Limited Partners. All allocations and distributions under this Article 4 shall be made to and among the Limited Partners in proportion in the number of Units held by them.

Section 4.08. Cash Flow Distributions. Cash Flow Distributions shall be made at such times as shall be determined in the sole and absolute discretion of the General Partner; provided, however, that the Cash Flow of the Partnership shall be distributed no less often than annually and within sixty (60) days following the close of the Partnership's fiscal year.

Section 4.09. Consequences of Distributions. Upon the determination to distribute funds in any manner expressly provided in this Article 4, made in good faith, the General Partner shall incur no liability on account of such distribution, even though such distribution may have resulted in the Partnership retaining insufficient funds for the operation of its business which insufficiency resulted in loss to the Partnership or necessitated the borrowing of funds by the Partnership.

Section 4.10. Restrictions on Distributions. The Partnership may be restricted from making distributions under the terms of notes, mortgages or other types of debt obligation which it may issue or assume in conjunction with borrowed funds, and distributions may also be restricted or suspended in circumstances under which the General Partner determines, in its absolute discretion, that such action is in the best interest of the Partnership.

5. Also as a result of the admission of Dorothy P. Thompson as Special Limited Partner, Section 9 of the Certificate is hereby amended, as follows:

- (a) Section 9(a)(ii) is amended by deleting same and substituting the following: "Second, ten percent (10%) to the Special Limited Partner, sixty-three percent (63%) to the Limited Partners, and twenty-seven per cent (27%) to the General Partner."

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- (b) Section 9(b) is amended by deleting same and substituting the following: "In the case of a Net Operating Loss, ten percent (10) to the Special Limited partner, eighty-nine and one-tenths percent (89.1%) to the Limited Partners and nine-tenths percent (0.9%) to the General Partner."
 - (c) Section 9(c)(iii) is amended by deleting same and substituting the following: "Third, ten percent (10%) to the Special Limited Partner, forty-five percent (45%) to the Limited Partners and forty-five percent (45%) to the General Partner."
 - (d) Section 9(d) is amended by deleting same and substituting the following: "In the case of a Net Loss from Capital Transactions, ten percent (10%) to the Special Limited Partner, eighty-nine and one-tenth percent (89.1%) to the Limited Partners and nine-tenths percent (0.9%) to the General Partner."
6. The interest of the Special Limited Partner is deemed to equal one (1) Unit for voting purposes pursuant to ARTICLE 8 of the Agreement or in any event where a vote of the Limited Partners is taken.
7. The Special Limited Partner hereby irrevocably constitutes and appoints the General Partner, with full power of substitution and resubstitution, as her attorney-in-fact for the purposes and with all of the powers and authority and subject to the same terms and provisions as originally set forth in ARTICLE 14 of the Agreement, all of which are hereby incorporated herein by reference as if set out verbatim.
8. Except as specifically provided in this Fourth Amendment, the Special Limited Partner shall have all of the rights

granted to and be subject to all of the obligations and limitations imposed upon the Limited Partners in the Agreement and the Certificate.

9. In the event of any inconsistencies between the provisions of the Agreement and/or the Certificate and the provisions of this Fourth Amendment, the Certificate as hereby amended shall be construed so as to accomplish the purposes explicitly and implicitly indicated by this Fourth Amendment.
10. Schedule A, as currently in effect as a result of previous amendments, is hereby amended by deleting same entirely and substituting in lieu thereof the Schedule A attached hereto.
11. In all other respects, the Agreement and the Certificate (as amended) are hereby ratified, confirmed and agreed to by all of the parties hereto.

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IN WITNESS WHEREOF, the undersigned have executed this
Fourth Amendment as of the day and year first above written.

SPECIAL LIMITED PARTNER:

GENERAL PARTNER:
VANTAGE CAPITAL, INC.

Dorothy P. Thompson
DOROTHY P. THOMPSON

By: Dan Collier
DAN COLLIER, PRESIDENT

LIMITED PARTNERS:

Vantage Capital, Inc.
as Attorney-in-Fact for the
parties named as Limited
Partners on Schedule A
attached hereto

By: Dan Collier
DAN COLLIER, PRESIDENT

STATE OF Alabama

COUNTY OF Jefferson

Before me, the undersigned, a Notary Public in and for said county and state, personally appeared DAN COLLIER, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be President of VANTAGE CAPITAL, INC., the within named bargainor, and that he as such President executed the foregoing instrument for the purpose therein contained.

WITNESS my hand and seal this 28th day of July, 1989.

John A. Sorensen
Notary Public

My Commission Expires: 7/24/91

STATE OF Alabama
COUNTY OF Jefferson

Before me, the undersigned, a Notary Public in and for said State and County, personally appeared DAN COLLIER, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the President of VANTAGE CAPITAL, INC., a Tennessee Corporation, the within named bargainor, and who further acknowledged that VANTAGE CAPITAL, INC., is Attorney-In-Fact for the parties named as Limited Partners on Schedule A, attached hereto; and that he, as such President, being duly authorized so to do, executed the foregoing instrument for the purposes contained therein by subscribing thereto the name of the said corporation therein by himself as President of the corporation, and he further acknowledged that he executed said instrument as the free act and deed of the corporation and as the free act and deed of the parties named as Limited Partners on Schedule A, attached hereto.

WITNESS MY HAND AND NOTARIAL SEAL this 28th day of July, 1989.

John L. Foreman
Notary Public

My Commission Expires: 7/24/91

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STATE OF Alabama
COUNTY OF Jefferson

Personally appeared before me, the undersigned, a Notary Public in and for the State and County aforesaid, DOROTHY P. THOMPSON, the within-named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS my hand and seal this 21st day of July, 1989.

John L. Foreman
Notary Public

My Commission Expires: 7/24/91

SCHEDULE A

TO

FOURTH AMENDMENT TO

BROOKLINE, LTD.

AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP

NAME AND ADDRESS

General Partner:

Vantage Capital, Inc.
One Maryland Farms
Suite 220
Brentwood, Tennessee 37027

Limited Partners:

Ronald C. Henning, IRA
Custodian: Union Planters National Bank
c/o Russell Kennedy, Vice President
P.O. Box 387 - Trust Operations
Memphis, Tennessee 38147

Robert S. Hite
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Brentwood, Tennessee 37027

Richard E. Jung
2608 Barton Avenue
Nashville, Tennessee 37212

John P. Guinn
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Memphis, Tennessee 38111-0899

Richard D. Muller
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H. W. Ferrell
2428 Hidden Lake
Columbia, Tennessee 38401

Harry B. Taylor
5505 Shady Trail
Old Hickory, Tennessee 37138

Duane Pulsifer, IRA
Custodian: Union Planters National Bank
c/o Charles V. Cifuni, Vice President
P.O. Box 387 - Trust Operations
Memphis, Tennessee 38147

Daniel L. and Lynn Schiller
5639 Granny White Pike
Brentwood, tennessee 37027

Glen D. Verner
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Brentwood, Tennessee 37027

Ray Tarkington
1705 Division Street
Nashville, tennessee 37203

Charles E. Blankenship, Jr., IRA
Custodian: Union Planters National Bank
c/o Russell Kennedy, Vice President
P.O. Box 387 - Trust Operations
Memphis, Tennessee 38147

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Michael R. Wood Profit Sharing
6010 Foxland Drive
Brentwood, Tennessee 37027

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SPECIAL LIMITED PARTNER:

Dorothy P. Thompson
1660 Heritage Place
Birmingham, Alabama 35210

1. Deed tax	\$	_____
2. Mtg. tax		_____
3. Recording fee		32.50
4. Indexing fee		3.00
TOTAL		36.50

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