

STATE OF ALABAMA)

SHELBY COUNTY)

**CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP
OF
FS EQUITY, LTD.**

THIS AGREEMENT, made and entered into on this the 24 day of April, 1993, by and among Jack Fiorella, III and Paul J. Spina, Jr. (hereinafter for convenience referred to as the "General Partners"), the Fiorella Family Partnership, Ltd., and Buck, Ltd. (hereinafter for convenience referred to as the "Limited Partners"), as follows:

W I T N E S S E T H:

WHEREAS, the General Partners and Limited Partners desire to form a limited partnership under the laws of the State of Alabama called FS EQUITY, LTD. (hereinafter referred to as the "Limited Partnership"), for the following defined purposes; and

WHEREAS, the parties to this Agreement are desirous of confirming the existence of the said Limited Partnership by reducing to writing the terms, provisions and conditions relating to the conduct of the Limited Partnership and by defining the rights and obligations of the parties hereto;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and undertakings of the parties hereto, it is agreed as follows:

1. Name, Office, Agent for Service of Process and Partners' Names and Mailing Addresses:

1.1 **Name:** The name of this Limited Partnership shall be FS EQUITY, LTD.

1.2 **Office:** The street address of the office of said Limited Partnership shall be at Two Riverchase Office Plaza, Suite 206, Birmingham, Alabama 35244, and shall also be at such other place or places as the General Partners may hereafter determine. The mailing address of the Limited Partnership shall be Two Riverchase Office Plaza, Suite 206, Birmingham, Alabama 35244.

1.3 **Agent for Service of Process:** The Limited Partnership's agent for service of process shall be Jack Fiorella, III, Two Riverchase Office Plaza, Suite 206, Birmingham, Alabama 35244.

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SHELBY COUNTY JUDGE OF PROBATE

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*Spina & Spina
One Independence Plaza, Suite 600
Birmingham, AL 35209*

1.4 Partners' Names and Mailing Addresses: The names and mailing addresses of the General Partners are set forth in Section 4.1. The name and mailing addresses of the Limited Partners are: The Fiorella Family Partnership, Lt., 2672 Dolly Ridge Road, Birmingham, Alabama 35243 and Buck, Ltd., 2908 Monte D'este Drive, Birmingham, Alabama 35216.

2. Duration: The term of the Limited Partnership shall commence on the date of the filing of this Certificate and Agreement of Limited Partnership in the Office of the Judge of Probate of Jefferson County, Alabama, and shall continue until December 31, 2040; provided, however, that the Limited Partnership shall be dissolved prior to such date (a) upon the sale or other disposition of all of the assets owned by the Limited Partnership unless prohibited from dissolving by law or by prior agreement of the Limited Partnership; (b) upon agreement of the Partners; or (c) as may be required by the Alabama Limited Partnership Act of 1983, as the same may be changed from time to time (the "Partnership Act").

3. Purpose and Description of Partnership Activity: The Limited Partnership is organized for the following purposes:

3.1 To invest in, acquire, hold, maintain, operate, own, lease, improve, sell, exchange, develop or otherwise use interest in real and personal property for profit, or to invest in one or more partnerships for similar purposes, and to engage in any and all activities related or incidental thereto.

3.2 To borrow money and to evidence the same by notes or other evidences of indebtedness and to secure the same by mortgage, deed of trust, pledge, or other lien or security interest in furtherance of any or all of the purposes of the Limited Partnership;

3.3 To enter into, perform, and carry out contracts and agreements necessary, appropriate, or incidental to the accomplishment of the purposes of the Partnership; and

3.4 To do any other acts and things which may be necessary, appropriate or incidental to the carrying out of the business and purposes of the Limited Partnership, subject to the terms and conditions of this Certificate and Agreement.

4. Capital Contributions:

4.1 **General Partners:** Jack Fiorella, III and Paul J. Spina, Jr. are hereby named as the General Partners of the Limited Partnership, and shall upon the filing of this Certificate and Agreement of Limited Partnership contribute in cash to the capital of the Limited Partnership in the amounts set forth in

Section 5 below. The mailing address of the General Partners is Two Riverchase Office Plaza, Suite 206, Birmingham, Alabama 35244.

4.2 Limited Partners: The Fiorella Family Partnership, Ltd., and Buck, Ltd. are hereby named as the Limited Partners of the Limited Partnership and shall upon the filing of this Certificate and Agreement of Limited Partnership contribute in cash to the capital of the Limited Partnership in the amounts set forth in Section 5 below. The mailing address of the Limited Partners are: The Fiorella Family Partnership, Lt., 2672 Dolly Ridge Road, Birmingham, Alabama 35243 and Buck, Ltd., 2908 Monte D'este Drive, Birmingham, Alabama 35216.

4.3 Summary of Capital Contributions: For the purposes of this Agreement, the capital of the Limited Partnership shall be deemed to include the initial capital contributions to the Limited Partnership made by the Partners and any other amounts subsequently contributed to the capital by the Limited Partners or the General Partners.

4.4 Capital Accounts: An individual capital account shall be maintained for each General and Limited Partner. The capital account for each Partner shall consist of such Partner's original contribution of capital, increased by (1) additional capital contributions by such Partner, and (2) such Partner's distributive share of taxable income and gains, and decreased by (a) distributions of cash or other property to such Partner and (c) such Partner's distributive share of taxable losses.

5. Profits, Losses and Distributions:

5.1 Profits and Losses and Distributions: All profits and losses derived from the Limited Partnership, and each item of income, gain, loss, deduction and credit entering into the computation thereof, shall be allocated to the Limited Partners and to the General Partners as follows:

<u>General Partners</u>	<u>Contributions</u>	<u>Percentage</u>
Jack Fiorella, III	\$ 10.00	1%
Paul J. Spina, Jr.	\$ 10.00	1%
<u>Limited Partner</u>	<u>Contribution</u>	<u>Percentage</u>
Fiorella Family Partnership, Ltd.	\$590.00	65.67%
Buck, Ltd.	\$390.00	32.33%

5.2 Cash Distributions: All distributions of cash or property by the Limited Partnership to the Partners, with

respect to the partnership interests held, shall be made according to the same percentages as set forth in Section 5.1 above, in such amounts and at such times as shall be determined by the General Partners in their absolute discretion.

6. Fiscal Matters:

6.1 Books of Account: Limited Partnership books, in which shall be entered fully and accurately each transaction of the Limited Partnership, shall be maintained by the General Partners at the office of the Limited Partnership in accordance with the Partnership Act. Each Limited Partner shall upon reasonable request and at all reasonable times during ordinary business hours have the right to inspect and copy, at their expense, all such books and records and any other books and records of the Limited Partnership. In addition, the Limited Partnership shall maintain at its offices the following records: (a) a current list of the full name and last known business or residence address of each Partner (which address shall be a street address); (b) a copy of the Certificate and Agreement of Limited Partnership and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any certificate or amendment thereto has been executed pursuant to the Partnership Act; (c) copies of the Limited Partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years; and (d) copies of the Limited Partnership's financial statements for the three most recent years. The books shall be closed and balanced at the end of each accounting year, and, if deemed necessary by the General Partner, shall be audited for each accounting year by a Certified Public Accountant or a firm of Certified Public Accountants. Adequate reserves may be established, if needed, for annual accounting and legal fees, real estate taxes, insurance, and any other item for which reserves should be established, upon advice of accountants.

6.2 Financial Statements: Annual financial statements shall be prepared and furnished to the Limited Partners within 120 days after the close of the taxable year of the Limited Partnership, and the Limited Partnership shall bear the cost of the preparation of such financial statements.

6.3 Annual Accounts: The business of the Limited Partnership shall be conducted on a calendar year basis, ending on the 31st day of December, and on that date a general accounting shall be taken of the assets and liabilities of the Limited Partnership, and of all other dealings and transactions of the same during the then preceding year.

6.4 Bank Accounts: All funds of the Limited Partnership shall be deposited in its name in such bank account or account as may be designated by the General Partners. Checks shall

be drawn upon said account or accounts only for the purposes of the venture and shall be signed by the General Partners.

7. Salaries, Drawings, Interest on Capital Contributions, and Other Forms of Fees:

Except as otherwise herein provided, no Partner shall receive any salary or drawings for services rendered on behalf of the Limited Partnership. In no event shall any Partner receive any interest on such Partner's contribution to the capital of the Limited Partnership.

8. Status of Limited Partnership:

8.1 Liability: The liability of any Limited Partner is limited by such Limited Partner's Capital Contribution (including any obligations to make capital contributions), and a Limited Partner shall not be bound by, or be personally liable for, any expenses, liabilities or obligations of the Limited Partnership, provided, however, that such capital contributions of a Limited Partner shall be subject to the risks of the business of the Limited Partnership and subject to the claims of the creditors of the Limited Partnership. In addition, (i) if any portion of a Partner's capital contribution to the Limited Partnership is returned to him in accordance with the terms of this Limited Partnership Agreement, such Partner will be liable to the Limited Partnership for a period of one year thereafter for the amount of the capital contribution returned to such Partner, but only to the extent that such returned capital is necessary to discharge the Limited Partnership's liabilities to creditors who extended credit to the Limited Partnership during the period such Partner's contribution was held by the Limited Partnership; and (ii) if any portion of a Partner's capital contribution to the Limited Partnership is returned to him in violation of the terms of this Agreement, such Partner will be liable to the Limited Partnership for six (6) years thereafter for the amount of the capital contribution wrongfully returned to such Partner. Nothing shall remove, diminish or affect the limitation of the liability of a Limited Partner as set forth herein. The Limited Partnership's creditors shall have no right to look to and are hereby notified that they may not look to the personal estate of any Limited Partner hereof for satisfaction of a Limited Partnership debt.

8.2 Status of Partnership Interests: No Limited Partner shall have the right to withdraw the capital contribution made by such Limited Partner to the Limited Partnership, except as a result of the dissolution and winding up of the Limited Partnership, or as otherwise provided by this Agreement or provided by law. No Limited Partner shall have the right to bring an action for sale for division or partition against the Limited Partnership or against any Partner. No Limited Partner shall have the right to demand or receive property other than cash in return for such

Limited Partner's contribution, either as to the return of contributions of capital or as to profits, losses or distributions.

8.3 Business of the Limited Partnership: A Limited Partner shall not take part in the conduct, management or control of the business of the Limited Partnership and shall have no right or authority to act for or bind the Limited Partnership in any manner whatsoever. Except as may be otherwise provided herein, a Limited Partner shall not have the right to vote on any matter concerning the management and affairs of the Limited Partnership.

9. Loans by Partners to the Limited Partnership: If any of the Partners shall make an advance to the Limited Partnership of money under a loan, the principal and interest under any such loan shall be fully paid before any distribution of funds is made to the Partner under the provisions of this Agreement. Should any of the Partners lend the Limited Partner funds under this provision, such Partner shall be deemed a general creditor of the Limited Partnership and not a Partner for the limited purpose of receiving the interest and principal on any such loan.

10. Management of the Limited Partnership, Powers and Duties of the General Partner:

10.1 The affairs of the Limited Partnership shall be managed and conducted by the General Partners in accordance with the applicable laws of the State of Alabama and subject to the terms and provisions of this Agreement. Except as otherwise provided in this Agreement, the General Partners shall have the exclusive right to manage the affairs of the Limited Partnership and handle all matters arising in connection therewith, and the Limited Partner shall not have the right to vote on any matters concerning the management and affairs of the Limited Partnership.

10.2 In addition to the other rights and powers which the General Partners may possess under law or by virtue of this Agreement, the General Partners shall have all specific rights and powers required or appropriate to its management of the Limited Partnership business, which shall include, but not be limited to, the following rights and powers on behalf of the Limited Partnership, subject, however, in all events to the specific limitations set forth in this Agreement, including but not limited to, the limitations of Section 10.3 hereof:

(a) to acquire, hold, sell, exchange and otherwise dispose of any property, interest therein, or appurtenance thereto, as well as personal or mixed property connected therewith, and other mixed or personal property, including the purchase, maintenance, exchange, trade or sale of such property, at such price or amount, for cash, securities or other property, and upon terms as he shall deem, in his absolute discretion, to be in the best interest of the Limited Partnership;

(b) to borrow money on the general credit of the Limited Partnership for use in the Limited Partnership business and, if security is required therefore, to mortgage or subject to any other security device, all or any portion of the property of the Limited Partnership, to obtain replacements of any mortgage, security agreement or other security device, and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any mortgage, security agreement or other security device, all of the foregoing at such terms and at such amounts as it deems to be in the best interest of the Limited Partnership;

(c) to acquire or enter into any contract of insurance which the General Partners deem necessary and proper for the protection of the Limited Partnership, for the conservation of its assets, or for any purpose convenient or beneficial to the Limited Partnership;

(d) to employ, engage or contact with persons in the operation and management of the Limited Partnership business, including, but not limited to, supervisory managing agents, building management agents, leasing agents, insurance brokers, marketing specialists, loan brokers, accountants and attorneys, on such terms and for such compensation as the General Partners shall determine;

(e) to execute, acknowledge, record and deliver any and all instruments to effectuate the foregoing on behalf of the Limited Partnership;

(f) to construct such improvements on the real estate of the Limited Partnership as the General Partners may deem to be in the best interests of the Limited Partnership and to make such arrangements for the construction, financing and sale of such improvements as may, in the judgment of the General Partners, be in the best interests of the Limited Partnership;

(g) to pay any and all expenses incurred in the organization of the Limited Partnership and the sale of interests to the Limited Partner.

(h) Pursuant to Section 6221, et. seq. of the Internal Revenue Code of 1986, as amended, Jack Fiorella, III is hereby designated as the Tax Matters Partner of the Limited Partnership.

10.3 The General Partners shall have all of the rights and powers and be subject to all of the restrictions and liabilities of partners in a partnership without limited partners, except as such rights and powers are restricted pursuant to this Agreement, and, in particular, the General Partners has no authority to:

(a) do any act in contravention of this Limited Partnership Agreement;

(b) do any act which would make it impossible to carry on the ordinary business of the Limited Partnership;

(c) confess a judgment against the Limited Partnership;

(d) possess Limited Partnership property or assign the rights of the Limited Partnership in specific Limited Partnership property for other than Limited Partnership purposes;

(e) admit a person as a General Partner except as otherwise provided in this Agreement;

(f) admit a person as a Limited Partner except as otherwise provided in this Agreement;

(g) continue the business with the Limited Partnership property after the retirement, death, incompetency, withdrawal, removal, adjudication of bankruptcy or insolvency, dissolution or other cessation to exist of the last remaining General Partner.

(h) any person doing business with or otherwise dealing in any transaction whatsoever with the General Partners acting as such shall be entitled to rely fully on their power and authority to bind the Limited Partnership in that business or transaction. The General Partners shall have no liability to the Limited Partnership or to the Limited Partner for any mistakes or errors in judgment or for any act or omission believed by it to be in good faith to be within the scope of authority conferred upon them by omissions involving intentional wrongdoing as General Partners. The Limited Partnership shall indemnify and save harmless the General Partners, their agents and employees against and from any loss, liability or damage incurred as a result of any act or omission with respect to which they are protected under any provision of this agreement.

10.4 All matters and actions hereunder requiring the authorization or approval of the General Partners shall require the authorization or approval of both of the General Partners.

11. Transfer of a Limited Partner's Interest:

11.1 Except as otherwise agree upon and except as may be precluded by the laws of any applicable state and of the United States, a Limited Partner shall have the right to sell, assign, convey or exchange (collectively hereinafter referred to in this Section 12 as "Assignment") the whole or any portion of such Limited Partner's interest in the Limited Partnership by a written

assignment, the terms of which are not in contravention of any of the provisions of this Limited Partnership Agreement, which Assignment has been fully executed by the assignor and assignee, and received by the General Partners and recorded on the books of the Limited Partnership; provided, however, any such Assignment shall have the prior written approval of the General Partners and such approval shall be at the sole and absolute discretion of such General Partners, and the Limited Partnership shall obtain the opinion of counsel that such assignments will not:

(a) contravene the applicable provisions of laws, rules and regulations of the federal and state securities commissions; or

(b) result in a termination of the Limited Partnership or jeopardize the tax treatment of any material tax item.

11.2 The "effective date" of an Assignment of such interest as used in this section of the Agreement shall be that date set forth on the written instrument of Assignment. An assignor Limited Partner shall cease to be a Limited Partner of the Limited Partnership upon the effective date of the Assignment of such interest, and the assignee shall not become a Limited Partner until the requirements of Section 13 hereof are satisfied. An Assignment by any Limited Partner does not release the assignor from his liability to the Limited Partnership.

11.3 Anything herein to the contrary notwithstanding, both the Limited Partnership and the General Partners shall be entitled to treat the assignor of such interest as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made in good faith to said assignor until such time as the written assignment has been received by and recorded on the books of the Limited Partnership.

11.4 An assignee of an interest in the Limited Partnership shall be entitled to receive distributions of cash or other property from the Limited Partnership attributable to such interest acquired by reason of such Assignment from and after the effective date of the Assignment of such interest to said assignee except as provided in subsection 11.3 above. The net profits, losses and distributions attributable to such interest acquired by reason of such Assignment shall be divided between and allocated to the assignor and assignee of such interest as of the effective date of the Assignment of such interest and shall be allocated pro rata from the effective date of such Assignment.

11.5 Upon the transfer of any interest in the Limited Partnership, the General Partners may elect to adjust the basis of the Limited Partnership assets pursuant to Section 754 of the Internal Revenue Code of 1986, as amended.

11.6 The death or incompetency of a Limited Partner shall not dissolve or terminate the Limited Partnership. In the event of such death or incompetency, the legal representatives of the deceased or incompetent Limited Partner shall become a substitute Limited Partner in the Limited Partnership and shall have all the rights and powers and be subject to all the restrictions and liabilities of the deceased or incompetent Limited Partner. The estate of the deceased or incompetent Limited Partner shall be liable for all of such Limited Partner's liabilities and obligations to the Limited Partnership as a Limited Partner.

12. Substituted Limited Partners: Subject to applicable regulations, no assignee of the whole or any portion of any interest in the Limited Partnership shall have the right to become a substituted Limited Partner in place of his assignor unless all of the following conditions are satisfied:

12.1 The assignor and assignee shall have executed and acknowledged a written instrument of assignment, together with such other instruments as the General Partners may deem necessary or desirable to effect the admission of the assignee as a Limited Partner, including, but not limited to, the proper execution and filing of an amendment to this Certificate and Agreement of Limited Partnership evidencing the assignee's consent and agreement to the terms set forth herein.

12.2 Such instrument of assignment provided for herein shall have been delivered to and received by the General Partners.

12.3 The written consent of the General Partners approving the assignee as a Limited Partner shall be obtained.

12.4 A transfer fee has been paid to the Limited Partnership which is sufficient to cover all reasonable expenses connected with which assignment and admission.

12.5 The Certificate of Participation evidencing a Limited Partner's interest in the Limited Partnership shall be endorsed by the assignors Limited Partner to the assignee Limited Partner and delivered to the assignee Limited Partner, or endorsed and delivered to the Limited Partnership for cancellation and the issuance of a new Certificate of Limited Partnership to the assignee Limited Partner.

POWER OF ATTORNEY

(a) Except as otherwise provided by law, the Limited Partner hereby irrevocably constitutes and appoints the General Partners as his, her, or its true and lawful attorney, in his, her, or its name, place, and stead, to make, execute, consent to, swear to, acknowledge, record and file all instruments and to take any and all other action as the General Partners may deem necessary or desirable to fully carry out the provisions of this Agreement in accordance with its terms.

(b) It is expressly understood and intended by each Limited Partner that the grant of the foregoing power of attorney is coupled with an interest and shall be irrevocable.

(c) The foregoing power of attorney shall survive the death of any Limited Partner who shall have died during the term hereof. The foregoing power of attorney may be exercised by the General Partners for each Partner individually or as attorney in fact for all of them together.

(d) The foregoing power of attorney shall survive the delivery of an assignment by a Limited Partner of the whole or any portion of such Partner's interest.

(e) The foregoing power of attorney shall in no way cause the grantor of such power of attorney or any other Partner other than the General Partners to be liable in any manner for the acts or omissions of the General Partners.

13. Other Ventures: The General Partners and the Limited Partners (collectively the "Partners") may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, and development of real property; neither the Limited Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom.

14. Notices: Any notices or document required or desired to be given to the General Partners or the Limited Partner or to the Limited Partnership shall be in writing and shall be deemed to be given (a) if to the Limited Partnership, when deposited in the United States mail, first class, postage prepaid, addressed to the Limited Partnership in care of the General Partners at the address of the Limited Partnership's office, and (b) if to the Partners, when delivered personally to those Partners, or their personal representative or successors in interest, or deposited in the United States mail, first class,

postage prepaid, addressed to the Partners (or their personal representatives or their successors in interest) at the address shown for such Partner in Section 4 hereof.

15. Applicable Law: This Certificate and Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Alabama.

16. Entire Agreement: This writing constitutes the entire Agreement of the parties and supersedes any prior understandings or agreements among the parties with respect to the subject matter. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this Agreement, except those fully expressed herein. No changes, alterations, modifications, additions or qualifications to the terms of this Agreement shall be made or be binding unless made in writing and signed by each of the then Partners.

17. Successors in Interests: Except as otherwise provided herein, all provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective heirs, executors, administrators, personal representative, successors and assigns of any of the parties to this Agreement.

18. Litigation: The General Partners shall prosecute and define such actions at law or in equity as may be necessary to enforce or protect the interests of the Limited Partnership. The General Partners shall respond to any final decree, judgment or decision of any court, board or authority having jurisdiction in the premises. The General Partners shall satisfy any such judgment, decree or decision, first out of any insurance proceeds available therefor, next out of the assets of the Limited Partnership, and finally, out of the assets of the General Partners.

19. Amendments: This Agreement shall not be modified, altered, changed or amended except in writing signed by all of the Partners.


20. Reproduced Copies: The typed copy or ribbon copy of this instrument was used to electrostatically reproduce the copies of this instrument which are being executed and signed by the parties. It is agreed and stipulated by all of the parties to this instrument that all of the electrostatic copies, which are executed and signed by all of the parties hereto, are deemed and declared to be primary evidence of this said instrument and each executed and signed copy thereof shall be treated for all purposes as a duplicate original of this said instrument.

21. Counterparts: This Certificate and Agreement of Limited Partnership to be executed in connection herewith may be


executed in any number of counterparts and all of such counterparts shall for all purposes constitute one agreement or certificate, binding on the parties hereto, notwithstanding that all parties are not signatories to the same counterpart, and further, the pages of the counterparts on which appear the signatures of the parties hereto may be detached from the respective counterparts of the agreement or certificate and attached all to one counterpart which shall represent the one final agreement or certificate.

IN WITNESS WHEREOF, the parties hereto affix their hands and seals on this the day and year first above written.

GENERAL PARTNERS




Jack Fiorella, III



Paul J. Spina, III
JK. 85

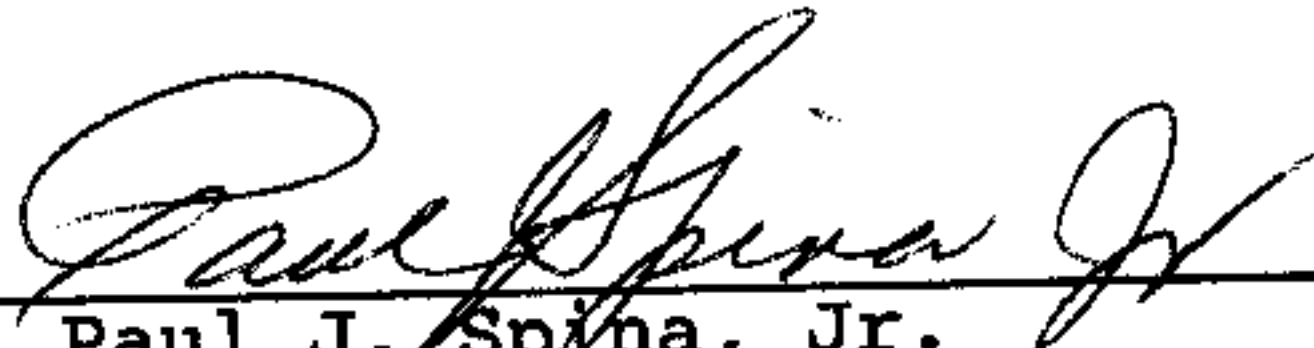
LIMITED PARTNERS

FIGRELLA FAMILY PARTNERSHIP, LTD.

By 

Jack Fiorella, III
Its General Partner

BUCK, LTD.

By 

Paul J. Spina, Jr.
Its General Partner

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