

**PARTNERSHIP AGREEMENT OF  
THE GROVE, AN ALABAMA GENERAL PARTNERSHIP**

THIS PARTNERSHIP AGREEMENT is made and entered into as of the 1/14 day of May, 1994, by and between Dogwood Properties, Inc. and Tanglewood Corporation (hereinafter together referred to as "Partners" and separately as "Partner").

**W I T N E S S E T H:**

WHEREAS, the Partners desire to form a partnership under the Alabama Partnership Act, Ala. Code §§ 10-8-1 et seq. (1975), for the purpose of acquiring and holding real estate and developing the same; and

WHEREAS, the Partners desire to enter into this Partnership Agreement to reflect their entire agreement and understanding with respect to the general partnership that is evidenced by this instrument.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and undertakings of the Partners, the Partners do hereby agree as follows:

1. Name and Place of Business. The name of the Partnership shall be THE GROVE (hereinafter referred to as the "Partnership"). The principal place of business and offices of the Partnership shall be located at 1109 Townhouse Road, Helena, Alabama 35080, or at such place as the Partners may from time to time designate.
2. Purpose. The purpose and business of the Partnership shall be to buy, sell, mortgage, encumber, develop, manage and own real estate within and without the State of Alabama, either directly or indirectly through other entities in which the Partnership is a participant.
3. Term. The Partnership shall commence on the date first above written and continue until terminated as herein provided.

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4. Capital Contributions.

(a) The names and addresses of the Partners, their respective initial Capital Contributions and their Partnership Interests as of the date of this Agreement are as follows:

| <u>NAME</u>              | <u>ADDRESS</u>                          | <u>CAPITAL CONTRIBUTION</u>        | <u>PARTNERSHIP INTEREST</u> |
|--------------------------|---|------------------------------------|-----------------------------|
| Dogwood Properties, Inc. | 276 Snow Drive<br>Birmingham, AL 35209  | 1/2 Interest in<br>Belzer Property | 50 %                        |
| Tanglewood Corporation   | 1109 Townhouse Road<br>Helena, AL 35080 | 1/2 Interest in<br>Belzer Property | 50 %                        |

(b) The Partners shall periodically be required to make additional contributions to the capital of the Partnership in such amounts and in such manner as the Partners having a majority in interest (as provided in paragraph 6 hereof) shall deem necessary and consistent with the purposes of the Partnership. Such additional capital contributions may be in the form of cash, real or personal property, or contract rights or then intangible property. Each Partner shall be required to contribute its pro rata share of the dollar amount of such additional contributions in accordance with the percentages set forth in subparagraph 5(a) below.

(c) The Partnership may from time to time meet its capital requirements through the use of borrowed capital from lenders other than the Partners in such amounts and on such terms as the Partners having a majority in interest shall deem necessary and consistent with the purposes of the Partnership. The borrowed capital may be in the form of loans or advances to the Partnership, or to the Partners for the use and benefit of the Partnership. If required by the lender, both Partners shall be jointly and severally liable. It is understood and agreed by the Partners that the liability of the Partners on any of the above-described

indebtedness or obligations shall, as between themselves, be in accordance with the percentages for the sharing of profits and losses as set forth in sub-paragraph 5(a) below. Payment of any such indebtedness by the Partnership shall be deemed to be a capital contribution by the Partners in the proportionate share set forth in subparagraph 5(a) below and to the extent the proportionate share of each principal payment is not allocated to the capital account ("Capital Account") of the Partners under the provisions of paragraph 5(a) below.

(d) Any additional contribution to the capital of the Partnership by a Partner without the approval of a majority in interest of the Partners as provided in paragraph 6 hereof, or a contribution to capital of the Partnership by a Partner in excess of its proportionate share, shall be treated as a loan to the Partnership and such Partner shall be entitled to the repayment of funds so contributed by the Partnership at prevailing interest rates.

(e) In the event that a Partner shall fail to contribute its pro rata share to the capital of the Partnership, either by refusal to pay its pro rata share of required additional contributions to the capital of the Partnership or refusal to execute documents in connection with a loan or advance to the Partnership, with such failure continuing for a period of thirty (30) days after written demand by any of the other Partners, then such other Partner, at its election, may on behalf of the Partnership:

(i) withdraw from the Capital Account of such defaulting Partner all or any portion of its pro rata share of the total amount of the required capital contribution and apply the funds so withdrawn to the working capital of the Partnership or to the repayment of any liability of the Partnership or to the repayment of any liability of the Partnership to the

nondefaulting Partner(s) resulting from the defaulting Partner's refusal to make its pro rata share of the required capital contribution to the Partnership;

(ii) treat the amount of such required advance from the defaulting Partner as a sum of money owed the Partnership by the defaulting Partner, due immediately, together with interest at the prevailing interest rate, and may file suit on behalf of the Partnership to collect the same, in which case no offsets owed that defaulting Partner shall be permitted to reduce the amount of money otherwise owing to the Partnership by the defaulting Partner; or

(iii) require the defaulting Partner to sell and assign enough of its Partnership interest so as to supply the funds necessary to pay such required capital contribution by giving written notice to the defaulting Partner, stating in such notice the amount of such interest in the Partnership to be transferred, the purchase price for such interest, and the person to whom such interest is to be transferred (the Partnership, any or all of the nondefaulting Partners, or such other person the nondefaulting Partner may elect). Within five (5) days after delivery of said notice as herein provided, the defaulting Partner shall sell and assign its Partnership interest to the person(s) described in the notice on the terms and conditions stated therein. The purchase price of the Partnership interest of the defaulting Partner shall be the fair market value of such interest as determined by the nondefaulting Partner in its sole discretion; provided that if such Partnership interest is determined to have no readily ascertainable fair market value, then notwithstanding anything above to the contrary, the defaulting Partner shall assign its entire interest to the Partnership and the Partnership shall relieve the defaulting Partner



of any subsequent obligation under the provisions of this Partnership Agreement, with the defaulting Partner thereafter having no interest in the Partnership.

(f) An individual Capital Account shall be maintained in the name of each Partner. The Capital Account shall reflect the capital interest of each Partner as defined below and shall be maintained in accordance with federal income tax accounting principles. Contributions actually paid to the capital of the Partnership (including "deemed" contributions under subparagraph 4(c) above) shall be credited respectively to each Partner's Capital Account. Profits and losses of the Partnership, as defined in paragraph 5(a), shall be credited or debited to the individual Capital Accounts of the Partners as soon as practicable after the close of each fiscal year. Except as otherwise provided in paragraph 11 of this Agreement, withdrawals from the Capital Accounts by the Partners shall be made in accordance with the provisions of subparagraph 5(b) hereof and such withdrawals of cash or property from the Capital Accounts of the Partners shall be distributed to the Partners in the proportionate shares set forth in subparagraph 5(a) hereof. The amount of each Partner's distribution from the capital of the Partnership shall be debited respectively to its Capital Account.

5. Profits and Losses.

(a) The profits and losses of the Partnership shall be determined each year in accordance with the accounting methods followed by the Partnership for federal income tax purposes. The determination of each Partner's distributive share of any Partnership item of income, gain, loss, deduction, credit or allowance for any accounting period of the Partnership shall be made in accordance with the following allocations:

(i) Profits shall be allocated to the Partners in the following proportions:

50% to Dogwood Properties, Inc.

50% to Tanglewood Corporation

(ii) Losses shall be allocated to the Partners in the following proportions:

50% to Dogwood Properties, Inc.

50% to Tanglewood Corporation

and the amount so allocated to each Partner shall be debited to its individual Capital Account.

(b) The Partnership shall make distributions in cash or other property to the Partners in such amounts as the Partners having a majority in interest as provided in paragraph 6 hereof shall deem advisable for the operation of the Partnership, and at such time or times as they shall deem advisable. Distributions to the Partners shall be made in the proportion of the respective Partner's interest in the profits and losses of the Partnership as of the time of distribution, except that if a Partner is indebted to the Partnership under the provisions of subparagraph 4(e) hereof, the Partnership shall have the right to offset such indebtedness by applying all or a portion of the distribution of such Partner to liquidate such indebtedness. Distributions shall be deemed to be a withdrawal from the Capital Account of the Partners and an amount equal to each Partner's distribution from the Partnership shall be debited respectively to its Capital Account.

(c) Neither Partner shall receive a salary.

6. Management. Each Partner shall participate in the management of the Partnership business. Decisions involving the business of the Partnership shall be made by the unanimous vote of the Partners.

7. Sale or Assignment of Interest in the Partnership. Except as provided in subparagraph 4(e)(iii) above or paragraph 8 below, no additional persons shall be admitted to the Partnership, and no Partner shall assign, pledge, or sell its interest or share in the Partnership or in its income, profits, capital assets or property, without the unanimous consent of the Partners.

8. Partners' Buy-Sell Agreement.

(a) Subject to the terms and conditions set forth below, a Partner (the "Offeror") may at any time offer to buy all of the interest of another Partner in the Partnership by delivering written notice to such other Partner (the "Offeree") stating the type and value, in dollars, of the consideration and terms of payment at which the Offeror would be willing to buy an undivided 100% interest in the Partnership (the "Offer").

(b) Within sixty (60) days after receipt of the Offer, the Offeree shall have the option to either:

(i) sell to the Offeror all of the interest of the Offeree in the Partnership at a purchase price equal to the 100% price referred to above multiplied by the sum of the percentage interest of such Offeree in the Partnership on the terms and conditions stated in the Offer; or, in the alternative,

(ii) purchase the entire interest of the Offeror in the Partnership at an aggregate purchase price equal to 100% of the price referred to above multiplied by the

percentage interest of the Offeror in the Partnership on the terms and conditions described in the Offer.

(c) The closing for the purchase and sale of the interest in the Partnership of the Offeror or the Offeree, as the case may be, shall take place at such time and place as may mutually agreed upon by the parties; provided that the closing date shall occur on or before one hundred twenty (120) days after the date of delivery of the Offer. Effective on the closing date, the purchasing Partner shall assume the selling Partner's share of any indebtedness incurred by the Partnership, or jointly incurred by the Partners, in connection with the Partnership business.

(d) If any Offeree fails to respond to the Offer within the said sixty (60) day period or to tender the documents or cash required at the closing, the Offer will be deemed to have been accepted, and the Offeror shall be obligated to purchase, and the Offeree shall be obligated to sell, all of the interest of the Offeree in the Partnership at the purchase price and on the terms and conditions stated in the Offer. If the Offer is accepted pursuant to this subparagraph (d), the closing shall occur not later than fourteen (14) days from the date of expiration of the aforesaid sixty (60) day period.

9. Involuntary Withdrawal of a Partner.

(a) A Partner shall be deemed to have involuntarily withdrawn from the Partnership in the event of the occurrence of any of the following with respect to such Partner:

- (i) the dissolution and termination of a Partner, which is a corporation or partnership; or
- (ii) the bankruptcy or insolvency of a Partner.



(b) Upon the withdrawal of a Partner as provided in subparagraph 9(a) above, the remaining Partners shall have the following options:

(i) To continue the business of the Partnership with the withdrawing Partner or its successor in interest as if no such withdrawal shall have occurred and the withdrawing Partner or its successors and assigns shall have the same rights and obligations in the Partnership for the remainder of the Partnership term as such withdrawing Partner had immediately preceding the date of withdrawal; or

(ii) To terminate the Partnership in accordance with paragraph 10 hereof.

The remaining Partner(s) shall exercise the aforesaid option by giving written notice of its election to the withdrawing Partner, or its successors or assigns, within sixty (60) days from the date of withdrawal; provided that if the previously mentioned notice is not given to the withdrawing Partner, or its successors and assigns, on or before the expiration of the said sixty (60) day period, the business of the Partnership shall be continued with the withdrawing Partner as provided in subparagraph 9(b)(i) above.

(c) For purposes of this paragraph 9, the "date of withdrawal" shall be whichever of the following dates is applicable:

(i) the date of termination of a Partner; or

(ii) the first day of the month in which the withdrawing Partner is determined bankrupt or insolvent.

10. Termination.

(a) Unless terminated by operation of the provisions of paragraph 8 hereof, the Partnership shall continue until terminated in accordance with paragraph 9 hereof or by unanimous agreement of the Partners. The date of such termination shall be the date of withdrawal of a Partner as described in subparagraph 9(c) hereof or the date on which the Partners unanimously agree to terminate the Partnership, whichever is applicable. Upon such termination, the assets and liabilities of the Partnership shall be allocated and divided between the Partners or their successors, as provided by law, with each Partner's share of such assets and liabilities to be distributed in kind forthwith. On such distribution, each Partner, or its successor, shall receive title to, and the right to use and enjoy, its share of the Partnership assets, and each Partner, or its successors, shall assume its share of the Partnership liabilities. (The term "Partner" shall also be deemed to include the successors in interest of a Partner.)

(b) The assets and liabilities of the Partnership shall be allocated and divided between the Partners as the Partners, or their successors, may unanimously agree; provided, that if the Partners do not reach a unanimous agreement on such allocation and division within ninety (90) days after the date of termination, the assets and liabilities of the Partnership shall be allocated and divided as provided in subparagraph (c) or (d) below.

(c) In the event that the Partners are unable to agree as to the allocation and division of Partnership assets and liabilities as above provided, the allocation and division of the assets and liabilities of the Partnership between the Partners shall be in accordance with the plan of dissolution ("Plan of Dissolution") then in effect. The Plan of Dissolution, if any, shall reflect the allocation and division of the assets and liabilities of the Partnership as may be agreed

upon by the Partners from time to time. The Plan of Dissolution shall be signed by each of the then Partners and state the term for which the Plan of Dissolution shall be effective. In allocating and dividing the assets and liabilities of the Partnership, the Plan of Dissolution shall specifically name such assets and liabilities, and assets and liabilities not specifically named in the Plan of Dissolution shall be allocated and divided between the Partners as provided in subparagraph (b) above, or, in the absence of an agreement of the Partners, as provided in subparagraph (d) below. A Plan of Dissolution shall not be effective unless it is signed by all of the Partners at the time of execution and the stated term has not expired.

(d) In the event there is no agreement of the Partners under subparagraph (b) above and there is no Plan of Dissolution as provided in subparagraph (c) above, each of the Partners shall appoint a qualified appraiser for the purpose of having such appraiser jointly prepare a plan for the allocation and division of the assets and liabilities of the Partnership between the Partners. In making the allocations and division of the assets and liabilities of the Partnership, such appraiser shall have the power and authority to select the assets and liabilities of the Partnership which shall be allocated to each of the Partners under the following principles:

(i) The assets and liabilities of the Partnership shall be allocated and divided between the Partners in such a manner that the value of a Partner's share of such assets and liabilities equals, as nearly as possible, an amount equal to the product of total value of the assets and liabilities of the Partnership multiplied by the percentage interest of such Partner for the sharing of profits and losses of the Partnership under subparagraph 5(a) above.

(ii) The assets and liabilities shall be allocated and divided in whole to each of the Partners to the extent that such allocation and division is feasible.

(iii) The proportionate share of the assets and liabilities of each Partner shall be determined on the basis of fair market value of such assets and liabilities on the date of termination.

(iv) No allowance shall be made for good will, trade name, or other intangible assets.

(e) Each Partner shall use its best efforts to obtain from the Partnership creditors releases from liability on Partnership indebtedness for a Partner not specifically assuming such indebtedness on termination of the Partnership. A Partner who specifically assumes a Partnership indebtedness on termination of the Partnership shall indemnify and hold harmless the Partners not assuming such indebtedness for any liability incurred and paid by such Partner thereon.

(f) The Partners shall execute and deliver on behalf of the Partnership from time to time all such deeds, assignments, bills of sale and other documents or instruments of conveyance, transfer or assignment, and further assurances as shall be necessary and appropriate to vest in or confirm in a Partner title to, and the right to use and enjoy, the property constituting its proportionate share of the Partnership assets.

11. Books of Account, Annual Accounting.

(a) Proper and complete books of account shall be kept at all times and shall be open to inspection by any Partner or its accredited representative at any reasonable time during business hours. The Partnership selection for accounting methods for federal income tax purposes shall be determined by the Partners, and the Partnership's return of income for each year shall be approved by the Partners prior to the filing with the taxing authorities.



(b) The Partnership's fiscal year for accounting and tax purposes shall commence on January 1 and conclude on December 31 of each year. The fiscal year shall not be changed unless agreed to by all Partners.

(c) There will not be a requirement by the Partnership that an independent certified public accountant make a report on the books of account. The Partners will use the statements and records of the leasing/management agent for income tax, economic decisions, and other purposes. The report shall not be audited by an independent CPA unless a Partner shall request an audit by a CPA; provided, that the party requesting such audit shall be responsible for the payment to the accountants for its fees and expenses incurred in connection with such audit. The report shall furnish information needed for income tax purposes and a statement of Partnership profit and loss and it shall be delivered to all Partners within a reasonable time from the close of the Partnership's fiscal year.

(d) The funds of the Partnership shall be deposited in a Partnership account or account in the bank or banks approved by the Partners.

12. Relationship of Partners. It is specifically understood and agreed by and between the Partners that this Partnership extends only to, and is limited to, the rights and obligations under this Agreement, and nothing herein shall be construed to constitute any Partner, the general agent of another Partner, nor in any manner to limit the Partners from carrying on their respective business or activity other than the activities included within the scope of the Partnership. Nothing herein shall deprive or otherwise affect the right of any Partner to own, invest in, manage, or operate property or to conduct business activities which are competitive with the business of the Partnership.

13. Partnership Liabilities. The Partners shall jointly and severally respond to any final decree, judgment or decision of any court, board or authority, having jurisdiction, decree or decision, first out of any insurance proceeds available therefor, next from the assets of the Partnership, and finally out of the assets of the Partners in accordance with the provisions of subparagraph 4(b) of this Agreement.

14. Amendment. This Agreement is the entire agreement between the parties with respect to the subject matter hereof and no alteration, modification or interpretation hereto shall be binding unless in writing and signed by all the Partners.

15. Notice. Written notice is required to effectively exercise the options established herein. All written notices required or which may be given pursuant to the Agreement shall be sufficient if in writing and delivered to the Partner entitled thereto by personal service or by depositing the notice in the United States mail, postage prepaid, addressed as follows:

If to Dogwood Properties, Inc.:

276 Snow Drive - Birmingham, Alabama 35209

If to Tanglewood Corporation:

1109 Townhouse Road - Helena, Alabama 35080

or to such other address as the party addressed shall have previously designated by notice to the other parties given in accordance with this paragraph; except that notices to an executor, administrator, representative, successor or assign at the address shall be deemed to have been delivered when deposited in the mail as specified in this paragraph; provided, that a notice or demand not given as above, if it is in writing, shall be deemed to have been given if and when actually received by the Partner to whom it is required or permitted to be given.

16. Miscellaneous.

(a) Real or personal property acquired by the Partnership shall be owned by the Partnership and all deeds or other instruments conveying such property to the Partnership shall reflect the Partnership as the owner of such property.

(b) The majority in ownership of the Partners are authorized to interpret and construe this Agreement if at the time questions should be raised as to the meaning, effect, interpretation or construction thereof.

(c) Covenants and agreements herein contained shall inure to the benefit, and be binding upon, the parties hereto and their respective successors and assigns. Any persons succeeding to the interest of the Partners shall succeed to all of such Partner's right, interest, and obligations hereunder subject to and with the benefit of all of the terms and conditions of this Agreement. Whenever the term "Partners" is used in this Agreement, it shall also be deemed to include the successor(s) in interest to such Partner.

(d) If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of said provision to such person or circumstance, other than those to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

(e) The Partnership Agreement and all matters relating to the parties as Partners of the Partnership or the business of the Partnership not covered by this Agreement shall be governed by the laws of the State of Alabama.

(f) Whenever the singular number is used in the Partnership Agreement, and when required by context, the same shall include the plural, and pronouns shall include the masculine, feminine and neuter genders and the word "person" shall include corporation, firm, partnership or other form of association.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the 1<sup>st</sup> day of May, 1994.

**DOGWOOD PROPERTIES, INC. '**

By:

John D. Baird

As its:

President

ATTEST:

As its: \_\_\_\_\_

**TANGLEWOOD CORPORATION**

By:

Jack D. Harris

As its:

President

ATTEST:

Rebecca B. Harris

As its:

Secretary



STATE OF ALABAMA                   )  
COUNTY OF SHELBY                )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John D. Baird, whose name as President of Dogwood Properties, Inc., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that, being informed the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 11<sup>th</sup> day of May, 1994.

Anne P. Marshall  
Notary Public

My commission expires: 3/13/95

STATE OF ALABAMA                   )  
COUNTY OF SHELBY                )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jack D. Harris, whose name as President of Tanglewood Corporation, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that, being informed the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 11<sup>th</sup> day of May, 1994.

Anne P. Marshall  
Notary Public

My commission expires: 3/13/95

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