

This instrument was prepared by:

Bruce A. Rawls  
Burr & Forman  
420 North 20th Street, Suite 3100  
Birmingham, Alabama 35203

STATE OF ALABAMA     )  
                                      )  
SHELBY COUNTY         )

03/28/1995-07811  
09:15 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
030 MCD 81.00

**CERTIFICATE OF LIMITED PARTNERSHIP AND LIMITED  
PARTNERSHIP AGREEMENT OF BORDER PROPERTIES, LTD.**

**THIS CERTIFICATE OF LIMITED PARTNERSHIP AND LIMITED  
PARTNERSHIP AGREEMENT OF BORDER PROPERTIES, LTD.** (sometimes referred to  
as the "Agreement" or the "Partnership Agreement") dated this 23rd day of March, 1995  
by and among **KAROLINA ROASTERS, INC.**, an Alabama corporation, as general partner,  
and **RICHARD D. REESE, DONALD M. GHAREEB, DORIAN REESE, KIMBERLY  
REESE and ELIZABETH G. GHAREEB**, as limited partners.

**RECITALS:**

The general partner and the limited partners named above desire to form a limited  
partnership pursuant to the Alabama Limited Partnership Act of 1983, as amended, under the  
name of **BORDER PROPERTIES, LTD.** on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the agreements contained  
herein and for other valuable consideration, the receipt and sufficiency of which is hereby  
acknowledged, the parties hereby agree as follows:

**ARTICLE I.**

**CERTAIN DEFINITIONS**

**Section 1.1** "Affiliate" applies to any Person, (i) if an individual, a spouse or lineal  
descendant; (ii) if a partnership, any general partner, of such Person; (iii) any corporation of  
which such Person is a stockholder; and (iv) any other Person directly or indirectly controlling,  
controlled by, or under common control with, such Person.

**Section 1.2** "Assignee" means a Person who has acquired all or a portion of General  
Partner Units or Limited Partner Units by effective assignment. An Assignee has only the rights  
granted under Section 702 of the Partnership Act [*Code of Alabama* § 10-9A-121 (1975)]. An  
Assignee does not have the right to become a Partner except as provided in this Agreement or  
with the consent of all Partners.

**Section 1.3** "Limited Partner" means each Person listed in Section 2.6 below and any other Person(s) to whom Limited Partner Units are issued by the Partnership or assigned and who at the time of reference thereto has been admitted as an additional Limited Partner or as a substitute Limited Partner.

**Section 1.4** "Code" means the Internal Revenue Code of 1986, as amended.

**Section 1.5** "Default Interest Rate" means the rate per annum equal to the *Wall Street Journal* prime rate as quoted in the Money Rates section of the *Wall Street Journal*, which is also the base rate on corporate loans at large United States Money Center commercial banks as its prime commercial or similar reference interest rate, with adjustments to be made on the same date as any change in such rate.

**Section 1.6** "Distributable Cash Flow" means for any fiscal year of the Partnership or portion thereof the amount by which the cash received from all sources by the Partnership during such period, including, without limitation, Capital Contributions, proceeds from loans from Partners or others, and funds released from Reserves, exceeds the sum of (i) expenditures that are paid during such period in connection with the organization of the Partnership and the acquisition and financing of the property; (ii) the ordinary and necessary costs and expenses that are paid during such period in connection with the operation of the business of the Partnership, including without limitation, capital improvements or replacements which are necessary for the maintenance or repair of the property; (iii) capital expenditures paid during such period relating to acquisition of new properties and assets, or replacements, additions or improvements to the Partnership's property and assets; (iv) payments which are due and payable during such period on any indebtedness or lease of the Partnership; and (iv) the Reserves funded during such period. In determining Distributable Cash Flow there shall be no deduction for depreciation or other noncash expenses.

**Section 1.7** "Distributions" means distributions of cash or other property made by the Partnership to the Partners.

**Section 1.8** "General Partner" means, initially, the Person listed in Section 2.5 below and any other Person(s) to whom General Partner Units are issued by the Partnership or assigned and who at the time of reference has been admitted to the Partnership as a "general partner" (as that term is defined in the Partnership Act).

**Section 1.9** "Majority in Interest" means, with respect to all Partners, those Partners to whom 51% or more of the Partnership's Profits and Losses are allocated in Article VI, and with respect to either the General Partner or the Limited Partners, it means those Partners having 51% or more of the General Partner Units or Limited Partner Units, respectively.

**Section 1.10** "Partner" means any General Partner or Limited Partner.

**Section 1.11** "Partnership" means Border Properties, Ltd., an Alabama limited partnership.

**Section 1.12** "Partnership Act" means the Alabama Limited Partnership Act of 1983 [*Code of Alabama* §§ 10-9A-1, *et seq.* (1975)], as amended from time to time.

**Section 1.13** "Person" means any individual, partnership, corporation, trust or other entity.

**Section 1.14** "Permitted Transferee" means (i) a spouse of a Partner, other than a spouse who is legally separated under a decree of separate maintenance, or a spouse who is a party to a pending divorce proceeding; (ii) a descendant of a partner, including descendants by adoption if the adoption was a court adoption of a minor under five (5) years of age; (iii) any parent or sibling of a Partner, or a descendant of a sibling of a Partner including those by adoption as defined in (ii) above; and (v) a trust created for the benefit of anyone listed in (i) through (iv) above. A Permitted Transferee, upon receiving a transfer of Limited Partner Units shall be an Assignee. A Permitted Transferee who has become an Assignee shall have the right to become a Substitute Limited Partner as provided in Article XI.

**Section 1.15** "Profit" or "Loss" means, for each fiscal year of the Partnership, the Partnership's taxable income or taxable loss for such fiscal year, as determined for federal income tax purposes with such adjustments as the General Partner shall determine appropriate for facilitating the purposes and intent of this Agreement:

**Section 1.16** "Reserves" means all Partnership reserves established by the General Partner, in its sole discretion, for Partnership purposes including, but not limited to acquisition of Partnership properties and assets, debt service, lease payments, accrued or deferred expenses, and other working capital needs, contingent liabilities, taxes and purchases.

**Section 1.17** "Substitute Limited Partners" means Persons who have acquired Limited Partner Units from Limited Partners and who have been substituted for such Limited Partners in accordance with this Agreement.

**Section 1.18** "Treasury Regulations" means the income tax regulations promulgated under the Code, as the same may be amended or supplemented by succeeding, temporary or final regulations.

**Section 1.19** "Unit" means the partnership interests in the Partnership, which are divided between General Partner Units and Limited Partner Units.



## ARTICLE II.

### THE PARTNERSHIP

#### Section 2.1. Formation; Duration.

The Partnership will be formed upon the filing of a certificate of limited partnership with the Office of the Judge of Probate of Shelby County, Alabama. The General Partner shall take such further actions deemed necessary or proper to permit the Partnership to conduct business as a limited partnership in the State of Alabama. The term of the Partnership shall continue from the date of its formation until December 31, 2030, unless sooner dissolved or terminated in accordance with law or this Agreement.

#### Section 2.2. Name.

(a) The business of the Partnership shall be conducted under the name and style of **BORDER PROPERTIES, LTD.**, or such other trade name or names as the General Partner may from time to time designate.

(b) The General Partner, in its discretion, may change the Partnership name at any time or from time to time, and may cause the Partnership to do business at the same time under one or more fictitious names. However, the surname of any Limited Partner shall not appear in the Partnership name as a fictitious name used by the Partnership.

#### Section 2.3. Purpose and Powers of the Partnership.

The general character of the Partnership's business shall be to invest in, acquire, hold, maintain, operate, own, lease, improve, sell, exchange, develop and otherwise use interests in real and personal property for profit, or to invest in one or more partnerships which acquire, hold, maintain, operate, own, lease, improve, sell, exchange, develop and otherwise use interests in real and personal property for profit, and to engage in any and all activities related or incidental thereto. Such real and personal property interests may be in fee as well as leasehold, and equitable (including land contracts), as well as legal, interests.

#### Section 2.4. Principal Place of Business; Registered Office; Agent for Service of Process.

(a) The principal office, place of business and mailing address of the Partnership at which all records of the Partnership shall be maintained shall be located at the office of the General Partner, 500 Chase Park South, Suite 108, Birmingham, Alabama 35243, or at such other location as the General Partner may determine from time to time.

(b) The Partnership shall maintain its registered office as required by Section 104 of the Partnership Act at 500 Chase Park South, Suite 108, Birmingham, Alabama 35243,

or at such other address in Alabama as may be designated from time to time by the General Partner.

(c) The Partnership's resident agent for service of process as required by Section 104 of the Partnership Act shall be Karolina Roasters, Inc., an Alabama corporation, at 500 Chase Park South, Suite 108, Birmingham, Alabama 35244. The General Partner may, from time to time, designate other persons to be the agent for service of process by naming such person in a certificate of amendment to the Partnership's certificate of limited partnership filed with the Office of the Judge of Probate of Shelby County, Alabama.

**Section 2.5. General Partner.**

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

Karolina Roasters, Inc.  
500 Chase Park South, Suite 108  
Birmingham, AL 35243

**Section 2.6. Limited Partners.** The name and address of each Limited Partner is as follows:

Richard D. Reese  
5200 Sandpiper Lane  
Birmingham, AL 35244

Donald M. Ghareeb  
3745 North Woodridge Road  
Birmingham, AL 35223

Dorian Reese  
922 Irving Road  
Birmingham, AL 35209

Kimberly Reese  
1300 20th Street South, Apt. 304  
Birmingham, AL 35205

Elizabeth G. Ghareeb  
3745 North Woodridge Road  
Birmingham, AL 35223

## ARTICLE III.

### CAPITAL REQUIREMENTS

#### Section 3.1. Capital Contributions.

(a) The General Partner has made a capital contribution to the Partnership in cash as indicated below, and in exchange for which it holds the General Partner Units listed below:

<u>General Partner</u>	<u>Aggregate Capital Contribution</u>	<u>General Partner Units</u>
Karolina Roasters, Inc.	\$ 20.00	20

(b) The Limited Partners have made capital contributions to the Partnership as indicated below for each, and in exchange for which they hold the Limited Partner Units listed below:

<u>Limited Partner</u>	<u>Aggregate Capital Contribution</u>	<u>Limited Partner Units</u>
Richard D. Reese	\$ 40.00	40
Donald M. Ghareeb	\$ 40.00	40
Dorian Reese	\$ 200.00	200
Kimberly Reese	\$ 200.00	200
Elizabeth Ghareeb	\$ 400.00	400

(c) The General Partner, or in the event there is more than one General Partner then with the prior written consent of at least a Majority in Interest of the General Partners, may (but is not required to) at any time and from time to time admit additional Persons as Limited Partners, upon each such Person's making or agreeing to make such contributions of cash or other property to the capital of the Partnership, at such time and on such terms and conditions, and in return for such interest in the Partnership, as shall be determined by the General Partner(s). The terms of admission of such additional Limited Partners, if proposed and approved as aforesaid, shall be set forth in an amendment to this Partnership Agreement, to which all Partners hereby consent if such terms are proposed and approved as aforesaid.

#### Section 3.2. Withdrawal; Loans.

(a) No Partner shall be entitled to withdraw from the Partnership or become entitled to a return of any portion of its Capital Account or to receive any Distributions from the Partnership except as specifically provided herein. No loan or advance made to the Partnership

by any Partner shall constitute a Capital Contribution unless made in accordance with this Agreement.

(b) In the event that funds are at any time or from time to time required for any Partnership purpose, a Partner, with the consent of the General Partner, may make a loan to the Partnership in the amount required for such purpose. Any such loan made by a Partner to the Partnership shall be an unsecured obligation of the Partnership, shall be subordinate to any senior debt of the Partnership, shall bear interest at the Default Interest Rate. Such loans shall be repayable from Distributable Cash Flow in accordance with Section 7.1 of this Agreement.

### **Section 3.3. Maintenance of Capital Accounts.**

For financial and tax accounting purposes, a separate capital account (a "Capital Account") shall be maintained for each Partner for using accounting principles approved and determined by the General Partner to be in keeping with generally accepted financial accounting principles, for financial accounting purposes, and established principles of tax accounting which, in the reasonable judgment of the General Partner, are in keeping the allocation of the Partnership's Profits and Losses, as provided in Article VI, below, and the manner in which Distributions and winding up of the Partnership is to be effected among the Partners as provided in Articles VII and XII, below.

## **ARTICLE IV.**

### **GENERAL PARTNER**

#### **Section 4.1. Management by General Partner.**

(a) The General Partner shall be responsible for the management and operation of the business and affairs of the Partnership.

(b) Each General Partner is authorized to act in the name of and on behalf of the Partnership in transacting the routine and ordinary business and affairs of the Partnership. In the event there shall be more than one General Partner, a General Partner, with the consent of a Majority in Interest of the General Partners, may be designated the Managing General Partner of the Partnership, until such designation is revoked or such Person ceases to serve as such for any reason. The Managing General Partner may, if so designated by the General Partners, be solely authorized to act or exercise some or all of the rights and powers of the General Partner. Notwithstanding the foregoing, the Managing General Partner shall have no authority to act in the name of or on behalf of the Partnership on any matter as to which the unanimous consent or a Majority in Interest of the General Partners is required under this Agreement or the Act.



**Section 4.2. Rights, Powers and Duties of the General Partners.**

In addition to any other rights and powers it may possess, and except as otherwise limited by this Agreement, the General Partner shall have all specific rights and powers required or appropriate to its management of the Partnership business which, by way of illustration, but not by way of limitation, shall include the right and power to:

(i) engage in any kind of activity and perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of, the purposes of the Partnership, as may be lawfully carried on or performed by a limited partnership formed under the laws of the State of Alabama;

(ii) acquire by purchase, lease or otherwise any property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Partnership, and to operate, manage, improve, maintain, sell, lease, and service property; to form corporations or acquire shares of stock in corporations to carry out any of the purposes of the Partnership and to acquire title to property in the name of such corporation(s) and to guarantee or otherwise secure the obligations of such corporation(s) in the furtherance of Partnership purposes;

(iii) to lend money to others (including Partners or Affiliates of the General Partner), to invest and reinvest its funds and to take and hold real and personal property as security for the repayment of funds so loaned or invested, as determined in its absolute discretion to be in the best interests of the Partnership;

(iv) borrow money from itself or others (including Affiliates of the General Partner) and, if security is required therefor, to mortgage or subject to any other security device all or any portion of any Partnership property, to obtain replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify, and consolidate such indebtedness as determined in its absolute discretion to be in the best interests of the Partnership;

(v) acquire and to enter into any contract of liability and other insurance that the General Partner deems necessary and proper for the protection of the Partners and Partnership for the conservation of its property or for any purpose convenient or beneficial to the Partnership;

(vi) employ from time to time Persons, firms, or corporations for the operation and management of the Partnership business, including, but not limited to, attorneys, accountants, advisors, financial consultants, and loan brokers on such terms and for such compensation as the General Partner may determine. The General Partner is hereby specifically authorized in its sole and absolute discretion to engage its Affiliates for services as described in Section 4.4 and is authorized to enter into contracts on behalf



of the Partnership with the General Partner or its Affiliates so long as the prices charged and terms thereof are fair, reasonable, and competitive;

(vii) pay and to be reimbursed by the Partnership for expenses and fees incurred by the General Partner and its Affiliates in connection with the organization and formation of the Partnership, the admission and substitution of Limited Partners, the preparation of this Agreement and amendments hereto, the holding of meetings of Limited Partners, and the obtaining of action by Limited Partners without a meeting;

(viii) compromise, arbitrate, or otherwise adjust claims in favor of or against the Partnership, and to commence or defend litigation with respect to the Partnership or any assets of the Partnership as the General Partner may deem advisable, all or any of the above matters being at the expense of the Partnership;

(ix) make any and all elections for federal, state, and local tax purposes, including, without limitation, any election, if permitted by applicable law, to adjust the basis of Partnership property pursuant to Code Sections 754, 734(b), and 743(b) or comparable provisions of state or local law in connection with transfers of Units and Partnership Distributions;

(x) determine Distributable Cash Flow and to make Distributions to the Partners;

(xi) amend this Agreement to reflect the admission of Limited Partners and Substitute Limited Partners as herein authorized;

(xii) execute any and all agreements, contracts, documents, certifications, and instruments necessary or convenient in connection with the exercise of the General Partner's rights and powers, including, but not limited to, any contract or other instrument purporting to convey or encumber any or all of the Partnership property;

(xiii) take such actions (including, but not limited to, amending this Agreement) as the General Partner determines are advisable or necessary, based upon advice of counsel to the Partnership, and will not result in any material adverse effect on the economic position of a Majority in Interest of the Limited Partners to (A) preserve the tax status of the Partnership as a partnership for federal income tax purposes, (B) to conform this Agreement to (I) the Partnership Act for the purpose of preserving the tax status of the Partnership as a partnership for federal income tax purposes, or (II) provisions of the Code or the Treasury Regulations relating to taxation of partners and partnerships, to modify this Agreement in a manner designed to ameliorate such difference;

(xiv) to establish, maintain, deposit into, sign checks or otherwise draw upon Partnership bank accounts and execute or accept any instrument or agreement

incident to the Partnership business and in furtherance of its purposes; without limiting the foregoing, the General Partner may cause cash funds of the Partnership to be deposited in bank accounts selected by the General Partner; and

(xv) perform any and all other acts or activities customary or incidental to the Partnership purposes and the foregoing powers.

#### **Section 4.3. Other Ventures and Opportunities.**

(a) The General Partner, or the Affiliates of the General Partner, or any shareholder, officer, director, or employee of a corporate General Partner, or other Person holding a legal or beneficial interest in an entity that is a General Partner or an Affiliate of a General Partner, 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, operation, management, and syndication of businesses the same or similar to that of the Partnership. Neither the 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. Neither a General Partner nor any Affiliate of a General Partner shall be obligated to present any particular opportunity to the Partnership, even if such opportunity is of a character which, if presented to the Partnership, could be taken by the Partnership, and a General Partner and any Affiliate of a General Partner shall have the right to take for its own account (individually or as a trustee, partner, or fiduciary) or to recommend to others any such particular opportunity.

(b) The General Partner or an Affiliate of the General Partner may acquire, and own as a Limited Partner, the interests of the Limited Partners.

(c) The General Partner, as such, shall devote only such time to the Partnership as it, in its sole discretion, shall deem to be necessary to manage and supervise the Partnership business.

(d) Any Person dealing with the Partnership or the General Partner may rely upon a certificate signed by the General Partner, thereunto duly authorized, as to:

- (i) the identity of the General Partner and any Limited Partner;
- (ii) the existence or nonexistence of any fact or facts which constitute a condition precedent to the acts by the General Partner or in any other manner relating to the affairs of the Partnership;
- (iii) the Persons who are authorized to execute and deliver any instrument or document of the Partnership; and
- (iv) any act or failure to act by the Partnership or as to any other matter whatsoever involving the Partnership or any Partner.

(f) Anything to the contrary set forth herein notwithstanding, without an amendment to this Agreement, which amendment shall require the unanimous consent of all of the Limited Partners, the General Partner shall not have authority on behalf of the Partnership to:

(i) do any act in contravention of this Agreement;

(ii) convert assets of the Partnership to its own use or possess or assign any rights in specific assets of the Partnership for other than a purpose of the Partnership;

(iii) admit a Person as a Limited Partner or as a General Partner except as provided in this Agreement;

(iv) perform any act that would subject any Limited Partner to liability as a general partner in any jurisdiction; or

(v) confess a judgment against the Partnership.

**Section 4.4. Compensation to the General Partner and Transactions with the General Partner and Its Affiliates.**

(a) A General Partner or its Affiliates will be entitled to a reasonable annual compensation for services rendered to the Partnership, reasonable compensation to be measured by the time required in the administration of the Partnership, the value of property under the General Partner's administration, and the responsibilities assumed in the discharge of the duties of office and shall comply with Section 704(e) of the Code, if applicable. This compensation shall be a guaranteed payment for federal income tax purposes. If the cash flow of the Partnership is insufficient to pay the compensation, the unpaid portion of the compensation may be deferred and bear interest at a reasonable rate of interest. Payments to a General Partner for services rendered to the Partnership will not be a return on invested capital, but will be paid as compensation for services rendered.

(b) The General Partner and its Affiliates will be entitled to reimbursement for all reasonable and necessary business expenses incurred in the administration of the Partnership.

**Section 4.5. Authority to Enter into Certain Agreements.**

The General Partner is authorized to cause the Partnership to obtain financing (the "Loan") from Greenwich Capital Financial Products, Inc., a Delaware corporation, its successors and assigns (the "Lender"), in such principal amount and upon such terms as are provided in that certain letter of commitment from the Lender dated March 23, 1995, with respect to the Lender's "1994-B Loan Program," which Loan shall be on such further terms as



may be deemed appropriate and approved by the General Partner, such approval to be conclusively evidenced by the execution of the General Partner of any promissory note, mortgage, loan agreement or other document or documents which provide for such Loan; and such Loan and the Partnership's other indebtedness, liabilities and obligations to Lender are hereby authorized to be secured by a lien upon and security interest in the Partnership's assets, whether now existing or hereafter acquired or arising, as the General Partner may deem appropriate. In furtherance of the foregoing, the General Partner is authorized and directed to do the following in the name of and on behalf of the Partnership, namely, (a) to borrow from Lender such sums as may be made available to the Partnership pursuant to the Loan, directly or indirectly, at any time and from time to time, (b) to execute and deliver such loan agreements, security agreements, mortgages, powers of attorney, financing statements, notes, guaranties, indemnities and other agreements, instruments, financial reports, certifications and other documents, and all renewals, extensions, supplements and modifications thereof, as Lender shall require to establish and continue the Loan, in each case upon such terms as the General Partner may approve, such approval to be conclusively evidenced by the General Partner's execution thereof, and (c) to do all such other acts and things as General Partner may deem necessary or advisable to establish and continue the Loan and to carry out the intent of the transactions contemplated herein, with all such acts and things previously done to establish and continue the Loan for the Partnership being hereby ratified and approved in all respects.

## **ARTICLE V.**

### **LIMITED PARTNERS**

#### **Section 5.1. Management.**

During the continuance of this Partnership, the Limited Partners shall take no part in the conduct or control of the Partnership business, shall have no right to vote on any matter concerning the management and affairs of the Partnership, shall have no authority or power to act for or to bind the Partnership, shall be liable only to make Capital Contributions in accordance with the provisions hereof, shall not be required to lend any funds to the Partnership, and shall not be liable for the debts, liabilities, contracts or any other obligations of the Partnership. The Limited Partners shall have no rights other than those provided for herein or those granted by the Partnership Act that are not inconsistent with any provision hereof.

#### **Section 5.2. Rights of Limited Partners.**

The Limited Partners shall have the following rights, powers, privileges, duties and liabilities:

(i) The Limited Partners shall be entitled to such reports as are set forth in Article VIII of this Agreement and shall have the right to obtain from the General Partner upon reasonable demand other information regarding the affairs of the Partnership as is just and reasonable.

(ii) The Limited Partners shall receive from the Partnership any Distributions provided for in this Partnership Agreement. Except as herein provided, no Limited Partner has any priority over the other Limited Partners with respect to any Distributions.

(iii) Except as provided herein, the Limited Partners shall not have the right to demand the return of their Capital Contributions; to demand and receive property other than cash for their Capital Contributions; or to bring an action for partition against the Partnership.

(iv) The Limited Partners or their duly authorized representatives shall be entitled, at reasonable times and at the office designated in Section 2.4, to inspect and copy, at such Limited Partner's expense, the records required to be maintained by the General Partner pursuant to this Agreement and the Partnership Act.

(v) The Limited Partners shall have the right to consider and vote upon certain actions proposed to be taken by the General Partners in accordance with the provisions of this Agreement.

### **Section 5.3. Liability.**

The liability of the Limited Partners is limited to the capital contributions required in Article III, above (the "Capital Contributions"), and the Limited Partners shall not be bound by, or be personally liable for, any expenses, liabilities or obligations of the Partnership; provided, however, that Capital Contributions of the Limited Partners shall be subject to the risk of the business of the Partnership and be subject to the claims of creditors of the Partnership. In addition, (i) if any portion of the Limited Partner's Capital Contribution to the Partnership is returned to him in accordance with the terms of this Agreement, such Limited Partner will be liable to the Partnership for a period of one year thereafter for the amount of the Capital Contribution returned to such Limited Partner, but only to the extent that such return of Capital Contribution is necessary to discharge the Partnership's liabilities to creditors who extended credit to the Partnership during the period such Limited Partner's Capital Contribution was held by the Partnership; and (ii) if any portion of the Limited Partner's Capital Contribution to the Partnership is returned to him in violation of the terms of this Agreement, such Limited Partner will be liable to the Partnership for a period of six years thereafter for the amount of the Capital Contribution wrongfully returned to such Limited Partner. Partnership creditors shall have no right to look to and are hereby notified that they may not look to the personal estate of the Limited Partners for satisfaction of a Partnership debt.

## **ARTICLE VI.**

### **ALLOCATIONS**

#### **Section 6.1. Allocation of Profits and Losses.**

(a) Profits shall be allocated among the Partners as follows: 98% to the Limited Partners and 2% to the General Partner.

(b) Losses shall be allocated among the Partners as follows: 98% to the Limited Partners and 2% to the General Partner.

#### **Section 6.2. Allocations Among Partners.**

The Profits and Losses allocated to the General Partner shall be further allocated among the Person(s) comprising the General Partner in the same proportion that such Person(s) hold the General Partner Units. The Profits and Losses allocated to the Limited Partners shall be further allocated among such Limited Partners in the same proportion that such Person(s) hold the Limited Partner Units.

#### **Section 6.3. Other Allocations.**

The General Partner shall from time to time adopt such other rules, procedures and accounting principles regarding allocations of tax and non-tax items as considered necessary or appropriate in an attempt to implement and comply with the Treasury Regulations promulgated under Section 704 of the Code to the extent such allocations are required under the Code or are, in the General Partner's good faith judgment, considered reasonable in order to effect the way in which the Partners divide Partnership Distributions (including Distributions upon winding up the Partnership). The Partners acknowledge and agree that the allocations set forth in Section 6.1 may not be consistent with the requirement of the said Treasury Regulations and, accordingly, the General Partner is authorized and directed to make such other allocations among the Partners of tax basis accounting items in any reasonable manner as the General Partner may deem reasonably necessary and appropriate to accomplish the foregoing and to otherwise effectuate the purposes of this Agreement. The General Partner shall compile and provide upon request by any Partner a summary of all such rules, procedures and accounting principles adopted hereunder.



## **ARTICLE VII.**

### **DISTRIBUTIONS**

#### **Section 7.1. Distributions of Distributable Cash Flow.**

(a) The General Partner may make distributions of Distributable Cash Flow to the Partners at such times and in such amounts as the General Partner deems to be in the best interest of the Partnership. Distributions shall be made to Partners as of a record date established by the General Partner in its discretion.

(b) Distributable Cash Flow shall be distributed in the following order of priority:

(i) First, to repay accrued interest on any loans made by the Partners to the Partnership, and if funds are insufficient therefor, then to such Partners proportionately in the ratio that the amount of accrued interest on each Partner's loan bears to the amount of all such accrued interest;

(ii) Second, to repay the outstanding principal on any loans made by the Partners to the Partnership, and if funds are insufficient therefor, then to such Partners proportionately in the ratio that the outstanding balance of each Partner's loan bears to the outstanding principal balance of all such loans.

(iii) The balance to the Partners in the following proportions: 98% to the Limited Partners and 2% to the General Partner.

(c) No Partner has a right to distributions of capital except upon dissolution or as provided in this Agreement.

(d) All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment or distribution to the Partnership or the Partners shall be treated as amounts distributed to the Partners pursuant to this Section 7.1 for all purposes under this Agreement. The General Partner may allocate any such amounts among the Partners in any manner that is in accordance with applicable law.

#### **Section 7.2. Distributions With Respect to Units.**

Distributions shall be allocated among the persons comprising the General Partner and among the Limited Partners in the same proportion that each such Person holds the General Partner Units and the Limited Partner Units, respectively.

## **ARTICLE VIII.**

### **BOOKS AND RECORDS, ACCOUNTING, TAX ELECTIONS, APPRAISALS, ETC.**

#### **Section 8.1. Tax Status and Reports; Tax Elections.**

(a) The General Partner, and if there is more than one General Partner, then one of such persons as shall be appointed by a Majority in Interest of the General Partners, and in the absence of such an appointment, then the person holding the largest combined number of General and Limited Partner Units, shall be the Tax Matters Partner ("TMP") for federal income tax purposes. Each Partner hereby approves of such designation and agrees to execute, certify acknowledge, deliver, swear to, file, and record at the appropriate public offices such documents as may be deemed necessary or appropriate to evidence such approval. To the extent and in the manner provided by applicable Code sections and Treasury Regulations, the TMP shall furnish the name, address, profits interest, and taxpayer identification number of each Partner (or assignee) to the Internal Revenue Service. The taking of any action and the incurring of any expense by the TMP in connection with any proceeding, except to the extent required by law, is a matter in the sole discretion of the TMP and the provisions on limitations of liability of the General Partner and indemnification set forth in Article VIII shall be fully applicable to the TMP in its capacity as such.

(b) The General Partner shall, in its sole discretion, determine whether to make any available election pursuant to the Code, including, but not limited to, the elections under Code Sections 108, 168, 709, 754 and 1017.

(c) In the event that the TMP is removed or resigns, as provided hereby, the Substitute General Partner, if any, shall serve as the TMP, provided in no event shall the TMP be a Limited Partner. The TMP may resign provided that a Substitute General Partner agrees to serve.

(d) The TMP shall have all the powers of a TMP under Code Section 6221 *et seq.*, and Treasury Regulations thereunder.

(e) The TMP shall be entitled to reimbursement from the Partnership for all reasonable costs and expenses incurred by him or it in complying with and carrying out his responsibilities as TMP, including the costs of bringing any petition and proceedings in the United States Tax Court or other courts of jurisdiction having jurisdiction over partnership tax matters.

#### **Section 8.2. Accounting.**

(a) The books of accounts of the Partnership shall be kept and maintained at all times at the place or places approved by the General Partner. The books of accounts shall be maintained on a cash or accrual basis as the General Partner determines. The books of account

shall be in accordance with generally accepted accounting principles or practices with respect to the basis of accounting so selected, and in accordance with generally accepted principles of tax accounting, consistently applied, and shall show all items of income and expense.

(b) Within ninety (90) days following the end of the fiscal year of the Partnership, the General Partner shall deliver to each Limited Partner unaudited statements of operations, cash flow and a balance sheet of the Partnership for the fiscal year just ended.

## **ARTICLE VIX.**

### **INDEMNIFICATION**

#### **Section 9.1. Indemnification.**

(a) The General Partner and its officers, directors, and employees (the "Indemnified Parties" or the "Indemnified Party") shall have no liability, responsibility, or accountability in damages or otherwise to any other Partner or to the Partnership for, and the Partnership agrees to indemnify and hold harmless the Indemnified Parties from and against, any and all claims, demands, liabilities, costs, damages, losses, judgments, expenses, and causes of action of any kind or nature whatsoever, including, but not limited to, actions by one or more Partners either in their own right or derivatively on behalf of the Partnership, by reason of any act performed or omitted to be performed by such Indemnified Party in connection with the business of the Partnership, including all such liabilities under federal and state securities laws (including the Securities Act of 1933, as amended) as permitted by law. Expenses (including attorneys' fees through all trials, appeals, and administrative proceedings) actually and reasonably incurred by any Indemnified Party in defending any action, suit, or proceeding instituted or threatened against such Indemnified Party shall be paid by the Partnership in advance of the final disposition of such action, suit, or proceeding upon a preliminary determination by the General Partner that such Indemnified Party will be entitled to indemnification pursuant hereto and upon receipt by the Partnership of a written undertaking by or on behalf of such Indemnified Party to repay such amounts unless it shall ultimately be determined that such Indemnified Party is entitled to be indemnified by the Partnership pursuant to this Section. Indemnification as provided for above shall continue as to the Indemnified Party after such Indemnified Party has ceased to be a General Partner or an officer, director, or employee of the General Partner. Except with regard to a partnership derivative suit, as a condition of the Indemnified Party's right to be indemnified hereunder, the Indemnified Party shall grant the Partnership the right to assume and control the defense or settlement of any claim made or threatened against the Indemnified Party for which indemnification is provided hereunder. Provided, however, that the Indemnified Party shall not be entitled to indemnification when the claim, demand, liability, cost, damage, or cause of action is based upon the gross negligence, willful malfeasance, fraud, or bad faith of the Indemnified Party and such Indemnified Party is unsuccessful in his defense.



(b) The General Partner is authorized to cause the Partnership to carry, at Partnership expense, such liability insurance as the General Partner deems necessary to implement this Section, but such insurance shall not relieve the Partnership or the General Partner of their obligations hereunder.

## **ARTICLE X.**

### **WITHDRAWAL OF A PARTNER**

#### **Section 10.1. When Withdrawal of a General Partner is Permitted.**

A General Partner may not voluntarily or involuntarily withdraw from the Partnership unless the withdrawal either complies with or is because of one of the following:

- (a) The withdrawal is approved by the unanimous consent of all Partners;
- (b) The withdrawing General Partner has assigned its entire interest in the Partnership and the assignee(s) thereof has, with the prior written consent of all Partners, become a substituted General Partner;
- (c) In the case of the General Partner who is a natural person, the death of such General Partner or the entry of a judgment by a court of competent jurisdiction adjudicating such General Partner to be incompetent to manage his personal estate;
- (d) In the case of a General Partner acting as General Partner by virtue of being a trustee of a trust, the termination of such trust (but not merely the substitution of a new trustee);
- (e) In the case of a General Partner that is a partnership, the dissolution and winding up of the affairs of such separate partnership;
- (f) In the case of a General Partner that is a corporation, the filing of articles of dissolution, or its equivalent for the corporation or the revocation of its charter;
- (g) In the case of a General Partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the Partnership;
- (h) The making of an assignment for the benefit of creditors; filing a voluntary petition in bankruptcy; the adjudication of the General Partner as a bankrupt or insolvent or becoming the subject of an order for relief under the bankruptcy laws; filing an answer or petition seeking for itself any reorganization, arrangement, or similar relief under any statute, law or regulation; the filing of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; or seeking,

consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or any substantial part of its property; or

(i) The failure, within one hundred twenty (120) days after commencement, to cause the dismissal of any proceeding to attach or charge his Partnership interest or seeking reorganization, arrangement, composition, readjustment, or liquidation, dissolution, or similar relief under any statute, law or regulation; or if within ninety (90) days after a court order attaching or charging its Partnership interest or appointing without its consent or acquiescence, a trustee, receiver or liquidator of such General Partner, the order or appointment is not vacated or stayed, or within ninety (90) days after the expiration of such stay, the order or appointment is not vacated.

#### **Section 10.2. Continuation of the Partnership Business.**

(a) In the event of the withdrawal of a General Partner (whether the withdrawal is permitted or in breach of this Agreement), the remaining General Partner(s), if any, and if none, the withdrawing General Partner, shall immediately send notice of such withdrawal to each Limited Partner. In such event, if every other General Partner so elects, the business of the Partnership may be continued for the balance of the term specified in Section 2.1 above, and unless the withdrawal of the General Partner is approved, the interest of the withdrawing General Partner shall be converted to that of a Limited Partner, and the withdrawing General Partner shall thereafter have the rights and obligations of a Limited Partner in the Limited Partnership with respect to its interest, provided that all allocations of Profits and Losses and Distributions shall be made as if the withdrawing General Partner had continued in its capacity as General Partner.

(b) In the event of the withdrawal of the sole General Partner, (i) the Limited Partners shall have the right, by agreement in writing, to continue the business of the Partnership with a new General Partner approved by the Limited Partners within 90 days from the date of withdrawal of the sole General Partner; (ii) the withdrawing General Partner shall use its best efforts to propose for admission, a substitute General Partner or Partners, such proposal to be subject to approval of the Limited Partners as herein provided, in their sole discretion, without limiting the right of the Limited Partners to propose and approve a different substitute General Partner or Partners; and (iii) the General Partner Units of the withdrawing General Partner shall be transferred to a substitute General Partner as provided below in this subparagraph. Each Limited Partner who is the same person as the withdrawing General Partner or controls, or is controlled by, or is under common control with, the withdrawing General Partner, hereby irrevocably agrees to elect in writing to continue the Partnership business if the other Limited Partners so elect and to approve in writing any substitute General Partner who may be approved in writing by the other Limited Partners. In the event the Limited Partners elect to continue the business of the Partnership and to have the interests of the withdrawing General Partner transferred to a substitute General Partner, the withdrawing General Partner hereby covenants and agrees to transfer to the substitute General Partner approved by the Limited Partners its General Partner Units. The withdrawing General Partner shall have no obligation to transfer its

General Partner Units to the newly designated General Partner unless and until it shall have received fair value for such interest and shall have been furnished a written agreement providing for the indemnification of the withdrawing General Partner by the Partnership and the newly designated General Partner for all liabilities incurred by the Partnership prior to the withdrawal of such General Partner.

**Section 10.3. Liability of Withdrawing General Partner.**

In the event that the General Partner withdraws from the Partnership in violation of this Agreement, such withdrawal shall not release such General Partner from any liability to the Partnership or any other Partner, and such withdrawal shall constitute and be deemed to be a breach of this Agreement, and the Partnership and Partners shall be entitled to recover from such General Partner any and all losses, liability, costs, expenses or damages of any nature whatsoever (including but not limited to attorney's fees and other costs of litigation) incurred or sustained by the Partnership or any other Partner or Partners as a result thereof. The Partnership may offset the damages against the amounts, if any, otherwise or thereafter distributable to such General Partner in any capacity or to anyone else claiming through or under such General Partner or regarding amounts relating to or arising from or through such General Partner's interest in the Partnership. A withdrawing General Partner, however, shall not incur any obligation or liability on account of the business of the Partnership or the activities of the General Partner conducted after its withdrawal.

**Section 10.4. Withdrawal of a Limited Partner.**

A Limited Partner may not withdraw from the Partnership prior to the expiration of the term of the Partnership as provided in Section 2.1, above, except as provided in Article XI, below, with respect to the transfer of such Limited Partners' Units and the admission of a Substitute Limited Partner with respect thereto.

**ARTICLE XI.**

**TRANSFERABILITY OF UNITS**

**Section 11.1. Restrictions on Transferability of the Units.**

(a) The ownership and transferability of the Units are substantially restricted. Neither record title nor beneficial ownership of the Units of any Partner may be transferred or encumbered except as set forth in this Agreement. This Partnership is formed by those who know and trust one another, who will have surrendered certain management rights (in exchange for limited liability in the case of a Limited Partner), or who will have assumed management responsibility and risk (in the case of a General Partner) based upon their relationship and trust. Capital is material to the business and investment objectives of the Partnership and its federal



tax status. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Partnership's capital and its financial ability to continue.

(b) Except as provided in Sections 11.2 and 11.3, neither record title nor beneficial ownership of a Unit may be assigned or otherwise transferred without the prior written consent of the General Partner, or in the event there is more than one General Partner, then the consent of a Majority in Interest of the General Partners ("Required Consent"). In addition, no Assignee of a Unit shall have the right to further assign any Unit except as provided in this Article. To be a valid assignment, in addition to meeting the other requirements of this Article, the assignment must be in writing, the terms of which are not in contravention of any of the provisions of the Agreement, and the assignment must be received by the Partnership and recorded on the books of the Partnership. Until the effective date of an assignment of a transferred Unit, both the Partnership and the Partners shall be entitled to treat the assignor of the transferred Unit as the absolute owner thereof in all respects. Upon the effective date of an assignment of transferred Units, the Partnership will not be required to recognize the interest of any transferee who has purportedly obtained a purported transferred Unit as the result of a transfer or assignment that is not authorized by this Agreement and the transfer and assignment shall be null and void for all purposes. If there is a doubt as to ownership of a Unit or who is entitled to Distributable Cash Flow or liquidating proceeds or other assets, the General Partner may accumulate Distributable Cash Flow or liquidation proceeds or other assets until the issue is resolved to the satisfaction of the General Partner.

#### **Section 11.2. Disclosures, Limitations, and Exceptions.**

The ownership and transfer or assignment of a Unit is further subject to the following disclosures, limitations and exceptions:

(a) **Federal Law Disclosure and Limitations.** The Units have not, nor will be, registered under federal or state securities laws. Units may not be offered for sale, sold, pledged, or otherwise transferred unless so registered, or unless an exemption from registration exists. The availability of any exemption from registration must be established by an opinion of counsel, whose opinion must be satisfactory to the General Partner.

(b) **Death or Incompetency of a Partner.** A Limited Partner (including a General Partner whose interest was converted to a Limited Partner as provided in Section 10.2, above) who is (1) an individual, or (2) the trustee of a trust with an individual beneficiary who has a limited or unlimited power of appointment at his or her death, may assign or transfer his or her Limited Partner interest to a Permitted Transferee without Required Consent. The assignment or transfer may be accomplished (i) pursuant to the properly probated last will and testament of a Partner; (ii) pursuant to the terms of a trust for a Permitted Transferee; (iii) pursuant to the exercise of a limited or unlimited power of appointment or beneficiary designation of any trust; or (iv) pursuant to a written and acknowledged assignment and designation of beneficiary delivered by the Partner to a General Partner prior to the death of the

Partner, effective as of his death or the death of the beneficiary. If there has been no prearranged transfer as provided above, the executor, administrator, guardian, conservator, or legal representative of a deceased or incompetent Limited Partner shall have the status of an Assignee and, in accordance with Section 705 of the Partnership Act, may exercise all the deceased or incompetent Limited Partner's rights and powers to settle the Limited Partner's rights and powers to settle the Limited Partner's estate or administer the Limited Partner's property, including the right of an Assignee to become a Limited Partner by obtaining Required Consent. However, the estate of a deceased or incompetent Limited Partner shall not have the right to become a substitute Limited Partner except as may be provided in this Article.

(c) **Lifetime Assignments by Limited Partner.** A Limited Partner who is an individual or the trustee of a trust with an individual beneficiary with a limited or unlimited right to make a disposition of all or any part of his or her interest in the trust during his or her lifetime, will have the right to make assignments or transfers of his or her Limited Partner Units, with or without consideration, to a Permitted Transferee without first obtaining Required Consent.

### **Section 11.3. Acquisition of Units Conveyed to Another Without Authority.**

If any Person acquires a Unit, or becomes an Assignee, as the result of an order of a court which the Partnership is required by law to recognize, or if a Partner's interest in the Partnership is subjected to a lawful "charging order," or if a Partner makes an unauthorized transfer or assignment of Unit(s) which the Partnership is required by law (and by order of a court) to recognize, the Partnership will have the unilateral option to acquire the Unit(s) of the transferee or Assignee, or any fraction or part thereof, upon the following terms and conditions:

(a) The Partnership will have the option to acquire the Unit(s) by giving written notice to the transferee or Assignee of its intent to purchase within ninety (90) days from the date it is finally determined that the Partnership is required to recognize the transfer or assignment.

(b) The valuation date for the determination of the purchase price of the interest will be the first day of the month following the month in which notice is delivered.

(c) Unless the Partnership and the transferee or Assignee agree otherwise, the purchase price for the interest, or any fraction to be acquired by the Partnership, shall be its fair market value as determined by a disinterested appraiser mutually selected by the Assignee and the Partnership. If the Assignee and the Partnership are unable to agree upon a disinterested appraiser, the Assignee and the Partnership shall each select a disinterested appraiser and if the disinterested appraisers selected are unable to agree as to the fair market value of the Unit(s), then the two disinterested appraisers shall select a third disinterested appraiser who shall determine the fair market value. The determination of fair market value as aforesaid shall be inclusive and binding on all parties. All costs of an appraiser mutually selected by the Assignee and the Partnership, or by the two disinterested appraisers shall be share equally by the Assignee



and the Partnership. All costs of individually selected appraisers shall be borne by the party selecting such appraiser.

(d) Closing of the sale will occur at the principal office of the Partnership at 10 o'clock a.m. on the first Tuesday of the month following the month in which the fair market value is determined.

(e) In order to reduce the burden upon the resources of the Partnership, the Partnership will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in fifteen (15) equal annual installments (or the remaining term of the Partnership if less than fifteen (15) years) with interest at the Default Interest Rate. The first installment of principal, with interest, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership will have the right to prepay all or any part of the purchase money obligation at any time without penalty.

(f) By Required Consent, other than the Partner whose interest is to be acquired, the General Partner may assign the Partnership's option to purchase to one or more of the remaining Partners and when done, any rights or obligations imposed upon the Partnership will instead become, by substitution, the rights and obligations of the Partners who are assignees.

(g) Neither the transferee nor Assignee of an unauthorized transfer or assignment or the Partner causing the transfer or assignment will have the right to vote on Partnership matters during the prescribed option period or, if the option to purchase is timely exercised, until the sale is closed.

**Section 11.4. Admission of Substitute Limited Partners.** Notwithstanding anything in this Article to the contrary, any Assignee of the Units of a Limited Partner permitted under the terms of this Agreement shall be admitted to the Partnership as a Substitute Limited Partner only upon the (a) furnishing to the General Partner of a written acceptance in a form satisfactory to the General Partner of all of the terms and conditions of this Agreement and such other documents and instruments as may be required to effect the admission of the Assignee as a Limited Partner; (b) obtaining the Required Consent, *even if the successor is a Permitted Transferee*; and (c) payment to the Partnership of a transfer fee sufficient to cover all reasonable expenses (including legal fees) connected with the assignment of the Units and admission of the Assignee as a Limited Partner. *The Required Consent that must be obtained as a condition to admitting an Assignee as a Substitute Limited Partner may be withheld or granted in the sole discretion of those constituting the Required Consent.* The Assignee shall be admitted to the Partnership as a substituted Limited Partner as of the effective date of the transfer.

**Section 11.5. Pledge or Encumbrance of Units.** No Partner may grant a security interest in or otherwise pledge, hypothecate or encumber his or her interest in this Partnership



or such Partner's distributions without Required Consent. It is understood that the Partners are under no obligation to give consent nor are they subject to liability for withholding consent.

## **ARTICLE XII.**

### **DISSOLUTION AND WINDING UP**

#### **Section 12.1. Dissolution.**

The Partnership shall dissolve upon the occurrence of any of the following:

- (a) Upon the expiration of the term of the Partnership; or
- (b) Upon the written consent of all Partners; or
- (c) Upon the occurrence of an event of withdrawal, as defined in Section 9.1, of the sole General Partner, and the failure of the Limited Partners to elect a successor within ninety (90) days of such event of withdrawal; or
- (d) Upon the bankruptcy or insolvency of the Partnership.

#### **Section 12.2. Winding Up.**

(a) Upon a dissolution of the Partnership, the General Partner shall take full account of the Partnership's liabilities and assets and such assets shall be liquidated as promptly as is consistent with obtaining the fair market value thereof and the proceeds therefrom shall be applied and distributed in the following order of priority:

- (i) To the payment and discharge of all of the Partnership's debts and liabilities to creditors, including debts and liabilities to creditors who are Partners;
- (ii) To the establishment of any necessary reserves deemed appropriate by the General Partner; and
- (iii) To the Partners in accordance with Article VII.

(b) Notwithstanding the foregoing, at the election of the General Partner and the Limited Partners, the General Partner may, upon the dissolution of the Partnership, distribute the Partnership's liabilities and assets consisting of promissory notes, other evidences of indebtedness and other securities (and not assets, tangible or intangible, used in the operation of the business of the Partnership) to the Partners in kind in lieu of liquidating the Partnership's

assets as provided in subsection (a) of this Section, provided that all such in kind distributions are made to the Partners in accordance with Article VII.

(c) If the Partnership is dissolved because of the withdrawal of the sole General Partner and the failure to reconstitute and continue the Partnership thereafter, the Limited Partners shall conduct the winding up of the Partnership's affairs.

(d) The Partnership's Certificate of Limited Partnership shall be cancelled in accordance with the requirements of law upon the dissolution and the completion of winding up the Partnership.

### **ARTICLE XIII.**

#### **POWER OF ATTORNEY**

##### **Section 13.1. Power of Attorney.**

(a) Each Limited Partner hereby irrevocably appoints and constitutes the General Partner, and in the event there is more than one General Partner, each of them, as his true and lawful attorney in his name, place, and stead to make, execute, swear to, acknowledge, deliver, and file:

(i) a Certificate of Limited Partnership as well as amendments thereto under the laws of the State of Alabama;

(ii) any other instrument that may be required to be filed by the Partnership under the laws of Alabama or by any governmental agency, or which the General Partner deems it advisable to file;

(iii) any documents that may be required to effect the continuation of the Partnership, the admission of an additional or substitute Limited Partner, the admission of a substitute General Partner, or the dissolution and termination of the Partnership, provided such continuation, admission, election, conversion, or dissolution and termination are in accordance with the terms of this Agreement;

(iv) all documents, certificates, or other instruments that may be required to effectuate the organization of any new limited partnership or the continuance of the Partnership business occasioned by the death, dissolution, withdrawal, or cessation to exist, removal, adjudication of incompetency, insanity, bankruptcy, or insolvency of the General Partner;

(v) all documents, certificates or other instruments which may be required to reflect amendments authorized or required under this Partnership Agreement; and

(vi) any document necessary or proper to carry out its powers and/or duties under this Agreement.

(b) The power of attorney hereby granted by each Limited Partner:

(i) is granted to each Person who from time to time shall be admitted as a General Partner of the Partnership, and may be exercised jointly or severally by such General Partner(s);

(ii) is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death of the Limited Partner;

(iii) may be exercised by the General Partner for each Limited Partner by a facsimile signature of the General Partner or by listing all of the Limited Partners executing any instrument with the signature of the General Partner acting as attorney-in-fact (a corporate General Partner may act through any of its corporate officers);

(iv) shall survive the delivery of an assignment by a Limited Partner of the whole or any portion of his interest in the Partnership; except that when the assignee thereof has been approved by the General Partner for admission to the Partnership as a substitute Limited Partner, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, swear to, or acknowledge and file any instrument necessary to effect such substitution; and

(v) shall not constitute a waiver of, or be used to avoid, the rights of the Limited Partners nor in any manner be inconsistent with the status of the Partnership.

## **ARTICLE XIV.**

### **AMENDMENT TO PARTNERSHIP AGREEMENT**

#### **Section 14.1. Amendment by General Partner.**

Except as provided in Section 14.2, below, the General Partner, or in the event there is more than one General Partner then a Majority In interest of the General Partners, shall have the right to amend this Partnership Agreement without the consent of any Limited Partners for any purpose, including without limitation (i) to admit a Person as a Limited Partner of the Partnership as authorized herein; (ii) to effect the substitution of an Assignee as a Limited Partner of the Partnership; (iii) to change the name of the Partnership; (iv) to change the name



or address of a Partner; or (v) to effect the withdrawal of the General Partner; (vi) in the opinion of the General Partner, there is an inconsistent, ambiguous, or erroneous provision in this Agreement provided the amendment does not adversely affect the rights of the Limited Partners under this Agreement; and (vii) in the opinion of counsel for the Partnership, it is necessary or appropriate to satisfy a requirement of the Code with respect to partnerships or of any federal or state securities laws or regulations, provided such amendments do not adversely affect the interests of the Limited Partners.

**Section 14.2. Amendment by Unanimous Consent of the Partners.**

Without the approval of all the Partners, no amendment may be made to this Agreement which shall: (i) change the Partnership to a general partnership or change the limited liabilities of the Limited Partners; (ii) modify the provisions relating to the amount or character of the Capital Contribution of any Partner or the obligation of a Partner to make any type of contributions to the capital of the Partnership; (iii) modify the provisions of the Agreement relating to the allocation for the sharing of Profits or Losses of the Partnership unless specifically authorized hereunder; (iv) change the manner in which Distributions are to be made to the Partners unless specifically authorized hereunder; or (v) to change the duration of the Partnership as stated in Section 2.1, above.

**ARTICLE XV.**

**ALTERNATIVE DISPUTE RESOLUTION ("ADR"); BINDING ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement, or any transaction hereunder shall be settled under the Commercial Arbitration Rules of the American Arbitration Association then in effect by three (3) arbitrators appointed in accordance with such rules. Judgment on the award entered by the panel may be entered in any court having jurisdiction thereof.

**ARTICLE XVI.**

**GENERAL**

**Section 16.1. Notices.**

(a) All notices, requests, consents and other communications hereunder shall be in writing and shall be personally delivered or sent by telegram or overnight courier or mailed first-class, registered mail, postage prepaid, or by overnight delivery courier, if to a Limited Partner, at the address as set forth in Section 2.6, and if to the General Partner, at the

address set forth in Section 2.5, or at such other address as such Partner may designate from time to time upon notice to the Partnership.

(b) All notices, requests, consents and other communications hereunder shall be deemed given upon the earlier to occur of (i) receipt by the party to whom such notice is directed or (ii) the third day following deposit thereof with U.S. Postal Service as aforesaid. Each party, by notice duly given in accordance herewith, may specify a different address for the giving of any notice hereunder.

(c) No transferee of any interest by any Partner shall be entitled to receive a notice independent of the notice sent to the Partner making such transfer. A notice sent or made to a Partner shall be deemed to have been sent and made to all transferees, if any, of such Partner.

#### **Section 16.2. Governing Law.**

Notwithstanding the place where this Agreement may be executed by any of the parties, this Agreement, the rights and obligations of the parties, and any claims and disputes relating thereto shall be subject to and governed by the Partnership Act and the other laws of the State of Alabama.

#### **Section 16.3. Entire Agreement.**

This Agreement contains the entire agreement between the parties hereto relative to the formation of the Partnership, and no amendment hereto shall be valid or binding unless made in accordance with the provisions hereof.

#### **Section 16.4. Waiver.**

No consent or waiver, express or implied, by any Partner to or of any breach or default by any other Partner in the performance by such other Partner of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Partner of the same or any other obligation of such Partner hereunder. Failure on the part of any Partner to object to or notify any other Partner of any act or failure to act of any other Partner or to declare any other Partner in default, irrespective of how long such failure continues, shall not constitute a waiver of such Partner of his rights hereunder.

#### **Section 16.5. Severability.**

If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 16.6. Terminology.**

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of Articles and Sections are for convenience only, and neither limit nor amplify the provisions of the Agreement itself, and all references herein to Articles, Sections or subdivisions refer to Articles, Sections or subdivisions of this Agreement unless specific reference is made to Articles, Sections or subdivisions of another document or instrument.

**Section 16.7. Binding Agreement.**

Subject to the restrictions on transfers and encumbrances set forth herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**Section 16.8. Counterparts.**

This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes constitute one Agreement, binding on all of the Partners, notwithstanding that all Partners are not signatories to the same counterpart. All references herein to this Agreement are deemed to refer to all such counterparts.

**Section 16.9. Miscellaneous.**

(a) If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid or unenforceable under existing or future law, the remainder of the Agreement and its application to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

(b) At any time or times upon the request of the General Partner, the Partners agree to sign and swear to any certificate required by Alabama law, to sign and swear to any amendment to or cancellation of such certificate whenever such amendment or cancellation is required by law, to sign and swear to or acknowledge similar certificates or affidavits or certificates of fictitious name, trade name, or the like (and any amendments or cancellations thereof) required by the laws of Alabama or any other jurisdiction in which the Partnership does or proposes to do business, and cause the filing of any of the same for record wherever such filing shall be required by law.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**GENERAL PARTNER**

KAROLINA ROASTERS, INC., an Alabama corporation

By: Donald Ghareeb  
Its: PRES

**LIMITED PARTNERS**

Richard D. Reese  
Richard D. Reese

Donald M. Ghareeb  
Donald M. Ghareeb

Dorian Reese  
Dorian Reese

Kimberly Reese  
Kimberly Reese

Elizabeth G. Ghareeb  
Elizabeth G. Ghareeb

Inst # 1995-07811