

Prepared by and return to:  
Shawn A. Tidwell, Esq.  
Krivcher Magids PLC  
6410 Poplar Avenue, Suite 300  
Memphis, TN 38119-4839

Inst # 1999-07518

02/23/1999-07518  
11:29 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
008 CRH 26.00

**FPI BIRMINGHAM, LTD.**

**THIRD AMENDMENT TO FIRST AMENDED AND RESTATED  
CERTIFICATE OF FORMATION AND LIMITED PARTNERSHIP AGREEMENT  
OF FPI BIRMINGHAM, LTD.**

THIS THIRD AMENDMENT TO FIRST AMENDED AND RESTATED CERTIFICATE OF FORMATION AND LIMITED PARTNERSHIP AGREEMENT OF FPI BIRMINGHAM, LTD. ("Agreement") is made and entered into as of January 1, 1999, by and among FOGELMAN REALTY GROUP, LLC, a Tennessee limited liability company ("FRG"), AVRON B. FOGELMAN, an individual resident of Memphis, Tennessee ("ABF"), FOGELMAN PROPERTIES, INC., a Tennessee corporation ("FPI" and together with ABF, the "Withdrawing Partners") and ABF INVESTMENTS I, L.P. All capitalized terms used but not defined in this Agreement shall have the meanings ascribed thereto in that certain First Amended and Restated Certificate of Formation and Limited Partnership Agreement of FPI Birmingham, Ltd. dated December 5, 1985 (the "Partnership Agreement"), which governs the business and affairs of FPI Birmingham, Ltd., an Alabama limited partnership (the "Partnership").

**RECITALS:**

WHEREAS, the Partnership was formed by its partners, by executing and filing the Certificate of Formation and Limited Partnership Agreement of FPI Birmingham, Ltd. (the "Initial Partnership Agreement") in the office of the Judge of Probate of Shelby County, Alabama on September 12, 1985;

WHEREAS, the Initial Partnership Agreement was amended and restated by the Partnership Agreement, which has been amended by: (i) that certain Amendment of First Amended and Restated Certificate of Formation and Limited Partnership Agreement of FPI Birmingham, Ltd., effective August 1, 1985, and filed with the office of the Probate Judge of Shelby County, Alabama on December 31, 1985; and (ii) that certain Second Amendment of Amendment to First Amended and Restated Certificate of Formation and Limited Partnership Agreement of FPI Birmingham, Ltd., dated effective August 1, 1985, and filed with the office of the Probate Judge of Shelby County, Alabama on June 23, 1988;

WHEREAS, the Withdrawing Partners and FRG are parties to that certain Transfer and Contribution Agreement dated as of December 21, 1998 (the "Contribution Agreement") pursuant

to which: (i) ABF has agreed to contribute certain assets (the "ABF Contributed Assets") to FRG; and (ii) FPI has agreed to contribute certain assets (the "FPI Contributed Assets") to FRG, as more particularly described in the Contribution Agreement;

WHEREAS, the ABF Contributed Assets include a 10.00% general partnership interest and a 63.50% limited partnership interests in the Partnership (the "ABF Partnership Interest");

WHEREAS, the FPI Contributed Assets include a 1.00% general partnership interest in the Partnership (the "FPI Partnership Interest");

WHEREAS, (i) ABF and FRG are parties to that certain Second ABF Assignment, effective of even date herewith, evidencing the transfer and assignment of the ABF Partnership Interests from ABF to FRG (the "ABF Assignment"); and (ii) FPI and FRG are parties to that certain FPI Assignment, effective of even date herewith, evidencing the transfer and assignment of the FPI Partnership Interest from FPI to FRG (the "FPI Assignment");

WHEREAS, pursuant to the ABF Assignment, ABF has assigned and transferred to FRG all of his right, title and interest in and to the ABF Partnership Interest;

WHEREAS, pursuant to the FPI Assignment, FPI has assigned and transferred to FRG all of its right, title and interest in and to the FPI Partnership Interest; and

WHEREAS, the parties hereto have determined that the Partnership Agreement should be amended to reflect: (i) the transfer of the ABF Partnership Interests to FRG; (ii) the transfer of the FPI Partnership Interest to FRG; (iii) the withdrawal of the Withdrawing Partners; and (iv) the admission of FRG as a substituted General Partner and a substituted Limited Partner.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. ABF hereby acknowledges and agrees that the ABF Partnership Interests have been assigned and transferred to FRG.

2. FPI hereby acknowledges and agrees that the FPI Partnership Interest has been assigned and transferred to FRG.

3. Withdrawing Partners hereby withdraw from the Partnership and Withdrawing Partners shall have no further interest in the Partnership and shall have no further obligation or liability to the Partnership or any of its Partners.

4. FRG is hereby admitted to the Partnership as a substituted General Partner in the name, place and stead of the Withdrawing Partners.

5. FRG is hereby admitted to the Partnership as a substituted Limited Partner in the name, place and stead of ABF.

6. FRG agrees to be bound by each of the terms, conditions and provisions of the Partnership Agreement and assumes and agrees to perform and discharge all of the obligations of the Withdrawing Partners thereunder.

7. Section 2.4 of the Partnership Agreement is deleted in its entirety and the following new Section 2.4 is simultaneously substituted in lieu thereof:

Section 2.4. Name and Address of General Partner. The name and address of the General Partner of the Partnership are: Fogelman Realty Group, LLC, 5400 Poplar Avenue, Memphis, Tennessee 38119.

8. Section 2.5 of the Partnership Agreement is deleted in its entirety and the following new Section 2.5 is simultaneously substituted in lieu thereof:

Section 2.5. Name and Address of Limited Partners. The name and address of the Limited Partners are set forth on Schedule "A" attached hereto and by this reference incorporated herein.

9. Section 3.1 of the Partnership Agreement is deleted in its entirety and the following new Section 3.1 is simultaneously substituted in lieu thereof:

Section 3.1. Partnership Interests. The Partners' interest in the Partnership shall be divided into units (collectively, the "Units" and, individually, a "Unit"). There shall be a total of 100 Units consisting of 89.00 General Partnership Units (the "General Partnership Units"), and 11.00 Limited Partnership Units (the "Limited Partnership Units"). The number of Units owned by each Partner is set forth on Schedule "A" attached hereto and by this reference incorporated herein.

10. Section 3.2 of the Partnership Agreement is deleted in its entirety and the following new Section 3.2 is simultaneously substituted in lieu thereof:

Section 3.2. Capital Contributions. The Partners have contributed cash in the aggregate sum of \$1,000 to the capital of the Partnership in payment for the Units owned by each. The amount contributed by each Partner (or his predecessor) is set forth on Schedule "A" attached hereto and by this reference incorporated herein. Contributions to the capital of the Partnership shall not bear interest.

11. Each of the parties hereto: (a) consents to the transfer and assignment to FRG of the ABF Partnership Interests and the FPI Partnership Interest; (b) consents to the admission of FRG as



a substituted General Partner in the name, place and stead of ABF and FPI; (c) consents to the admission of FRG as a substituted Limited Partner in the name, place and stead of ABF; and ~~(d)~~; waives any and all requirements or conditions to such transfer, assignment and/or admission contained in the Partnership Agreement.

12. All other terms, provisions and conditions set forth in the Partnership Agreement remain unaffected hereby and except as specifically herein set forth, all such terms, provisions and conditions are hereby ratified and affirmed.

13. Every term, covenant and provision of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, legal representatives, successors, transferees and assigns.

14. This Agreement shall be governed by and construed under and in accordance with the laws of the State of Alabama without regard to principles of conflicts of law.

[COUNTERPART SIGNATURE PAGE(S) FOLLOW]

**COUNTERPART SIGNATURE PAGE TO**

**THIRD AMENDMENT TO FIRST AMENDED AND RESTATED  
CERTIFICATE OF FORMATION AND LIMITED PARTNERSHIP AGREEMENT  
OF FPI BIRMINGHAM, LTD.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized representatives and having first been duly sworn, do hereby state and affirm that the same is true, accurate and complete to the best of their knowledge, information and belief, all as of the date first above written.

**GENERAL PARTNER:**

FOGELMAN REALTY GROUP, LLC, in  
its capacity as a substituted General Partner

By: Richard L. Fogelman  
Richard L. Fogelman  
Chief Manager

**LIMITED PARTNERS:**

FOGELMAN REALTY GROUP, LLC, in  
its capacity as a substituted Limited Partner

By: Richard L. Fogelman  
Richard L. Fogelman  
Chief Manager

**WITHDRAWING PARTNERS:**

Avron B. Fogelman  
AVRON B. FOGELMAN, as a withdrawing  
General Partner and a withdrawing Limited  
Partner

ABF INVESTMENTS I, L.P.,  
Limited Partner

By: Fogelman Properties, Inc.,  
General Partner

By: Richard L. Fogelman  
Richard L. Fogelman  
President

FOGELMAN PROPERTIES, INC., as a  
withdrawing General Partner

By: Richard L. Fogelman  
Richard L. Fogelman  
President

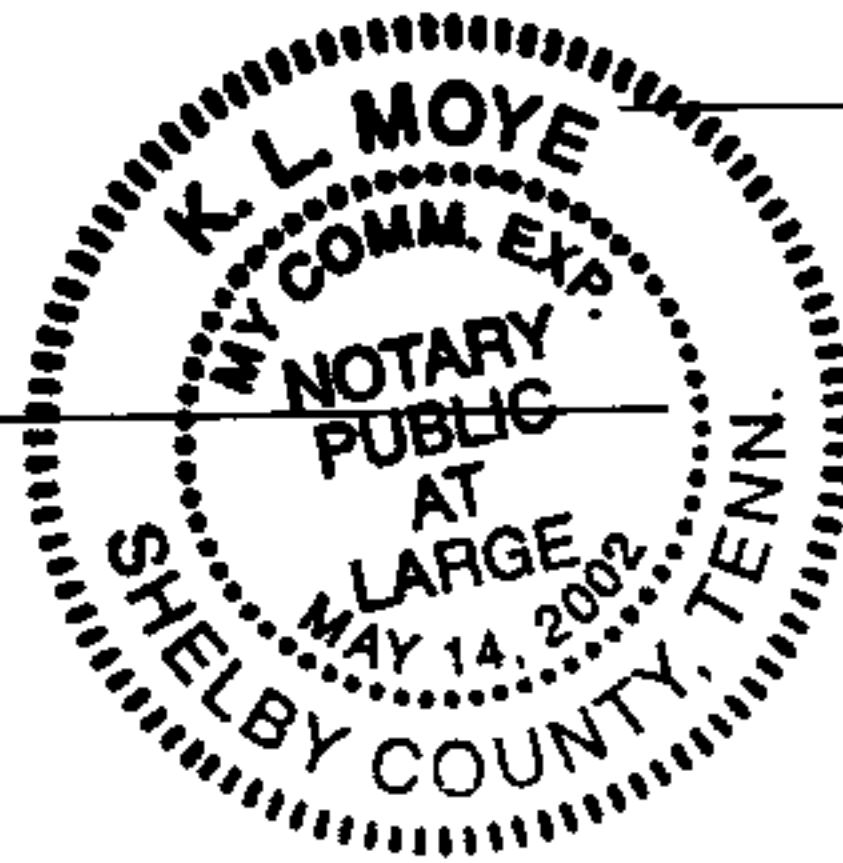
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public of the state and county aforesaid, personally appeared Avron B. Fogelman, an individual to me known to be the person who executed the within and foregoing instrument and who upon oath acknowledged that he executed the foregoing instrument as his free and voluntary act and deed for the uses and purposes therein contained.

Witness my hand and notary seal at office in Memphis, Tennessee this 1st day of January, 1999.

K. L. Moye  
Notary Public

My Commission Expires:



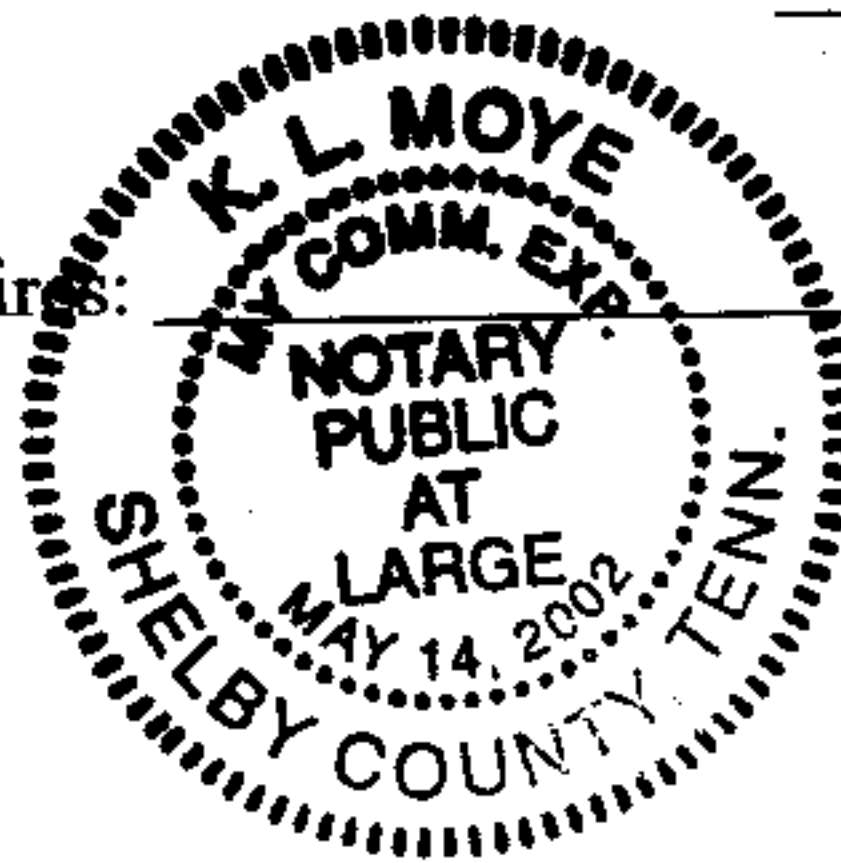
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public of the state and county aforesaid, personally appeared Richard L. Fogelman, with whom I am personally acquainted and who upon oath acknowledged himself to be the President of Fogelman Properties, Inc. and that he, as such officer being authorized to do so, executed the within and foregoing instrument for the uses and purposes therein contained by signing the name of the corporation by himself as such officer.

Witness my hand and notary seal at office in Memphis, Tennessee this 1st day of January, 1999.

K. L. Moye  
Notary Public

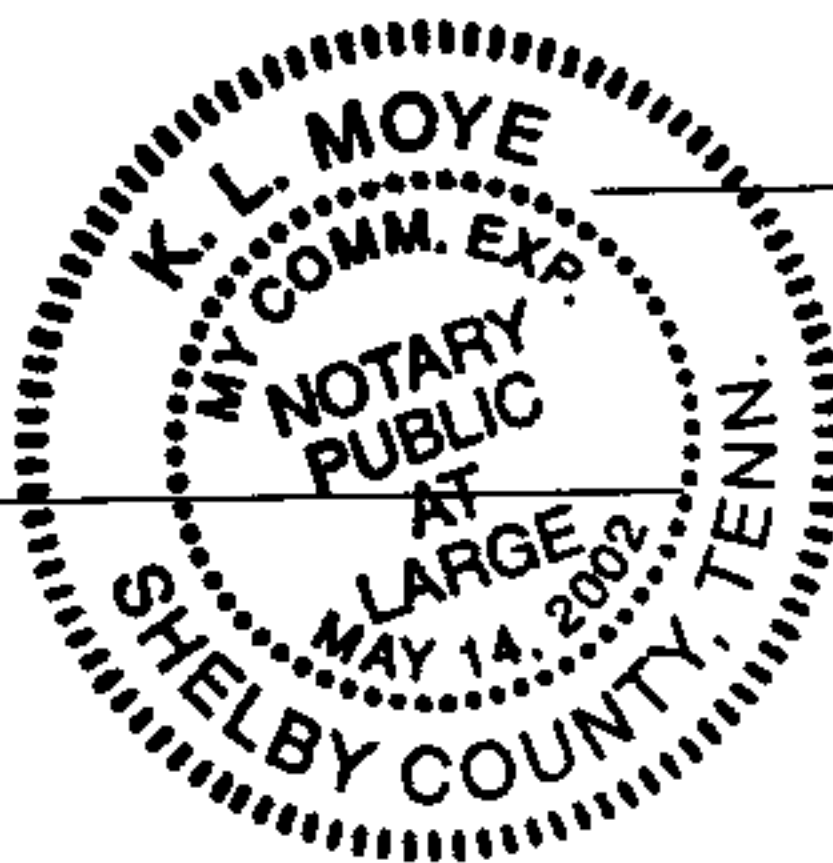
My Commission Expires:



STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public of the state and county aforesaid, personally appeared Richard L. Fogelman, with whom I am personally acquainted and who upon oath acknowledged himself to be the Chief Manager of Fogelman Realty Group, LLC and that he, as such manager being authorized to do so, executed the within and foregoing instrument for the uses and purposes therein contained by signing the name of the limited liability company by himself as such manager.

Witness my hand and notary seal at office in Memphis, Tennessee this 1st day of January, 1999.



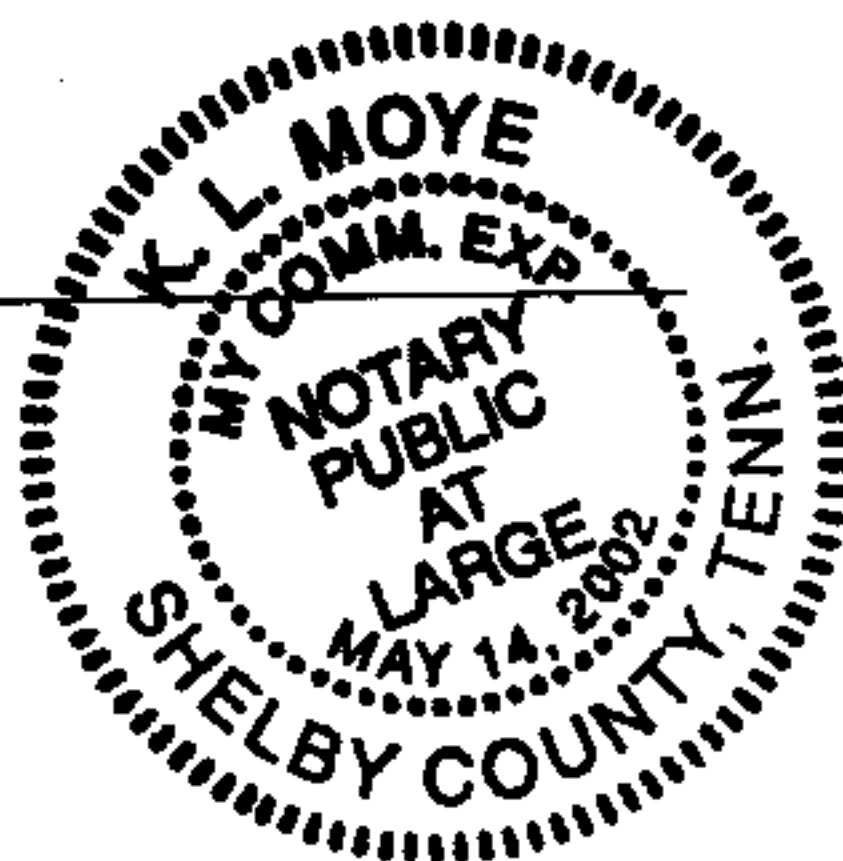
K. L. Moye  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public of the state and county aforesaid, personally appeared Richard L. Fogelman, with whom I am personally acquainted and who upon oath acknowledged himself to be the President of Fogelman Properties, Inc., the general partner of ABF Investments I, L.P., and that he, as such officer being authorized to do so, executed the within and foregoing instrument for the uses and purposes therein contained by signing the name of the corporation by himself as such officer.

Witness my hand and notary seal at office in Memphis, Tennessee this 1st day of January, 1999.



K. L. Moye  
Notary Public

My Commission Expires: \_\_\_\_\_

## SCHEDULE A

The name, address, capital contribution and the number of Units held by each Partner is as follows:

Name and Address	Capital Contribution	General Partnership Units	Limited Partnership Units
Fogelman Realty Group, LLC 5400 Poplar Avenue Memphis, TN 38119	\$ 745.00	11.00	63.50
ABF Investments I, L.P. 5400 Poplar Avenue Memphis, TN 38119	\$ 255.00		25.50
<b>Totals</b>	\$ 1,000.00	11.00	89.00

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