

Division of Corporations

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Division of Corporations
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AD2-1580

LIMITED PARTNERSHIP AMENDMENT

3801 PGA LP HOLDING, LTD

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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FIRST AMENDMENT TO
CERTIFICATE OF LIMITED
PARTNERSHIP OF
3801 PGA LP HOLDING, LTD.

The undersigned, desiring to amend the Certificate of Limited Partnership of 3801 PGA LP Holding, Ltd. (the "Certificate") pursuant to the provisions of the Florida Revised Uniform Limited Partnership Act, hereby state the following:

1. Name of Limited Partnership. The name of the limited partnership is:

3801 PGA LP Holding, Ltd.
(the "Partnership")

2. Date of Filing Certificate of Limited Partnership: The Certificate was filed with Florida Secretary of State's Office on December 2, 2002.

3. Amendment. The Certificate is hereby amended as follows:

(a) Item 4 of the Certificate of Limited Partnership is hereby amended to reflect the addition of a second general partner; therefore, Item 4 is hereby amended to read in its entirety as follows:

"4. The names and current business addresses of the offices of the general partners are:

3801 PGA Equity Investors, Ltd.
("Equity")

3801 PGA Boulevard, Suite 600
Palm Beach Gardens, Florida 33410

LB Florida PGA, LLC
("LB") MD1000002674

c/o Lehman Brothers Holdings Inc.
399 Park Avenue, 8th Floor
New York, New York 10022"

(b) The Certificate is hereby amended to include the following provisions:

"7. Prohibited Transactions. For so long as that certain \$7,932,187.91 loan (the "Mezzanine Loan") made by GMAC Commercial Mortgage Corporation ("Lender") to the Partnership for the purpose of making a capital contribution to 3801 PGA Investors, LTD., a Florida limited partnership ("Property Owner") for purposes of partially prepaying mortgage indebtedness encumbering the land and improvements located at 3801 PGA Boulevard, Palm Beach Gardens, Florida and that certain \$21,832,399.63 mortgage loan (the "Mortgage Loan") made by Lender to Property Owner for the purpose of refinancing prior indebtedness of the Property Owner and paying Property Owner's costs and expenses (the Mezzanine Loan and Mortgage Loan are hereinafter referred to collectively as "Loan") are outstanding, Equity and LB, their permitted successors and assigns in their capacities as general partners in the Partnership (collectively, the "General Partners"), unless otherwise consented to by Lender, shall cause the Partnership to comply with the following representations, warranties and covenants:

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- (a) The Partnership is and shall remain a Florida limited partnership;
- (b) The managing general partner is and shall remain Equity, except as otherwise provided in Sections 5.1 and 5.6 of the Limited Partnership Agreement of the Partnership (the "Partnership Agreement");
- (c) The Partnership does not and will not own any asset or property other than its general partnership interest in 3801 PGA Holding, LLC, a Delaware limited liability company ("GP") and its limited partnership interests in Property Owner (collectively, the "Interests").
- (d) The Partnership does not and will not engage in any business other than the ownership, management and operation of the Interests and the Partnership will conduct and operate its business in all material respects as presently conducted and operated.
- (e) The Partnership will not enter into any contract or agreement with any Guarantor (as defined in the Loan Agreement between the Partnership and Lender) or an Affiliate (as defined in the Partnership Agreement), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length third-party basis.
- (f) The Partnership has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than: (i) the indebtedness owed pursuant to the Loan; and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are customary and reasonable under the circumstances. Except with Lender's prior written approval in each instance, no indebtedness other than the indebtedness owed pursuant to the Mezzanine Loan is or shall be secured by the Interests.
- (g) The Partnership has not made and will not make any loans or advances to any third party (including any constituent party, any Guarantor or any Affiliate of the Partnership, of any constituent party or of any Guarantor), except in de minimis amounts in the ordinary course of business and of the character of trade or operational expenses.
- (h) The Partnership has done or caused to be done, and will do or cause to be done, all things necessary to preserve its existence, and the Partnership will not, nor will the Partnership permit any constituent party or Guarantor, to amend, modify or otherwise change the Certificate, the Partnership Agreement, articles of incorporation and bylaws, trust or other organizational documents, as the case may be, of the Partnership or such constituent party or Guarantor in a manner which would adversely affect the Partnership's existence as a single purpose entity.
- (i) The Partnership will maintain books and records and bank accounts separate from those of its Affiliates and any constituent party, and the Partnership will file or cause to be filed separate tax returns. The Partnership shall not change the

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principal place of its business without providing Lender with at least 30 days prior written notice of such change to Lender.

- (j) The Partnership is and will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of the Partnership, any constituent party, any Guarantor or any Affiliate of any constituent party or Guarantor).
- (k) Neither the Partnership nor any constituent party will cause or seek the dissolution or winding up, in whole or in part, of the Partnership.
- (l) The Partnership will not commingle its funds and other assets with those of any constituent party, any Guarantor, any Affiliate of the Partnership, of any constituent party or of any Guarantor, or any other person.
- (m) The Partnership will not file or consent to the filing of any petition to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.
- (n) The Partnership does not and will not hold itself out to be responsible for the debts or obligations of any other person.
- (o) 3801 PGA Equity Corporation, the general partner of Equity, shall at all times maintain at least one duly appointed independent director, which director has not been at the time of such individual's appointment and may not have been at any time during the preceding two years: (a) a partner of the Partnership, a partner of any partner of the Partnership, or an employee or Affiliate of any of the foregoing; (b) a customer of or supplier to the Partnership or to any constituent party thereof; (c) a person or other entity controlling any such customer or supplier to the Partnership or constituent party of the Partnership; or (d) a member of the immediate family of any such customer or supplier to the Partnership or constituent party of the Partnership. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person or entity, whether through ownership of voting securities, by contract or otherwise.

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8. **Limitations.** Except as provided in Section 5.15 of the Partnership Agreement, notwithstanding any other provision of this Certificate, as amended, or the Partnership Agreement and so long as any portion of the Loan remains outstanding and not discharged in full, the Partnership shall not:

- (a) cause or allow the Partnership to engage in any business or activity other than those permitted by Section 5.13 of the Partnership Agreement;
- (b) do any act which would make it impossible for the Partnership to carry on its ordinary business;
- (c) borrow money or incur indebtedness on behalf of the Partnership other than normal trade accounts and lease obligations incurred in the ordinary course of

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business as permitted under the Loan documents, or grant consensual liens on the Partnership's Property (as defined in the Partnership Agreement);

- (d) dissolve or liquidate the Partnership, in whole or in part;
- (e) sell or lease, or otherwise dispose of all or substantially all of the assets of the Partnership except in a manner, if any, consistent with the requirements of the documents evidencing the Loan;
- (f) file a voluntary petition or otherwise initiate proceedings to have the Partnership adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Partnership, or file a petition seeking or consenting to reorganization or relief of the Partnership as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Partnership; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Partnership or of all or any substantial part of the properties and assets of the Partnership, or make any general assignment for the benefit of creditors of the Partnership, or admit in writing the inability of the Partnership to pay its debts generally as they become due or declare or effect a moratorium on the Partnership debt or take any action in furtherance of any action;
- (g) amend, modify or alter the Certificate or the Partnership Agreement;
- (h) merge or consolidate with any other entity;
- (i) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or fail to remain qualified to do business and in good standing in each State in which the conduct of its business will so require;
- (j) own any new subsidiary or make any investment in, any Person (as defined in the Partnership Agreement) without the consent of Lender;
- (k) make any loans or advances to any third party, including, without limitation, any General Partner, member, shareholder, principal or Affiliate of the Partnership, or any general partner, principal or Affiliate thereof;
- (l) fail to file its own tax returns;
- (m) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;
- (n) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or

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- (o) fail to pay its expenses and liabilities only out of its own funds.

So long as any obligations under the Loan remain outstanding and not discharged in full, the Managing General Partner (as defined in the Partnership Agreement) shall have no authority (1) to take any action in subsections (a) through (o) above unless such action has been approved by all of the limited partners of the Partnership and by a unanimous vote of the Board of Directors of 3801 PGA Equity Corporation, the general partner of the Managing General Partner, including the independent director of 3801 PGA Equity Corporation, or (2) to take any action in subsections (a) through (e) and (g) through (o) above without the written consent of the holder of the Loan which consent may be withheld in such holder's sole discretion.

So long as any obligation under the Loan remains outstanding and not discharged in full, the Managing General Partner shall have a Certificate of Limited Partnership containing the restrictions and terms set forth Sections 5.9, 5.13, 5.15 and 5.16 of the Partnership Agreement (including, without limitation, those provisions requiring an independent director of 3801 PGA Equity Corporation) of such General Partner's Amended and Restated Certificate of Limited Partnership.

So long as any obligation under the Loan remains outstanding and not discharged in full, the Managing General Partner shall have a corporate general partner having Articles of Incorporation containing the restrictions and terms set forth in Articles III, XI and XII (including, without limitation, those provisions requiring an independent director) of 3801 PGA Equity Corporation's Articles of Incorporation as amended, and the Managing General Partner shall have no other general partners.

9. Separateness Provisions. Notwithstanding anything contained in the Partnership Agreement to the contrary, the Partnership shall at all times:

- (a) maintain books and records and bank accounts separate from those of any other Person;
- (b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
- (c) hold regular Partnership meetings, as appropriate, to conduct the business of the Partnership, and observe all other Partnership formalities;
- (d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (e) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group;
- (f) allocate and charge fairly and reasonably any common employee or overhead shared with Affiliates;

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- (g) transact all business with Affiliates on an arm's-length basis and pursuant to enforceable agreements;
- (h) conduct business in its own name, and use separate stationery, invoices and checks;
- (i) not commingling its assets or funds with those of any other Person;
- (j) not assume, guarantee or pay the debts or obligations of any other Person;
- (k) not make any loans or advance to any third party (including any constituent party or any Affiliate);
- (l) satisfy its own expenses and liabilities from its own funds and not pay expenses or liabilities of Equity, LB, Paramount Real Estate Services, Inc. ("Paramount"), PAMI, LLC ("LLC"), Property Asset Management Inc. ("PAMI"), 3801 PGA GP Holding, LLC ("GP Holding"), Property Owner and 3801 PGA Equity Corporation or any other person;
- (m) maintain correct and complete books and records in a consistent manner from year to year and the minutes of the meetings and other proceedings of its Partners;
- (n) act and conduct business only through its duly authorized agents;
- (o) not hold itself out to be a guarantor of or otherwise liable for the debts of another; and
- (p) maintain a commercially reasonable relationship, similar to that in an arm's-length transaction, with Equity, LB, Paramount, LLC, PAMI, GP Holding, Property Owner and 3801 PGA Equity Corporation in all business dealings between or among them.

10. Title to Partnership Property. All property owned by the Partnership shall be owned by the Partnership as an entity and, insofar as permitted by applicable law, no Partner shall have any ownership interest in any Partnership Property in its individual name or right, and each Partner's Partnership Interest shall be personal property for all purposes.

11. Effect of Bankruptcy, Dissolution, Etc. of a Limited Partner. The bankruptcy, dissolution, liquidation or termination of a limited partner shall not cause the termination or dissolution of the Partnership and the business of the Partnership shall continue. Upon any such occurrence, the trustee, receiver or administrator of such limited partner shall have all the rights of such limited partner for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute limited partner. The transfer by such trustee, receiver or administrator of any Partnership Interest shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, dissolved, liquidated or terminated limited partner.

12. Effect of Bankruptcy, Dissolution, Etc. of a General Partner. The bankruptcy, dissolution, withdrawal, liquidation or termination of any General Partner shall not cause the

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termination or dissolution of the Partnership and the business of the Partnership shall continue. Upon any such occurrence, any remaining General Partner agrees to carry on the business of the Partnership. To the extent necessary to prevent the dissolution of the Partnership, all Partners agree that upon any event of withdrawal, they will agree in writing to continue the business of the Partnership within ninety (90) days after the withdrawal and will appoint one (1) or more additional General Partners, if necessary, subject to the Loan documents.

13. No Substitution of Managing General Partner. So long as any obligations under the Loan remain outstanding and not discharged in full and notwithstanding any other provision of the Partnership Agreement there shall be no substitution of the Managing General Partner except as otherwise provided in Sections 5.1 and 5.6 of the Partnership Agreement or the Loan documents."

The execution of this First Amendment to the Certificate of Limited Partnership by the undersigned General Partners of the Partnership constitute an affirmation under the penalties of perjury that the facts stated herein are true.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Certificate of Limited Partnership of 3801 PGA LP Holding, Ltd. this 5th day of December, 2002.

SIGNATURE OF CURRENT GENERAL PARTNER:

3801 PGA EQUITY INVESTORS, LTD., a Florida limited partnership

By: 3801 PGA EQUITY CORPORATION, a Florida corporation, its General Partner

By: 
Patrick J. DiSalvo, Vice President

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SIGNATURE OF ADDITIONAL GENERAL PARTNER:

LB FLORIDA PGA, LLC, a Delaware limited liability company

By: PAMI, LLC, a Delaware limited liability company, its managing member

By: See attached
Name: _____
Title: _____

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Upon any such occurrence, any remaining General Partner agrees to carry on the business of the Partnership. To the extent necessary to prevent the dissolution of the Partnership, all Partners agree that upon any event of withdrawal, they will agree in writing to continue the business of the Partnership within ninety (90) days after the withdrawal and will appoint one (1) or more additional General Partners, if necessary, subject to the Loan documents.

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SIGNATURE OF CURRENT GENERAL PARTNER:

3801 PGA EQUITY INVESTORS, LTD., a Florida limited partnership

By: 3801 PGA EQUITY CORPORATION, a Florida corporation, its General Partner

By: _____
Patrick J. DiSalvo, Vice President

SIGNATURE OF ADDITIONAL GENERAL PARTNER:

LB FLORIDA PGA, LLC, a Delaware limited liability company

By: PAML LLC, a Delaware limited liability company, its managing member

By: _____
Name: _____
Title: _____

Car...
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Authorized Signatory

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