

FIRST AMENDMENT TO AMENDED  
AND RESTATED AGREEMENT AND  
CERTIFICATE OF LIMITED PARTNERSHIP OF  
SIMMONS BUILDING ASSOCIATES

This First Amendment dated as of March 21, 1988 to the Amended and Restated Agreement and Certificate of Limited Partnership dated as of December 9, 1983, establishing SIMMONS BUILDING ASSOCIATES as a limited partnership organized under Rhode Island law (the "Partnership").

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W I T N E S S E T H

WHEREAS, pursuant to Section 8.3 of said Amended and Restated Agreement and Certificate of Limited Partnership (the "Agreement"), the General Partners of the Partnership desire to amend the Agreement to reflect the transfer of three units of limited partnership interest by the Estate of Saul Hodosh to Marvin R. Hodosh (one and one-half units) and Lee R. Coleman (one and one-half units) and to admit Marvin R. Hodosh and Lee R. Coleman as Substitute Limited Partners.

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. In order to reflect the transfer of three units of limited partnership interest from the Estate of Saul Hodosh to Marvin R. Hodosh and Lee R. Coleman as provided by Section 8.3 of the Agreement, effective as of the date hereof, Schedule A attached to the Agreement is hereby amended to read in the form of Exhibit A attached hereto to this First Amendment.

2. This first amendment shall be effective as of the day and year first above written.

Rec'd & Filed JUN 02 1988

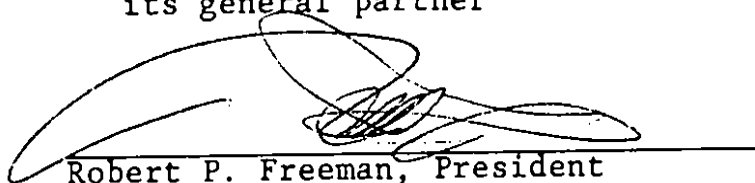
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IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the day and year first above written.

GENERAL PARTNER

MDC PARTNERS

By: Marathon Development Corporation  
its general partner

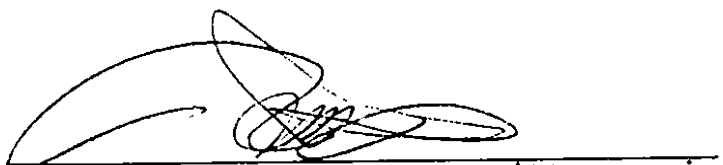


Robert P. Freeman, President

LIMITED PARTNERS

Adams-Wright Associates  
Thomas C. Angelone  
David G. Botvin  
Donald D. Breed  
John C. Cahill  
Eleanor P. Cohen  
Robert J. Ducoff  
Edward R. Feller, M.D.  
Gloria R. Fitzgerald  
David Friedman  
Marvin R. Hodosh  
Roswell D. Johnson, M.D.  
Donald G. Kaufman  
Mary F. Mahoney  
Lillian C. Mangione  
Lillian C. Mossop  
Thomas H. Nicholson  
Edgar E. Sharp  
Meredith C. Smith  
Philip A. Torgan, M.D.

L. Saul Alpert  
Ardean D. Botvin  
Paul Boyajian  
Americo C. Buonanno, Jr.  
Sidney Clifford, Jr.  
Lee R. Coleman  
Frank Fanella  
John J. Fitzgerald  
Lena Forte  
Larry Friedman  
Bernard Jackvony  
V. Duncan Johnson  
G. Dickson Kenney  
W. Richard Mahoney  
Estate of Leo A. McCaughey  
Catharine F. Nicholson  
Sheila D. Przybyla  
Douglas A. Smith  
Erwin B. Summer  
Renee G. Vogel, M.D.



By: Robert P. Freeman as Attorney in  
fact for each of the above

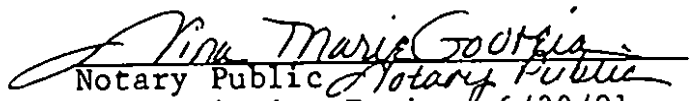
STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence in said County on the *31st* day of May, 1988, before me personally appeared ROBERT P. FREEMAN, President of Marathon Development Corporation, the general partner of MDC Partners, a Rhode Island limited partnership, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed, and the free act and deed of said corporation in its corporate capacity and as the general partner of MDC Partners.

  
Notary Public ~~Notary Public~~  
My Commission Expires 6/30/91

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence in said County on the *31st* day of May, 1988, before me personally appeared Robert P. Freeman, to me known and known by me to be the person executing the foregoing instrument as attorney-in-fact for each of the Limited Partners and he acknowledged said instrument by him executed to be his free act and deed for and on behalf of each of the foregoing persons and entities as their attorney-in-fact.

  
Notary Public ~~Notary Public~~  
My Commission Expires 6/30/91

Simmons Building Associates  
Schedule A to  
Amended and Restated Agreement and  
Certificate of Limited Partnership

<u>General Partner Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
MDC Partners c/o Marathon Development 3 Davol Square, Box 77 Providence, RI 02903	\$ 100	1% until Investment Recovery and 20% thereafter
<u>Limited Partners Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
Adams-Wright Associates c/o Adrienne A. Wright 11 Alice Drive Nashua, NH	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
L. Saul Alpert 21 Browning Drive Narragansett, RI 02882	\$ 50,000	4.3% until Investment Recovery and 3.5% thereafter
Thomas C. Angelone 58 Cool Spring Drive Cranston, RI 02910	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Ardean D. Botvin David G. Botvin 15 Dorset Road Pawtucket, RI 02860	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Paul Boyajian 27 Winnisquam Drive Warwick, RI 02886	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Donald D. Breed 88 Congdon Street Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Americo C. Buonanno, Jr. 2450 Hartford Avenue Johnston, RI 02919	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

<u>Limited Partners Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
John C. Cahill 284 President Avenue Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Sidney Clifford, Jr. 60 Freeman Parkway Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Eleanor P. Cohen 90 Massapoag Avenue Sharon, MA 02067	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Lee R. Coleman 294 Old Great Neck Road Mashpee, MA 02649	\$ 15,000	1.3% until Investment Recovery and 1.05 thereafter
Robert J. Ducoff 100 D'Agnillo Drive East Greenwich, RI 02818	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Frank Fanella 34 Sweet Briar Lane West Warwick, RI 02893	\$ 70,000	6.1% until Investment Recovery and 4.9% thereafter
Edward R. Feller, M.D. 13 Charlesfield Street Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
John J. Fitzgerald Gloria R. Fitzgerald 1 Orchard Drive Cranston, RI 02920	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Lena Forte 2450 Hartford Avenue Johnston, RI 02919	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
David Friedman 8 Woodland Terrace Providence, RI	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

<u>Limited Partners Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
Larry Friedman 265 Freeman Parkway Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Marvin R. Hodosh 152 Red Chimney Drive Warwick, RI 02886	\$ 15,000	1.3% until Investment Recovery and 1.05 thereafter
Bernard Jackvony 100 Pegwin Drive East Greenwich, RI 02818	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Roswell D. Johnson, M.D. P.O. Box 482 Farm Pond Road Oak Bluffs, MA 02557	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
V. Duncan Johnson 168 Governor Street Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Donald G. Kaufman 103 W. Blue Ridge Road Cranston, RI 02920	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
G. Dickson Kenney 470 Potter Road North Kingstown, RI 02852	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Mary F. Mahoney W. Richard Mahoney 187 Laurel Avenue Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Lillian C. Mangione Apartment 1108 1 Jackson Walkway Providence, RI 02903	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Estate of Leo McCaughey 40 Cross Street Providence, RI 02904	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

<u>Limited Partners Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
Lillian C. Mossop 89 President Avenue Providence, RI 02906	\$ 60,000	5.2% until Investment Recovery and 4.2% thereafter
Catharine F. Nicholson Thomas H. Nicholson 440 Conant Road Weston, MA 02193	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Sheila D. Przybyla 86 Bishop Avenue Seekonk, MA 02771	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Edgar E. Sharp 1700 Main Street Houston, Texas 77001	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Douglas A. Smith Meredith C. Smith One Church Place P.O. Box 137 Wilmot Flat, NH 03287	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Erwin B. Summer 140 Medway Street Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Philip A. Torgan, M.D. 22 Wingate Road Providence, RI 02906	\$ 60,000	5.2% until Investment Recovery and 4.2% thereafter
Renee G. Vogel, M.D. 12 Clarke Road Barrington, RI 02806	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

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AMENDED AND RESTATED AGREEMENT AND  
CERTIFICATE OF LIMITED PARTNERSHIP OF  
SIMMONS BUILDING ASSOCIATES

SIMMONS BUILDING ASSOCIATES  
AMENDED AND RESTATED AGREEMENT AND  
CERTIFICATE OF LIMITED PARTNERSHIP

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SIMMONS BUILDING ASSOCIATES  
AMENDED AND RESTATED AGREEMENT AND  
CERTIFICATE OF LIMITED PARTNERSHIP

AGREEMENT OF AMENDMENT, dated as of this 9th day of December, 1983, by and among MDC Partners, a Rhode Island limited partnership, as General Partner and those individuals and entities listed on Schedule A hereto and incorporated herein by reference as Limited Partners.

Preliminary Statement

Simmons Building Associates was formed as a limited partnership under the laws of the State of Rhode Island (the "Partnership") pursuant to a Limited Partnership Agreement dated July 14, 1983, by and among MDC Partners as General Partners and Marathon Development Corporation as Limited Partner. The Certificate of Limited Partnership was filed in the office of the Secretary of State of Rhode Island on July 15, 1983.

The purpose of this Amendment and Certificate to the said Agreement is to set out more fully the rights, obligations and duties of the General Partners and the Limited Partners.

Now, therefore, it is hereby agreed that the Limited Partnership Agreement and Certificate of Simmons Building Associates as presently in effect shall be replaced in its entirety by the following Amended and Restated Agreement and Certificate.

ARTICLE I

Defined Terms

The defined terms used in this Agreement shall have the meaning specified below:

"Accountants" means Arthur Young & Company of Providence, Rhode Island or their successor or such other firm of certified public accountants as may be engaged by the General Partner.

"Affiliate" or "Affiliated Person" means (i) the General Partner, (ii) any member of the Immediate Family of a General Partner, (iii) any legal representative, successor or assignee of any person referred to in the preceding clauses (i) and (ii), (iv) any trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) through (iii), or (v) any Entity which directly or, indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any Person referred to in the preceding clauses

(i) through (iv), or (vi) any Person who is an officer, director, trustee, employee, stockholder (10% or more) or partner, of any Person referred to in the preceding clauses (i) through (v). For purposes of this definition, the term "control" means the owners of 10% or more of the beneficial interest or the voting power of the appropriate Entity.

"Agreement" means this Amended and Restated Agreement and Certificate of Limited Partnership as it may be amended from time to time.

"Capital Account" means, as to any Partner or class of Partners, the Capital Contribution actually made by such Partner or class, plus all income, gain or profits allocated to such Partner or class, and minus the sum of (i) all losses or deductions allocated to such Partner or class, (ii) all distributions to such Partner or class, and (iii) all other payments to such Partner or class not allowed as additions to the basis of Partnership property or deductions from Partnership gross income for federal income tax purposes.

"Capital Contribution" means the total amount of cash contributed or agreed to be contributed to the Partnership (exclusive of interest) by each Partner as shown in the Schedule. Any reference in this Agreement to the Capital Contribution of a then Partner shall include a Capital Contribution previously made by any prior Partner with respect to the Partnership interest of such then Partner.

"Cash Flow" shall have the meaning provided in Section 10.2.B hereof.

"Certificate" means the Limited Partnership Agreement and Certificate of Limited Partnership establishing the Partnership, filed in the Office of the Secretary of the State of Rhode Island on July 15, 1983, as said Certificate is herein amended and may be further amended from time to time in accordance with the terms hereof and the Uniform Act.

"Class Contribution" means the aggregate Capital Contributions of all members of a particular class of Partners (e.g., the General Partners, or the Limited Partners).

"Code" means the Internal Revenue Code of 1954, as amended from time to time and all published rules, rulings (including private rulings) and regulations thereunder at the time of reference thereto.

"Commitments" means the commitments of the Lender to make the loan to be secured by the Mortgage Loan and shall also

include the Loan Agreement, the Construction Contract, the Note, the Mortgage and any other instrument or agreement delivered to or requested by, the Lender in connection with the Mortgage or the Project.

"Completion" means the date on which the Project is certified by the architect for the Project to be substantially complete. Space in the Project to be leased to tenants shall be deemed to be substantially complete when heating and air conditioning systems, carpeting and interior partitions have been installed.

"Consent of Limited Partners" means the written consent or approval of Limited Partners whose Capital Contributions represent 51% of the Limited Partners Class Contributions (excluding any interest held by a General Partner). A Limited Partner shall be deemed to have consented in writing to any proposed action by the General Partners if such Limited Partner fails to respond to a notice from the General Partners requesting his consent thereto within thirty (30) days of the mailing of such notice.

"Construction Completion Notes" means the non-interest bearing notes of the Partnership issued pursuant to Section 6.8 and not secured by any liens or other charges upon the Project, which notes are payable only as permitted by Section 6.8 and/or Article X of this Agreement.

"Construction Contract" means the construction contract (including all exhibits and attachments thereto and all plans and specifications referred to therein) entered into or to be entered into between the Partnership and Anthony A. Nunes, Inc., a Rhode Island corporation, for a price not to exceed \$975,000, (excluding the Monitor), as such contract may be modified from time to time, pursuant to which the Project shall be rehabilitated.

"Entity" means any general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association.

"Escrow Agent" means Marathon Capital Corporation, an Affiliate of the General Partner.

"Escrow Agreement" means the Agreement between Marathon Capital Corporation and the Partnership, as the same may be amended from time to time.

"Event of Bankruptcy" means as to a General Partner

(a) his or its failure to pay his or its debts generally as they become due;

(b) his or its filing a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Federal Bankruptcy Act (as now or in the future amended) or an admission seeking the relief therein provided;

(c) his or its making a general assignment for the benefit of his or its creditors;

(d) his or its consenting to the appointment of a receiver, trustee, or custodian for all or a substantial part of his or its property;

(e) his or its being adjudicated a bankrupt or being the subject of an order for relief under Title 11 of the U.S. Code;

(f) The entry of a court order appointing a receiver, trustee, or custodian for all or a substantial part of his or its property without his or its consent which order remains unstayed and in effect for more than 30 days;

(g) the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of his or its property.

"General Partner or General Partners" means MDC Partners and those Persons who become General Partners as provided herein, in such Persons' capacity as the General Partners of the Partnership.

"GP Administration Fee" means the annual fee payable beginning in 1983 and in following years to the General Partner, out of the first available Cash Flow (prior to any distribution to the Partners), equal to \$10,000 per annum, adjusted annually to give effect to the increase or decrease in the General Partner's cost and expense of providing administration services to the Partnership as determined by the General Partner, provided, however, such annual adjustments shall be limited to the percentage change over the preceding year in the Consumer Price Index for the metropolitan Providence area, as reported by the U.S. Department of Labor, Bureau of Labor Statistics. Such fee shall be an operating expense of the Partnership for all purposes hereunder. Any portion of the GP Administration Fee not paid in any fiscal year shall be paid as provided in Section 10.2 C.

"Immediate Family" means, with respect to any Person, his spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

"Improvements" means the proposed office and retail space development and related facilities to be constructed through the rehabilitation of the so-called Simmons Building.

"Investment Recovery" means the point in time when the Limited Partners shall have recovered 100% of their original Capital Contributions (exclusive of interest) from any one or more of (i) distributions of Cash Flow, (ii) the proceeds of a refinancing of the Project or a sale, exchange, condemnation (or similar eminent domain taking), casualty or other disposition of all or a portion of the Project, or (iii) from any other distributions made by or on behalf of the Partnership provided, however, for purposes of determining "Investment Recovery" an amount equal to 50% of any investment tax credit allowable under Section 38 of the Code (including the credit with respect to the rehabilitation of historic structures pursuant to Section 48(g) of the Code) which is allocated to a Limited Partner by the Partnership and which is not disallowed by the Internal Revenue Service shall be deemed a distribution made to the Limited Partner by the Partnership.

"Investor Note" means a negotiable promissory note issued by a Limited Partner to the Partnership pursuant to Section 5.1 hereof, which shall bear interest at the greater of the prime rate of Citibank, N.A. or 12% per annum, payable quarterly, in arrears, commencing September 30, 1983, and the principal of which is payable in four equal annual installments commencing March 1, 1984.

"Land" means the parcel located on the westerly side of Eddy Street and bounded also by Point and Richmond Streets in Providence, Rhode Island referred to in the Commitments.

"Lender" means Citizens Bank, a Rhode Island banking corporation.

"Limited Partner" or "Limited Partners" shall mean and include the individuals and entities listed on the Schedule, as from time to time amended.

"Loan Agreement" means the agreement dated November 10, 1983 between the Partnership and the Lender providing for a loan to finance the acquisition and rehabilitation of the Project, as such agreement may hereafter from time to time be amended.

"Management Agent" means Marathon Property Company, the managing and rental agent for the Project.

"Management Fee" means the amount payable from time to time by the Partnership to the Management Agent on an annual basis for management services in accordance with a management contract with a reasonable and competitive fee arrangement.

"Monitor" means an addition to the fifth floor of the Project, which would add approximately 3,000 square feet of rental area to the Project, which will not be constructed unless, in the opinion of the General Partner, the value of the Project would be increased by more than the cost of construction of the Monitor.

"Mortgage" means the first mortgage indebtedness of the Partnership in the amount of \$1,200,000, (up to \$1,320,000 if the Monitor is built) evidenced by the Note and secured by a mortgage on the real property and improvements located on Eddy Street, Providence, Rhode Island from the Partnership to the Lender.

"Mortgage Loan" means the \$1,200,000 loan (up to \$1,320,000 if the Monitor is built) made by the Lender to the Partnership under the Loan Agreement, as amended from time to time, and which is secured by the Mortgage.

"Note" means the promissory note of the Partnership to the Lender which is secured by the Mortgage and any note of the Partnership issued in substitution or replacement thereof.

"Operating Guaranty Period" means the period ending five years after the Project is first occupied or ready for occupancy by tenants, whichever event first occurs.

"Partner" means any General Partner or Limited Partner.

"Partnership" means the limited partnership governed by this Agreement as said limited partnership may from time to time be constituted and amended.

"Percentage Interest" means, as to a Partner, the percentage specified in the Schedule.

"Person" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

"Project" means the Improvements constructed or to be constructed on the Land.

"Project Documents" means and includes the Commitments and all other documents related to the Project and signed by a General Partner.

"Project Expenses" means all the costs and expenses of any type incurred incident to the ownership and operation of the Project, including, without limitation, taxes, capital improvements, payments of principal and interest on the Mortgage (without forbearance), the cost of operations, maintenance and repairs, the GP Administration Fee, and the funding of any reserves, deposits, or escrow accounts required to be maintained by the Lender. For the purposes of Sections 6.8 and 6.10, Project Expenses shall be determined on an accrual basis of accounting regardless of the basis upon which the books of the Partnership are kept for other purposes.

"Retirement" (including the verb form Retire and the adjectival forms Retired and Retiring) means, as to a General Partner, and shall be deemed to have occurred automatically upon, the occurrence of an Event of Bankruptcy, dissolution, withdrawal from the Partnership for any reason including death, or adjudication of insanity or incompetence.

"Schedule" means the Schedule of Partners annexed hereto as Schedule A as amended from time to time and as so amended at the time of reference thereto.

"State" means the State of Rhode Island.

"Subordinated Loan" means the loan or loans made by the General Partners to the Partnership pursuant to Section 6.10 and which is or are payable without interest and only as provided in Article X or as otherwise specifically set forth herein.

"Substitute General Partner" means any person who is admitted to the Partnership as a General Partner under the provisions of this Agreement.

"Substitute Limited Partner" means any Person who is admitted to the Partnership as a Limited Partner under the provisions of Section 8.3.

"Uniform Act" means the Uniform Limited Partnership Act as embodied in Title 7, Chapter 13 of the General Laws of Rhode Island.

"Unit" means a portion of the Limited Partner Class Contributions representing a Capital Contribution of \$10,000.

"Withdrawal" (including the verb form Withdraw and the adjectival forms Withdrawn and Withdrawing) means, as to a General Partner, any circumstances, whether voluntary or involuntary, by which such Person (i) ceases to be a General Partner in the Partnership, (ii) causes a dissolution or termination of the Partnership, (iii) sells, assigns, transfers or otherwise disposes of or encumbers all or any portion of its interest as a General Partner in the Partnership, except for any of its interest in Partnership profits, losses, capital, distributions and Cash Flow which is not all or substantially all of such economic interest and provided that at all times the General Partners together shall hold a 1% interest in each material item of Partnership income, gain, loss, deduction, or credit, or (iv) the General Partners shall have committed a material violation of Sections 6.8 or 6.10 hereof.

## ARTICLE II

### Continuation; Name; and Purpose

#### Section 2.1 Continuation

The parties hereto hereby agree to continue the limited partnership known as Simmons Building Associates, a limited partnership formed pursuant to the provisions of the Uniform Act.

#### Section 2.2 Name and Office

The Partnership shall continue to be conducted under the name and style of Simmons Building Associates. The principal office of the Partnership shall be located at Two Davol Square, Providence, Rhode Island 02903 (telephone: 401-273-9700). All correspondence should be addressed to Marathon Development Corporation, the general partner of the General Partner, at that address. The General Partners may at any time change the location of such principal office and shall give due notice of any such change to the Limited Partners.

#### Section 2.3 Purpose

The purpose of the Partnership is to acquire, rehabilitate, develop, improve, maintain, operate, lease, sublease, sell, dispose and otherwise deal with the Project, with such rehabilitation and development to be conducted in a manner consistent with the historic character of the Project. Subject to

the limitations on the obligation of the General Partner set forth in Section 6.7 and elsewhere in this Agreement, the General Partner shall use its best efforts to operate the Project in accordance with all applicable Commitments and all governmental regulations, and shall take all steps necessary on a best efforts basis to discharge their obligations as General Partner to the Partnership and the Partners. The Partnership shall not engage in any other business or activity.

#### Section 2.4 Authorized Acts

In furtherance of its purposes, but subject to all other provisions of this Agreement including, but not limited to, Article VI, the Partnership is hereby authorized:

(i) To acquire by purchase, lease or otherwise acquire any real or personal property which may be necessary, convenient or incidental to the accomplishment of the purpose of the Partnership.

(ii) To construct, rehabilitate, operate, maintain, finance, improve, own, sell, convey, assign, mortgage, lease or sublease any real estate and any personal property necessary, convenient or incidental to the accomplishment of the purpose of the Partnership.

(iii) To borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Partnership, and to secure the same by mortgage, pledge or other lien on the Project, the Investor Notes, or any income or other asset of the Partnership; provided however, that the proceeds of such borrowings, except as otherwise permitted by Article X, shall not be used directly or indirectly to pay Subordinated Loans or Construction Completion Notes.

(iv) To borrow money on the general credit of the Partnership for the use in the Partnership business; provided, however, that the proceeds of such borrowings, except as otherwise permitted by Article X, shall not be used directly or indirectly to pay Subordinated Loans or Construction Completion Notes.

(v) To prepay in whole or in part, refinance, recast, increase, modify, or extend the Mortgage Loan or any other financing or mortgages affecting the Project and in connection therewith to execute any extensions, renewals, or modifications of the Mortgage

Loan or any such other financing or mortgages on the Project.

(vi) To employ a Management Agent, including an Affiliated Person, to manage the Property, and to pay reasonable compensation for such services.

(vii) To lease all or any portion of the Project from time to time for such periods and upon such terms as shall be acceptable to the General Partner and to collect all rents and other income and to pay therefrom all Project Expenses for which the Partnership shall be responsible.

(viii) To enter into, perform and carry out contracts of any kind, including contracts with any Affiliated Person, necessary to, in connection with or incidental to, the accomplishment of the purposes of the Partnership, specifically including, but not limited to, the execution and delivery of the Commitments, and all other agreements, certificates, instruments or documents required by the Lender in connection with the Commitments and other financing and the acquisition, construction, rehabilitation, development, improvement, maintenance and operation of the Project or otherwise required by the Lender in connection with the Project.

(ix) To enter into any kind of activity and to 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, so long as said activities and contracts may be lawfully carried on or performed by a partnership under the laws of the State.

(x) To enter into, on behalf of the Partnership, (1) easements, rights of way, utility or other agreements necessary for the development of the Project, and (2) easements, cross-easements, rights of way and other agreements required to permit access over, through, and across the Project.

#### Section 2.5 Term and Dissolution

The Partnership shall continue in full force and effect until December 31, 2050, except that the Partnership shall be dissolved prior to such date upon the happening of any of the following events:

(i) The sale or other disposition of all or substantially all the assets of the Partnership;

(ii) The Retirement of General Partner if no General Partner remains and the Partnership is not continued as provided in Section 7.3; or

(iii) The election to dissolve the Partnership made in writing by the General Partner with the consent of all of the Partners.

Upon dissolution of the Partnership, the General Partner (or its trustees, receivers, successors or legal representatives) shall cause the cancellation of the Certificate, and shall, unless the Partnership is continued pursuant to Section 7.3, liquidate the Partnership assets and apply and distribute the proceeds thereof in accordance with Section 10.3. Notwithstanding the foregoing, in the event such liquidating General Partner shall determine that an immediate sale of part or all of the Partnership's assets would cause undue loss to the Partners, the liquidating General Partner may, in order to avoid such loss, either (i) defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Partnership except those necessary to satisfy the Partnership debts and obligations (other than Subordinated Loans and Construction Completion Notes) or (ii) distribute the assets to the Partners in kind; provided, however, that the proceeds of any sale or other disposition of Partnership assets shall be distributed in the fiscal year of the Partnership in which the sale or other disposition occurs.

### ARTICLE III

#### MORTGAGE LOAN AND REFINANCING AND DISPOSITION OF PROJECT

##### Section 3.1 Mortgage Loan

The Partnership may borrow up to \$1,200,000 (exclusive of Subordinated Loans and under Construction Completion Notes) for the acquisition, rehabilitation, development and construction of the Project and to meet the expenses of operating the Project and may secure the same by mortgage, assignment of income and any other form of lien or security interest. The Mortgage Loan shall provide that after completion no partner shall have personal liability for the repayment of the Mortgage Loan. The General Partner signing singly is specifically authorized to execute such documents and instruments as it deems necessary or appropriate in connection with the acquisition, rehabilitation, development, financing operation and management of the Project including, without any implied

limitation, the Note, the Mortgage and the Loan Agreement. In addition, the General Partner is authorized to borrow up to an additional \$120,000 for construction of the Monitor if the General Partner determines that the value of the Project would be increased by more than the cost of the construction of the Monitor. Such additional borrowings for the construction of the Monitor may be obtained from the Lender or other financial institution selected by the General Partner. The General Partner signing singly is specifically authorized to execute such instruments and documents as it deems necessary or appropriate in connection with the construction and financing of the Monitor, including, without implied limitation, any notes, mortgages and security agreements.

### Section 3.2 Refinancing and Disposition of the Project

The General Partner, on behalf of the Partnership, may decrease or increase the Mortgage Loan at or before Completion up to a maximum principal amount of \$1,200,000 (\$1,320,000 if the Monitor is to be built) and as otherwise necessary to conform to any reasonable changes in the Commitments. The Partnership may also refinance the Mortgage Loan, including any required transfer or conveyance of Partnership assets for security or mortgage purposes, and sell, lease, sublease, exchange or otherwise transfer or convey all or substantially all of the assets of the Partnership; provided, however, that prior to Investment Recovery or unless Investment Recovery would occur immediately following any such refinancing, sale, lease, sublease, exchange or other transfer or conveyance, then the terms of such proposed transaction must receive the Consent of the Limited Partners before such transaction shall be binding on the Partnership. The General Partner shall give the Limited Partners at least 30 days written notice of any transaction described above which requires Consent of the Limited Partners. In no event shall this Section 3.2 be construed to require the Consent of the Limited Partners for leases to tenants who will occupy the Project made in the regular course of the Partnership's business.

## ARTICLE IV

### Partners; Capital

#### Section 4.1 General Partner

A. The General Partner of the Partnership is MDC Partners and its Capital Contribution is set forth in the Schedule.

B. Subject to the provisions of Section 7.5 hereof, the General Partner shall have the right to admit any Person as an

additional General Partner provided such admission receives the consent of the General Partner and does not reduce the percentage interest of the Limited Partners in the Partnership.

#### Section 4.2 Partnership Capital

The capital of the Partnership shall be the aggregate amount of the cash contributed by the General Partner and by the Limited Partners, as set forth in the Schedule. No interest shall be paid by the Partnership on any Capital Contribution to the Partnership.

#### Section 4.3 Withdrawal of Capital

No Partner shall have the right to withdraw from the Partnership all or any part of his Capital Contribution until December 31, 2050. No Partner shall have any right to demand and receive property (other than cash) of the Partnership in return for his Capital Contribution except as may be specifically provided in this Agreement. All rights to withdrawal of a Partner's Capital Contribution shall be subject to the provisions of the Uniform Act.

#### Section 4.4 Liability of Limited Partner

No Limited Partner shall, except as required by the Uniform Act, be liable for any debts, liabilities, contracts, or obligations of the Partnership. A Limited Partner shall be liable only to make payments of his Capital Contribution as and when due hereunder. After his Capital Contribution shall be fully paid, no Limited Partner shall, except as required by the Uniform Act, be required to make any further Capital Contributions or lend any funds to the Partnership.

#### Section 4.5 Limited Partners

A. Marathon Development Corporation shall cease to be Limited Partner upon the filing of this Agreement with the Secretary of State of Rhode Island. The Limited Partners shall be those Persons listed on the Schedule.

B. The General Partner shall have the right to admit additional Limited Partners who shall make or agree to make Capital Contributions (exclusive of interest) of up to a total of \$1,140,000 (including the amounts agreed to be made by the Limited Partners listed on the Schedule) subject to and in accordance with the provisions of Section 5.1 hereof. After Limited Partners have been admitted who have made or agreed to make Capital Contributions of up to a total of \$1,140,000, the

General Partner may admit additional Limited Partners only with the Consent of the Limited Partners.

C. Each Limited Partner shall, by his execution of this Agreement, as a result of being admitted to the Partnership as a Substitute Limited Partner pursuant to Article VIII or as a condition of receiving any interest in the Partnership property, agree to be bound by the terms and provisions of the Commitments, the Mortgage Loan, and any other documents required in connection therewith. Any Limited Partner shall also agree to accept such other terms and conditions set forth in writing to them at the time of admission as the General Partner may reasonably determine.

D. Upon the admission of any Limited Partner, the Schedule shall be amended to reflect the name, address and Capital Contribution of such Limited Partner, and an amendment to the Certificate reflecting such admission shall be filed with the Secretary of the State of Rhode Island. Each Limited Partner may become signatory hereto by signing a conformed copy of this Agreement in such manner as the General Partner shall determine (including pursuant to a power of attorney), and, by so signing, such Limited Partner shall be deemed to have adopted and to have agreed to be bound by all the provisions of this Agreement, provided, however, that no such copy shall be binding until it has been signed by the General Partner.

## ARTICLE V

### Capital Contributions of the Limited Partners

#### Section 5.1 Payments

(a) Except as hereinafter provided, Limited Partners to be admitted under the provisions of Section 4.5 hereof shall make their Capital Contributions in one hundred fourteen (114) Units of \$10,000 or multiples thereof with a minimum investment per Limited Partner of three (3) Units. Payment for each such Unit shall be made by one of the following two methods: (i) cash or certified or bank check made payable to the Partnership in the amount of \$10,000 payable upon admission to the Partnership; or (ii) cash or certified or bank check made payable to the Partnership in the amount of \$2,000, payable upon admission to the Partnership, and by the delivery of an Investor Note in the amount of \$8,000, secured by (x) a letter or letters of credit issued in favor of the Partnership (or, if required by the General Partner, in favor of such financial institutions as

may be designated by the General Partners) from a financial institution satisfactory to the General Partner and (y) the Limited Partner's interest in the Partnership.

Cash, checks, Investor Notes and the letters of credit shall be deposited with Marathon Capital Corporation, as Escrow Agent, pursuant to the Escrow Agreement, at the time of the execution of the Subscription Agreement pursuant to which the Limited Partner subscribes for his Limited Partnership interest and shall be released on the date the Limited Partner is admitted to the Partnership with the conditions set forth in Section 5.1(b) hereof.

(b) The obligations of the Escrow Agent to release the Limited Partner's Capital Contributions to the Partnership is subject to the condition that (i) the Partnership has received subscriptions for at least 104 Units and has deposited with the Escrow Agent Capital Contributions in the form of cash, certified or bank checks, Investors' Notes and letters of credit aggregating \$1,040,000 (exclusive of interest), (ii) the General Partner have delivered to the Escrow Agent the GP Certificate (as hereinafter defined), (iii) all of the conditions to the first advance of the Mortgage Loan shall have been satisfied (other than the prior use of the Capital Contributions for Project costs and expenses), (iv) the Partnership shall have entered into the Construction Contract and (v) counsel to the Partnership shall have issued a favorable opinion with respect to the taxation of the Partnership for Federal income tax purposes.

The obligation of Limited Partners to make their Capital Contribution hereunder and the obligation of the Escrow Agent to release the Capital Contributions to the Partnership is subject to the condition that the General Partner shall have delivered a written certificate (the "GP Certificate") to the Escrow Agent (i) listing all preconditions, representations and warranties applicable to the payment of the Capital Contributions (including, without limitation, those set forth in Section 6.5 hereof), (ii) stating that all such preconditions, representations, warranties and agreements have been satisfied and are true and correct, and (iii) stating that, as to the General Partner or any other Affiliated Person, no default has occurred and is continuing under the Agreement, or any of the Project Documents. The GP Certificate shall be delivered to the Escrow Agent as a precondition to payment by the Limited Partners of the payment of the Capital Contribution described

in Section 5.1(a)(i) and the cash portion of the Capital Contribution described in Section 5.1(a)(ii). The payment of the installments of the Investor Notes and their release to the Partnership by the Escrow Agent shall be unconditional upon the release of the cash portion of the Capital Contribution described in Section 5.1(a)(ii).

## ARTICLE VI

### Rights, Powers and Duties of the General Partner

#### Section 6.1 Restriction on Authority

Notwithstanding any other provisions of this Agreement, the General Partner shall have no authority to perform any act in violation of the Commitments, any applicable law or regulation or any other agreement between the Partnership and the Lender. Except for borrowings under the Mortgage Loan, including borrowings secured by the Investor Notes and borrowings for construction of the Monitor, the General Partner shall have no authority to borrow on the general credit of the Partnership for Completion of the Project until exhaustion of the General Partner's obligations under Section 6.8. In addition, the General Partner acting on behalf of the Partnership shall not have any authority to do any of the following acts without the Consent of the Limited Partners and, if required, the approval of the Lender;

(1) following Completion of the Improvements, engage in any construction or replacement that would substantially alter the character or use of the Project, or

(2) to acquire any real property in addition to that used for the Project;

(3) to become personally liable on, or in respect of or to guarantee, the Mortgage Loan; or

(4) except as otherwise provided in Section 3.2 hereof, refinance, sell or convey the Project.

The General Partner does not have the authority, without the Consent of the Limited Partners, except as otherwise expressly provided in this Agreement, to do any act required to be approved or ratified by a limited partner under the Uniform Act.

#### Section 6.2 Personal Services

No Affiliated Person shall receive any compensation for services rendered to the Partnership in connection with the construction and rehabilitation of the Improvements and the initial rent-up of the Project, except (i) as provided in Section 6.9, (ii) Management Fees payable to Marathon Property Company in connection with the rental of the Project to tenants based upon a fair and reasonable percentage of the gross rents, (iii) fees for professional services, (iv) the commissions payable to Marathon Capital Corporation in connection with the sale of Limited Partners interests in the Partnership, and (v) the amounts paid to Affiliated Persons to purchase the Improvements. Except as provided herein any Partner may engage independently or with others in other business ventures of every nature and description including, without limitation, the ownership, operation, management, syndication and development of real estate, and neither the Partnership nor any Partner shall have any rights in and to such independent ventures or the income or profits derived therefrom.

### Section 6.3 Business Management and Control

A. The General Partner shall have the exclusive right to manage the business of the Partnership. If there shall be more than one General Partner, the General Partners shall have equal rights in the management of the Partnership business as provided by the partnership law of the State and shall act by vote or assent of a majority in interest of the General Partner.

No Limited Partner (except one who may also be a General Partner, and then only in his capacity as General Partner) shall (i) have any authority or right to act for or bind the Partnership, or (ii) participate in or have any control over the Partnership business, except as required by law. The Limited Partners hereby consent to the exercise by the General Partner of the powers conferred on them by this Agreement.

B. The General Partner shall be fully authorized to take any action of any type and to do anything and everything which the General Partner may be authorized to take or do hereunder, and specifically, without limitation of such authority, signing singly, to execute, sign, seal and deliver in the name and on behalf of the Partnership:

(1) any lease, note, mortgage or other instruments or documents in connection with the Mortgage and all other agreements, certificates or instruments required by the Lender in connection with the acquisition, ownership, construction, development, financing and operation of the Project,

(2) any deed, lease, mortgage, mortgage note, bill of sale, contract or any other instrument purporting to convey or encumber the real or personal property of the Partnership,

(3) any and all agreements, contracts, documents, certifications and instruments whatsoever involving the construction, rehabilitation, development, financing, management, maintenance and operation of the Project, including the employment of such Persons or other Entities as may be necessary therefor,

(4) any and all instruments or documents requisite to carrying out the intention and purpose of this Agreement, including, without limitation, the filing of all business certificates, Certificates of Limited Partnership, all amendments thereto and documents required, or deemed advisable by the General Partner in connection with any financing.

Every contract, deed, mortgage, lease and other instrument executed by the General Partner shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that at the time of the delivery thereof the execution and delivery of such instruments were duly authorized by the General Partners. Any Person dealing with the Partnership or General Partner may always rely on a certificate signed by General Partner:

(1) as to who are the General or Limited Partners hereunder,

(2) as to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the General Partner or are in any other manner germane to the affairs of this Partnership,

(3) as to who is authorized to execute and deliver any instrument or document of the Partnership,

(4) as to the authenticity of any copy of the Partnership Agreement and amendments thereto, or

(5) as to any act or failure to act by the Partnership or as to any other matter whatsoever involving the Partnership or any Partner.

#### Section 6.4 Duties and Obligations

A. The General Partner shall promptly take all action which may be necessary or appropriate for the development of the Project and the proper maintenance and operation of the Project in accordance with the provisions of this Agreement and applicable laws and regulations.

B. The General Partner shall use its best efforts to cause the Partnership at all times to comply with and to perform their obligations under the Commitments and the Mortgage Loan and any other applicable requirements of the Lender.

C. The General Partner on behalf of the Partnership and at the Partnership's expense, shall obtain and keep in force during the term of the Partnership fire and extended coverage, worker's compensation and public liability insurance in favor of the Partnership, in such companies and in such amounts as shall be satisfactory to the Lender and be reasonable and prudent in connection with the ownership of the Project.

D. The General Partner shall diligently and faithfully devote such of its time to the business of the Partnership as may be necessary to conduct it for the greatest advantage of the Partnership and shall at all times act in a fiduciary manner toward the Partnership and the Limited Partner.

#### Section 6.5 Representation and Warranties

The General Partner hereby represents and warrants to the Limited Partners that, as of the date hereof and to the best of its knowledge (due inquiry having been made), the following are true and at all times after the date hereof they will use their best efforts to comply with and otherwise cause the following statements to be true:

A. (i) The Partnership is a duly organized limited partnership validly existing under the laws of the State and has complied with all filing requirements necessary under the Uniform Act for the preservation of the limited liability of the Limited Partners.

(ii) The Partnership is the sole owner in fee simple of the real property on which the Project is or will be constructed, free and clear of all liens, claims and encumbrances, except the lien of the Mortgage, the lien of current taxes not yet due and payable and such other matters as do not and will not materially interfere with the use and enjoyment of said real property for its intended purposes; and said

real property is properly zoned for its intended purposes;

(iii) Construction of the Improvements will progress in substantial conformity with the Commitments and the Construction Contract and substantially all of the rehabilitation of the Project will be in conformity with the historic nature of the Project as set forth in the rehabilitation plans submitted to the United States Department of Interior.

(iv) All payments and expenses required to be made or incurred in order to complete construction of the Improvements (exclusive of the cost of individual tenant finish work) in conformity with the Commitments and in order to satisfy all requirements under the Commitments and/or which form the basis for determining the principal sum of the Mortgage Loan, including, without implied limitation, interest during construction and any escrow payments, have been paid or provided for by, or for the account of, the Partnership utilizing only (a) the funds available from the Mortgage Loan, (b) the Capital Contributions of the Limited Partners, and (c) funds furnished by the General Partners pursuant to Section 6.8.

(v) The Project is listed on the National Register and is therefore a "certified historic structure" as defined in Section 48(g) of the Code.

(vi) The Partnership will elect the straight-line method of depreciation or cost recovery and will take all other necessary action to result in the rehabilitation expenditures incurred in connection with the Project, qualifying as "qualified rehabilitation expenditures" within the meaning of Section 48(g) of the Code.

(vii) No event, occurrence or proceeding is pending or to their best knowledge threatened which would (a) materially adversely affect the Partnership or the Project, or (b) materially adversely affect the ability of the General Partner or any Affiliated Person to perform their obligations hereunder or under any other agreement with respect to the Project or (c) prevent the completion of construction of the Improvements in conformity with the Commitments. This subparagraph shall be deemed to include, but not be

limited to the following: (x) legal actions and proceedings before any court, commission or administrative body having jurisdiction over the zoning or environmental laws or regulations applicable to the Property, (y) labor disputes and (z) acts of any governmental authority.

(viii) No material default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any of the Commitments, the Project Documents, or any other agreement affecting the Project, and the same are in full force and effect.

(ix) Neither the Partnership nor any Partner has any personal liability with respect to the Mortgage Loan, except that during the construction period and the initial leasing period, the Mortgage Loan will be guaranteed by Marathon Development Corporation.

(x) The use of the Land for construction and operation of the Project is not in material violation of applicable zoning law, and there are no density restrictions, building or use laws, planning rules, regulations, ordinances or requirements or environmental procedures applicable to the Project which would materially inhibit or materially adversely affect the development of the Project, or the acquisition of limited partnership interests in the Partnership by the Limited Partners.

(xi) Marathon Development Corporation, the sole general partner of the General Partner, has and will maintain a net General Partner worth of not less than \$250,000 or such greater amount as is required to meet the so-called "safe harbor" rules of Revenue Procedure 72-13 of the Internal Revenue Service or any successor requirement.

(xii) No event has occurred which as a matter of law would result for Federal income tax purposes in the classification of the Partnership as an association taxable as a corporation or terminate its ownership of the Project.

(xiii) The execution and delivery of all instruments and the performance of all acts heretofore or hereafter made or taken pertaining to the Partnership or the Project by each Affiliated Person which is a corporation or a partnership have been duly authorized

by all necessary corporate or other action and the consummation of any such transactions with or on behalf of the Partnership will not constitute a breach or violation of, or a default under, the charter, by-laws or partnership agreement of said Affiliated Person or any agreement by which such Affiliated Person or any of its properties is bound, nor constitute a violation of any law, administrative regulation or court decree.

(xiv) All appropriate roadways and public utilities, including sanitary and storm sewers, water, gas and electricity, are available to and are or will be operating properly for the Project.

(xv) The only direct or indirect compensation or remuneration to be received by the General Partner or any of its Affiliates are the fees described in or permitted by this Agreement and the gain realized upon the sale of Land and Improvements to the Partnership.

B. The General Partner agrees that, except for the guaranty of Marathon Development Corporation during the construction and initial lease-up period, it will not at any time become personally liable nor permit any of its Affiliated Persons to become liable for the payment under the Mortgage Loan and will use its best efforts to prevent any other Partner from becoming so liable.

C. Marathon Development Corporation, as the sole general partner of the General Partner, agrees that throughout the term of this Partnership to maintain an aggregate net worth of at least \$250,000 or any greater amount which may be required, from time to time, to meet the standards set by the Code, Treasury Regulations thereunder or administrative guidelines or interpretations related thereto; provided, however, (a) such aggregate net worth may be reduced upon written opinion to the Limited Partners from Messrs. Edwards & Angell that a lesser net worth will not adversely affect the taxation of the Partnership as such under the Code and (b) such aggregate net worth may be satisfied by the addition or substitution of a General Partner who, either together with the General Partner or separately as the case may be, satisfies any existing net worth requirement. The addition or substitution of a General Partner shall be subject to the Consent of the Limited Partners as provided in Sections 4.1.B and 7.5.

#### Section 6.6 Indemnification

The Partnership shall indemnify and save harmless the General Partner from any loss or damage incurred by reason of

any act or omission performed or omitted by it in good faith on behalf of the Partnership and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement and in the best interests of the Partnership and the Partner, provided that it was not adjudged to be grossly negligent or to have engaged in willful misconduct with respect to such acts or omissions. No indemnification may be made in respect of any claim, issue or matter as to which the General Partner shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of its duty to the Partnership unless, and only to the extent that, the court in which such action or suit was brought determines that, despite the adjudication of liability, but in view of all circumstances of the case, the General Partner is fairly and reasonably entitled to indemnity for those expenses which the court deems proper. Any indemnity under this Section 6.6 shall be paid from, and only to the extent of, Partnership assets, and no Limited Partner shall have any personal liability on account thereof.

#### Section 6.7 Liability of General Partner to Limited Partners

The General Partner shall not be liable, responsible or accountable for damages or otherwise to any Limited Partner for any act or omission performed or omitted by it in good faith on behalf of the Partnership and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement and in the best interests of the Partnership and the Partner, except that the General Partner shall indemnify promptly and hold harmless the Partnership and the Limited Partners from and against any and all damages and liabilities which the Partnership and the Limited Partners may incur by reason of (a) the past, present and future actions or omissions of the General Partner or any Affiliated Person involving fraud, willful misconduct or gross negligence, (b) any undisclosed liabilities to which either the Partnership or the Project is subject on the date of this Agreement, (c) any misrepresentation of a material fact or breach of covenant or warranty, and (d) any liability provided in Sections 6.5 and 6.8.

#### Section 6.8 Obligation to Complete Construction

The General Partner shall use its best efforts to cause the Improvements to be constructed in the manner set forth in the Construction Contract. In the event the proceeds of the Mortgage Loan and the paid-in Capital Contributions of the Limited Partners made or to be made are insufficient to complete construction of the Project (exclusive of individual tenant finish work), to achieve Completion and pay Project

Expenses accrued through Completion as required to be paid at or prior to Completion and to correct any latent defects appearing within one (1) year of Completion, the General Partners shall advance to the Partnership all such funds which shall be necessary to accomplish the foregoing at such time as those costs, expenses or fees become due and payable. Any such advances, shall be represented by Construction Completion Notes, which shall not bear interest, which shall be issued by the Partnership, and which shall be repayable out of Mortgage Loan proceeds received by the Partnership on or before Completion or from the balance of the Capital Contribution of the Limited Partners or refunds of deposits or escrows advanced by the General Partners on behalf of the Partnership; and, to the extent not so repaid, such Notes shall be payable only as provided in Article X hereof. The General Partner is entitled to use any net rental or other income of the Partnership prior to Completion to meet its obligations under this section or to repay Construction Completion Notes.

#### Section 6.9 Certain Payments to the General Partner

A. The Partnership shall pay to the General Partner a development fee of \$110,000 for development services rendered to the Partnership including obtaining the necessary local approvals for development, the carrying of the initial development costs of the Project prior to development, for the review and supervision of the rehabilitation/construction of the Project including work in connection with (a) the progress of the rehabilitation schedules and (b) progress payments, design changes, change orders, budgets, quality of workmanship, compliance with plans and specifications and compliance with governmental regulations applicable to the Project. Such fee shall be payable on December 31, 1983.

B. The Partnership shall pay the General Partner the GP Administration Fee for its administration of the Partnership's affairs, including providing reports to the Limited Partners as required by Section 12 hereof.

#### Section 6.10. Obligation to Provide for Project Expenses

If the Partnership shall require funds for any purpose (other than cash distribution) during the Operating Guaranty Period, the General Partner shall make non-interest bearing Subordinated Loans to the Partnership of the amounts required, up to a maximum aggregate amount of \$200,000.

### Section 6.11 Survival of Obligations

The representations, warranties and obligations set forth in Sections 6.5, 6.7, 6.8 and 6.10 shall survive any Retirement of the General Partner from the Partnership for any reason.

## ARTICLE VII

### Retirement of a General Partner

#### Section 7.1 Retirement of General Partner

The General Partner shall not have the right to voluntarily Retire from the Partnership or sell, assign, transfer or encumber its interest as General Partner without the Consent of the Limited Partners. Notwithstanding the above, in the event of an act of Retirement as to a General Partner, such General Partner shall automatically be deemed to have withdrawn as a General Partner of the Partnership. In the event of the voluntary withdrawal of a General Partner in violation of this Section 7.1 or an involuntary withdrawal due to an Event of Bankruptcy or pursuant to the provisions of Section 7.6 hereof, the withdrawing General Partner shall forfeit all interest in the Partnership as provided in Section 7.4. Notwithstanding any such forfeiture, such withdrawing General Partner shall remain liable for the performance of all obligations under this Agreement and shall be liable to the Limited Partners for all damages suffered by them as a result of the withdrawal of such General Partner occurring without the Consent of the Limited Partners.

#### Section 7.2 Obligation to Continue

Upon the Retirement of a General Partner, any remaining General Partner(s), if any, or, if none, the Retired General Partner or its successors or assigns, shall immediately send notice of such Retirement to each Limited Partner, and the Partnership shall be (i) dissolved if there is no remaining General Partner or (ii) continued by the remaining General Partner(s), unless there is no remaining General Partner.

#### Section 7.3 Retirement of Sole General Partner

If, following the Retirement of General Partner, there is no remaining General Partner of the Partnership, then the Limited Partners representing one hundred percent (100%) in interest of the Limited Partners Class Contributions (excluding the interests of General Partner who may also be a Limited Partner) may, within sixty (60) days after notice of such Retirement, elect to reconstitute the Partnership and continue the business

of the Partnership for the balance of the term specified in Section 2.5 by selecting a successor General Partner. If the Limited Partners elect to reconstitute the Partnership pursuant to this Section 7.3, and admit a successor General Partner, the relationship among the then Partners shall be governed by this Agreement. Each Limited Partner who does not desire to participate in such reconstituted Partnership with such General Partner shall be paid with nonrecourse notes of the reconstituted partnership, without interest, with a term not in excess of three (3) years, in a principal amount equal to the fair market value of his interest in the Partnership, as determined by the Limited Partners, or in case of failure to agree, as determined by a committee of three qualified appraisers, one selected by the remaining Limited Partners, one selected by the selling Limited Partner or Partners, and a third appraiser selected by the two appraisers so selected. Such principal amount shall be payable in equal quarter-annual installments.

#### Section 7.4 Interest of Retired General Partner

(A) The General Partner hereby agrees to transfer, at the time of its Retirement, to a successor General Partner selected in accordance with Section 7.3 hereof, or to the remaining General Partner(s), if any, its General Partner interest, such transfer to be made in consideration of the payment by the remaining General Partner(s) or the successor General Partner to the transferring General Partner of the fair market value of such interest as determined by mutual agreement of the General Partners or, if they cannot agree, by a committee of three qualified real estate appraisers, one selected by the Retired General Partner, or its legal representative, one selected by the proposed successor General Partner, and a third selected by the two appraisers so selected. The General Partner interest transferred in accordance with the provisions of this Section 7.4(a) shall be transferred in a manner sufficient to ensure the continued treatment of the Partnership as a partnership under the then applicable provisions of the Code and any applicable regulations, rules and rulings (including published private rulings) thereunder. Notwithstanding the foregoing provisions of this Section 7.4(a), in the event of a Retirement by General Partner from the Partnership in violation of the provisions of Section 7.1, its entire interest in the Partnership shall be forfeited and deemed to be automatically transferred to the successor General Partner or the remaining General Partner(s) without the payment of any consideration therefor.

(B) For the purposes of Article X hereof, the effective date of the transfer pursuant to the provisions of Section 7.4(a) of all or any portion of the General Partner interest of

a Retired General Partner shall be deemed to be the date of Retirement, but the Partnership shall not make any distributions to the designated transferee until the transfer has been made. Any portion of the General partner interest of a Retired General Partner which is not transferred to a successor General Partner pursuant to the provisions of Section 7.4(a) shall be deemed to be the interest of an assignee of a General Partner with the same interest in the profits, losses and distributions of the Partnership as were allocable to such portion of such interest prior to the Retirement in question.

#### Section 7.5 Designation of New General Partners

Subject to the provisions of Section 13.1 hereof, the General Partner may, with the Consent of the Limited Partners, at any time designate additional General Partners each with such interest as a General Partner in the Partnership as the General Partners may agree. Any incoming General Partner shall, as a condition of receiving any interest in the Partnership, agree to be bound by the Commitments and any other documents required in connection therewith and by the provisions of this Agreement and shall provide such financial statements, guarantees or other assurances as required by counsel to the Partnership or the Accountants.

#### Section 7.6 Partnership Tax Status

Notwithstanding any provision in this Agreement to the contrary, any General Partner which is a corporation shall immediately cease to be a General Partner (and be deemed to have automatically withdrawn) if its continuance as a General Partner might (in the reasonable opinion of legal counsel to the Partnership or the Accountants) adversely affect the status of the Partnership under the then applicable provisions of the Code or any regulation or ruling thereunder, provided, however, that such withdrawing General Partner shall have the right to designate a successor who is not an Affiliate of any individual General Partner and whose substitution as a General Partner, in the opinion of legal counsel to the Partnership and the Accountants, will not adversely affect the status of the Partnership for tax purposes, and such successor shall succeed to all rights, powers and obligations of the withdrawing General Partner.

#### Section 7.7 Amendment of Certificate

Upon the admission of an additional General Partner, the Schedule shall be amended to reflect such admission and an amendment to the Certificate of Limited Partnership reflecting such admission shall be filed in accordance with the Uniform

Act. Each General Partner, including the President, Vice President or Secretary of any corporate General Partner, is hereby constituted and empowered to act alone as the attorney-in-fact of all the other General Partners and all Limited Partners with authority to execute, acknowledge, swear to, and deliver such instruments as may be necessary or appropriate to carry out the foregoing provisions of this Article VII, including amendments to the Schedule, amendments to the Certificate of Limited Partnership required by the Uniform Act, business certificates and the like.

## ARTICLE VIII

### Transferability of Limited Partner Interests

#### Section 8.1 Limited Right to Assign

Subject to the provisions of this Article VIII, no Limited Partner shall have the right to assign or transfer all or any portion of its interest in the Partnership without the prior written consent of all General Partners the granting of which consent shall be in their sole discretion.

#### Section 8.2 Restrictions

A. In no event shall all or any part of a Limited Partner's interest in the Partnership be assigned or transferred to a minor (other than to a member of a Limited Partner's Immediate Family by reason of death) or to an incompetent.

B. The General Partner may require as a condition of its consent to any sale, transfer, exchange or other disposition of any interest in the Partnership, that the transferor (i) assume all costs incurred by the Partnership in connection therewith and (ii) furnish General Partner with a legal opinion satisfactory to counsel for the Partnership that such sale, transfer, exchange or other disposition complies with applicable Federal and state securities laws.

C. Any sale, exchange, transfer or other disposition in contravention of any of the provisions of this Section 8.2 shall be void and ineffectual and shall not bind or be recognized by the Partnership.

#### Section 8.3 Substitute Limited Partners

No Limited Partner shall have the right to substitute an assignee as a Limited Partner in its place. The General Partner shall, however, have the right in its exclusive discretion to permit a Limited Partner to designate a Person who

shall thereby become a Substitute Limited Partner. Any such permission by the General Partner shall be binding and conclusive without the consent or approval of any other Limited Partner. The General Partner's failure or refusal to permit an assignee to become a Substitute Limited Partner shall not give rise to any cause of action against the Partnership or any Partner.

Any Substitute Limited Partner shall, as a condition of receiving any interest in the Partnership property, agree to be bound by the Mortgage and other documents required in connection therewith and by the provisions of this Agreement to the same extent as any other Limited Partner.

Upon the admission of a Substitute Limited Partner, the Schedule shall be amended to reflect the name and address of such Substitute Limited Partner and to eliminate, if necessary, the name and address of the predecessor of such Substitute Limited Partner, and an amendment to the Certificate reflecting such admission shall be filed in accordance with the Uniform Act. Each Substitute Limited Partner shall execute such instrument or instruments as shall be required by the General Partners to signify his agreement to be bound by all of the provisions of this Agreement.

Any assignee of a Limited Partner who becomes a Substitute Limited Partner shall succeed to the assignor's Limited Partner interest as set forth in the Schedule.

#### Section 8.4 Assignees

If the purported assignee of a Limited Partner does not become a Substitute Limited Partner in accordance with Section 8.3, the Partnership shall not recognize the assignment and the purported assignee shall not have any rights to receive any portion of the share of profits, losses and distributions of the Partnership allocated to the Limited Partner making the purported assignment. Any such profits, losses and distributions shall continue to be allocated as if there were no assignment.

### ARTICLE IX

#### Loans

##### Section 9.1 In General

All Partnership borrowings shall be subject to the restrictions of Section 6.1 and applicable restrictions under the Mortgage Loan. To the extent borrowings are permitted, they

may be made from any source, including Partners and Affiliated Persons thereof. The Partnership may issue notes to evidence such borrowings or in payment for goods and services furnished to the Partnership.

If any Partner shall lend any monies to the Partnership, the amount of any such loan shall not be an increase of his Capital Contribution or affect in any way his share of the profits, losses or distributions of the Partnership. Except as otherwise provided in Section 6.8 and 6.10, the amount of any loan made by a Partner to the Partnership is not to be considered a Construction Completion Note or Subordinated Loan and shall be repayable, together with interest thereon at the rate then prevailing for comparable loans, to the same extent and in the same manner as a loan made by a lender who is not a Partner.

#### Section 9.2 Preexisting Advances

The General Partner is authorized to repay to itself and other parties, including Affiliated Persons, from the Mortgage Loan or other available Partnership funds, all advances for certifiable costs relating to the rehabilitation of the Improvements actually made to, or for the benefit of, the Partnership prior to the date of this Agreement.

### ARTICLE X

#### Profits and Losses; Distributions

##### Section 10.1 Profits and Losses

A. Except as provided in Paragraph B hereof, for Federal and State income tax purposes, all profits, losses and credits of the Partnership for each fiscal year (and portions thereof in the year in which Investment Recovery occurs) shall be allocated among, or be borne by the Partners as follows:

(i) Until Investment Recovery, ninety-nine percent (99%) to the Limited Partners and one percent (1%) to the General Partner.

(ii) After Investment Recovery, eighty percent (80%) to the Limited Partners and twenty percent (20%) to the General Partner.

B. Notwithstanding the provisions of Section 10.1(A), for Federal and State income tax purposes, the net profits arising from the sale, exchange, condemnation (or similar eminent domain taking), casualty or other disposition of all, or substantially all of, the Project, or from the liquidation of all,

or substantially all, of the assets of the Partnership (by reason of sale, exchange, condemnation, or similar eminent domain taking, casualty or other disposition), shall be allocated in the following order of priority:

(i) First, to each class of Partners (without preference as to class) having a negative balance in their Capital Accounts, in the proportion that such class of Partners' negative Capital Accounts bear to the total of all the Capital Accounts of Partners having negative Capital Accounts, until all such negative Capital Accounts equal zero;

(ii) Second, the balance of any such net profits, shall be allocated (a) ninety-nine percent (99%) to the Limited Partners and one percent (1%) to the General Partner, up to investment recovery;

(iii) Third, any net profits in excess of those allocated under Section 1.01(B)(i) and (ii) shall be allocated eighty percent (80%) to the Limited Partners and twenty percent (20%) to the General Partner.

If the amount of net profits available to be allocated pursuant to clauses (i) above is less than the amount referred to in such clause, the allocation of net profits between the classes of Partners pursuant to such clause shall be made on a pro rata basis, according to the amount which would have been allocated to such classes if the full amount were available to allocate.

All losses attributable to the sale or other disposition of all or a substantial part of the assets of the Partnership shall be allocated to the Partners to the extent of their respective positive Capital Account balance and thereafter eighty percent (80%) to the Limited Partners and twenty percent (20%) to the General Partner.

C. Except as otherwise provided herein, all profits and losses shared by a class of Partners shall be shared by the members of the class in the ratios of their Percentage Interests to the total percentage Interests held by that class.

D. The term "profits" and "losses" as used in this Agreement shall mean taxable income and losses as determined in accordance with generally acceptable accounting principles applied on a consistent basis.

#### Section 10.2 Distribution Prior to Dissolution

A. Cash Flow for each calendar year (or fractional portion thereof) shall be allocated first to the repayment of the Sub-

ordinated Loans and the Construction Completion Notes and the balance distributed to the Partners as follows:

(i) Until Investment Recovery, ninety-nine percent (99%) to the Limited Partners and one percent (1%) to the General Partner.

(ii) After Investment Recovery, eighty percent (80%) to the Limited Partners and twenty percent (20%) to the General Partner.

Subject to the provisions of the Mortgage and other requirements of any other lender, distributions of Cash Flow to the Partners shall be made at such reasonable intervals during the fiscal year as shall be determined by the General Partner, and in any event shall be made within 75 days after the close of each fiscal year.

Except as otherwise provided herein, all distributions to the Partners or a class of Partners shall be shared by the Partners or the members of the class in the ratio of their Percentage Interests, one to the other.

B. Definition of Cash Flow. For all purposes of this Agreement, the term "Cash Flow" shall mean the profits or losses of the Partnership from and after Completion (as profits and losses are determined in accordance with Section 10.1.D) but subject to the following modifications:

(a) Depreciation and cost recovery on Improvements and personal property, amortization of any fee and other noncash charges utilized in computing the Partnership's taxable income shall not be considered as a deduction in determining Cash Flow.

(b) Mortgage amortization, repayment of the debts of the Partnership, including loans from Partners other than the Subordinated Loans and Construction Completion Notes, and any other cash expenditures not deductible in determining profits or losses shall be considered as deductions from Cash Flow.

(c) If the General Partner shall so determine, reasonable reserves shall be established to provide for working capital needs, funds for improvements or replacements or for any other contingencies of the Partnership and the amount allocated to such reserve or reserves from time to time shall be considered as deductions from Cash Flow and, conversely, any amounts

previously set aside as reserves shall be considered as additions to Cash Flow when and to the extent the General Partner no longer regards such reserves as reasonably necessary in the efficient conduct of the affairs of the Partnership.

(d) Any amounts paid by the Partnership for capital expenditures shall be considered as deductions from Cash Flow, unless paid by cash withdrawal from insurance proceeds or any replacement reserve for capital expenditures.

(e) Gain or loss from the sale, exchange, condemnation (or similar eminent domain taking), casualty or other disposition or all, or any substantial portion of, the Project (other than the proceeds of any business or rental interruption insurance), or from the liquidation of the Project following a dissolution of the Partnership shall not be included in determining Cash Flow.

(f) The CP Administration Fee shall be considered as deductions in the determination of Cash Flow.

Cash Flow shall be determined separately for each calendar year or portion thereof, and for the portion of the year in which Investment Recovery occurs, and shall not be cumulative.

C. Distributions of Other Than Cash Flow. Prior to dissolution and subject to the terms of the Mortgage and any other applicable restrictions, if the General Partner determine there is cash available for distribution from sources other than Cash Flow (such as, for example, from a refinancing of the Mortgage or a sale or disposition of any part of or all the Project or from any other transaction the proceeds of which do not constitute Cash Flow), such cash shall be distributed within 75 days of the end of the calendar year in which the event generating the cash occurs as follows:

First, to the discharge all debts and liabilities of the Partnership then due (or required by any lender or creditor to be repaid on account of the event referred to in this Section 10.2C which makes such cash available), other than, Subordinated Loans and Construction Completion Notes;

Second, to fund reserves for contingent liabilities to the extent deemed reasonable by the General Partners and the Accountants;

Third, to the payment of the cumulative unpaid amount of the GP Administration Fee;

Fourth, to the payment of outstanding Subordinated Loans, if any;

Fifth, to the payment of the Construction Completion Notes, if any, to the General Partner;

Sixth, to each Partner with a positive balance in his Capital Account, after taking into account distributions pursuant to clauses First through Fifth, above, up to the amount of such positive balance;

Seventh, to the Limited Partners until Investment Recovery;

Eighth, to the General Partner until it has received an amount equal to its original capital contributions under Section 10.2(C) Sixth and Eighth; and

Ninth, the balance of any remaining cash proceeds shall be distributed eighty percent (80%) to the Limited Partners and twenty percent (20%) to the General Partners.

Except as otherwise provided herein, all distributions to a class of Partners (except as otherwise provided for under Clauses Fourth through Seventh in 10.2(C) above) shall be shared by the Partners or the members of the class in the ratio of their Percentage Interests, to the total percentage interests held by that class.

#### Section 10.3 Adjustment of Shares of Profits, Losses and Distributions.

If and during such time as the Partnership shall have admitted Limited Partners who shall have acquired less than 114 Units in the aggregate, the share of the profits, losses, credits and distributions allocated hereunder to the Limited Partners shall be reduced by the same ratio as the total number of Units not yet acquired by the Limited Partners bears to 114 and the share of the profits, losses, credits and distributions allocated hereunder to the General Partner shall be correspondingly increased.

#### Section 10.4 Distributions Upon Dissolution

Upon dissolution, after payment of, or adequate provision for, the debts and obligations of the Partnership, excluding Construction Completion Notes, the remaining assets of the Partnership shall be sold or otherwise disposed of by the remaining or surviving General Partner(s) and the proceeds of such sale or other disposition shall be distributed to the Partners in the priority set forth in Section 10.2.(C), Third through Ninth.

#### Section 10.5 Contribution by General Partner

In the event of the liquidation or dissolution of the partnership the General Partner will contribute to the Partnership the amount of any deficiency in the Capital Accounts of the Limited Partners up to but not in excess of one percent (1%) of the aggregate Capital Contributions of all of the Partners.

#### Section 10.6 Priority of Allocations

All profits, losses and distributions to the Partners shall be credited or charged, as the case may be, to their Capital Accounts as of the date at which profits and losses are determined. All distributions made to the Partners pursuant to the provisions of Section 10.2(A) and (C) shall be treated as having been made subsequent to the allocation of profits and losses pursuant to Section 10.1. Profits and losses of the Partnership allocated among the Partners pursuant to Section 10.1(A) shall be credited or charged to their respective Capital Accounts prior to the allocation of profits and losses pursuant to Section 10.1(B). Notwithstanding anything contained in this Article X to the contrary, the General Partner shall at all times maintain a 1% interest in all Partnership income, gain, loss, deduction and credit and the allocations to the Limited Partners shall be reduced whenever necessary to give effect to the provisions hereof.

#### Section 10.7 In Kind Distribution.

Any distributions of property to the Partners other than cash and cash equivalents shall be valued at their fair market value for purposes of adjustments to Partner's Capital Accounts and for purposes of determining when Investment Recovery has been achieved.

## ARTICLE XI

### Management Agent

#### Section 11.1 Management Agent

The General Partner designates Marathon Property Company as Management Agent. The Management Agent shall receive a Management Fee and shall be responsible for the location of suitable tenants for the Project, negotiation of leases and general supervision of the Project. The Partnership shall enter into a management services agreement with the Management Agent on terms fair and reasonable to the Partnership.

## ARTICLE XII

### Books and Records, Accounting, Tax Elections, Etc.

#### Section 12.1 Books and Records

The General Partner shall keep or cause to be kept complete and accurate books and records of the Partnership, including the names and addresses of the Limited Partner, and supporting documentation of transactions with respect to the conduct of the Partnership's business, which shall be maintained in accordance with sound accounting practices and shall be available at the principal office of the Partnership for examination by any Partner, or his duly authorized representatives, at any and all reasonable times during normal business hours at the office of the Partnership.

#### Section 12.2 Bank Accounts

The bank accounts of the Partnership shall be maintained in such banking institutions as the General Partner shall determine, and withdrawals shall be made only in the regular course of business on such signature or signatures as the General Partner shall determine. All deposits (including security deposits and other funds required to be escrowed) and other funds not needed in the operation of the business shall be deposited, to the extent permitted by the Mortgage Loan requirements, in interest-bearing accounts or invested in short-term United States Government or municipal obligations maturing within one year.

#### Section 12.3 Accountants

The Accountants for the Partnership shall be those named in Article I hereof or such other firm of certified public accountants as shall be engaged by the General Partner with the

consent of the Limited Partner. The Accountants shall prepare for execution by the General Partner all tax returns of the Partnership and shall audit all annual financial statements to the Partners which statements shall be certified and prepared in accordance with generally accepted accounting principles.

#### Section 12.4 Reports to Limited Partners

The General Partner shall comply with the following provisions:

A. Until Completion, the General Partner shall, within 30 days after the end of each quarterly period commencing with the quarter ending December 31, 1983, cause to be prepared and sent to the Limited Partners a report which shall state (i) the percentage of completion furnished to the Lender for each month of the quarter, (ii) the anticipated date of completion of construction of the Improvements, (iii) whether there are any anticipated cost overruns, and, if so, the amount thereof, (iv) a narrative summary of any material deviations from the Commitments or other original plans for construction or commencement of rent-up of the Project including the information specified under Paragraph D below, (v) the space available for occupancy, and (vi) the actual number of stores occupied and the tenants therein and the approximate annual rental charge for such space.

B. The reports referred to in A. above shall continue after Completion until the Project has achieved 90% tenant occupancy (the "90% Occupancy"). Such reports shall state, (i) the current rental occupancy level for the quarter, (ii) the number of units vacated and number of evictions within the month and the previous quarter, (iii) if an operating deficit is being incurred or is anticipated by the General Partners, and if so, the amount thereof and the manner in which such deficit shall be funded, and (iv) the Cash Flow statement of the Partnership for the preceding quarter indicating the cash available to be escrowed for a distribution to the Limited Partner. After the Project has achieved 90% Occupancy such report shall be required on an annual basis.

D. After Completion an annual operating pro forma budget shall be prepared by the General Partner and distributed to the Limited Partner within 60 days of the beginning of each fiscal year.

E. Within 75 days after the end of each fiscal year, the General Partner shall cause to be prepared and sent to the Limited Partners (i) a balance sheet and the related statements of income and Partners' capital and changes in financial position, accompanied by a report of the Accountants stating that

an audit of such financial statement has been made in accordance with generally accepted auditing standards, stating the opinion of the Accountant in respect of the financial statements and the accounting principles and practices reflected therein and as to the consistency of the application of the accounting principles, and identifying any matters to which the Accountant takes exception and stating, to the extent practicable, the effect of each such exception on such financial statement; (ii) a certification by the General Partner that (a) all Mortgage payments and taxes and insurance premiums with respect to the Project for which the Partnership is obligated are current as of the date of the year-end report, (b) no notice has been received of any defaults under the Mortgage, or Partnership Agreement, or if there be any such default, a description thereof, and (c) no notice has been received of any building, health or fire code violation or similar violation of a governmental law, ordinance or regulation against the Partnership of a material nature, or, if there be any such notice, a description of the violation in question; and (iii) a summary of all transactions during the fiscal year between the Partnership and any Affiliated Person, including the nature of the transaction and the payments involved. Upon the written request of the Limited Partners for further information with respect to any matter covered in items (i), (ii), or (iii) above, the General Partner shall furnish such information within 15 days of receipt of such request. Schedule K-1 (Form 1065) or any successor or additional form required by the Limited Partners to prepare their tax returns shall be furnished to the then Limited Partners within 75 days of the end of each calendar year. Each Partner shall be entitled to receive, upon request, copies of all Federal, state and local income tax returns and informational returns, if any, which the Partnership is required to file.

F. Prior to November 1 of each year, the General Partner shall cause to be prepared and sent to the Limited Partners, a current estimate of the Limited Partner's share of the profits or losses of the Partnership for Federal income tax purposes for the current fiscal year.

#### Section 12.5 Depreciation, Cost Recovery and Elections

With respect to the Improvements the Partnership shall elect to use the straight-line depreciation (cost recovery) method. However, on the advice of the Accountants the Partnership shall elect or change to some other method of depreciation or cost recovery so long as such other method is, in the opinion of the Accountants, most advantageous to the Limited Partners and will not result in the loss of any material tax benefit.

transfer of such interests that the transferor furnish a legal opinion that the proposed transfer complied with applicable Federal and state securities laws.

B. Any sale, exchange or other transfer in contravention of any of the provisions of this Section 13.1 shall be void and ineffectual, and shall not bind or be recognized by the Partnership.

#### Section 13.2 Amendments to Certificates

Within 90 days after the end of any fiscal year in which the Limited Partners shall have received any distributions under Article X hereof, the General Partners shall cause to be filed as required under the law of the State and elsewhere as the General Partners deem appropriate an amendment to the Certificate reducing by the amount of its allocable share of such distribution the amount of Capital Contribution of the Limited Partners as stated in the last previous amendment to the Certificate. Nothing in this Section 13.2 shall authorize, however, any change in the Schedule to this Agreement nor shall the filing of any such amendment affect the computation of any Partner's share of distributions, profits, losses or any other item shared by the Partners under Article X. In no event shall any such amendment reduce the amount of any such Capital Contribution below \$1.00.

#### Section 13.3 Notices

Any and all notices (as distinguished from periodic reports) called for under this Agreement shall be deemed adequately given only if in writing and sent registered or certified mail, postage prepaid, to the party or parties for whom such notices are intended.

All such notices or periodic reports in order to be effective shall be addressed to the last address of record on the Partnership books when given by the General Partners and intended for other Partners; and to the address of the Partnership when given by the Limited Partner and intended for the General Partners.

All notices required to be given by the Partnership or the General Partners to the Limited Partners shall be deemed to have been duly given if such notice is given to the Limited Partners at his address set forth on the Schedule, or such other address as may be designated by him in writing, at least three business days prior to the last day on which the notice in question may be timely given.

#### Section 13.4 Word Meanings

The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires.

Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Partnership.

As among the parties hereto, the terms of this Agreement shall control in the event of a specific conflict between such terms and the terms of the Certificate as amended.

#### Section 13.5 Binding Provisions

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assigns of the respective parties hereto.

#### Section 13.6 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State.

#### Section 13.7 Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart, except that no counterpart shall be binding unless signed by General Partner. Any counterpart hereof signed by the party against whom enforcement of this Agreement is sought shall be admissible into evidence as an original hereof to prove the contents hereof.

#### Section 13.8 Survival of Representations and Warranties

All representations and warranties herein shall survive the dissolution and final liquidation of the Partnership, except to the extent that a representation or warranty expressly provides otherwise.

### Section 13.9 Separability of Provisions

Each provision of this Agreement shall be considered separable and (a) if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, the balance of this Agreement shall be interpreted, to the extent practicable, so as to give effect to the original intent of the parties hereto; (b) if for any reason any provision or provisions herein would cause the Limited Partners to be personally bound by the obligations of the Partnership under the laws of the State as the same may now or hereafter exist, such provision or provisions shall be deemed void and of no effect.

### Section 13.10 Paragraph Titles

Paragraph titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

### Section 13.11 Meeting of Partners

Meetings of the Partnership may be called by any of the General Partner or by Limited Partners holding at least 51% of the Limited Partner Interests for information purposes or for any matters for which the Partners may vote as set forth in this Agreement. Upon receipt of a written Notice requesting a meeting and stating the purpose of the meeting, the General Partner shall provide the Partners, within twenty (20) days after receipt of said Notice, written Notice of a Partnership meeting and the purpose of such meeting. Such meeting shall be held at the principal offices of the Partnership and on a date not less than fifteen (15) days nor more than sixty (60) days after receipt of the Notice requesting such meeting.

### Section 13.12 Amendment Procedure

This Agreement may not be modified or amended except with the written consent of the General Partner and the Consent of the Limited Partner.

### Section 13.13 Time of Admission

The Limited Partners shall be deemed to have been admitted to the Partnership as of the first day of the month during

which its admission actually occurred for all purposes under this Agreement, including Article X.

WITNESS the execution under seal as of the 9th day of December , 1983.

WITHDRAWING LIMITED PARTNER

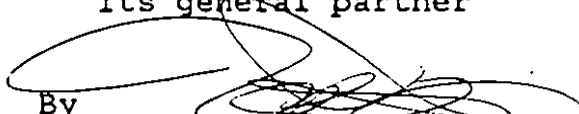
MARATHON DEVELOPMENT  
CORPORATION



Robert P. Freeman, President

GENERAL PARTNER

MDC PARTNERS  
By Marathon Development Corporation,  
its general partner



By Robert P. Freeman, President

LIMITED PARTNERS

Adams-Wright Associates

L. Saul Alpert

Thomas C. Angelone

Ardean D. Botvin

David G. Botvin

Paul Boyajian

Donald D. Breed

Americo C. Buonanno, Jr.

John C. Cahill

Sidney Clifford, Jr.

Eleanor P. Cohen

Robert J. Ducoff

Frank Fanella

Edward R. Feller, M.D.

John J. Fitzgerald

Gloria R. Fitzgerald

LIMITED PARTNERS

Lena Forte

David Friedman

Larry Friedman

Saul Hodosh

Bernard Jackvony

Roswell D. Johnson, M.D.

V. Duncan Johnson

Donald G. Kaufman

G. Dickson Kenney

Mary F. Mahoney

W. Richard Mahoney

Lillian C. Mangione

Leo A. McCaughey

Lillian C. Mossop

Catharine F. Nicholson

Thomas H. Nicholson

Sheila D. Przybyla

Edgar E. Sharp

Douglas A. Smith

Meredith C. Smith

Erwin B. Summer

Philip A. Torgan, M.D.

Renee G. Vogel, M.D.

By: Robert P. Freeman as  
attorney-in-fact for  
each of the above

*Robert P. Freeman by  
V. Duncan Johnson under  
Power of Attorney*

Robert P. Freeman  
Attorney-in-fact

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence in said County on the 8<sup>th</sup> day of December, 1983, before me personally appeared ROBERT P. FREEMAN, President of Marathon Development Corporation, the general partner of MDC Partners, a Rhode Island limited partnership, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed, and the free act and deed of said corporation in its corporate capacity and as the general partner of MDC Partners.

*Barbara Braun Schoenfeld*

Notary Public

My Commission Expires:

BARBARA BRAUN SCHOENFELD

My Commission Expires August 30, 1986

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence in said County on the 9<sup>th</sup> day of December, 1983, before me personally appeared Robert P. Freeman, to me known and known by me to be the person executing the foregoing instrument as attorney-in-fact for each of the Limited Partners and he acknowledged said instrument by him executed to be his free act and deed for and on behalf of each of the foregoing persons and entities as their attorney-in-fact. *by V. Duncan Johnson under Power of Attorney*

*Barbara Braun Schoenfeld*

Notary Public

BARBARA BRAUN SCHOENFELD

My Commission Expires June 30, 1986

Simmons Building Associates  
Schedule A to  
Amended and Restated Agreement and  
Certificate of Limited Partnership

<u>General Partner's Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
MDC Partners c/o Marathon Development Corporation Providence, RI 02901	\$ 100	1% until Investment Recovery and 20% thereafter
 <u>Limited Partners Name and Address</u>		
Adams-Wright Associates c/o Raymond V.N. Adams 115 Apple Tree Lane, Warwick, RI 02888	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
L. Saul Alpert 21 Browning Drive Narragansett, RI 02882	\$ 50,000	4.3% until Investment Recovery and 3.5% thereafter
Thomas C. Angelone 58 Cool Spring Drive Cranston, RI 02910	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Ardean D. Botvin David G. Botvin 15 Dorset Road Pawtucket, RI 02860	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Paul Boyajian 27 Winnisquam Drive Warwick, RI 02886	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Donald D. Breed 85 Congdon Street Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

<u>Limited Partners Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
Americo C. Buonanno, Jr. 2450 Hartford Avenue Johnson, RI 02919	\$ 30,000	2.6% until Investment Recovery and 2.11% thereafter
John C. Cahill 284 President Avenue Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Sidney Clifford, Jr. 60 Freeman Parkway Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Eleanor P. Cohen 90 Massapoag Avenue Sharon, MA 02067	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Robert J. Ducoff 100 D'Agnillo Drive East Greenwich, RI 02818	\$ 30,000	2.6% until Investment Recovery and 2.11% thereafter
Frank Fanella 34 Sweet Briar Lane West Warwick, RI 02893	\$ 70,000	6.1% until Investment Recovery and 4.9% thereafter
Edward R. Feller, M.D. 560 Cole Avenue Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
John J. Fitzgerald Gloria R. Fitzgerald 1 Orchard Drive Cranston, RI 02920	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Lena Forte 77 Lloyd Road Saunderstown, RI 02874	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
David Friedman 8 Woodland Terrace Providence, RI	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

<u>Limited Partners Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
Larry Friedman 265 Freeman Parkway Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Saul Hodosh 22 Oaklawn Avenue Cranston, RI 02910	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Bernard Jackvony 100 Pegwin Drive East Greenwich, RI 02818	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Roswell D. Johnson, M.D. P.O. Box 482 Farm Pond Road Oak Bluffs, MA 02557	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
V. Duncan Johnson 168 Governor Street Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Donald G. Kaufman 103 W. Blue Ridge Road Cranston, RI 02920	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
G. Dickson Kenney 470 Potter Road North Kingstown, RI 02852	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Mary F. Mahoney W. Richard Mahoney Apartment 1011 1 Jackson Walkway Providence, RI 02903	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Lillian C. Mangione Apartment 1108 1 Jackson Walkway Providence, RI 02903	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

<u>Limited Partners Name and Address</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
Leo A. McCaughey 40 Cross Street Providence, RI 02904	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Lillian C. Mossop 89 President Avenue Providence, RI 02906	\$ 60,000	5.2% until Investment Recovery and 4.2% thereafter
Catharine F. Nicholson Thomas H. Nicholson 440 Conant Road Weston, MA 02193	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Sheila D. Przybyla 86 Bishop Avenue Seekonk, MA 02771	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Edgar E. Sharp 1700 Main Street Houston, TX 77001	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Douglas A. Smith Meredith C. Smith 33 Clarendon Road London W51AA England	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Erwin B. Summer 140 Medway Street Providence, RI 02906	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter
Philip A. Torgan, M.D. 22 Wingate Road Providence, RI 02906	\$ 60,000	5.2% until Investment Recovery and 4.2% thereafter
Renee G. Vogel, M.D. 12 Clarke Road Barrington, RI 02806	\$ 30,000	2.6% until Investment Recovery and 2.1% thereafter

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EDWARDS & ANGELL

Counsellors at Law

One Hospital Trust Plaza  
Providence, Rhode Island 02903  
401 274-9200  
Telex 952001 "E A PVD"  
Telecopier 401 276-6611

December 9, 1983

Secretary of State's Office  
State House  
Providence, Rhode Island 02903

Dear Madam:

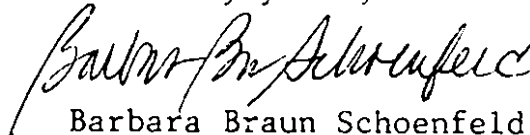
Enclosed please find an original executed copy of the "Amended and Restated Agreement and Certificate of Limited Partnership of Simmons Building Associates" for filing.

I also enclose two photocopies for your convenience, which photocopies are to be certified. I enclose a check for \$54.00: \$50.00 to cover the filing fee and \$2.00 for each of the certified copies.

Please call me if you have any questions. I can be reached at 276-6484 or 274-9200.

Thank you very much for your cooperation.

Sincerely yours,

  
Barbara Braun Schoenfeld

Enclosures

BY MESSENGER

375 Park Avenue  
Suite 3409  
New York, NY 10152  
212 308-4411  
Telecopier 212 308-4844

250 Royal Palm Way  
P.O. Box 2621  
Palm Beach, Florida 33480  
305 833-7700  
Telecopier 305 655-8719

One Boston Place  
Suite 3920  
Boston, Massachusetts 02108  
617 720-3440  
Telecopier 617 720-0645