

Filing Fee: \$10.00



State of Rhode Island and Providence Plantations

OFFICE OF THE SECRETARY OF STATE
100 NORTH MAIN STREET
PROVIDENCE, RHODE ISLAND
02903-1335

CERTIFICATE OF CORRECTION
OF
APPLICATION FOR REGISTRATION
OF

Parcel Five Limited Partnership

To the Secretary of State
of the State of Rhode Island

Pursuant to the provisions of Section 7-13-52 of the General Laws, 1956, as amended, the undersigned foreign limited partnership hereby submits the following Certificate of Correction of its Application for Registration:

FIRST: A Certificate of Registration was issued to the limited partnership by your office on January 12, 19 89, authorizing it to transact business in Rhode Island under the name of Parcel Five Limited Partnership

SECOND: The Application for Registration is corrected or amended as follows:

(Insert correction or amendment)

See Restated Certificate and Agreement of Limited Partnership attached.

FILED

FILED

SEP 16 1994

By [Signature] 129044

(Over)

Dated September 12, 19 94 .

Parcel Five Limited Partnership  
(Exact name of Limited Partnership submitting certificate)

By Michael Thonis  
General Partner ~~XX~~  
Aeneas Holdings, Inc.

State of Massachusetts

County of Suffolk

} Sc.

At Boston in said county on this 12th

day of September, 19 94, personally appeared before me

Michael Thonis

who, being by me first duly sworn, declared that he/she is a General Partner of the

Aeneas Holdings, Inc.

, that he/she signed the foregoing

document as a General Partner of the limited partnership, and that the statements therein contained

are true.

Kelly A. McDonnell

Kelly A. McDonnell Notary Public  
Commission Expires: May 19, 2000

**FILED**  
AUG 30 1994  
SECRETARY OF STATE  
CORPORATION DIVISION

RESTATED CERTIFICATE AND AGREEMENT OF  
LIMITED PARTNERSHIP  
OF  
PARCEL FIVE  
LIMITED PARTNERSHIP

Original Formation on 12/16/88

RECEIVED  
SECRETARY OF STATE  
CORPORATION DIVISION

34

## TABLE OF CONTENTS

### ARTICLE 1: GENERAL PROVISIONS

Section 1.1.	Formation of Limited Partnership . . . . .	2
Section 1.2.	Name of the Partnership. . . . .	2
Section 1.3.	Business of the Partnership . . . . .	2
Section 1.4.	Place of Business of the Partnership; Agent for Service of Process . . . . .	3
Section 1.5.	Term of the Partnership . . . . .	3
Section 1.6.	Partners' Names and Addresses . . . . .	3
Section 1.7.	Title to Partnership Property . . . . .	3
Section 1.8.	Filing of Certificates . . . . .	4

### ARTICLE 2: CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

Section 2.1.	Capital Contributions. . . . .	5
Section 2.2.	Capital Accounts. . . . .	5

### ARTICLE 3: CASH DISTRIBUTIONS

Section 3.1.	Distribution of Net Cash Flow . . . . .	7
Section 3.2.	Net Proceeds of Interim Capital Transactions . . . . .	7
Section 3.3.	Liquidating Distributions . . . . .	7
Section 3.4.	Property Distributions and Installment Sales . . . . .	7

### ARTICLE 4: ACCOUNTING FOR PARTNERSHIP PROFIT AND LOSS

Section 4.1.	Allocation of Taxable Income and Losses from Operations . . . . .	8
Section 4.2.	Allocation of Taxable Income and Losses from Interim Capital Transactions . . . . .	9
Section 4.3.	Allocation of Taxable Income and Loss from Liquidating Transactions . . . . .	10
Section 4.4.	Other Capital Account and Income Tax Adjustments . . . . .	11

### ARTICLE 5: MANAGEMENT

Section 5.1.	Management of the Partnership . . . . .	14
Section 5.2.	Authority of the General Partner . . . . .	14
Section 5.3.	Services of the General Partner . . . . .	16
Section 5.4.	Compensation of General Partner . . . . .	16
Section 5.5.	Liability and Indemnification . . . . .	16

Section 5.6.	Tax Elections . . . . .	16
Section 5.7.	Certain Fees and Expenses . . . . .	17

ARTICLE 6: BOOKS, RECORDS AND BANK ACCOUNTS

Section 6.1.	Books and Records . . . . .	18
Section 6.2.	Accounting Basis and Fiscal Year . . . . .	18
Section 6.3.	Reports . . . . .	18
Section 6.4.	Bank Accounts . . . . .	18

ARTICLE 7: TRANSFER OF INTEREST OF PARTNERS

Section 7.1.	Limitations on Transfer . . . . .	20
Section 7.2.	Transferees of General Partner . . . . .	20
Section 7.3.	Procedural Matters . . . . .	20

ARTICLE 8: WITHDRAWAL, REMOVAL, DISSOLUTION AND TERMINATION

Section 8.1.	Withdrawal and Removal of General Partner . . . . .	22
Section 8.2.	Dissolution Events . . . . .	22
Section 8.3.	Liquidation . . . . .	23
Section 8.4.	Distribution . . . . .	23

ARTICLE 9: RIGHTS AND OBLIGATIONS OF THE LIMITED PARTNER

Section 9.1.	No Participation in Management . . . . .	24
Section 9.2.	Limitation of Liability . . . . .	24

ARTICLE 10: MISCELLANEOUS

Section 10.1.	Notices . . . . .	25
Section 10.2.	Successors and Assigns . . . . .	25
Section 10.3.	Power of Attorney . . . . .	25
Section 10.4.	Amendments . . . . .	25
Section 10.5.	Partition . . . . .	26
Section 10.6.	No Waiver . . . . .	26
Section 10.7.	Entire Agreement . . . . .	27
Section 10.8.	Captions . . . . .	27
Section 10.9.	Counterparts . . . . .	27
<del>Section 10.10.</del>	<del>Applicable Law . . . . .</del>	<del>27</del>

ARTICLE 11: CERTAIN DEFINITIONS

Section 11.1.	Definitions . . . . .	28
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RESTATED CERTIFICATE AND AGREEMENT OF  
LIMITED PARTNERSHIP  
OF  
PARCEL FIVE LIMITED PARTNERSHIP

This Restated Certificate and Agreement of Limited Partnership of Parcel Five Limited Partnership ("Restated Agreement") dated as of August 25, 1994, between Aeneas Holdings, Inc., a Massachusetts corporation ("General Partner") and the Person or Persons executing this Agreement as limited partners (the "Limited Partners"), restates in its entirety the Parcel Five Limited Partnership Second Amended and Restated Certificate and Agreement of Limited Partnership ("Second Restatement") dated as of June 29, 1990. Collectively the General Partner and the Limited Partners are referred to as the "Partners". Certain capitalized terms as used in this Agreement have the meanings set forth in Section 11.1 hereof.

As of June 29, 1990, General Partner, as Principal General Partner, Parcel Five Corp. ("PFC"), a Massachusetts corporation, as Operations General Partner, and the limited partners named therein entered into the Second Restatement for the primary purpose of developing the Property, as hereinafter defined, as a luxury apartment house (the "Project").

As of July 11, 1990, the Parcel Five Limited Partnership (the "Partnership") as Borrower and Phemus Corporation ("Phemus"), a Massachusetts corporation, as Lender entered into a Construction Loan Agreement under which Phemus advanced a construction loan (the "Phemus Loan") to the Partnership to construct the Project. The Partnership's obligations under the Construction Loan Agreement were evidenced by a promissory note dated July 11, 1990 in the original principal amount of \$36,187,281 (the "Phemus Note"). Immediately prior to the execution of this Restated Agreement, the outstanding principal amount under the Phemus Note, together with all accrued and unpaid interest, was \$36,187,281. The Phemus Note and the obligations of the Partnership under the Construction Loan Agreement were secured in part by an Amended and Restated Leasehold Mortgage and Security Agreement (the "Phemus Mortgage") dated as of July 11, 1990, recorded with the Providence Land Evidence Records in Book 2266, at Page 2.

By Assignment of Interest dated as of June 30, 1993, in exchange for a release and other valuable consideration, PFC assigned all of its general and limited partnership interests in the Partnership to the General Partner, which action caused a dissolution of the Partnership for state law purposes. As an act of winding up the affairs of the Partnership under state law, General Partner hereby continues in limited partnership under the name Parcel Five Limited Partnership.

Although debt service has been regularly paid with respect to the Phemus Loan, in order to secure new financing for the Project, General Partner and Phemus have agreed to convert a portion of Phemus' interest in the Property and the Project from a loan into an interest in the Partnership. Phemus is contributing that portion of the Phemus Loan as will not be repaid with the net proceeds of the new financing, which unpaid balance shall be set forth as Phemus' capital contribution on Schedule A and reflected in Phemus' opening Capital Account.

In consideration of the mutual promises made herein, the parties, intending to be legally bound, hereby agree as follows:

## ARTICLE 1

### GENERAL PROVISIONS

1.1. Formation of Limited Partnership. The undersigned parties continue this limited partnership pursuant to the provisions of Chapter 109 of the General Laws of the Commonwealth of Massachusetts (the "Act"), and the rights and liabilities of the Partners shall be as provided in the Act, except as varied in accordance with the Act by the express provisions of this Agreement.

1.2. Name of the Partnership. The name of the partnership is Parcel Five Limited Partnership or such other name as the General Partner may from time to time determine. The General Partner shall cause to be filed on behalf of the Partnership ~~such partnership or assumed or fictitious name~~ certificate or certificates as may from time to time be required by law.

1.3. Business of the Partnership. The business of the Partnership is to acquire, hold, maintain, develop, improve, operate, sell, lease, finance, dispose of and otherwise invest in the real property known as Parcel 5 of the Capital

Center development project in Providence, Rhode Island (the "Property"), and all ancillary personal property of every nature and description. In furtherance of the Partnership's purpose, the Partnership shall have the power to enter into and perform contracts, to own, mortgage, lease, pledge or otherwise deal in the Property, to exercise all rights, powers, and privileges and other incidents of ownership with respect to assets or investments, to borrow money and issue notes, drafts, bills of exchange, to lend any of its assets or funds, to invest its liquid assets in short-term money market instruments and certificates of deposit, to maintain one or more offices, rent space, and engage and retain personnel and agents.

1.4. Place of Business of the Partnership; Agent for Service of Process. The principal place of business of the Partnership shall be located at c/o Harvard Private Capital Group, Inc., 600 Atlantic Avenue, 26th Floor, Boston, Massachusetts 02110-2203. The General Partner may, at any time and from time to time, change the location of the Partnership's principal place of business, upon written notice of such change to the Limited Partner, and may establish such additional place or places of business of the Partnership as it may from time to time determine upon notice to the Limited Partner. The Partnership's agent for service of process shall be the General Partner.

1.5. Term of the Partnership. The Term of the Partnership commenced as of the date first above written and shall continue unless terminated at an earlier date in accordance with this Agreement until December 31, 2044.

1.6. Partners' Names and Addresses. The name and business address of each Limited Partner is set forth in Schedule A hereto. The name and business address or mailing address of the General Partner is:

Aeneas Holdings, Inc.  
c/o Harvard Private Capital Group, Inc.  
600 Atlantic Avenue, 26th Floor  
Boston, Massachusetts 02110-2203

~~1.7. Title to Partnership Property. All property owned~~ by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually, shall have any ownership of such property. The Partnership may hold any of its assets in its own name or in the name of its nominee, which nominee may be one or more individuals, partnerships,

trusts, associations or other entities designated by the General Partner.

1.8. Filing of Certificates. The General Partner shall execute, file and publish all such certificates, notices, statements or other instruments required by law for the formation or operation of a limited partnership in all jurisdictions where the Partnership may elect to do business.

## ARTICLE 2

### CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

#### 2.1. Capital Contributions.

(a) Initial Capital. The General Partner has contributed \$3,607,513 to the capital of the Partnership consisting of its actual cash investment in the Partnership less any depreciation allowable with respect to the Project through the date hereof. The Limited Partner has contributed the amount set forth opposite such Person's name on Schedule A (consisting of the amount presently due to the Limited Partner less the proceeds of the new financing that will be used to repay a portion the amount presently due to the Limited Partner) concurrently with the execution of this Agreement. Neither the General Partner nor the Limited Partner shall be required to make any additional capital contributions except to the extent otherwise provided herein.

(b) Additional Capital. If the General Partner shall determine that the Partnership shall need additional capital for the conduct of its business, it shall notify the Limited Partner and seek to secure an agreement concerning the amount of such capital to be contributed by each Partner. In the absence of such agreement, any additional funds provided by the General Partner to meet Partnership obligations shall constitute a loan to the Partnership rather than a capital contribution, which loan shall bear interest on the balance from time to time outstanding at a rate that is 1 percent in excess of the interest rate from time to time announced as the "base" or "prime" rate of the Bank of Boston, Boston, Massachusetts.

(c) Interest on Contributed Capital. No interest shall be paid or otherwise accrue on any contributions to the capital of the Partnership, and no Partner shall have the right to withdraw or to be repaid any capital contributed by it, except as specifically provided in this Agreement.

#### 2.2. Capital Accounts.

(a) Maintenance of Separate Capital Accounts. A separate capital account shall be maintained for each Partner (each a "Capital Account"). There shall be credited to each Partner's Capital Account the amount of any cash actually contributed by such Partner to the capital of the Partnership, the agreed fair market value

of any property contributed by such Partner to the Partnership and such Partner's share of the income or gains (including income or gain exempt from tax) of the Partnership allocated to such Partner pursuant to Article 4 hereof. There shall be charged against each Partner's Capital Account the amount of all distributions to such Partner, such Partner's share of the losses and expenses of the Partnership allocated to such Partner pursuant to Article 4 hereof and the fair market value of any property distributed to such Partner.

(b) Capital Account Determinations. Except as otherwise provided in this Agreement, whenever it is necessary to determine the Capital Account of any Partner for purposes of any provision hereof, the Capital Account of the Partner shall be determined after giving effect to all capital contributions theretofore made to the Partnership and all allocations for transactions effected prior to the time as of which such determination is made of all income, gain, loss and expense and all distributions theretofore made. Any Partner, including any additional or substitute partner, who shall receive an interest in the Partnership or whose interest in the Partnership shall be increased by means of a transfer to such Partner of all or a part of the interest of another Partner shall be credited with (or charged with) the transferor's capital account (or an appropriate part thereof in the case of a transfer of a partial interest).

## ARTICLE 3

### CASH DISTRIBUTIONS

3.1. Distribution of Net Cash Flow. Net Cash Flow for each fiscal year (or part thereof) of the Partnership shall be distributed not less frequently than annually, 99 percent to the Limited Partner and one (1) percent to the General Partner.

3.2. Net Proceeds of Interim Capital Transactions. Net Proceeds from an Interim Capital Transaction shall be distributed as soon as practicable following receipt of such proceeds by the Partnership, 99 percent to the Limited Partner and one (1) percent to the General Partner.

3.3. Liquidating Distributions. Upon dissolution and termination of the Partnership, the Net Proceeds of the sale of the property and all other assets of the Partnership, shall be distributed as soon as practicable following receipt of such proceeds by the Partnership (but in all events, by the later of the end of the taxable year or 90 days after the date of liquidation of the Partnership as defined in the Treasury Regulations under section 704 of the Code) to the Partners in proportion to their Capital Accounts.

3.4. Property Distributions and Installment Sales. If any assets of the Partnership shall be distributed in kind pursuant to this Article 3, such assets shall be distributed to the Partners entitled thereto as tenants-in-common (if real property) or joint owners (if personal property) in the same proportion as the Partners would have been entitled to cash distributions. The amount by which the fair market value of any property to be distributed in kind to the Partners exceeds or is less than the tax basis of such property shall, to the extent not otherwise recognized by the Partnership, be taken into account in allocating gain or loss and determining the Capital Accounts of the Partners as if such property had been sold at its fair market value. If any assets are sold in transactions in which, by reason of the provisions of section 453 of the Code or any successor thereto, gain is realized but not recognized, such gain shall be taken into account in computing gain or loss of the Partnership for purposes of allocation of gain or loss under Article 4 hereof, and the Partnership shall be deemed to have been dissolved and terminated notwithstanding any election by the Partners to continue the Partnership for purposes of collecting the proceeds of such sales.

ARTICLE 4

ACCOUNTING FOR PARTNERSHIP PROFIT AND LOSS

4.1. Allocation of Taxable Income and Losses from Operations.

(a) Income from Operations. All net income for each year of the Partnership (other than the net income or gain from an Interim Capital Transaction or the sale or disposition of properties in connection with the termination of the Partnership) shall be allocated for federal income tax purposes and credited to the Capital Accounts of the Partners as follows and in the following order of priority:

(i) First, an amount of net income (or item thereof) up to the respective excess, if any, of the negative balance of the Capital Account of any Partner (after giving effect to all amounts distributed or to be distributed for such year or fraction thereof to such Partner under Sections 3.1 and 3.2 hereof) over such Partner's share of the Minimum Gain (determined as of the end of such year or fraction thereof), shall be credited to the Capital Account of such Partner.

(ii) Second, an amount of net income shall be credited to the Capital Accounts of the Partners to the extent of and in proportion to the amount of Net Cash Flow distributed (or to be distributed) to the Partners under Section 3.1 hereof (except to the extent net income was allocated in respect of such distributions pursuant to clause (i) hereof).

(iii) Third, if the ratio between the Capital Accounts of the Partners (taking into account the allocations made pursuant to clauses (i) and (ii) above) is other than in the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners, there shall be credited to the Capital Account of the Partner with ~~the lesser Capital Account balance~~ so much of the net income as may be available to eliminate (or reduce) the difference between the ratio of the then prevailing Capital Accounts and the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners.

(iv) Fourth, any remaining balance of net income shall be credited to the Partners in proportion to their Capital Accounts.

(b) Losses from Operations. All net losses for each year of the Partnership (other than loss from an Interim Capital Transaction or the sale or disposition of properties in connection with the termination of the Partnership) shall be allocated for federal income tax purposes and charged 85 percent to the Capital Account of the Limited Partner and 15 percent to the Capital Account of the General Partner.

4.2. Allocation of Taxable Income and Losses from Interim Capital Transactions.

(a) Income from Interim Capital Transactions. Any net income or gain recognized in connection with an Interim Capital Transaction shall be allocated for federal income tax purposes and credited to the Capital Accounts of the Partners as follows and in the following order of priority:

(i) First, an amount of such net income or gain (or item thereof) up to the respective excess, if any, of the negative balance of the Capital Account of any Partner (after giving effect to all distributions made or to be made for such year or fraction thereof under Sections 3.1 and 3.2 hereof and after crediting or charging thereto all net income or net losses for such year or fraction thereof under Section 4.1 hereof) over such Partner's share of the Minimum Gain (determined as of the end of such year or fraction thereof) shall be credited to the Capital Account of such Partner.

(ii) Second, an amount of net income shall be credited to the Capital Accounts of the Partners to the extent of and in proportion to the amount of Net Proceeds distributed (or to be distributed) to the Partners under Section 3.2 hereof (except to the extent net income was allocated in respect of such distributions pursuant to Section 4.1 or clause (i) of this Section 4.2).

(iii) Third, if the ratio between the Capital Accounts of the Partners (taking into account the allocations made pursuant to clauses (i) and (ii) above is other than in the ratio of the aggregate contributions to the capital of the Partnership

theretofore made by the Partners, there shall be credited to the Capital Account of the Partner with the lesser Capital Account balance so much of the net income as may be available to eliminate (or reduce) the difference between the ratio of the then prevailing Capital Accounts and the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners.

(iv) Fourth, any remaining balance of net income shall be credited to the Partners in proportion to their Capital Accounts.

(b) Losses from Interim Capital Transactions. All net losses for each year recognized in connection with an Interim Capital Transaction shall be allocated for federal income tax purposes and charged 85 percent to the Capital Account of the Limited Partner and 15 percent to the Capital Account of the General Partner.

4.3. Allocation of Taxable Income and Loss from Liquidating Transactions.

(a) Income from Liquidating Transactions. Any net income or gain realized by the Partnership upon the sale of all or substantially all of the property of the Partnership or otherwise in connection with the dissolution and liquidation of the Partnership shall be credited to the Capital Accounts of the Partners (after crediting or charging thereto the appropriate portion of all net income or net losses and all gain and loss of the Partnership for the then current year in accordance with Sections 4.1 and 4.2 hereof and all amounts distributed or to be distributed for such year pursuant to Sections 3.1 and 3.2 hereof) as follows:

(i) First, if the ratio between the Capital Accounts of the Partners is other than in the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners, there shall be credited to the Capital Account of the Partner with the lesser Capital Account balance so much of the net income or gain as may be available to eliminate (or reduce) the difference between the ratio of the then prevailing Capital Accounts and the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners.

(ii) Second, any remaining balance of net income shall be credited to the Partners in proportion to their Capital Accounts.

(b) Loss from Liquidating Transactions. Any net loss realized by the Partnership upon the sale of all or substantially all of the property of the Partnership or otherwise in connection with the dissolution and liquidation of the Partnership shall be charged to the Capital Accounts of the Partners (after crediting or charging thereto the appropriate portion of all net income or net losses and all gain and loss of the Partnership for the then current year in accordance with Sections 4.1 and 4.2 hereof and all amounts distributed or to be distributed for such year pursuant to Sections 3.1 and 3.2 hereof) as follows:

(i) First, if the ratio between the Capital Accounts of the Partners (taking into account the allocations made pursuant to clauses (i) and (ii) above is other than in the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners, there shall be charged to the Capital Account of the Partner with the greater Capital Account so much of the net loss as may be necessary to eliminate (or reduce) the difference between the ratio of the then prevailing Capital Accounts and the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners.

(ii) Second, any remaining balance of the net loss shall be charged to the Partners in proportion to their Capital Accounts.

#### 4.4. Other Capital Account and Income Tax Adjustments.

(a) Certain Contributions of Property. In the event there is a difference between the fair value at which any property is accepted as a contribution to the capital of the Partnership and the adjusted basis of such property to the Partnership, the General Partner shall for federal income tax purposes specially allocate the income, gain, loss and deduction attributable to such property (prior to making the remaining federal income tax allocations in conformity with Sections 4.1 through 4.3 hereof) to the extent required by section 704(c) of the Code and any applicable Treasury Regulations.

(b) Certain Nondeductible Expenses. Each Partner's Capital Account shall be charged for such Partner's allocable share (based on the ratio of the aggregate contributions to the capital of the Partnership theretofore made by the Partners) of expenditures of the Partnership described in section 705(a)(2)(B) of the Code (relating to expenditures which are neither deductible nor properly chargeable to capital) and expenditures which, pursuant to the Regulations under section 704(b) of the Code, are characterized as section 705(a)(2)(B) expenditures.

(c) Certain Partnership Elections. In the event that the Partnership makes an election under section 754 of the Code, the amounts of any adjustments to the bases of the assets of the Partnership made pursuant to section 743 of the Code shall not be reflected in the Capital Accounts of the Partners, but the amounts of any adjustments to the bases of the assets of the Partnership made pursuant to section 734 of the Code as a result of the distribution of property by the Partnership to a Partner shall be reflected in the Capital Accounts of the Partners in the manner provided by the Regulations under section 704(b).

(d) Interpretation. It is the intent of the Partners that each Partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined and allocated in each year of the Partnership in accordance with this Section to the fullest extent permitted by section 704(b) of the Code and the Regulations. In furtherance of the foregoing, the General Partner is hereby directed to resolve any ambiguity in the provisions of this Agreement in a manner that will preserve and protect the tax allocations provided for in this Section for Federal income tax purposes to the maximum extent permitted by the express language of this Agreement. In the event of any dispute, the decision of the independent tax counsel employed by the Partnership shall be final but no Partner shall have the right to require or compel any allocation or distribution not authorized or provided for by the provisions of this Agreement on the ground that such allocation or distribution is necessary to cause the provisions hereof to conform to the provisions of the Treasury Regulations.

(e) Additional Limited Partners. If as a consequence of a Transfer under Article 7 additional persons shall be admitted to the Partnership as either Limited Partners or Class A Limited Partners all

allocations and distributions to the General Partner under this Agreement shall be shared among the General Partner and Class A Limited Partners as a single class and all distributions and allocations to the Limited Partner shall be shared among the original Limited Partner and its transferees or successors as a single class, to be allocated among the Partners comprising each respective class in accordance with their interest as set forth in Schedule A.

ARTICLE 5

MANAGEMENT

5.1. Management of the Partnership. The overall management and control of the business and affairs of the Partnership shall be vested solely in the General Partner.

5.2. Authority of the General Partner.

(a) In General. The General Partner shall have all the rights and powers of a general partner under the Act and as otherwise provided by law and, except as otherwise expressly provided in subsection (b) of this Section 5.2, all decisions respecting any matter set forth herein or otherwise affecting or arising out of the conduct of the business of the Partnership shall be made by the General Partner, and the General Partner shall have the exclusive right and full authority to manage, conduct and operate the Partnership's business. Specifically, and not by way of limitation, the General Partner shall be authorized in the name and on behalf of the Partnership:

(i) to acquire, lease, mortgage, encumber, sell or otherwise dispose of or refinance assets of the Partnership;

(ii) to borrow money and, as security therefor, to mortgage, pledge or otherwise encumber the assets of the Partnership;

(iii) to cause to be paid all amounts due and payable by the Partnership to any person or entity;

(iv) to employ such agents, employees, managers, accountants, attorneys, consultants and other persons, including itself, necessary or appropriate to carry out the business and affairs of the Partnership, whether or not any such persons so employed are affiliated or related to any Partner, and to pay such fees, expenses, salaries, wages and other compensation to such persons as it shall in its sole discretion determine; provided, however, that ~~any person employed by the Partnership which is~~ affiliated with or related to any Partner shall not be employed upon terms and conditions materially more favorable than the Partnership would obtain from an unrelated third party for similar service; and provided, further, that the terms and conditions upon which all persons employed by the Partnership are

engaged shall conform to all requirements imposed by applicable law;

(v) to pay, extend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise, upon such terms as it may determine and upon such evidence as it may deem sufficient, any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the Partnership;

(vi) to cause to be paid any and all taxes, charges and assessments that may be levied, assessed or imposed upon any of the assets of the Partnership, unless the same are contested by the General Partner;

(vii) to serve as the tax matters partner for the Partnership, pursuant to sections 6221-6231 of the Code;

(viii) to execute such documents as the General Partner deems necessary or advisable to reflect the Partnership's ownership of the interests in property in any state as may be required; and

(ix) to enter into any other agreements on behalf of the Partnership regardless of whether they extend beyond the term of the Partnership.

With respect to all of its obligations, powers and responsibilities under this Agreement, the General Partner is authorized to execute and deliver, for and on behalf of the Partnership, such notes and other evidences of indebtedness, contracts, agreements, assignments, deeds, leases, loan agreements, mortgages and other security instruments and agreements as it deems proper, all on such terms and conditions as it deems proper.

(b) Actions Requiring Consent of Limited Partners. Notwithstanding the provisions of Section 5.2(a) above, the General Partner shall not, without the consent of a majority-in-interest of the Limited Partners:

(i) sell, exchange, lease, pledge, or transfer all or substantially all the assets of the Partnership (except for tenant leases in the ordinary course of business and mortgage financing); or

(ii) admit any persons as additional Limited Partners.

5.3. Services of the General Partner. During the existence of the Partnership, the General Partner shall devote such time and effort to the Partnership business as may be necessary to promote adequately the interests of the Partnership and the mutual interests of the Partners; however, it is specifically understood and agreed that the General Partner shall not be required to devote full time to Partnership business, and the General Partner may at any time and from time to time engage in and possess interests in other business ventures of any and every type and description, including, without limitation, the ownership, operation, financing, and management of real estate, independently or with others, and neither the Partnership nor any Partner shall by virtue of this Agreement have any right, title or interest in or to such independent ventures.

5.4. Compensation of General Partner. The General Partner shall not be entitled to any compensation for serving as General Partner other than his share of the profits, losses and distributions of the Partnership.

5.5. Liability and Indemnification. The General Partner shall not be liable to the Partnership or any Partner for any loss, cost or damage attributable to or arising from any act or omission suffered or taken by him other than acts or omissions involving the gross negligence or willful misconduct of the General Partner. The General Partner shall be fully protected and indemnified by the Partnership against all liabilities, loss, cost and damage suffered or incurred by him in his individual capacity by virtue of his status as a General Partner (including legal fees and expenses reasonably incurred in connection with any pending or threatened litigation or proceeding and amounts paid in respect of judgments or fines or in settlement of litigation) not attributable to the gross negligence or willful misconduct of the General Partner. The General Partner and each officer of the Partnership may consult with legal counsel selected by him and any action or omission suffered or taken in reliance and accordance with the opinion or advice of such counsel shall be full protection and justification with respect to the action or omission so suffered or taken.

5.6. Tax Elections. The General Partner shall make all required or permitted tax elections in a manner which he deems to be in the best interests of a majority-in-interest of the Partners and shall not be required to make any optional election which in the opinion of the General Partner may unnecessarily complicate the accounting for Partnership

operations or cause any unnecessary expense to the Partnership.

5.7. Certain Fees and Expenses. All out-of-pocket expenses incurred in connection with the Partnership's organization, formation or business shall be paid by the Partnership or reimbursed to the General Partner by the Partnership. In any event, all legal expenses incurred by the General Partner in connection with formation of the Partnership shall also be borne by the Partnership.

## ARTICLE 6

### BOOKS, RECORDS AND BANK ACCOUNTS

6.1. Books and Records. The General Partner shall keep true and accurate books of account with respect to the operations of the Partnership. Such books shall be maintained at the principal place of business of the Partnership, or at such other place as the General Partner shall determine, and all Partners, and their duly authorized representatives, shall at all reasonable times have access to such books.

6.2. Accounting Basis and Fiscal Year. Such books shall be kept on the cash method of accounting, or on such other method of accounting as the General Partner may from time to time determine, and in accordance with consistently applied accounting principles, and shall be closed and balanced at the end of each Partnership year. The same method of accounting shall be used for both Partnership accounting and tax purposes. The fiscal year of the Partnership shall be June 30th.

6.3. Reports. Within 60 days after the end of each fiscal year, the General Partner shall cause to be prepared and sent to each person who was a Partner at any time during the fiscal year then ended a financial report of the Partnership, including a balance sheet, a profit and loss statement, a cash flow or source and application of funds statement and a pro forma projection of profit and loss for the then current fiscal year. Within 60 days after the end of each fiscal year, the General Partner shall furnish each such Partner with such information as may be needed to enable such Partner to file its Federal income tax return, any required state income tax return and any other reporting or filing requirements imposed by any governmental agency or authority. The General Partner shall cause to be prepared and distributed to the Partners such further reports as may be reasonably requested by the Limited Partner. The cost of all such reporting shall be paid by the Partnership as a Partnership expense. The Limited Partner may, at any time, at its own expense, cause an audit of the Partnership books to be made by a certified public accountant of its own selection.

6.4. Bank Accounts. The General Partner shall be responsible for causing one or more accounts to be maintained in a bank (or banks) which is a member of the Federal Deposit Insurance Corporation, which accounts shall be used for the payment of the expenses and expenditures incurred by the

General Partner in connection with the business of the Partnership, and in which shall be deposited any and all cash receipts. All such amounts shall be and remain the property of the Partnership, and shall be received, held and disbursed by the General Partner for the purposes specified in this Agreement. There shall not be deposited in any of said accounts any funds other than funds belonging to the Partnership, and no other funds shall in any way be commingled with such funds.

## ARTICLE 7

### TRANSFER OF INTEREST OF PARTNERS

7.1. Limitations on Transfer. No Partner may sell, transfer, assign or otherwise dispose of, or mortgage, hypothecate or otherwise encumber, or permit or suffer any encumbrance of all or any part of its Partnership interest (collectively, a "Transfer") except that:

(a) any Partner (subject to the provisions of Section 8.1 in the case of the General Partner) may Transfer all or any part of his interest, on death or inter vivos (in trust or otherwise), to or for the benefit of any member of his immediate family (i.e., spouse, parents, children, including those adopted, children's direct descendants, brothers, sisters, nieces, nephews, aunts, uncles, first cousins and the spouses of any of them), or to the legal representative of a deceased or incapacitated Partner (or by such legal representative to accomplish any Transfer under this clause (a); and

(b) any Limited Partner may Transfer all or any part of his interest (other than pursuant to clause (a) above) with the prior written consent of the General Partner, which consent may not be unreasonably withheld.

7.2. Transferees of General Partner. If the General Partner shall transfer a portion of his interest pursuant to Section 7.1, no such transferee shall have any rights to become a General Partner or otherwise take part in the management and control of the business and affairs of the Partnership without the express consent of all the then Limited Partners, except that, with the consent of a majority-in-interest of the Limited Partners, the General Partner may admit any such transferee as a Class A Limited Partner with only such proportionate interest in the profits, losses and distributions specified in Article 3 and Article 4 as would otherwise have been allocated or distributed to the General Partner in the absence of such Transfer, in which event such Limited Partner shall be recognized as a Limited Partner for purposes of all other provisions of this Agreement.

7.3. Procedural Matters. No person may be admitted as a Limited Partner without the consent of a majority-in-interest of the Limited Partners. Upon the admission of a transferee as a Limited Partner, the General Partner shall cause the Certificate of Limited Partnership and Schedule A

to be amended in a manner to clearly reflect the interest of such Limited Partner.

## ARTICLE 8

### WITHDRAWAL, REMOVAL, DISSOLUTION AND TERMINATION

8.1. Withdrawal and Removal of General Partner. The General Partner shall not voluntarily withdraw from the Partnership or, by a permitted Transfer, reduce his interest in profits, losses, and distributions to less than a 1 percent interest in each such item, without the consent of the Limited Partner. Any action which may constitute a withdrawal under applicable law voluntarily undertaken by the General Partner without the consent of the Limited Partner shall constitute an action in contravention of the Agreement entitling the Limited Partner to such remedies as may be provided under applicable law for breach of the Agreement. The General Partner may be removed by the Limited Partners only for gross negligence or willful misconduct.

8.2. Dissolution Events. The Partnership shall be dissolved upon the first to occur of the following events ("Dissolution Events"):

(a) The death, permanent disability, or removal of the General Partner or the adjudication of insolvency of the General Partner pursuant to a judgment or order which remains in force for ninety (90) days after its entry;

(b) The sale, foreclosure or other disposition of all or substantially all of the property of the Partnership and the collection by the Partnership and distribution to the Partners of all proceeds from such sale (whether such proceeds be cash, notes, or other property), but a disposition referred to in this subsection does not include the granting of a lien or security interest in any property of the Partnership;

(c) The agreement of all Partners to dissolve the Partnership;

(d) The expiration of the Term set forth in Section 1.5 above;

(e) ~~The issuance of a decree by a court of the~~ dissolution of the Partnership; or

(f) The Partnership is adjudicated insolvent, and such judgment or order remains in force for ninety (90) days after its entry.

8.3. Liquidation. Upon dissolution of the Partnership pursuant to the provisions of this Agreement or by operation of law, the Partnership shall not terminate; rather, a full accounting of the Partnership's assets and liabilities shall be taken by the General Partner (or in the event of the death or disability of the General Partner, a liquidator jointly appointed by the representatives of the General Partner and the Limited Partner or a court of competent jurisdiction), the receivables and outstanding loans shall be collected, and the Partnership's real and personal assets shall be liquidated and distributed in accordance with the terms set forth in Section 8.4 below as promptly as is consistent with obtaining the fair market value thereof. After dissolution, the Partnership shall engage in no further business other than that necessary to cause the property to be operated on an interim basis and to enable the Partnership to collect its receivables and liquidate any remaining assets.

8.4. Distribution. Upon dissolution of the Partnership, the assets of the Partnership shall be applied and distributed in the following order of priority:

- (a) to creditors of the Partnership, including Partners, in order of priority provided by law, and the creation of a reserve of cash or other assets of the Partnership for contingent liabilities in an amount, if any, determined by the General Partner or liquidator in its sole judgment to be appropriate for such purposes; and
- (b) to the Partners in accordance with the provisions of Section 3.3.

ARTICLE 9

RIGHTS AND OBLIGATIONS OF THE LIMITED PARTNER

9.1. No Participation in Management. No Limited Partner shall take part in the management of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership.

9.2. Limitation of Liability. Except as otherwise provided by the Act, the Limited Partners shall have no personal liability whatsoever in their capacity as a Limited Partner for the debts of the Partnership or any of its losses.

## ARTICLE 10

### MISCELLANEOUS

10.1. Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the Partner giving such notice, election or demand and shall be delivered personally, or sent by registered or certified mail, return receipt requested (except that routine notices required or permitted to be given by the General Partner or the Partnership may be sent by ordinary first class mail or other reliable delivery service), to the other Partner, at its address set forth in this Agreement, or at such other address as may be supplied by written notice given by such Partner to the other Partner in conformity with the terms of this Section 10.1. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice.

10.2. Successors and Assigns. Subject to the restrictions on transfer set forth herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the Partners, their respective successors, successors-in-title and assigns, and each and every successor-in-interest to any Partner, whether such successor acquires such interest by way of gift, purchase, foreclosure, or by any other method, shall hold such interest subject to all of the terms and provisions of this Agreement.

10.3. Power of Attorney. The Limited Partner, by the execution of this Agreement hereby irrevocably constitutes and appoints the General Partner, each officer thereof, and each of them acting singly, in each case with full power of substitution, its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead, to make, execute, acknowledge, swear to, deliver, file and record such documents and instruments as may be necessary or appropriate to carry out the provisions of this Agreement. The foregoing power of attorney, being coupled with an interest, is hereby declared to be irrevocable, and shall survive the withdrawal, bankruptcy, dissolution or incapacity of any Limited Partner.

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10.4. Amendments. In addition to any amendments otherwise authorized herein, amendments may be made to this Agreement from time to time in either of the following manners:

(a) By the General Partner, without the consent or approval of the Limited Partner, (i) to add to the duties or obligations of the General Partner or surrender any right or power granted to the General Partner herein and (ii) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement; provided, however, that no amendment shall be adopted pursuant to this Section 10.4(a) unless the adoption thereof (1) is not adverse to the interests of the Limited Partner; (2) is consistent with Section 5.1 hereof; (3) does not affect the method of allocation of cash distributions provided in Article 3 hereof or the method of allocation of net profits or net losses provided in Article 4 hereof among the Partners; and (4) does not affect the status of the Partnership as a partnership for Federal income tax purposes.

(b) By a writing duly executed by all Partners.

10.5. Partition. The Partner hereby agree that no Partner nor any successor-in-interest to any Partner, shall have the right while this Agreement remains in effect to have the property of the Partnership partitioned, or to file a complaint or institute any proceeding at law or in equity to have the property of the Partnership partitioned, and each Partner, on behalf of himself, his successors, representatives, heirs, and assigns, hereby waives any such right. It is the intention of the Partner that during the term of this Agreement, the rights of the Partner and their successors-in-interest, as among themselves, shall be governed by the terms of this Agreement, and that the right of any Partner or successor-in-interest to assign, transfer, sell or otherwise dispose of his interest in the Property shall be subject to the limitations and restrictions of this Agreement.

10.6. No Waiver. The failure of any Partner to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Partner's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

10.7. Entire Agreement. This Agreement constitutes the full and complete agreement of the parties hereto with respect to the subject matter hereof.

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

10.9. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall for all purposes constitute one Agreement, binding on all the Partners notwithstanding that all Partners have not signed the same counterpart.

10.10. Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

## ARTICLE 11

### CERTAIN DEFINITIONS

11.1. Definitions. For purposes of this Agreement the following terms shall have the following meanings:

"Code": The Internal Revenue Code of 1986, as amended, and any successor statute.

"Interim Capital Transaction": A financing, refinancing, insurance award, condemnation, easement sale, sale of a property or interest therein as other than part of a plan for the termination or winding up of the affairs of the Partnership and any similar transaction which, in accordance with generally accepted accounting principles, is attributable to capital, but which is neither connected with nor results in the dissolution and termination of the Partnership.

"Minimum Gain": This term shall mean that portion of the excess, if any, of (i) aggregate outstanding principal balance of all nonrecourse debt that is secured by an interest in the Partnership's property (or the property of any partnership or joint venture in which the Partnership has an interest) plus any and all accrued interest thereon, over (ii) the adjusted basis of such property to the Partnership for Federal income tax purposes which is attributable to the Partnership. A Partner's share of the Minimum Gain shall be determined on the basis of his allocable share of losses from Partnership operations under Section 4.1(b).

"Net Cash Flow": The excess of (x) the sum of all cash receipts of the Partnership derived from the operation of the properties owned by the Partnership or in which the Partnership has an interest or derived from sources other than capital contributions, the proceeds of an Interim Capital Transaction or the proceeds of the sale of any properties incident to the termination or winding up of the affairs of the Partnership, over (y) the sum of all cash disbursements connected with the operation of the properties or the Partnership, including, without limitation, all debt service, management fees and capital expenditures for maintenance and repair of such properties and such reserves as the General Partner determines to be appropriate to meet contingencies or future obligations.

"Net Proceeds": The proceeds of an Interim Capital Transaction or the sale or other disposition of any properties incident to the termination or winding up of the

affairs of the Partnership remaining after the payment of the debts and liabilities of the Partnership to the extent required to be paid or satisfied in connection with such transaction, the payment of any and all costs and expenses incurred in connection with the transaction and the dissolution and winding up of the affairs of the Partnership and such reserves established from time to time in such amounts and for such purposes as the General Partner shall reasonably determine. In the case of a sale or other disposition of any property or interest in property incident to the termination or winding up of the affairs of the Partnership, Net Proceeds shall include the fair market value of all noncash consideration received by the Partnership.

IN WITNESS WHEREOF, the Partners have executed this Partnership Agreement as of the date and year first written above.

GENERAL PARTNER

AENEAS HOLDINGS, INC.

By: Michael Thon  
Title AUTHORIZED SIGNATORY

By: John G. Salley  
Title AUTHORIZED SIGNATORY

LIMITED PARTNER

PHEMUS CORPORATION

By: Michael Thon  
Title AUTHORIZED SIGNATORY

By: John G. Salley  
Title AUTHORIZED SIGNATORY

SCHEDULE A  
to  
RESTATED LIMITED PARTNERSHIP AGREEMENT  
of  
PARCEL FIVE LIMITED PARTNERSHIP

Limited Partners

<u>Name and Address</u>	<u>Capital Contribution</u>
Phemus Corporation c/o Harvard Private Capital Group, Inc. 600 Atlantic Avenue, 26th Floor Boston, MA 02210	\$25,687,281

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A TRUE COPY ATTEST  
*Michael J. Connolly*  
 MICHAEL J. CONNOLLY  
 SECRETARY OF STATE  
 9-9-94  
 DATE

**FEE PAID**

\$ 100.00  
AUG 30 1994

CASHIERS  
SECRETARY'S OFFICE

*Michael Joseph Connolly*

AMENDMENT (RESTATED)

PARCEL FIVE LIMITED PARTNERSHIP  
 \_\_\_\_\_  
 Name of Limited Partnership  
 \_\_\_\_\_  
 Amendment — Amendment Mass. General Laws, Chapter 109  
 Filed in the Office of the Secretary of State August 30, 1994