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TOP OF THE TRACK ASSOCIATES LIMITED PARTNERSHIP  
CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP

THIS CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP is made and entered into as of the 30th day of September, 1983 by and among:

Top of the Track, Inc., a Maine corporation with a principal place of business at 11 Lisbon Street, Lewiston, Maine ("TOT-ME");

Gaylord Boutilier of East Livermore, Maine ("Boutilier") (TOT-ME and Boutilier are hereinafter referred to individually as a "General Partner" and collectively as the "General Partners");

Community Loan and Investment Bank, a Rhode Island Loan and Investment Bank with a principal place of business at 454 Broadway, Providence, Rhode Island ("Community");

AMERICO C. BUONANNO, JR., of Johnston, Rhode Island ("Buonanno");

DAVID FRIEDMAN of Providence, Rhode Island ("Friedman").

(Community, Buonanno and Friedman are hereinafter individually referred to as a "Limited Partner" and collectively as the "Limited Partners"). The General Partners and the Limited Partners are sometimes hereinafter referred to individually as a "Partner" and collectively as the "Partners".

Each of the parties to this Agreement solemnly agrees, certifies and swears as follows:

ARTICLE I

Formation, Name, and Purpose

Section 1.1 - Formation

The Partners hereby form a limited partnership pursuant to the provisions of the Uniform Limited Partnership Act of the State of Rhode Island as set forth in Title 7, Chapter 13 of the General Laws of Rhode Island of 1956, as amended ("Act") to be known as "Top of the Track Associates Limited Partnership" ("Partnership"). The Partnership shall qualify as a Foreign Limited Partnership in Maine and such other states as it may transact business or own property.

Section 1.2 - Name and Offices

The Partnership shall be conducted under the name and style of Top of the Track Associates Limited Partnership. The office

of the Partnership in the State of Rhode Island shall be 454 Broadway, Providence, Rhode Island. The principal office and usual place of business of the Partnership shall be at 11 Lisbon Street, Lewiston, Maine and its registered agent in Maine shall be John C. Orestis, Esq. The General Partners may, at any time, change the location of such Rhode Island office, such Maine office or such usual place of business, provided notice of any such change is given to the Limited Partners.

### Section 1.3 - Purpose

The purposes of the Partnership are (i) to enter into a Lease Agreement ("Lease") substantially in the form annexed hereto as Exhibit A with Lewiston Raceway, Inc., a Maine corporation ("Raceway") pursuant to which the Partnership shall operate or cause to be operated certain food and drink concession areas, cocktail lounge and other facilities on premises owned by the Raceway and situated on Main Street, Lewiston, Maine ("Premises") (ii) to make certain improvements to the Premises in accordance with the Lease (iii) to enter into a Sublease Agreement with Top of the Track, Inc., a Maine corporation substantially in the form annexed hereto as Exhibit B (the "Sublease") (iv) to make working capital loans to the Sublessee designated in the Sublease ("Sublessee") and (v) to perform the obligations of the Partnership under the Lease in accordance with the terms thereof.

### Section 1.4 - Authorized and Prohibited Acts

A. In furtherance of its purposes, but subject to all other provisions of this Agreement, the Partnership and the General Partners are hereby authorized:

- (i) To enter into the Lease and perform the Lease in accordance with its terms;
- (ii) To enter, perform, and carry out the Sublease;
- (iii) To make working capital loans to Sublessee in an aggregate amount not to exceed fifty thousand (\$50,000) dollars; and
- (iv) To file such forms as may be needed to qualify the Partnership as a foreign Limited Partnership in Maine and such other states as it may transact business or own property.

B. The Partnership and the General Partners are hereby prohibited from:

- (i) borrowing money;
- (ii) granting, conveying or assigning any interest in Partnership property whether by way of pledge, mortgage, assignment, conveyance, gift or otherwise.

## Section 1.5 - Term and Dissolution

The Partnership shall commence as of the date of the filing of this Certificate and Agreement of Limited Partnership as required under the Act and shall continue in full force and effect until September 1, 2013 except that the Partnership shall be dissolved and its business wound up prior to such date upon the happening of any of the following events:

- A. The termination of the Lease, unless the Partners shall unanimously elect to continue the Partnership, notwithstanding such termination;
- B. Upon the Retirement of a sole General Partner unless the remaining Partners shall unanimously elect to continue the Partnership in accordance with Section 4.2 hereof;
- C. The sale or disposition of all or substantially all of the assets of the Partnership;
- D. The agreement of all of the Partners.

The death, incapacity or insanity of any individual General Partner or the bankruptcy, receivership, merger, liquidation or dissolution of any corporate General Partner shall not cause a dissolution of the Partnership. Upon the dissolution and winding up of the Partnership, its liabilities and obligations to creditors shall be paid and any remaining assets (or proceeds of their sale) shall be distributed to the Partners in accordance with the procedure provided in Section 6.1 hereof.

## ARTICLE II

### Partners; Capital

#### Section 2.1 - General Partners

The General Partners of the Partnership are TOT-ME, and Boutilier. Upon the execution of this Agreement, the General Partners shall contribute to the capital of the Partnership, the amounts set opposite their names on the Schedule annexed hereto and made a part hereof (the "Schedule").

#### Section 2.2 - Limited Partners

The Limited Partners are Community, Buonanno and Friedman. Upon their execution of this Agreement, each Limited Partner shall contribute to the capital of the Partnership, the amount set forth opposite such Limited Partner's name on the Schedule and such amounts shall constitute the initial capital contributions of the Limited Partners. No Limited Partner shall be required thereafter to make any further capital contributions or lend any funds to the Partnership.

### Section 2.3 - Liability of Limited Partners

No Limited Partner shall be liable for any debts, liabilities, contracts or obligations of the Partnership.

### Section 2.4 - Partnership Capital

The capital of the Partnership shall be the aggregate amount of cash contributed by the Partners as designated on the Schedule. The Schedule shall be amended from time to time to reflect the withdrawal or admission of Partners, any changes in the Partnership interests held by a Partner arising from the transfer of a Partnership interest to or by such Partner and any change in the amounts to be contributed or agreed to be contributed by any Partner.

No interest shall be paid on any capital contribution received by the Partnership.

### Section 2.5 - Capital Accounts

There shall be maintained for each Partner a capital account which shall be increased by the amount of all capital contributions of such Partner and by the amount of any taxable income and gains of the Partnership allocated to such Partner and shall be decreased by the amount of all cash and the net fair market value of any property distributed to the Partner and the amount of any taxable loss allocated to such Partner. No Limited Partner with a negative balance in his capital account shall be obligated to restore such negative balance or to make a contribution to the capital of the Partnership solely by reason thereof.

### Section 2.6 - Withdrawal and Returns of Capital

Except as otherwise provided under the Act and except as provided herein, no Partner shall have the right to withdraw all or any part of his capital contribution.

## ARTICLE III

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

#### Section 3.1 - Restrictions on Authority

The General Partners shall not have the authority to perform any act in violation of any applicable law or regulation, any agreement binding upon the Partnership including, without limitation, the Lease and the Sublease, or to do any act (without proper approval) required to be approved or ratified by the Limited Partners under the Act or hereunder.

### Section 3.2 - Business Management and Control

The General Partners shall have the exclusive right to manage the business of the Partnership. Except to the extent that one or more General Partners have been delegated authority to act pursuant to Section 3.4 hereof, the unanimous vote of the General Partners shall be required to approve any action subject to the control and discretion of the General Partners. No Limited Partner shall participate in or have any control over the Partnership business, except as required by law or as provided herein. No Limited Partner shall have the authority or the right to act for or bind the Partnership.

### Section 3.3 - Services Rendered by TOT-ME under Sublease

The services rendered and other Acts performed by TOT-ME under and in accordance with the Sublease and the payments received by TOT-ME pursuant thereto shall not be deemed to be rendered, performed and received by TOT-ME in its capacity as a General Partner hereunder.

### Section 3.4 - Delegation of General Partners' Authority

The General Partners may, from time to time, by an instrument in writing signed by both of the General Partners, delegate all or any of their powers or duties hereunder to one General Partner, such a writing to fully authorize such acting General Partner to act alone without the requirement of any act or signature of the other General Partner; provided, however, that any such delegation shall not relieve the General Partner making such delegation of its or his obligations under this Agreement. Every contract, instrument, document and agreement executed by any General Partner so authorized shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof a) this Partnership was in existence, b) this Agreement had not been terminated or cancelled or amended in any matter so as to restrict such authority (except as shown in Certificates or other instruments duly filed in accordance with the applicable laws and regulations of the States of Rhode Island and Maine (and such other states as may be appropriate) and c) the execution and delivery of such instruments were duly authorized by the General Partners. Any person dealing with the Partnership or the General Partners may always rely on a Certificate signed by any General Partner hereunder:

- (i) As to who are the General Partners or the Limited Partners hereunder;
- (ii) As to who is authorized to execute and deliver any instrument or document of the Partnership;
- (iii) As to the authenticity of any copy of this Agreement and the Amendments thereto.

### Section 3.5 - Duties and Obligations

The General Partners shall promptly take all action which may be necessary or appropriate for the performance of the obligations of the Partnership under the Lease and the Sublease.

### Section 3.6 - Liability of General Partners

General Partners shall not be liable to the Partnership or to any Limited Partner for any loss in connection with the affairs of the Partnership so long as they act in good faith and not with misconduct or in breach of their fiduciary duties hereunder.

## ARTICLE IV

### Retirement, Bankruptcy, or Death of a General Partner

#### Section 4.1 - Conversion of Certain General Partnership Interests

In the event of the retirement, bankruptcy, insolvency, liquidation or death of a General Partner, its or his interest as a General Partner shall, upon the occurrence of such event, become the interest of a Limited Partner hereunder ("Converted Interest") and:

- A. The interests of the General Partners as a class as set forth on the Schedule shall be decreased and the interests of the Limited Partners as a class as set forth on the Schedule shall be increased by the amount of the Converted Interest;
- B. The holder of the Converted Interest shall have no right to vote or to consent as a Limited Partner hereunder.

#### Section 4.2 - Obligation to Continue

Upon the conversion of an interest of a General Partner, the Partnership shall, except as set forth herein, be (i) dissolved if there is no remaining General Partner or (ii) continued by the remaining General Partners.

#### Section 4.3 - Conversion of the interest of a Sole General Partner

If, following the conversion of the interest of a General Partner, there is no remaining General Partner of the Partnership, then the Limited Partners may elect to reconstitute the Partnership and continue the business of the Partnership for the balance of the term specified in Section 1.5 by selecting a successor General Partner.

## ARTICLE V

### Assignment of Interests of Parties

#### Section 5.1 - Limited Partners

A Limited Partner may assign or transfer all or any part of its interest in the Partnership, subject to the restrictions set forth in Section 5.3.

#### Section 5.2 - General Partners

With the approval of the Limited Partners, a General Partner may transfer all or any part of his or its interest as a General Partner in the Partnership, subject to the restrictions set forth in Section 5.3.

#### Section 5.3 - Restriction

No sale or exchange of any Partner's interest in the Partnership may be made if the interest sought to be sold or exchanged, when added to the total of all other interests in the Partnership sold or exchanged within the period of twelve consecutive months prior to the proposed date of sale or exchange, would result in the termination of the Partnership under Section 708 of the Internal Revenue Code of 1954, as amended. Any sale, exchange or other transfer in contravention of this Section 5.3 shall be void and ineffectual and shall not bind or be recognized by the Partnership; provided, however, that this Section 5.3 shall not apply to the purchase at any one time by TOT-ME of all of the interests of all other Partners.

## ARTICLE VI

### Allocations, Distributions and Fiscal Year

#### Section 6.1 - Receipts and Proceeds of Sale

All receipts from the Partnership from normal business operations and all proceeds of the Partnership from the sale or other disposition of Partnership assets shall be allocated in the following order of priority:

- A. Exclusively to the Limited Partners until they have received a return of their capital contributions;
- B. Exclusively to the General Partners until they have received a return of their capital contributions;
- C. Any remaining proceeds shall be allocated 99% to the Limited Partners and 1% to the General Partners.

## Section 6.2 - Profits and Losses

Profits and Losses of the Partnership for each fiscal year as determined for federal income tax purposes utilizing the accounting method adopted by the Partnership shall be allocated 99% to the Limited Partners and 1% to the General Partners.

## Section 6.3 - Allocation within Partnership Class

The profits and losses of the Partnership allocated to and the distributions made to the General Partners and the Limited Partners shall be allocated among the members of each such class of partner in accordance with their Partnership interest as specified in the Schedule.

## Section 6.4 - Fiscal Year

The fiscal year of the Partnership shall be the calendar year.

## Section 6.5 - Timing

Distributions shall be made by the General Partners in accordance with the procedure set forth in this Article VI at convenient periodic intervals but not less frequently than monthly.

# ARTICLE VII

## Power of Attorney and Amendments

### Section 7.1 - Power of Attorney

The Partners hereby each make, constitute and irrevocably appoint any individual General Partner and the President of any corporate General Partner, and each of them, as their true and lawful attorney with full power and authority in their name place instead to make, execute, sign, acknowledge and file with respect to the Partnership in accordance with the provisions of such statutes as may be applicable:

- A. Certificates of fictitious names;
- B. A Certificate of Limited Partnership;
- C. Such certificates, documents or instruments as shall be required to qualify the Partnership as a foreign Limited Partnership in any jurisdiction;
- D. Such Amendments to the Certificate of Limited Partnership as may be required; and
- E. The Lease and the Sublease.

The Power of Attorney granted herein shall be deemed to be coupled with an interest and shall survive the death or incompetency of an individual General Partner.

Section 7.2 - Limitation

Notwithstanding the provisions of this Article VII, when acting in a representative capacity, the General Partners shall not have any right, power or authority to amend or modify this Agreement and Certificate of Limited Partnership or the Lease or Sublease except to reflect:

- A. A change in the name of the Partnership;
- B. Changes of address of the Partnership or of any General Partner or Limited Partner or;
- C. Such other change as been consented to by all of the Partners.

ARTICLE VIII

Miscellaneous

Section 8.1 - Binding Effect

Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, representatives, successors and assigns, as applicable.

Section 8.2 - Applicable Laws

This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island.

Section 8.3 - Counterparts

This Agreement may be executed in several counterparts each of which shall be deemed an original and said counterpart shall constitute but one in the same instrument which may be sufficiently evidenced by one counterpart.

Section 8.4 - Bank Accounts

The Partnership shall maintain a bank account or bank accounts in such bank or banks as may be selected by the General Partners.

Section 8.5 - Notices

All notices provided for under this Agreement shall be in writing and shall be sufficient if sent by registered or

certified mail to the address of the party to whom such notice is to be given as set forth in the Schedule.

**Section 8.6 - Partnership Records**

Proper and complete books of account shall be kept at all times and shall be open to inspection by any Partner or his accredited representative at any reasonable time. The books of account shall be examined and reviewed as of the close of each fiscal year by an independent certified public accountant selected by the General Partners and such accountant shall make a report thereon to the Partners.

**Section 8.7 - Unanimous Consent**

Any matter requiring the approval of the General Partners or the Limited Partners shall, unless otherwise provided herein, require the approval of all members of such class and any matters requiring the approval of the Partners, shall, unless otherwise provided herein, require the approval of all Partners.

**Section 8.8 - Other Endeavors**

Any Partner may engage independently or with others in business or investment ventures of any nature and description and neither the Partnership nor any Partner shall have any rights by virtue of this Agreement to the income or profits derived therefrom.

IN WITNESS WHEREOF, the undersigned have executed this Agreement and Certificate of Limited Partnership on this 30<sup>th</sup> day of September, 1983.

TOP OF THE TRACK, INC.  
General Partner

By: Gaylord Boutilier  
Gaylord Boutilier, Treasurer

Gaylord Boutilier  
Gaylord Boutilier, General Partner

COMMUNITY LOAN AND INVESTMENT BANK,  
Limited Partner

By: Biagio M. Maggiasco, Pres.  
Biagio M. Maggiasco, President

*Amico C. Buonanno, Jr.*  
~~PARAMOUNT RESTAURANT SUPPLY CORP.,~~  
AMERICO C. BUONANNO, JR Limited Partner

By: *David Friedman*  
DAVID FRIEDMAN, Limited Partner

STATE OF MAINE  
COUNTY OF ANDROSCOGGIN

In Lewiston, on this 30<sup>th</sup> day of September, 1983, before me personally appeared GAYLORD BOUTILIER, to me known and known by me to be Treasurer of Top of the Track, Inc. and the person executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed individually and as such Treasurer and the free act and deed of said corporation.

*John C. Orestis*  
\_\_\_\_\_  
Notary Public  
JOHN C. ORESTIS

STATE OF MAINE  
COUNTY OF ANDROSCOGGIN

In Lewiston, on this 30<sup>th</sup> day of September, 1983, before me personally appeared GAYLORD BOUTILIER, 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.

*John C. Orestis*  
\_\_\_\_\_  
Notary Public  
JOHN C. ORESTIS

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence, on this 4<sup>th</sup> day of ~~September~~ <sup>October</sup>, 1983, before me personally appeared Biagio M. Maggiacomo, to me known and known by me to be President of Community Loan and Investment Bank, and the person executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed individually and as such President and the free act and deed of Community Loan and Investment Bank.

*Sarah T. Dowling*  
\_\_\_\_\_  
Notary Public ~~Notary Public~~  
SARAH T. DOWLING

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence, on this 4<sup>th</sup> day of ~~September~~ <sup>October</sup>, 1983, before me personally appeared ~~Americo C. Buonanno Jr. and David Friedman~~ to me known and known by

me to be ~~of PARAMOUNT RESTAURANT SUPPLY CORP.~~  
and the person executing the foregoing instrument, and they  
acknowledged said instrument by them executed to be their free act  
and deed ~~and the free act and deed of said corporation.~~

SARAH T DAWLING  
Notary Public *Notary Public*  
SARAH T DAWLING

SCHEDULE A TO  
 CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP  
 TOP OF THE TRACK ASSOCIATES LIMITED PARTNERSHIP

<u>General Partners</u>	<u>Capital Contribution</u>	<u>Partnership Interest</u>
Top of the Track, Inc. 11 Lisbon Street Lewiston, ME	\$2,000.00	1/2 of 1%
Gaylord Boutilier	\$2,000.00	1/2 of 1%
 <u>Limited Partners</u>		
Community Loan and Investment Bank 454 Broadway Providence, RI	\$198,000	49 1/2%
Americo C. Buonanno, Jr. 2450 Hartford Avenue Johnston, R.I.	\$ 99,000	24 3/4%
David Friedman 8 Woodland Terrace Providence, R.I.	\$ 99,000	24 3/4%

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