

Filing Fee: \$50.00

49880

✓  
1084

State of Rhode Island and Providence Plantations

CERTIFICATE OF AMENDMENT TO  
CERTIFICATE OF LIMITED PARTNERSHIP

Be it Known to All by these Presents, That, the undersigned partner(s) of  
Sunset Ranch Limited Partnership

desiring to amend the Certificate of said partnership, (does) (do) hereby execute the following  
Certificate of Amendment to its Certificate of Limited Partnership.

FIRST. The name of the Limited Partnership is  
Sunset Ranch Limited Partnership

SECOND. The date of the filing of the Certificate of Limited Partnership is  
May 30, 1986

THIRD. The Certificate of Limited Partnership (as amended on  
July 1, 1986; December 31, 1986; December 31, 1986),

(List all dates of amendment or omit if not applicable)

is amended as follows:

(Insert amendment)

The Limited Partnership has been amended in accordance with the  
attached Exhibit A, which is incorporated herein and made a part  
hereof.

04/18/88

PAID

CP50  
CHEK  
0336A001

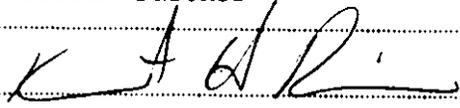
50.00  
50.00

Rec'd & Filed APR 15 1988  
MK

In Testimony Whereof, We have hereunto set our hands and stated our residences this.....

13<sup>th</sup> day of April A.D. 1988

Name	Business Address
	<del>Residence</del>
	(No. Street, City or Town, State.)
Picerne Investment Corporation, General Partner	75 Lambert Lind Highway Warwick, RI 02886



By: Kenneth A. Picerne, Senior Vice  
President

EXHIBIT A

Fifth Amendment to

Sunset Ranch Limited Partnership

THIS FIFTH AMENDMENT (hereafter the "Amendment") to the Partnership Agreement of Sunset Ranch Limited Partnership (hereinafter the "Partnership"), made as of this 13<sup>th</sup> day of April, 1988, is by and among Picerne Investment Corporation, a Rhode Island Corporation as General Partner, and each of the persons listed on Schedule A attached hereto as Limited Partners, acting through the General Partner as their Attorney-in-Fact.

WHEREAS, the Partnership is governed by the Partnership Agreement dated as of May 1, 1986 as heretofore amended (hereinafter the "Partnership Agreement").

WHEREAS, capitalized terms used herein are used in accordance with their meaning in the Partnership Agreement unless otherwise defined herein.

WHEREAS, as a result of the promulgation of certain regulations under Section 704(b) of the Internal Revenue Code concerning allocations of partnership income, loss, distributions and credits (the "Regulations"), the parties hereto have agreed that it is in the best interest of the Partnership to amend the Partnership Agreement to comply with such Regulations and to make certain other conforming and corrective amendments.

WHEREAS, each Partner has consented in writing to the proposed Amendment, and the Limited Partners have granted the General Partner(s) a power of attorney to effectuate the Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Partnership is hereby amended as follows:

1. The definition of Capital Contribution in the Partnership Agreement is hereby amended to read in its entirety as follows:

"Capital Contributions" means, with respect to any Partner, the total amount of money (prior to the deduction of any selling commissions, fees, or expenses), and the initial Gross Asset Value of any property (other than money) contributed or agreed to be contributed to the Partnership by such Partner.

2. The Partnership Agreement is hereby amended by adding the following terms and their respective definitions:

"Book Depreciation" has the meaning set forth below.

"Book Profits and Losses" means the Profits or Losses of the Partnership, adjusted for purposes of determining and maintaining the Partners' Capital Accounts as provided more fully below.

"Capital Account" means, with respect to a Partner, such Partner's total Capital Contributions, increased or decreased as provided elsewhere in this Amendment.

"Distribution" means, when used with reference to a Partner or Partners, any cash payment by the Partnership to such Partner or Partners on account of his or their Interests, regardless of the source of the funds used for such payments, but not including repayment of principal and interest on any indebtedness of the Partnership to such Partner or any payment of fees or compensation or reimbursement of expenses to such Partner.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except when adjusted as is provided more fully below.

"Syndication Expenses" means all expenditures classified as syndication expenses pursuant to Treasury Regulation Section 1.709-2(b). Syndication Expenses shall be taken into account in determining and maintaining Capital Accounts pursuant to provisions of this Agreement at the time they would be taken into account under the Partnership's method of accounting if they were deductible expenses.

"Profits" and "Losses" means the same as "profits" and "losses" as defined in the Partnership Agreement or the Partnership's taxable income or tax losses, respectively, for each Fiscal Year (or part thereof) as determined for federal income tax purposes, and includes, where the context requires, all items of income, gain, loss, deduction, and credit which enter into the computation thereof.

3. References to the Partnership Agreement used herein, shall include in their meaning references to the Partnership Agreement as amended (if amended) unless otherwise stated.

4. Section 9.02 of the Partnership Agreement is hereby amended to read in its entirety as follows:

9.02 Liability of Limited Partners.

Except as provided otherwise in this Agreement, no Limited Partner shall be liable for any debts, liabilities, contracts or obligations of the Partnership. A Limited Partner shall only be liable 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 provided elsewhere hereby or under the Uniform Act, be required to make any further Capital Contributions or to loan any funds to the Partnership.

5. A new Section 6 is hereby added to the Partnership Agreement reading in its entirety as follows:

Section 6 Partnership Capital; Capital Accounts.

A. A Capital Account shall be maintained on the books of the Partnership for each Partner, which shall be (i) credited with his Capital Contributions and the amount of any Partnership liabilities that are assumed by such Partner or that are secured by any Partnership property distributed to such Partner; (ii) credited with his distributive share of Profit and any income of the

Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profit; (iii) charged with his distributive share of Losses and any non-deductible expenditures of the Partnership (including Syndication Expenses), described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account under this Section; and (iv) charged with any Distributions to him and with the amount of any liabilities of such Partner that are assumed by the Partnership or that are secured by any property contributed by such Partner to the Partnership. In the case of property other than cash contributed to the Partnership or distributed to a Partner, each Partner's Capital Account will be credited with the Gross Asset Value of property contributed to the Partnership by him (net of liabilities assumed by the Partnership and liabilities to which such contributed property is subject) and shall be debited with the cash and the Gross Asset Value of property distributed to him (net of liabilities assumed by such Partner and liabilities to which such distributed property is subject). In the event the Gross Asset Values of Partnership assets are adjusted as is provided hereby, the Capital Accounts of all Partners shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Partnership recognized gain or loss equal to the amount of such aggregate net adjustment.

Upon the sale, exchange or other transfer of an Interest, or the assignment of such Interest to a new Partner, the Capital Account of the transferor Partner shall carry over to the transferee Partner. A Partner's Capital Account may indicate a negative balance, but, except as provided elsewhere in this Agreement, no Partner shall have any obligation to the Partnership arising solely from the existence of a negative balance in his or any other Partner's Capital Account.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulation. In the event the General Partner(s) shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulation or any successor regulation, the General Partner(s) may, with the prior written Consent of the Limited Partners, amend this Agreement to make such modification. With the prior written Consent of the Limited Partners, the General Partner(s) also shall amend this Agreement to make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulation Section 1.704-1(b).

B. For purposes of determining and maintaining the Partners' Capital Accounts, the Gross Asset Value of Partnership assets shall be adjusted as follows:

(i) the initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the Partnership;

(ii) the Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner with reference to Section 7701(g) of the Code, as of the following times: (a) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Partnership to a Partner or more than a de minimis amount of Partnership property other than money, unless all Partners receive simultaneous distribution of undivided interests in the distributed property in proportion to their interest in the Partnership; (c) the distribution by the Partnership to any Partner of appreciated Partnership property; and (d) the termination of the Partnership for federal income tax purposes pursuant to Code Section 708(b)(1)(B); and

(iii) if the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (i) or (ii) of this Section, such Gross Asset Value shall thereafter be adjusted by the Book Depreciation taken into account with respect to such asset for purposes of computing Book Profits and Losses, as set forth below.

C. If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (i) or (ii) or hereby, for purposes of determining and maintaining the Partners' Capital Accounts and the computation of Book Profits and Losses only, the following adjustments shall be made to the calculation of Profits and Losses reflected in the Partners' Capital Accounts:

(i) gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(ii) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such Profits or Losses, there shall be taken into account Book Depreciation for such Fiscal Year or other period, computed as hereinafter set forth;

(iii) For this purpose, "Book Depreciation" means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Book Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deductions for such year or other period bears to such beginning adjusted tax basis; and

(iv) Allocations of Book Profits and Losses among the Partners shall be made in accordance with the Partnership Agreement as amended hereby.

D. No interest shall be paid by the Partnership on any Capital Contribution. Loans to the Partnership by any Partner shall not be considered Capital Contributions. A Partner shall not be entitled to demand the return of, or to withdraw, any part of his Capital Contribution or his Capital Account, or to receive any Distribution, except as provided in this Agreement. Except as specifically provided elsewhere, no Partner shall be liable for the return of the Capital Contribution of any other Partner or the payment of interest thereon, and no Partner shall be obligated to make any contributions to the capital of the Partnership other than the Capital Contributions as provided above.

6. Notwithstanding any provision of the Partnership Agreement to the contrary, the Partnership Agreement is hereby amended as follows:

Any Limited Partner who shall assign all of his interest in the Partnership shall cease to be a Limited Partner of the Partnership, and shall no longer have any rights or privileges or obligations of a Limited Partner, except that, unless and until the assignee of such Limited Partner is admitted to the Partnership as a Substitute Limited Partner in accordance with the Partnership Agreement, said assigning Limited Partner shall retain the statutory rights and be subject to the statutory obligations of an assignor limited partner under the Uniform Act as well as the obligation to make the Capital Contribution attributable to the interest in question, if any portion thereof remains unpaid, including any obligation provided hereby.

7. The Profits and Losses provision of the Partnership Agreement is hereby amended to read in relevant part as follows:

B. All profits and losses arising from (i) the sale or other disposition of all or substantially all of the assets of the Partnership and (ii) any other transactions, the proceeds of which do not constitute Cash Flow, shall be shared by the Partners as follows:

(1) As to profits:

First, to the Partners with negative Capital Accounts pro-rata in such amounts as will result in the elimination of the negative Capital Accounts of such Partners; provided, however, that if profits to be allocated under the Partnership Agreement are insufficient to eliminate all negative Capital Accounts, such profits will be allocated to Partners with negative Capital Accounts in a proportion that each such Partner's negative Capital Account bears to the sum of all such negative Capital Accounts.

Second, to each Partner in an amount such that when added to each Partner's positive Capital Account Balance, if any, after Section First above, it equals the amount of cash available for distribution to that Partner, from sales, refinancings and other capital transactions.

Third, any remaining Profits, to the Partners in accordance with their respective percentage interest in sales, refinancings and other capital transactions as they are allocated in the Partnership Agreement as it is amended from time to time.

(ii) As to Losses:

First, to any Partners having positive Capital Account balances, in proportion to and to the extent of such balances.

Second, the balance, if any, to the Partners in accordance with their respective percentage interest in sales, refinancings and other capital transactions as they are allocated in the Partnership Agreement as it is amended from time to time.

8. Paragraph 16.11 is hereby added to the Partnership Agreement reading in its entirety as follows:

16.11 Liquidating Trust

In the event the Partnership is "liquidated" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g), distributions shall be made by the end of the taxable year within which such "liquidation" occurs (or, if later, within 90 days after the date of such "liquidation"). Distributions pursuant to the preceding sentence may be distributed to a trust established for

the benefit of the Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the Partners from time to time, in the reasonable discretion of the liquidator, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the Partners pursuant to the Partnership Agreement.

9. A new Paragraph 16.12 is hereby added to the Partnership Agreement reading in its entirety as follows:

16.12 Obligation to Restore Negative Capital Account Balances on Liquidation.

If any Partner has a negative Capital Account balance following the "liquidation" of the Partnership or of that partner's interest in the Partnership within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g), after taking into account all Capital Account adjustments (including adjustments arising from the liquidation) for the Partnership taxable year during which such "liquidation" occurs, other than those made pursuant to provisions in the Partnership Agreement, that Partner shall be unconditionally obligated to restore the amount of such negative Capital Account balance to the Partnership by the end of such taxable year (or, if later, within 90 days after the date of such "liquidation"). Amounts contributed to the Partnership in respect of such obligation to restore negative Capital Account Balances shall be paid to creditors of the Partnership or distributed to other Partners in accordance with their positive Capital Account balances as of the date of "liquidation". Amounts contributed to the Partnership in respect of such obligation to restore negative Capital Account balances may be contributed to the liquidating trust described above.

10. In the event of a conflict between a provision or defined term as used herein and that which is provided in the Partnership Agreement as amended heretofore, the parties hereto

agree that the terms and provisions hereof shall apply. The Partnership Agreement, as hereby and heretofore amended is ratified, approved and confirmed in all respects.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment on the day and year first above written, to be effective as of January 1, 1987.

GENERAL PARTNER

Picerne Investment Corporation,  
a Rhode Island Corporation

By: 

Title: Senior Vice President

LIMITED PARTNERS

(Listed on Schedule A attached hereto)

By: Picerne Investment Corporation,  
a Rhode Island Corporation as  
Attorney-in-Fact

By: 

Title: Senior Vice President

SUNSET RANCH  
SCHEDULE "A"

GENERAL PARTNER

Picerne Investment Corporation  
75 Lambert Lind Highway  
Warwick, RI 02886

LIMITED PARTNERS

Gloria M. Rossi  
81 Knollwood Drive  
Warwick, RI 02886

Warren W. West  
Wood Cove Drive  
Coventry, RI

Garry R. MacLean  
79 Tupelo Drive  
Cranston, RI 02920

Donna Picerne Papps  
75 Lambert Lind Highway  
Warwick, RI 02886

John G. Picerne  
75 Lambert Lind Highway  
Warwick, RI 02886

Dave Kohner  
5314 North 12th Street  
Suite 100  
Phoenix, AZ 85014

Robert E. DeBlois, Sr.  
59 Orchard Drive  
Cranston, RI 02920

Raymond T. Mancini  
40 Applewood Road  
Cranston, RI 02920