

49294

AMENDED AND RESTATED CERTIFICATE OF
LIMITED PARTNERSHIP OF SIMMONSVILLE ASSOCIATES III

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Pursuant to the provisions of Section 7-13-26 G.L.R.I., 1956, as amended (1969 Re-enactment), the undersigned, as general and limited partners, as the case may be, of Simmonsville Associates III, adopt the following amended and restated certificate of formation and do hereby solemnly swear as follows:

FIRST: The name of the partnership is: Simmonsville Associates III.

SECOND: The general and limited partners of the partnership on June 30, 1983, in the manner prescribed by Chapter 7-13 of the G.L.R.I., 1956, as amended (1969 Re-enactment) adopted the following amended and restated certificate of limited partnership:

"I. The name of the partnership is: Simmonsville Associates III.

"II. The character of the business of the partnership is:
To acquire (by lease, purchase or otherwise), construct, develop, improve, own, maintain, operate, lease, sell and otherwise deal with those certain parcels of land located in the Town of Johnston, State of Rhode Island, and more specifically described in Exhibit B attached to the Amended and Restated Partnership Agreement.

"III. The location of the principal place of business of the partnership is: 75 Lambert Lind Highway, Warwick, Rhode Island.

"IV. The name and place of residence of each member - general and limited partners being respectively designated, is:

GENERAL PARTNERS:

David R. Picerne
5828 East Calle Del Norte
Phoenix, Arizona

Robert M. Picerne
22 Falmouth Road
Cranston, Rhode Island

Kenneth A. Picerne
130 Greening Lane
Cranston, Rhode Island

Kelly & Picerne Venture Corp.
75 Lambert Lind Highway
Warwick, Rhode Island

LIMITED PARTNERS:

See Schedule A attached hereto.

"V. The term for which the partnership is to exist:
From May 4, 1982, until December 31, 2019, unless sooner terminated.

"VI. The amount of cash and a description and the agreed value of the other property contributed by each limited partner:
Each Limited Partner has contributed the sum of \$9,640 for each Unit of limited partnership interest owned by him, or a propor-

tionally lesser or greater amount in the case of the ownership of less or more than one Unit.

"VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made: Each Limited Partner shall make the following additional contributions:

(1) \$13,600 per Unit (the "Second Installment") shall be payable on the later to occur of (a) substantial completion of the Project and entry by the Partnership into a Housing Assistance Payments Contract with Department of Housing and Urban Development, or (b) April 1, 1984.

(2) \$11,440 per Unit (the "Third Installment") shall be payable on the later to occur of (a) 95% occupancy of the Project or (b) April 1, 1985.

(3) \$9,240 per Unit (the "Fourth Installment") shall be payable on the later to occur of (a) 95% occupancy of the Project maintained for a period of six (6) consecutive months or (b) April 1, 1986.

(4) \$7,840 per Unit (the "Fifth Installment") shall be payable on the later to occur of (a) one year after the Fourth Installment or (b) 95% occupancy of the Project.

(5) \$4,840 per Unit (the "Final Installment") shall be payable on the later to occur of (a) one year after the Fifth Installment or (b) 95% occupancy of the Project.

Upon liquidation of the Partnership and the winding up of Partnership affairs, in the event that any Limited Partner has a Negative Capital Account after the application of certain other Sections of the Partnership Agreement, such Limited Partner shall contribute to the Partnership immediately prior to liquidation an amount of cash equal to the amount of his Negative Capital Account.

"VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned: There is no agreement as to the time when the contributions of the Limited Partners are to be returned. Subject to the terms and conditions of the Amended and Restated Partnership Agreement, the General Partners are empowered on a pro rata basis, to return the capital contributions of the Limited Partners.

"IX. The share of the profits or the other compensation by way of income which a limited partner shall receive by reason of his contribution: Cash Flow from normal operations of the Partnership up to an amount equal to the Annual Distribution will be shared 94% by the Limited Partners and 6% by the General Partners. Cash Flow in excess of the Annual Distribution will be shared 47% by the Limited Partners and 53% by the General Partners.

Profits from normal operations will be shared in the same manner as Cash Flow distributed or distributable to the extent of such Cash Flow, and any profits in excess of Cash Flow and all losses from normal operations will be shared 94% by the Limited Partners and 6% by the General Partners.

Profits from a sale or refinancing or other transaction not in the course of normal operations will be allocated 47% to the Limited Partners and 53% to the General Partners after the following priority allocations set forth in the Partnership Agreement: (i) allocation to each Partner of an amount of such profits equal to his Negative Capital Account, if any, (ii) if any Partner has a Positive Capital Account, allocation of profits to all Partners until the aggregate Positive Capital Accounts of the Limited Partners and the aggregate Positive Capital Accounts of the General Partners are equal, (iii) allocation of profits to the Partners pro rata in the amounts necessary to make the aggregate balances in the Capital Accounts of the Limited Partners an amount equal to \$1,415,000 and the aggregate balances in the Capital Accounts of the General Partners an amount equal to \$100,845 (less certain prior distributions); (iv) allocation to the Partners of an amount of profits corresponding to the aggregate unpaid Annual Distributions (less certain prior distributions received in respect of the Annual Distributions). Losses from a sale or refinancing or other transaction not in the course of normal operations will be allocated (i) first to reduce any Positive Capital Accounts of any Partner or Partners to zero and then (ii) 47% to the Limited Partners and 53% to the General Partners.

Net proceeds from a sale or refinancing or other transaction not in the course of normal operations will be distributed in accordance with the Partners' Positive Capital Accounts, provided

that any outstanding Residual Receipts Notes will be paid as a priority allocation after distribution of certain proceeds to the Partners in accordance with a formula set forth in the Partnership Agreement, and provided that the following priority payments shall be made immediately prior to distribution of any proceeds to the Partners in their capacity as Partners: (i) Payment of all debts and obligations of the Partnership excluding Project Expense Loans and Residual Receipts Notes; (ii) funding of reserves for contingent liabilities to the extent deemed reasonable by the General Partners and Accountants; and (iii) payment of Project Expense Loans.

The terms "profit and losses," "Cash Flow," "Project Expense Loans," "Residual Receipts Notes," "Annual Distribution," "Capital Account," "Negative Capital Account," "Positive Capital Account" and "Capital Contributions" are defined in the Amended and Restated Partnership Agreement and are used herein in accordance with the definitions therein contained.

"X. The right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of such substitution: A Limited Partner may assign or transfer any or all of his interest in the partnership; however, no such assignee or transferee shall be substituted as a Limited Partner of the partnership without the prior written consent of the General Partners, which consent is solely within the discretion of the General Partners. In order for an assignee to become

a substitute Limited Partner, (i) the General Partners must consent; (ii) the assignee must accept in writing all the provisions of the Amended and Restated Partnership Agreement and agree to be bound by all the provisions relating to financing of the Project; and (iii) the Certificate of Limited Partnership must be amended to reflect the admission of the assignee as a substitute Limited Partner. In addition, the General Partners may require as a condition of any sale, transfer, exchange or other disposition of any interest in the partnership, that the transferor (i) assume all costs incurred by the partnership in connection therewith; and (ii) furnish the partnership with an opinion of counsel satisfactory to counsel for the partnership that such sale, transfer, exchange or other disposition complies with applicable federal and state securities laws.

"XI. The right, if given, of the partners to admit additional limited partners: The General Partners, with the consent of all the Limited Partners, may admit additional Limited Partners.

"XII. The right, if given, of one or more of the limited partners to priority over other limited partners as to contributions or as to compensation by way of income and the nature of such priority: No Limited Partner has any priority over other Limited Partners as to contributions or as to compensation by way of income.

"XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement,

or insanity of the general partner: Upon the retirement, death, insanity or bankruptcy of a General Partner the remaining General Partner or Partners shall have the right to and are obligated to continue the business of the partnership, and therefore, such events shall not operate to terminate the partnership. If there is no remaining General Partner, then subject to the terms and conditions contained in the Amended and Restated Partnership Agreement, the Investor Service Agent may designate a person to become a successor General Partner of the partnership.


"XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution: No Limited Partner has the right to demand to receive property other than cash in return for his capital contribution."

XV. Each Limited Partner has irrevocably appointed and empowered each General Partner, and the President, Executive Vice-President, Senior Vice-President, Treasurer, Secretary and Assistant Secretary of any corporate General Partner, his true and lawful attorney-in-fact and agent to effectuate, with full power and authority to act in his name, place and stead in effectuating and requisite to carrying out the intention and purposes of the partnership and the Amended and Restated Partnership Agreement, including, but not limited to, the execution, acknowledgement, swearing to, delivering, filing and recording of all Certificates of Limited Partnership and amendments thereto.

The appointment by each Limited Partner of each General Partner and the aforesaid officers of any corporate General Partner as aforesaid as attorneys-in-fact is deemed to be a power coupled with an interest. The foregoing power of attorney is irrevocable and survives the assignment by any Limited Partner of the whole or any part of his interest hereunder, is binding on any assignee or vendee of a Unit or any portion thereof, including any assignee or vendee of only the distribution rights relating thereto, and survives the death, incompetency or legal disability of any Limited Partner.


IN WITNESS WHEREOF the parties have hereunto set their hands and seals this 30th day of June, 1983.

Kelly & Picerne Venture Corp.
General Partner

By 
Robert M. Picerne

Robert M. Picerne, Attorney-in-Fact for David R. Picerne, General Partner


Robert M. Picerne
General Partner


Robert M. Picerne, Attorney-in-Fact for Kenneth A. Picerne General Partner

Robert M. Picerne
Robert M. Picerne, Attorney-in-Fact for the Limited Partners listed in Article IV of this Amended and Restated Certificate

Ronald R.S. Picerne
Ronald R.S. Picerne
Withdrawing Limited Partner

Picerne Investment Corporation
Withdrawing Limited Partner

By Ronald R.S. Picerne
Picerne

STATE OF RHODE ISLAND
COUNTY OF Kent

In Warwick on this 29th day of June, 1983, before me personally appeared Graham L. Picerne to me known and known by me to be the Silvestro Picerne of Kelly & Picerne Venture Corp. and the person executing the foregoing instrument, and being first duly sworn by me, he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of said Kelly & Picerne Venture Corp. and declared that the statements made therein were true.

Paula P. Allen
Notary Public

STATE OF RHODE ISLAND
COUNTY OF Providence

In Providence on this 30th day of June, 1983, before me personally appeared Robert M. Picerne to me known and known by me to be the person executing the foregoing instrument, and being first duly sworn by me, he acknowledged said instrument by him executed to be his free act and deed individually and in said capacity as Attorney-in-Fact for David R. Picerne and declared that the statements made therein were true.

[Signature]
Notary Public

STATE OF RHODE ISLAND
COUNTY OF *Providence*

In *Providence* on this *30th* day of *June*, 1983, before me personally appeared Robert M. Picerne to me known and known by me to be the person executing the foregoing instrument, and being first duly sworn by me, he acknowledged said instrument by him executed to be his free act and deed and declared that the statements made therein were true.



Notary Public

STATE OF RHODE ISLAND
COUNTY OF *Providence*

In *Providence* on this *30th* day of *June*, 1983, before me personally appeared Robert M. Picerne to me known and known by me to be the person executing the foregoing instrument, and being first duly sworn by me, he acknowledged said instrument by him executed to his free act and deed individually and in said capacity as Attorney-in-Fact for Kenneth A. Picerne and declared that the statements made therein are true.



Notary Public

STATE OF RHODE ISLAND
COUNTY OF *Providence*

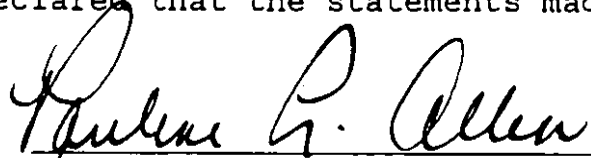
In *Providence* on this *30th* day of *June*, 1983, before me personally appeared Robert M. Picerne to me known and known by me to be the person executing the foregoing instrument, and, being first duly sworn by me, he acknowledged said instrument by him executed to be his free act and deed, individually and in said capacity as Attorney-in-fact for the Limited Partners, and declared that the statements made therein were true.



Notary Public

STATE OF RHODE ISLAND
COUNTY OF *Kent*

In *Warwick* on this *29th* day of *June*, 1983, before me personally appeared Ronald R. S. Picerne to me known and known by me to be the person executing the foregoing instrument, and being first duly sworn by me, he acknowledged said instrument by him executed to be his free act and deed and declared that the statements made therein were true.


Notary Public

STATE OF RHODE ISLAND
COUNTY OF *Kent*

In *Warwick* on this *29th* day of *June*, 1983, before me personally appeared Ronald R. S. Picerne to me known and known by me to be the *President* of Picerne Investment Corporation and the person executing the foregoing instrument, and being first duly sworn by me, he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of said Picerne Investment Corporation and declared that the statements made therein were true.


Notary Public

SIMMONSVILLE ASSOCIATES III

SCHEDULE A

AMENDED AND RESTATED CERTIFICATE OF LIMITED PARTNERSHIP

<u>INVESTOR</u> <u>LIMITED PARTNERS</u>	<u>CAPITAL</u> <u>CONTRIBUTED</u>	<u>TO BE</u> <u>CONTRIBUTED</u>
Chester W. Barrows and Alice H. Barrows, Joint Tenants 1491 Narragansett Blvd. Cranston, Rhode Island 02905 (1 Unit)	\$ 9,640.00	\$ 46,960.00
Herman L. Bender 185 South Main Street Attleboro, Massachusetts 02703 (1 Unit)	9,640.00	46,960.00
Robert G. Champagne 19 Sayles Avenue Lincoln, Rhode Island 02865 (1 Unit)	9,640.00	46,960.00
Richard J. Champion 445 West 66 Terrace Kansas City, Missouri 64113 (1/2 Unit)	4,820.00	23,480.00
Barry Cohen 112 Tupelo Hill Road Cranston, Rhode Island 02920 (1 Unit)	9,640.00	46,960.00
Robert J. Crouse 114 South Angell Street Providence, RI 02906 (1/2 Unit)	4,820.00	23,480.00
Anthony DelVecchio and Grace DelVecchio, Joint Tenants 35 Ramblewood Drive Warwick, Rhode Island 02889 (1 Unit)	9,640.00	46,960.00

INVESTOR
LIMITED PARTNERS

CAPITAL
CONTRIBUTED

TO BE
CONTRIBUTED

Nicholas DeCristofaro
236 Central Avenue
Johnston, Rhode Island 02919
(1 Unit)

\$ 9,640.00

\$ 46,960.00

Max B. Dressler
110 Ann Mary Brown Drive
Warwick, Rhode Island 02888
(1 Unit)

9,640.00

46,960.00

Raymond Esposito
515 Ocean Avenue
Newport, Rhode Island 02840
(1/2 Unit)

4,820.00

23,480.00

Edward R. Feller
560 Cole Avenue
Providence, RI 02906
(1/2 Unit)

4,820.00

23,480.00

Timothy Fullum
66 Adin Street
Hopedale, MA 01747
(1 Unit)

9,640.00

46,960.00

Donald G. Kaufman
103 Blue Ridge Road
Cranston, RI 02920
(1/2 Unit)

4,820.00

23,480.00

Ronald C. Markoff
11 Fireside Drive
Barrington, RI 02806
(1/2 Unit)

4,820.00

23,480.00

Anthony Masi
122 Glen Ridge Road
Cranston, RI 02920
(1 Unit)

9,640.00

46,960.00

Neil J. McKillen
70 Whitman Drive
North Kingstown, RI 02852
(1 Unit)

9,640.00

46,960.00

INVESTOR
LIMITED PARTNERS

CAPITAL
CONTRIBUTED

TO BE
CONTRIBUTED

Seymour Missry
39 East Belair Road
Cranston, RI 02920
(1 Unit)

\$ 9,640.00

\$ 46,960.00

Lewis J. Nulman
2 Linden Drive
Providence, RI 02906
(1/2 Unit)

4,820.00

23,480.00

Belarmino A. Nunes
830 Smithfield Avenue
Lincoln, RI 02865
(1 Unit)

9,640.00

46,960.00

Charles P. O'Donnell
46 Cooke Street
Providence, RI 02906
(1/2 Unit)

4,820.00

23,480.00

Peter A. Pizzarello
220 Walker Street
Seekonk, MA 02771
(1 Unit)

9,640.00

46,960.00

Eugene A. Richmond
92 Rhode Island Street
Cranston, RI 02910
(1 Unit)

9,640.00

46,960.00

Charles F. Rogers, Jr. and
Martha Rogers,
Joint Tenants
29 Thayer Street
Providence, RI 02906
(1/2 Unit)

4,820.00

23,480.00

Herbert E. Sackett
287 Rochambeau Avenue
Providence, RI 02906
(1 Unit)

9,640.00

46,960.00

Melvin Sand
50 West Hill Road
Woodcliff Lake, NJ 07675
(1 Unit)

9,640.00

46,960.00

INVESTOR
LIMITED PARTNERS

CAPITAL
CONTRIBUTED

TO BE
CONTRIBUTED

Louis Sugarman
28 Sea Breeze Lane
Bristol, RI 02809
(1 Unit)

\$ 9,640.00

\$ 46,960.00

Paul E. Sydlowski
53 Stimson Avenue
Providence, RI 02906
(1/2 Unit)

4,820.00

23,480.00

Alan H. Wasserman
195 Sweetbriar Drive
Cranston, RI 02920
(1 Unit)

9,640.00

46,960.00

Gilbert Wasserman
110 Hartshorne Road
Providence, RI 02906
(1 Unit)

9,640.00

46,960.00

Jack J. Wasserman
36 Highgate Road
Cranston, RI 02920
(1 Unit)

9,640.00

46,960.00

.....50.00

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