

CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP OF SEVENTY-SEVENTH AND CICERO PROPERTY PARTNERSHIP

\$25.00

THIS AGREEMENT OF LIMITED PARTNERSHIP dated this 30TH day of December, 1986 but made as of the first day of October, 1986, among the general and limited partners signing Schedule A attached hereto (hereinafter "Partners").

WITNESSETH:

WHEREAS, the parties hereto under the above name are about to acquire property described on Schedule B attached hereto.

WHEREAS, the parties hereto desire to form a limited partnership under the laws of the State of Illinois to hold and manage the Property.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and agreements hereafter set forth, the parties hereto agree as follows:

1. Formation, Name and Principal Office

The parties form a limited partnership pursuant to the provisions of the Uniform Limited Partnership Act of the State of Illinois (the "ULPA"), under the above name or such other name as may hereafter be adopted. The Partners will record this Agreement as the Certificate of Limited Partnership in the Office of the Recorder of Deeds of the county described in Schedule B, and such other offices as may be deemed appropriate by the General Partners. The Partnership shall file an Assumed Name Certificate in the appropriate public office, if required. The General Partners as attorneys-in-fact for all Partners are empowered to execute such other instruments and make such other filings and recordings as may be required to implement and continue the conduct of the Partnership as a Limited Partnership pursuant to the ULPA. The principal office of the Partnership shall be located at 304 East Rand Road, Arlington Heights, Illinois 60004, or such other office as may from time to time be designated by the General Partners.

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This Instrument Prepared By:

This instrument was prepared by \_\_\_\_\_  
Residence \_\_\_\_\_  
Chicago \_\_\_\_\_

Box 416  
(PH)

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2. Purpose

The purpose of the Partnership shall be to invest in, purchase, develop, improve, lease and/or sell the Property.

3. Term

The term of this Partnership shall continue until the earlier to occur of (i) 35 years from the date of recording the Certificate, or (ii) the sale or other disposition of all assets of the Partnership unless sooner terminated by operation of law or as hereinafter provided.

4. Capital Contributions and Advances

The General Partners and Limited Partners have contributed property or cash, capital accounts are established in the amounts and each Partner shall have the respective profit and loss percentage (hereinafter sometimes "Profit Percentage") in the Partnership described in Schedule A.

5. Advances and Loans

Unless otherwise herein expressly provided, any advance of money to the Partnership by a Partner in excess of its or his contribution as set forth above, or as from time to time adjusted, shall not be deemed a capital contribution to the Partnership but a loan to the Partnership, which, unless otherwise provided, shall be repaid with interest at the prime rate charged from time to time by The First National Bank of Chicago, Illinois. All such interest on loans shall be payable quarterly, and principal shall be payable from "available cash flow" (as hereinafter defined).

6. Conduct of Partnership Affairs

(a) The General Partners shall have complete responsibility for management and conduct of the affairs and business of the Partnership including, but not limited to, management direction, operation and development, obtaining of commitments and financing and executing and delivering instruments and documents in respect of interim or permanent mortgages or unsecured indebtedness, obtaining services and paying of brokers' fees and expenses of all professional persons for drawings, market studies, analyses, and like matters; except however without the prior written consent of the Partners owning in the aggregate not less than fifty-one percent (51%) of all of the profit percentages, there shall be no sale in toto of all or substantially all of the Partnership's business or assets. Bank accounts in the Partnership name and

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withdrawals therefrom shall be created and made as the General Partners determine, provided no withdrawal shall be made in violation of any provision hereof. Nothing herein is intended to preclude appointment by the General Partners of a managing agent or agents for any property or properties of the Partnership (including any Affiliate of the General Partners or a Limited Partner) provided fees charged by such agents shall not exceed market rates. Such agent or agents, if appointed, may be vested with such powers and authorities as the General Partners may at any time or from time to time delegate. An "Affiliate" is a person or entity directly or indirectly controlling, controlled by or under common control (by contract or otherwise) of a General Partner.

(b) The General Partners shall devote so much of their time to Partnership affairs as they deem necessary to perform the covenants herein, it being understood the General Partners now engage and may hereafter engage in other businesses.

(c) No Limited Partner shall take part in the management of the Partnership business or transact any business for the Partnership or have any power to sign for or bind the Partnership or to subject the Partnership to any liability or obligation.

(d) Partners may receive compensation for services rendered to the Partnership at the direction or approval of the General Partners.

(e) The General Partners will not represent to anyone that a Limited Partner is a General Partner.

(f) The General Partners, without prior written consent of the Limited Partners, shall not:

(i) On behalf of the Partnership become a surety or guarantor of, or an accommodation party to, an obligation of any other person;

(ii) Assign the Partnership assets or any portion in trust for creditors or on the assignee's promise to pay the debt of the Partnership;

(iii) Confess a judgment against the Partnership.

(g) The Property may be held by Illinois land trusts or other nominees of this Partnership as determined by the General Partners from time to time. The General Partners or their designees shall have sole power of direction thereunder including, without limitation, direction of disbursements and authority to waive rights of redemption.

(h) It is anticipated and agreed that it will be necessary for the Partnership from time to time mortgage the

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Property, and/or pledge its beneficial interest in the Property, as security for interim and/or permanent financing in connection with the Property. The Limited Partners hereby expressly consent to the granting of any such encumbrance without limit and agree that the General Partners may grant or cause to be granted such encumbrances from time to time without obtaining any further consent of the Limited Partners.

7. Budgets, Audits and Other Accounting Matters

(a) The General Partners shall at all times maintain complete and accurate books of account of the Partnership at the Partnership's principal place of business, showing all receipts and expenditures, assets and liabilities, profits and losses, and all other records necessary for reporting the Partnership's business and affairs. The books of the Partnership shall be kept on such basis as is determined by the General Partners in accordance with generally accepted accounting principles. Such books and records shall be open for inspection at the principal office of the Partnership by the Limited Partners, and their duly authorized representatives, at all reasonable times.

(b) The fiscal year of the Partnership shall be as determined by the General Partners.

(c) The Partnership shall furnish to the Partners within ninety (90) days following the close of each fiscal year of the Partnership a balance sheet showing the assets, liabilities and capital accounts of the Partners as of the end of such fiscal year, and a profit and loss statement of the Partnership for such fiscal year. Concurrently therewith, each Partner shall receive a statement showing the amount of net income and net loss, capital gain and other items allocable to such Partner for federal income tax purposes. All of the above reports and statements will be prepared in accordance with generally accepted accounting principles, consistently applied.

(d) All funds of the Partnership shall be used exclusively in furtherance of the business and purposes of the Partnership (and under no circumstances shall be commingled with other funds of the General Partners or of any other business or venture in which the General Partners have an interest; provided, however, Partnership funds may be lent to the General Partners or such other business or venture).

8. Repayments and Distributions - Current

(a) "Available cash flow" of the Partnership means cash funds of the Partnership contributed or realized from any

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source (including, without limiting the generality of the foregoing, excess funds resulting from financing or refinancing of any obligation, insurance and condemnation proceeds not required to restore or replace property of the Partnership or committed to such use), less (i) amounts required for amortization of debt (principal and interest), (ii) operating expenses, and (iii) a reserve, as determined by the General Partners, for other fixed or contingent liabilities or anticipated cash requirements of the Partnership coming due and required to be accumulated for subsequent periods in excess of anticipated income.

(b) The Partnership on or about the ninetieth (90th) day following the end of each calendar year shall distribute available cash flow as of the end of the preceding calendar year in the following order of priority:

(i) First, in repayment of loans and advances made by the Partners to the Partnership, including all cumulated and unpaid interest;

(ii) Thereafter, to the Partners in proportion to their respective Profit Percentages (notwithstanding that the capital accounts of Partners may vary or that any Partner shall show a deficit); provided, however, if there are then any advances outstanding to a Partner, the amount thereof, plus all accrued interest, shall first be offset against any amounts otherwise payable to such Partner.

#### 9. Repayments and Final Distribution

On dissolution of the Partnership, the Partnership shall wind up and settle its accounts in the following manner and order of priority:

(a) The payment of the debts and liabilities of the Partnership (other than loans or advances that may have been made by any Partner to the Partnership).

(b) To expenses of liquidation.

(c) After the creation of a reasonable cash reserve (the amount of which shall be determined by the General Partners) for any contingent or unforeseen liabilities or obligations of the Partnership arising out of or in connection with the Partnership business or sale, liquidation or other disposition of its assets, all remaining assets (and at the expiration of such period as the General Partners shall deem advisable, the remaining cash reserve, if any) shall be applied and distributed as follows:

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(i) To the repayment of any loans or advances that may have been made by any of the Partners to the Partnership including all cumulated interest;

(ii) To distribution among all of the Partners of any balance remaining in the proportion to their respective profit percentages (notwithstanding that the capital accounts of Partners may vary or that any Partner shall show a deficit); provided, however, if there are then any advances outstanding to a Partner, the amount thereof, plus all accrued interest, shall first be offset against any amounts otherwise payable to such Partner.

If any of the foregoing distributions, repayments or payments are insufficient to pay all amounts due within a class of priority, then the distribution, repayment and payment within such class of priority such be allocated within said class in that proportion which the amount of the claim of the Partner within such class bears to the total claims of the Partners within the class.

#### 10. Transferability of Partnership Interests

(a) Except as hereinafter expressly provided, the General Partners, without the prior written consent of the Limited Partners, shall have no right to dispose of all or any part of their interest in the Partnership except by way of Permitted Transfers made in compliance with the provisions of paragraph 10(c) below but in no event shall the General Partners dispose of all interest (except by inheritance), and any transferee shall be a Limited and not a General Partner.

(b) The Limited Partners shall have no right to dispose of all or any part of their interests in the Partnership or to pledge or otherwise encumber the same except for "Permitted Transfers" pursuant to paragraph 10(c). Anyone acquiring all or any part of their interests in connection with a Permitted Transfer under clauses (1) through (5) of paragraph 10(c) below, made in compliance with paragraph 10(d), shall become a substituted Limited Partner in place of his assignor to the extent of such disposition. If the Limited Partner should make any disposition of his interest in violation of the provisions of this Agreement, anyone acquiring such interest and any subsequent transferee shall not be or become a substituted Limited Partner in his place but shall instead have only the rights given an assignee under Section 19(c) of the ULPA.

(c) The restrictions contained in paragraph 10(a) and (b) above except as stated therein shall not apply to any of the following (herein collectively "Permitted Transfers"):

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(1) A transfer by a Partner of all or any part of his or its interest to another Partner.

(2) A transfer to a bona fide purchaser provided that prior to such a disposition the selling party shall in writing offer to sell such interest to the General Partners at a price not exceeding the price currently being offered the selling party by a responsible purchaser (other than an affiliate) and on terms not more favorable to the selling party than the terms currently being offered by the purchaser, shall specify the interest in the Partnership which the selling party desires to dispose of and shall specify the name and address of the prospective purchaser. The General Partners (or either) shall have fifteen (15) days from receipt of the offer from the selling party within which to accept it, and if the General Partners (or either) shall not accept the offer, then the Partnership shall have such fifteen (15) days thereafter, as the case may be, within which to accept such offer, and upon the purchase thereof, such interest shall be a Limited Partnership interest. A failure to respond is a rejection. If the General Partners and the Partnership shall reject such offer, then such selling party may within ninety (90) days from the date of expiration of the thirty (30) day period dispose of the interest to the prospective purchaser on terms not materially less favorable to the selling party than those contained in the offer. If not disposed of within such ninety (90) day period, the interest shall again be subject to the restriction in this paragraph.

(3) A bona fide gift of an interest in the Partnership to any member of the donor's Family. As used herein "Family" shall mean any spouse, ancestor, lineal descendant (including legally adopted children), brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, niece, nephew, aunt or uncle.

(4) Transfer of all interest of a Partner in the Partnership to a corporation controlled by such Partner or any member of his Family, or any two or more of the foregoing, or disposition by such corporation of said interest in the Partnership to such Partner or any member of his Family as stockholders of said corporation. "Family" as used herein includes a spouse, ancestors (including those of a spouse), descendants and brothers and sisters (including those of a spouse or ancestor).

(5) An inter vivos disposition of any interest in the Partnership to any trust of which the Transferor or any member of his Family is the grantor and of which the transferor and/or any member of his Family is the

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beneficiary, or by the Trustee or Trustees of said trust to such beneficiary or beneficiaries.

(6) If otherwise a Permitted Transfer, a disposition of any interest in the Partnership by bequest or under the laws of descent and distribution to any member of his Family.

(7) A disposition of any interest in the Partnership to the legal representative of a bankrupt or incompetent Limited Partner.

(8) Any permissible transfer, whether a Permitted Transfer or otherwise, shall be effective only if contemporaneously therewith (i) notice thereof has been given all the other Partners, (ii) an instrument of assignment is executed and delivered whereby the transferee accepts and agrees to be bound by all obligations of and restrictions pursuant hereto, with respect to the interest so transferred, (iii) a duplicate original thereof is delivered to all other partners, and (iv) if required by the ULPA, a new certificate or amendment to the Certificate of Limited Partnership shall have been signed, sworn to and filed for record as required.

#### 11. Dissolution

(a) If any of the following events should occur, namely:

(i) If either of the General Partners should die or become insane or incompetent or shall withdraw;

(ii) If either of the General Partners should apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of their assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, file a petition or answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or if an order, judgment or decree is entered by a court of competent jurisdiction upon the application of the creditor adjudicating either a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of its assets, and such order, judgment or decree is continued unstayed and in effect for a period of ninety (90) days.

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(iii) Another event shall occur whereby the Partnership is dissolved under the ULPA.

The Partnership shall be dissolved but not terminated or wound up if the remaining General Partner shall reconstitute and continue the Partnership. Such reconstitution shall not release a General Partner from any liability then incurred or, if such General Partner voluntarily withdrew from the Partnership, from any executory obligation of a General Partner. If there be no remaining General Partner, all Limited Partners may reconstitute the Partnership, designating a General Partner who shall have all the authorities of the original General Partners. Immediately upon dissolution (if not reconstituted pursuant to the terms hereof) the Limited Partners shall have the right to take possession of the assets and interests of the Partnership and carry on its business in their own names and to carry this out the General Partner upon demand shall forthwith surrender actual possession of the property and the Limited Partners by an appointed representative may enter and take possession thereof together with all books, papers and accounts of the Partnership.

(b) Upon dissolution under subparagraph (a) preceding, the Partnership reserves any claims for damage occasioned by virtue of any act or omission to act of the former General Partner or General Partners and, if such General Partner or General Partners voluntarily withdrew from the Partnership, from any executory obligation of the General Partner or General Partners.

(c) If the Partnership shall be dissolved and not reconstituted, then the Partnership shall be terminated and wound up pursuant to paragraph 9.

## 12. Miscellaneous

(a) Notices shall be in writing (i) if to the Partnership, care of the General Partners, and (ii) if to any Partner, to the address shown on Schedule A, or as a party shall otherwise designate by notice given in accordance with the terms hereof.

(b) Subject to the provisions hereof, all of the terms hereof are binding upon and shall inure to the benefit of the administrators, executors, heirs, successors and assigns of the respective Partners. Genders shall be deemed modified and the singular or plural used in the context or factual circumstance required. This Agreement contains the entire undertakings of the parties in respect hereof and may not be changed or terminated except as set forth herein without a writing signed by all Partners. If any provision shall be deemed invalid, it shall not affect the other provisions. Paragraph headings are for reference only and shall not

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affect the interpretation of the agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original. An original Certificate and any amendments to the Certificate of Limited Partnership from time to time deemed required by the General Partners and the initial Assumed Name Certificate and any amendments from time to time deemed required by the General Partners may be executed by the General Partners as attorneys-in-fact for all Partners and an irrevocable power of attorney coupled with an interest is hereby extended the General Partners for such purpose.

IN WITNESS WHEREOF, the parties being first duly sworn, hereby certify that all of the foregoing is true, accurate and correct, and have executed this Agreement on Schedule A as of the day and year first above written.

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SCHEDULE A

(continued)

[Signatures of Partners]

*Joseph J. ...*  
 Joseph J. ... & Associates, Inc. General Partner  
 General Partner  
 By: *...*

*Jayce ...* Limited Partner

STATE OF ILLINOIS  
COUNTY OF COOK

The undersigned, a Notary Public in and for the county and state aforesaid do hereby certify that each of the persons whose signature appears above and personally known to me to be the same person so signing appeared before me this

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day in person and acknowledged and swore that he signed and delivered the instrument as his free and voluntary act.

Dated: December 30, 1986

Dione Marie Barnett  
Notary Public

My Commission Expires:

10/29/98

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SCHEDULE B

Description of Property

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