

CERTIFICATE AND AGREEMENT JUL 19 3 21 PM '83
OF SECRETARY OF STATE
LIMITED PARTNERSHIP
OF

SUN MOUNTAIN DIET CENTERS,
an Idaho Limited Partnership

THIS CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP, made and executed by Samuael R. Penrod as General Partner ("General Partner") and Samuel R. Penrod, Dana B. Penrod, John A. Penrod, and Ruth F. Penrod as Limited Partners ("Limited Partners").

The General Partner and the Limited Partners hereby form a limited partnership ("Partnership") under and pursuant to the Uniform Limited Partnership Law of the State of Idaho, and do hereby agree as follows:

ARTICLE 1

PARTNERSHIP NAME

1.1 The name of the Partnership is SUN MOUNTAIN DIET CENTERS, an Idaho Limited Partnership.

ARTICLE 2

PARTNERSHIP BUSINESS

2.1 The character of the business to be engaged in by the Partnership shall be to acquire, hold, and operate Diet Center licenses and to sell lease, or otherwise dispose of the same.

2.2 The Partnership shall have power to engage in and conduct any and all business activities related, necessary, advisable or appropriate to its business purpose, and to perform all acts and conduct all business activities permitted by the Idaho Uniform Limited Partnership Law.

ARTICLE 3
PRINCIPAL PLACE OF BUSINESS
REGISTERED AGENT

3 1 The principal place of business and the registered office of the Partnership shall be located at 440 North 7th West, St Anthony ID 83445, until changed by the General Partner by giving written notice to the Limited Partners. The initial registered agent of the Partnership for service of process is Samuel R. Penrod.

ARTICLE 4
TERM

4.1 The Partnership shall commence as of June 1, 1983, and shall exist for a period of twenty (20) years from said date unless sooner terminated pursuant to the provisions of this Agreement.

ARTICLE 5
PARTNERSHIP INTERESTS AND CONTRIBUTIONS TO CAPITAL

5.1 The initial capital contributions and the interest of each Partner in the capital and profit and losses of the Partnership shall be as follows:

		Initial Capital
<u>Partner Name</u>	<u>Percentage Interest</u>	<u>Contribution</u>
General Partner:		
Samuel R. Penrod	1%	\$ 1.00
Limited Partners:		
Samuel R. Penrod	25%	\$25.00
Dana B. Penrod	24%	\$24.00
John A. Penrod	25%	\$25.00
Ruth F. Penrod	24%	\$24.00

5.2 The Partners shall from time to time contribute as capital to the Partnership such amount or amounts as may be

mutually agreed to by the Partners. All capital contributions shall be made in pro-rata amounts based upon the percentage interests of each Partner in the Partnership as set forth in Paragraph 5.1 above.

5.3 The General Partner shall contribute management and accounting services in return for his percentage interest in the Partnership.

5.4 A separate capital account shall be maintained for each Partner. Each Partner's capital account shall be credited with each capital contribution made by each Partner, and each Partner's capital account shall be decreased by the amount of any capital distributions made to each Partner under the provisions of the Partnership Agreement. The Partner's capital accounts shall not be increased or decreased by profits or losses of the Partnership. The General Partner may purchase Limited Partnership interests.

5.5 The Partnership records shall reflect the Partnership interest owned by each Partner

5.6 No interest shall be paid on any Partner's capital contribution.

ARTICLE 6

PROFITS AND LOSSES

6.1 The net profits and net losses of the Partnership shall be allocated to the Partners each year based upon the percentage interest in capital and profits and losses set forth in Article 5.1 above. Allocation shall be made to a separate profit and loss account maintained for each Partner and shall not be charged or credited to the Partner's capital account.

6.2 Net profits and net losses shall be determined in accordance with generally accepted accounting principals based upon cash receipt and disbursements methods (unless otherwise determined by the General Partner) and shall include gains or

losses from the sale of Partnership assets. Net profits and losses for purposes of the Partnership Agreement shall be as finally determined each year for Federal Income Tax purposes. The fiscal year of the Partnership both for accounting and tax purposes shall be the calendar year ending the 31st day of December of each year.

ARTICLE 7

DISTRIBUTIONS

7.1 The General Partner may from time to time in his sole discretion make distributions from the Partnership to the Partners. Provided, however, distributions to Partners shall be made only if the Partnership is in a sound cash and financial position and proper provisions have been made for the payment when due, of all Partnership obligations (including, but not limited to the repayment of any advances by the General Partners) and for the property operation of the Partnership business.

7.2 Partnership distributions shall be made in the ratio of the Partnership interests set forth in Article 5.1 above; however, no distributions shall be made as interest on capital contributions of Limited Partners or the General Partners.

ARTICLE 8

LIMITATION OF LIABILITY

8.1 Notwithstanding anything to the contrary contained elsewhere herein, the Limited Partners shall not be subject to assessments and shall have no personal liability for the obligations or losses of the Partnership. Liability of each of the Limited Partners shall be limited to the amount of the capital contribution made by each Limited Partner to be made to the Partnership, plus any undistributed Partnership net profits held by the Partnership for distribution to the Limited Partners.

ARTICLE 9
MANAGEMENT

9.1 The General Partner shall have full charge of the management, conduct and operation of the Partnership business and all matters relating thereto and shall have the power on behalf of the Partnership to perform such acts as are allowed by the Idaho Uniform Limited Partnership Law, except as otherwise limited by this Partnership Agreement, including, but not limited to the following:

- (a) To buy, sell, lease, trade, encumber and otherwise deal in all property of the Partnership;
- (b) To enter into and execute any and all contracts, agreements, documents, leases, deeds, mortgages, or other agreements as may be necessary, incidental to or appropriate for the conduct of the Partnership business;
- (c) To enter into contracts, agreements and transactions with any Partner or with any other person, firm or corporation in which the General Partner has an interest or which has a business for financial or other relationship with the General Partner;
- (d) To engage Operators for the conduct of Diet Center businesses;
- (e) To maintain bank accounts and to draw checks and orders for the payment of money, to borrow money and to endorse and execute promissory notes and other instruments and evidences of indebtedness, all without limit as to amount and to pay the same and to secure payment thereof by mortgages, deeds of trust, pledge agreement, assignments, security agreements and to pledge all or any part of the Partnership property as security therefore; to employ such persons, employees, contractors, or independent contractors, or other persons as may be

necessary, appropriate, or convenient for the administration, management and conduct of the Partnership business and to pay the reasonable expenses for the same by the Partnership; to perform all other acts which may necessary, appropriate, or incidental to the conduct of the Partnership business.

9.2 The General Partner may delegate any or all of his powers, rights, and obligations hereunder and in furtherance thereof may appoint agents, contractors, employees or others for the transaction or conduct of Partnership business under the supervision and approval of the General Partner.

9.3 The General Partner may not do any act in contravention of this Certificate and Agreement of Limited Partnership or which would make it impossible to carry on the ordinary business of the Partnership; confess a judgment against the Partnership; possess, pledge, or hypothecate Partnership property for other than Partnership purposes; admit a person as a general partner; admit a person as an additional Limited Partner, except as herein otherwise provided. The General Partner shall be reimbursed for all direct expenses and out of pocket costs incurred and paid by the General Partner in conducting the Partnership business or in connection with the Partnership business.

9.4 The Limited Partners shall not take part in the management of the business of the Partnership and shall not transact any business for the Partnership and shall have no power to sign for or bind the Partnership.

9.5 Any of the Partners may engage in any other business ventures of every nature and description, including but not limited to, the ownership, financing, leasing, operation, management, and development of Diet Center franchises and neither the Partnership, the General Partner, nor any Limited Partner shall have the right by virtue of this Limited Partnership Agreement in and to such independent ventures or to the income or profits derived therefrom.

9.6 The General Partner shall devote such time to the Partnership as shall be necessary to the conduct of the Partnership business. In return for his services, the General Partner shall be entitled to a management fee in the amount of \$150.00 per month until such time as the first Diet Center business is handling an average of 40 dieters per day at which time the General Partner shall receive \$250.00 per month for each month that the business maintains the 40 dieter average.

9.7 The General Partner shall not be liable to the Limited Partners or the Partnership for any loss resulting whether from errors in judgment or any acts or omissions, willful or not disclosed, unless caused by reason of the misconduct or gross negligence of the General Partner. If the General Partner shall be made or threatened to be made a party to any action or proceeding by reason of the fact that said Partner is or was a General Partner of the Partnership, the Partnership shall and hereby agrees to indemnify and hold harmless said General Partner against any and all judgments, liabilities and obligations, including costs and reasonable fees incurred as a result of such action or proceeding or any appeal thereof, provided that the General Partner acted in good faith for a purpose which said Partner believed to be in the best interest of the Partnership.

9.8 In the event of the death, bankruptcy, or assignment for the benefit of the creditors of the inability to serve the General Partner, a new General Partner shall be appointed by the Partners owning a majority of the Limited Partnership interests in the Partnership, or such other action shall be taken as shall be determined by the vote of the Limited Partners owning a majority of the Limited Partnership interests in the Partnership.

ARTICLE 10

TRANSFER OF LIMITED PARTNERSHIP INTERESTS

10.1 No Limited Partner may sell, assign, or transfer all or any part of his Limited Partnership interest without the prior

written consent of the General Partner, except that the interest of a decedent Limited Partner may pass to his or her surviving spouse without the consent of the General Partner or compliance with this Article 10.

10.2 No assignee or transferee of a Limited Partner's Partnership interest shall become a substitute Limited Partner unless all of the following conditions are satisfied.

(a) The General Partner consents in writing to such substitution;

(b) The transferor Limited Partner has delivered to the Partnership a duly executed and acknowledged assignment, conveyance or transfer, in writing, which includes a statement of interest and request by the transferor Limited Partner that the assignee or transferee become a Limited Partner;

(c) The assignee or transferee has delivered to the Partnership a written, acknowledged, instrument whereby the assignee or transferee accepts and agrees to all of the terms and conditions of this Certificate and Agreement of Limited Partnership (including the Power of Attorney set forth herein) and agrees that the Limited Partnership interest is purchased for his own account, for investment purposes only and not with a view to or any intention to redistribute or resell the same. The assignee or transferee shall also agree to execute such other documents, instruments or agreement which the General Partner may deem necessary, advisable, or appropriate to effectuate the transfer of the Limited Partnership interest.

(d) The General Partner has recorded an amendment to this Certificate and Agreement of Limited Partnership to reflect the assignee or transferee as a substitute Limited Partner in place of the transferor Limited Partner and the assignee or transferee has paid all reasonable costs and

expenses connected with the transfer (including preparation of documents and amendments and recording thereof).

10.3 In the event a Limited Partner transfers or disposes of all or part of his Limited Partnership interest pursuant to the provisions of this Article 10, the Partnership net profits or net losses for the year in which transfer is made shall be allocated between the transferor Limited Partner and the substitute Limited Partner based upon the number of days in said year for which the transferred Partnership interest was owned by each of said Partners.

ARTICLE 11

DISSOLUTION AND LIQUIDATION

11.1 The death, disability, legal incapacity, bankruptcy, (voluntary or involuntary) or assignment for the benefit of creditors of the General Partner shall not cause a dissolution of the Partnership.

11.2 The death, incapacity or transfer of an interest of a Limited Partner or the admission of a substitute Limited Partner into the Partnership shall not cause the dissolution of the Partnership.

11.3 The Partnership shall be dissolved upon expiration of its term, unless otherwise dissolved as herein provided:

(a) The Partnership shall be dissolved upon the sale and disposition of all of its properties with the intent to terminate the Partnership business.

(b) The Partnership may be dissolved at any time prior to the expiration of its term upon the vote of the Partners who collectively own an interest equal to or more than fifty-one percent (51%) in the Partnership.

11.4 The dissolution and final termination of the Partnership shall be conducted exclusively by the General Partner

and the General Partner shall be authorized to perform any and all acts necessary for such purpose and to proceed as follows:

(a) A proper accounting shall be made of the capital and profit and loss accounts of each Partner and the Partnership shall immediately commence to wind up its affairs.

(b) The Partnership assets shall be sold as soon as possible consistent with realizing a reasonable fair market value therefrom.

(c) The Partners shall continue to share profits and losses during the period of liquidation in the same proportions as before dissolution. Any gain or loss in disposition of the Partnership properties in the process of liquidation shall be credited or charged to the Profit and Loss accounts of the Partners in the ratio of their interests in profit and loss as set forth in Article 5.1 hereof.

(d) The proceeds from the liquidation of the Partnership shall be applied as follows:

(i) Payment of all debts and liabilities of the Partnership, other than those owing to the Partners;

(ii) Deduction of a reserve account which the General Partners may reasonably deem necessary to pay or provide for any contingent liabilities of the Partnership (to be held in escrow in a liquidation reserve account, any balance of which shall be distributed in the priorities hereafter provided;

(iii) Payment to the Partners as provided under Article 7.2;

(iv) If sufficient funds do not exist for full distribution to all participants in any classification herein provided for, such distribution shall be made to such participants on a

pro-rata basis based upon the ratio that the amount due to any one participant bears to the total amount due to all participants in said classification;

(v) The Partners shall look solely to the assets of the partnership for distribution of amounts due to Partners and no Partner shall be indebted to the Partnership or to any other Partner nor have any claim against the Partnership or the other parties by reason of the fact that the remaining assets of the Partnership are insufficient to repay the Partners in full.

ARTICLE 12

BOOKS AND RECORDS

12.1 The Partnership shall maintain adequate books and records at its principal office and all Partners shall have the right to inspect such books at reasonable times during business hours.

12.2 A separate capital account and separate profit and loss account shall be maintained for each partner, including the name and address of each Partner.

12.3 The General Partner shall deliver to each Partner within sixty (60) days after the expiration of each fiscal year of the Partnership a balance sheet and profit and loss statement, together with a statement showing the capital accounts of each partner, the basis employed in stating the valuation of the assets and any changes in such basis during the preceding year, the amount of income or loss and the additions and deductions therefrom, setting forth in particular the amounts of depreciation, amortization, interest and extraordinary income, and the amount thereof reportable by each Partner for state and federal income tax purposes.

ARTICLE 13
POWER OF ATTORNEY

13.1 By execution of this Partnership Agreement, the Limited Partners jointly and separately hereby irrevocably constitute and appoint the General Partner their true and lawful attorney in their name, place and stead, to make, execute, acknowledge and record the following:

(a) A Certificate and Agreement of Limited Partnership together with any and all amendments thereof;

(b) A Certificate of Doing Business Under a Fictitious Name;

(c) Any other certificates, instruments, or documents which may be necessary or advisable to file for the continued operation of the Partnership or for the admission of a new or substitute Limited Partner or for the termination and liquidation of the Partnership.

13.2 This Power of Attorney is a special power of attorney coupled with an interest and shall survive the death of a Limited Partner and shall survive the delivery of an assignment by a Limited Partner of the whole or any portion of his Limited Partnership interest, except where the entire interest of a Limited Partner is transferred and the transferee Limited Partner becomes a substitute Limited Partner.

13.3 By the act of becoming a substitute Limited Partner an assignee or transferee Limited Partner shall conclusively be deemed to constitute and appoint the General Partners his attorney in the same force and for the same purposes as the assignor or transferor Limited Partner.

13.4 This Power of Attorney may be exercised by the General Partner for the Limited Partners by executing any instrument or document as a Limited Partner.

13.5 By execution of the Certificate and Agreement of Limited Partnership and/or subscription agreement, the Limited

Partners have jointly and separately agreed to be bound by all of the acts and representations of the General Partner as their attorney in fact and waive any and all defenses which may be available to them to contest, negate or disaffirm the actions of the General Partner under this power of attorney and have ratified and confirmed all acts which the said General Partner may take as attorney in fact in all respects as if performed by the Limited Partners.

ARTICLE 14

AMENDMENTS

14.1 The Certificate and Agreement of Limited Partnership may be amended by the vote and written consent of Partners who collectively own equal to or more than a fifty-one percent (51%) interest in the Partnership.

14.2 No amendment to the Certificate and Agreement of Limited Partnership shall change the Partnership to a General Partnership or change the limited liability of the Limited Partners or increase the profit participation of the General Partner or decrease the profit participation of the Limited Partners unless all Partners unanimously agree to such change.

ARTICLE 15

MEETINGS OF PARTNERS

15.1 Any meeting of the Limited Partners shall be called by the General Partner by giving seven (7) days written notice to all of the other Partners of the time and place of said meeting. At said meeting each Partner shall be entitled to vote based upon the percentage interest in the Partnership owned by each Partner.

15.2 Any one or more of the following actions may be taken upon the affirmative vote (at a meeting duly called in accordance with the provisions of this paragraph), or upon

written consent of the Partners owning fifty-one percent (51%) or more than fifty-one percent (51%) of the the outstanding Partnership interests.

(a) Removal of a General Partner and/or election of a new General Partner;

(b) Termination of the Partnership and ordering of the distribution of its assets;

(c) Amending the Partnership Agreement;

(d) Ordering the sale or pledge of substantially all of the assets of the Limited Partnership. The Partnership property may not be sold for less than its principal purchase cost without the written consent or affirmative vote of the Partners owning fifty-one percent (51%) or more of the then outstanding Partnership interests.

ARTICLE 16

GENERAL PROVISIONS

16.1 Notices. All notices under this Certificate and Agreement of Limited Partnership shall be in writing and shall be given to the Partners at the addresses set forth on the books of the Partnership and to the Partnership at its principal office and shall be deemed to have been given if personally delivered or deposited for delivery in the U S. Mail.

16.2 Binding Agreement. Except as otherwise herein provided, this Certificate and Agreement of Limited Partnership shall be binding upon and inur to the benefit of the Partners, their heirs, executors, administrators, successors and all persons hereinafter having or holding an interest in this Partnership, whether as assignees, substitute Limited Partners or otherwise. This Certificate and Agreement of Limited Partnership contains the entire understanding and agreements between the parties respecting the within subject matter. There are no representations, agreements, arrangements, or understandings,

oral or written, between and among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

16.3 Validity. In the event that a provision or provisions of this Certificate and Agreement of Limited Partnership shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

16.4 Construction. When the context in which words are used in this Agreement indicate that such is the intent, words in the singular number shall include the plural and vice versa and references to masculine, feminine or neuter shall be made as the identity of the person, persons, entity or entities may require.

16.5 Applicable Law. This Certificate and Agreement of Limited Partnership and all amendments thereto shall be governed by and construed in accordance with the laws of the State of Idaho.

16.6 Waiver of Action for Partition. Each of the Partners hereby irrevocably waives during the term of the Partnership any right that said Partner may have to maintain any action for partition with respect to the property and other investments of the Partnership.

16.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16.8 Insurance. Notwithstanding any other provisions of this Agreement, in the event that the Partnership owns any life insurance on the life of any Partner said Partner shall have no rights, incidents of ownership, controls or interests in said policies of insurance or proceeds thereof and all rights thereunder shall be exercised solely by the other Partner or Partners; and said Partner shall not be charged with any part of the premium paid for said insurance.

IN WITNESS WHEREOF, the undersigned have executed this Certificate and Agreement of Limited Partnership this 28TH day of June, 1983.

GENERAL PARTNER

Samuel R. Penrod
SAMUEL R. PENROD
440 North 7th West
St. Anthony, ID 83445

STATE OF IDAHO)
COUNTY OF MADISON) :SS

On this 28th day of June, in the year of 1983, before me, a Notary Public in and for said State, personally appeared SAMUEL R. PENROD, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Barry H. Bright
Notary Public
Residing In:
My Commission Expires: Life

LIMITED PARTNERS

Samuel R. Penrod
SAMUEL R. PENROD
440 North 7th West
St. Anthony, ID 83445

Dana B. Penrod
DANA B. PENROD
440 North 7th West
St. Anthony, ID 83445

John A. Penrod
JOHN A. PENROD
1940 Eagle
Idaho Falls, ID 83401

Ruth F. Penrod
RUTH F. PENROD
1940 Eagle
Idaho Falls, ID 83401

STATE OF IDAHO)
COUNTY OF MADISON) :SS

On this 28th day of June, in the year of 1983, before me, a Notary Public in and for said State, personally appeared SAMUEL

R. PENROD, DANA B. PENROD, JOHN A. PENROD, and RUTH F. PENROD,
who duly acknowledged to me that they have read the foregoing
Certificate and Agreement of Limited Partnership, and that they
have executed the same for the purposes therein set forth as
Limited Partners.

Barry H. Slight
Notary Public
Residing In:
My Commission Expires: *Life*