

*Siegel, Barnett & Schantz*  
500 Capital Bldg  
Aberdeen South Dakota  
57401

784599

ARTICLES OF LIMITED PARTNERSHIP  
OF THE  
MERRILLVILLE SUPER 8 LIMITED PARTNERSHIP

This Agreement of Limited Partnership made this 23<sup>rd</sup> day of October, 1984, by and between SUPER 8 MOTELS, INC., a South Dakota corporation, hereinafter referred to as "General Partner", and GUENTHER ROTH, hereinafter referred to as "Limited Partner";

WHEREAS, the General and Limited Partners desire to enter into business to purchase, develop, and own a Super 8 Motel in Merrillville, Indiana, and other activities associated therewith; and

WHEREAS, the General Partner desires to manage and operate such business; and

WHEREAS, the Limited Partner desires to invest in such business and limit his liabilities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the General Partner and Limited Partner do hereby contract, stipulate, and agree as follows:

I  
GENERAL PROVISIONS

This limited partnership is organized pursuant to the provisions of the Uniform Limited Partnership Act of the State of South Dakota and the rights and liabilities of the General and Limited Partners shall be as provided therein, except as is herein otherwise expressly stated.

II  
NAME

The name of the Limited Partnership shall be the Merrillville Super 8 Limited Partnership.

III  
BUSINESS OF THE PARTNERSHIP

This Limited Partnership is formed for the following purposes:

1. To purchase, receive by gift, subscribe for, invest in, and in all other ways acquire, develop, lease, hold for investment or otherwise enjoy, exercise, own, operate, manage, and lease real estate and motel properties, and do all other acts not contrary to law; and

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STATE OF INDIANA/S.S. NO.  
LAKE COUNTY  
FILED FOR RECORD  
Dec 14 3 13 PM '84  
WILLIAM BIELSKI JR  
RECORDER

1900

2. To hire and employ agents and employees, to enter into agreements of employment and collective bargaining, to act as agent, contractor, trustee, benefactor or otherwise in relation to the above-noted purpose.

IV  
PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Limited Partnership shall be at 1910 Eighth Avenue Northeast, P. O. Box 4090, Aberdeen, South Dakota 57401. The Limited Partnership shall also have such other places of business as from time to time shall be determined by the General Partner.

V  
CAPITAL CONTRIBUTION - LIMITED PARTNER

The Limited Partner shall contribute the amount of One Hundred Thousand Dollars (\$100,000.00) to purchase the limited partnership interest herein at the date of the execution of this Limited Partnership Agreement. The Limited Partner shall be entitled to a cumulative nine percent (9%) per annum return (commencing upon the first day such motel is open for business) on such investment to be paid to Limited Partner, such payment to be made only after the payment of all operating expenses of any kind and mortgage debt service upon the Merrillville Super 8 Motel owned by the Limited Partnership and after the payment of the one percent (1%) advertising fund payment to Super 8 Motels, Inc., such payment to be made annually or at such other intervals as the Limited and General Partners shall from time to time agree; provided however, that it is specifically agreed that such a return on investment shall be paid to the Limited Partner before the payment of the Super 8 franchise royalty fee or the management fee to the Super 8 Motel subsidiary.

VI  
LOAN TO LIMITED PARTNERSHIP

The Limited Partner shall loan to the Limited Partnership at the date of the execution of this Limited Partnership Agreement the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) said loan shall be an unsecured loan which loan shall be subordinated to any mortgage loans acquired by the Limited Partnership to purchase, construct, own, and operate the Merrillville Super 8, and further shall be subordinate to any loans obtained to furnish and equip such motel with furniture, fixtures, and equipment and any operating loans obtained by or on behalf of such motel. The Limited Partner shall have no right

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STATE OF Minnesota :  
SS.

COUNTY OF Hennepin :

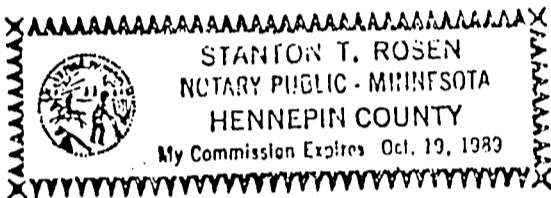
On this, the 21<sup>st</sup> day of November, 1984, before me, Stanton T. Rosen, the undersigned officer, personally appeared Guenther-Roth, known to be to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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Rau,  
money-in-  
of for  
office  
Roth*

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Stanton T. Rosen  
Notary Public,  
My Commission Expires: \_\_\_\_\_

(Notarial Seal)



INST. NO. 379  
BK. 94 PAGE 827

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DIANA RUFFELD  
SOUTH CO. S. DAK.  
REGISTER OF DEEDS

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to foreclose upon such loan in the event of a default in payment of the same. The Limited Partner shall be entitled to a fourteen percent (14%) per annum cumulative return (commencing upon the first day such motel is open for business) upon such loan which will be paid to the Limited Partner annually or at such other intervals as the Limited and General Partners may from time to time agree until the sale of such motel, the principal amount shall not be amortized. Such payment shall be made to the Limited Partner only after and be subordinate to the payment of all operating expenses of any kind and mortgage debt service of such motel and the Super 8 Motel one percent (1%) advertising fund payment, provided however, that it is specifically agreed that such cumulative return on such loan shall be paid prior to the payment of the Super 8 Motel, Inc., royalty fee or the management fee to Super 8 Management, Inc.

#### VII DUTIES AND LIABILITIES OF THE PARTNERS

The General Partner shall diligently apply itself about the management of the business of the partnership to the utmost of its skill and ability. It is acknowledged that this Limited Partnership need not be the full time endeavor of the General Partner and it is further acknowledged that the General Partner may directly or indirectly compete with this Limited Partnership in the ownership, development, and management of Super 8 Motels and other real estate and related enterprises.

No Limited Partner shall have any right to be active in the conduct of the partnership's business, nor have power to bind the partnership in any contract, agreement, promise or undertaking.

#### VIII COMPENSATION OF GENERAL PARTNER

The General Partner shall serve without salary or compensation except as is provided herein.

#### IX BOOKS OF ACCOUNT

There shall be maintained during the continuance of this partnership, an accurate set of books of account of all transactions, assets and liabilities of this Limited Partnership prepared according to generally accepted accounting principles consistently applied. The books shall be balanced and closed at the end of each year and at any other time upon reasonable request of the General Partner. The books are to be kept at the principal place of business of the partnership and are to be open

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for inspection by any partner at all reasonable times. The partnership shall employ a certified public accountant who shall produce yearly unaudited financial statements; provided however, that any partner shall be entitled to request an audited financial statement, the cost of which will be borne by the party requesting the same.

X  
SUBSTITUTIONS, ASSIGNMENTS, AND ADDITIONS  
OF ADDITIONAL PARTNERS

The General Partner shall not substitute a partner in its place or sell or assign all or any part of its interest in the partnership business without the express written consent of all of the Limited Partners.

Additional Limited Partners may be admitted to this partnership on terms that may be agreed on in writing between the General Partner and the new Limited Partners, subject to the express written consent of all then existing Limited Partners. The terms of such admission of such new Limited Partner shall constitute an amendment to this Limited Partnership Agreement.

No Limited Partner may substitute an assignee as a Limited Partner in his place; but the person or persons entitled by will or by intestate laws, as the case may be, shall succeed to all right, title, and interest of a Limited Partner as a substituted Limited Partner.

XI  
MOTEL CONSTRUCTION

The General Partner will construct and furnish the Merrillville Super 8 Motel, including all furniture, fixtures, and equipment, telephones and telephone switching equipment, and similar items, together with inventory necessary for operation of such motel. It is specifically agreed by and between the General and Limited Partners hereto that the construction of said motel will be accomplished by a wholly owned subsidiary of the General Partner and the furnishing of the furniture, fixtures, telephones, and equipment for such motel will likewise be contracted with an additional wholly owned subsidiary of the General Partner. The cost for the furniture, fixtures, telephones, and equipment for such motel shall be at the then price and/or rate charged by such subsidiary to independent franchisees who wish to purchase the same. The construction price from the Super 8 subsidiary shall be at actual costs, including allocated overhead, plus a \$500 per room fee.

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XII  
MANAGEMENT CONTRACT

Upon completion of such motel and the same being ready for occupancy, a management contract shall be executed with Super 8 Management, Inc., a wholly owned subsidiary of the General Partner, which management corporation shall manage such motel for a management fee of five percent (5%) of the gross room revenues of such motel. Such management fee shall be subordinated to the cumulative return on the Limited Partner's investment and the interest payment on the loan by the Limited Partner to the Limited Partnership, as provided herein.

XIII  
GUARANTEE

The General Partner shall be solely responsible for guaranteeing any debt or mortgage indebtedness necessary to secure the construction, furnishing, operation, and long-term financing of the motel to be constructed and owned by this Limited Partnership, it being specifically understood that the Limited Partner shall in no circumstances guarantee such indebtedness nor be liable for the same.

XIV  
FINANCING DEFICIENCIES

In the event that the construction financing is insufficient to pay the costs incurred in the construction and furnishing of said motel, then the General Partner will fund such additional cost with its own funds, but shall be entitled to be reimbursed for such additional cost from the operating profits of such project, together with interest thereon at the rate of twelve percent (12%) per annum, but such reimbursement shall be subordinate to the payment to the Limited Partner of the nine percent (9%) return on the invested monies and the fourteen percent (14%) interest return upon the monies loaned to the Limited Partnership by the Limited Partner, as provided herein.

XV  
INTERESTS OF THE PARTNERS

Both the Limited and General Partners shall acquire a fifty percent (50%) interest in the profits and losses of the motel to be owned and built by such Limited Partnership.

XVI  
SALE FEE

In the event that the motel owned by the Limited Partnership is sold, then the General Partner will receive an

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additional One Hundred Thousand Dollar (\$100,000.00) fee if proceeds of such sale exceed the original cost of such project by \$100,000, and after the payment of the cumulative returns and/or interest as provided in Paragraphs V and VI of this Partnership Agreement.

XVII  
ALLOCATION

The following is a summary of the allocation between the General Partner and the Limited Partner Super 8 and Roth of the ownership interest, allocation of gain, cash flow allocations, and project costs as agreed to by the parties hereto:

	<u>General Partner</u>	<u>Limited Partner</u>
Depreciation & Tax Benefits --	50%	50%
 <u>Distribution of proceeds upon sale after payment of liens, mortgage, and selling costs:</u>		
- Return of equity and loan contribution --		100%
- Any deficiency from prior years in the cumulative return on investment or interest on loans --		100%
- Difference between original mortgage and final mortgage balance --	50%	50%
- Deferred \$100,000 developer fee --	100%	
- Any additional proceeds --	50%	50%
 <u>Allocation of Gain:</u>		
- Up to original project cost --	50%	50%
- \$100,000 above original project cost (developers fee) --	100%	
- Any additional gain --	50%	50%

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Specific Ordering of Cash  
Flow from Operations

1. Operating Expenses.
2. Debt Service.
3. One percent (1%) Super 8 Advertising Fund.
4. Annual 9% and 14% return pursuant to Paragraphs V and VI (upon commencement of operations).
5. Any prior year deficiency in Limited Partner's return from No. 4 above.
6. Reimbursement of costs and expenses not reimbursed from the construction and furnishing costs of the motel over the construction loan, plus a 12% cumulative return.
7. Four percent (4%) Super 8 Franchise Royalty.
8. Five percent (5%) Management Fee.
9. Remaining Cash Flow
  - Super 8 Motels, Inc. -- 50%
  - Limited Partner -- 50%.

Allowed Project Costs

1. Reimbursement of Expenses to General Partner.
2. Cost of land.
3. Construction Costs at cost plus \$500 per room profit.
4. Furnishings at competitive prices from Midwest Motel Supply.
5. Franchise Fee - \$15,000 to Super 8.
6. Financing Costs - financing fees will include a fee to The Churchill Company of 3.5% of the total project cost for each of the two facilities constructed under this partnership and covers placement of debt and a consulting fee for structuring and arranging this transaction.

XVIII  
FRANCHISE AGREEMENT

This Limited Partnership shall purchase and execute the then existing Super 8 Motels, Inc., Franchise Agreement for the Merrillville motel location.

XIX  
REPORTS

The General Partner and/or its subsidiary shall produce at least quarterly unaudited financial statements of the type and nature as are produced as a matter of general practice by Super 8 Management, Inc., and deliver such statements to the Limited Partner.

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XX  
AUDITED STATEMENTS

Either the General or Limited Partner shall be entitled to demand audited financial statements of the Limited Partnership and/or the Merrillville Super 8 Motel, the cost of such audited statements to be borne solely by the party requesting the same. The Limited Partner or his agent shall be entitled to examine and copy the books, records, accounts, and tax returns of the Limited Partnership and/or motel.

XXI  
RIGHT OF FIRST REFUSAL

That it is specifically agreed by and between General and Limited Partners that if either party receives an offer to purchase his or its interest in the Limited Partnership, operating corporation, and/or motels established pursuant to this agreement which such individual or corporation is willing to accept in good faith, then such party shall serve notice upon the other in writing of the exact terms and conditions of such offer which such party is willing to accept. The other party shall then have thirty (30) days from the receipt of such notice to accept or reject such offer upon the identical terms and conditions. If the other party does not accept such offer within such 30 days, then the party wishing to sell shall be free to do so upon the terms and conditions set forth in such notice.

XXII  
OPTION AGREEMENT

At the death, insolvency, or the filing of a petition in bankruptcy under any chapter thereof by the Limited or General Partner, the other party, at its sole discretion, shall have the option to purchase all of the interests of the other in the limited partnership, operating corporation and/or motel constructed or established pursuant to this agreement for the fair market value thereof at the date of the death, insolvency, or filing of the bankruptcy petition. The party exercising this right hereunder shall exercise the same by giving written notice of such exercise to the other, his executor, administrator, administratrix, personal representative, or bankruptcy trustee. If the parties are unable to agree pursuant to negotiations upon the fair market value of such assets, then the parties shall attempt to agree upon a third person to serve as the arbiter of such value. If the parties are unable to agree upon a third person to serve as such arbiter, then such dispute shall be submitted for arbitration pursuant to the then-existing rules of the American Arbitration Association.

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XXIII  
ASSIGNMENT

The interests of the General and Limited Partners hereto shall not be assignable by either without the express prior written consent of the other.

XXIV  
RESTRICTION

No General or Limited Partner herein shall pledge, mortgage, hypothecate or otherwise encumber or dispose of his or its interest in this Limited Partnership or the assets of the same without the express prior written consent of the other party.

XXV  
OPERATING CORPORATION

The motel constructed by the Limited Partnership shall be leased to a corporation for its operation. Each party shall own fifty percent (50%) of the common stock of such corporation.

XXVI  
HOLDING ASSETS

The assets of the Limited Partnership shall be held in the Limited Partnership's name.

Dated on the date first set forth above.

SUPER 8 MOTELS, INC

By

Loren D. Steele

Its President

GENERAL PARTNER

Guenther Roth by Gerald H. [Signature]  
Attorney in fact

Guenther Roth

LIMITED PARTNER

VERIFICATION

Loren D. Steele, President of Super 8 Motels, Inc., and Guenther Roth, being duly sworn on oath, depose and state that

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