

RECEIVED & FILED APR 28 1978

AMENDED AND RESTATED  
AGREEMENT AND CERTIFICATE OF  
LIMITED PARTNERSHIP  
OF  
FOX POINT ASSOCIATES

This Agreement and Certificate of Limited Partnership, dated this 24<sup>th</sup> day of April, 1978, is entered into by and among:

Orlando A. Andreoni and William J. Canning, individuals (hereinafter collectively referred to as the "Operating General Partner"), and ~~\*FOX POINT CORPORATION\*~~ a Rhode Island corporation (hereinafter referred to as the "Corporation") (the Operating General Partner and the Corporation are hereinafter collectively referred to as the "General Partner"); \*Fox Point Manor Corporation, *etc*

and

Orlando A. Andreoni and William J. Canning (hereinafter collectively referred to as the "Withdrawing Limited Partner");

and

Real Estate Partners Limited, a California limited partnership (hereinafter referred to as the "Limited Partner"), having as its general partners Sonnenblick-Goldman Corp. of California, a California corporation and Charles H. Boxenbaum, of Santa Monica, California.

with reference to the following facts:

A. The Operating General Partner and the Withdrawing Limited Partner are all of the partners of Fox Point Associates, an existing Rhode Island limited partnership (the "Partnership") formed pursuant to a certificate of limited partnership filed with the Secretary of State of Rhode Island on September 15, 1977.

B. The Partnership is the owner and holder of the Property (as hereinafter defined), upon which the Project (as hereinafter defined) is proposed to be situated.

C. The General Partner, the Withdrawing Limited Partner and the Limited Partner desire to effect the admission of the Limited Partner and the Corporation to, and the withdrawal of the Withdrawing Limited Partner as a limited partner from, the Partnership, to continue the Partnership for the purposes herein described, to amend and restate in its entirety the Partnership's agreement and certificate of limited partnership, and to enter into this AMENDED AND RESTATED AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP OF FOX POINT ASSOCIATES (the "Agreement") on the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

#### 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1.1 Affiliated Person. "Affiliated Person" means any person, firm or entity

1.1.1 which owns or is owned by the General Partner in whole or in part;

1.1.2 which controls or is controlled by the General Partner in whole or in part;

1.1.3 which is the parent, subsidiary or affiliate of the General Partner;

1.1.4 in which the General Partner has any interest whatsoever, except as a creditor;

1.1.5 from which the General Partner shall receive any remuneration directly or indirectly;

1.1.6 to which the General Partner is a "related taxpayer" as defined in Section 1313(c) of the Internal Revenue Code of 1954, as amended; or

1.1.7 which then constitutes the General Partner.

1.2.1 Agreement Concerning Completion. The "Agreement Concerning Completion" means the Agreement Concerning Completion and Negative Cash Flow Guaranties of even date, by and between the Operating General Partner (individually and not in its capacity as the general partner of the Partnership), the Partnership and the Limited Partner.

1.2.2 Authority. The "Authority" means the Rhode Island Housing and Mortgage Finance Corporation and its successors and assigns.

1.3 Breakeven. "Breakeven" means that for the relevant period the Partnership shall have received and maintained Cash from Operations (as hereinafter defined).

1.4 Cash from Operations. "Cash from Operations" means, with respect to any accounting period, the sum of all receipts of the Partnership determined on an accrual basis with respect to rents, lease payments, subsidy payments, releases from reserves for operating deficits and for repairs and replacement of Partnership property and any and all other sources relating to the Project other than cash receipts from all tenant deposits and trade deposits, sales, exchanges or other dispositions or refinancings of the Project or other Partnership property (including but not limited to proceeds resulting from insured losses or condemnation or eminent domain proceedings), capital contributions to the Partnership or borrowed funds from any source relating to the Project, less the sum of all Operating Disbursements (as hereinafter defined) for such accounting period; and the Partnership shall not be deemed to have received and maintained Cash from Operations for such period unless such receipts exceed such disbursements.

1.5 Completion of the Project. "Completion of the Project" means the later of (i) delivery of a certificate from the Project's architect to the effect that the Project has been substantially completed pursuant to the plans and specifications approved by the Authority, as may be amended from time to time with the consent of the Authority, with all of the units and the Project ready for occupancy by tenants; and (ii) obtaining of certificates of occupancy for all of the units of the Project from the local governmental body or agency having jurisdiction, provided such agency customarily furnishes such certificates.

1.6 Disposition or Disposition of Partnership Property. "Disposition" or "Disposition of Partnership Property" means

any sale or exchange, either in one transaction or a series of transactions, to one or more buyers pursuant to a plan of disposition formulated by the Operating General Partner, or other disposition, except an involuntary disposition giving rise to insurance or other proceeds, of all or substantially all of the Partnership's property.

1.7 FHA. The "FHA" means the Federal Housing Administration.

1.8 Final Acceptance. "Final Acceptance" means the last to occur of (i) the entering into of the Housing Assistance Payment Contract by the Authority, and (ii) Completion of the Project, and (iii) cost certification of the Project by the Authority.

1.9 HUD. "HUD" means the United States Department of Housing and Urban Development.

1.10 Initial Closing. The "Initial Closing" means any and all documents, approvals and agreements (including any subsidy agreements) required by the Authority in connection with the Project have been fully executed by all the parties thereto. The Initial Closing occurred on January 16, 1978.

1.11 Investment Agreement. The "Investment Agreement" means the AGREEMENT FOR INVESTMENT IN FOX POINT ASSOCIATES of even date, by and among the Partnership, the General Partner, the Withdrawing Limited Partner, and the Limited Partner.

1.12 Mortgage. The "Mortgage" means the first mortgage granted by the Partnership, as from time to time amended, which secures the Mortgage Loan, in the amount then outstanding.

1.13 Mortgage Loan. The "Mortgage Loan" means the mortgage loan to be obtained by the Partnership, secured by a first mortgage encumbering the Property, in the face amount of \$3,179,000.

1.14 Mortgage Note. The "Mortgage Note" means the non-recourse note, as from time to time amended, made by the Partnership to evidence the Mortgage Loan, which is secured by the Mortgage.

1.15 Operating Disbursements. "Operating Disbursements" means all costs and expenses incurred incident to operation of the Partnership or the ownership, development,

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operation, repair and maintenance of the Project, including without limitation, taxes, ~~capital improvements and acquisitions~~ payments of principal, interest and annual fees on the Mortgage, repayment of loans from Partners, and the funding of reserves, if any, required by the General Partner, the Authority or any other governmental agency having jurisdiction with respect to the Project. All costs and expenses representing fuel or other utility costs shall be annualized so as to reflect on a monthly basis the average of the expenses so incurred. Operating Disbursements shall be determined on the accrual basis of accounting regardless of the basis upon which the books of the Partnership are kept for other purposes.

1.16 Partial Disposition of Partnership Property. "Partial Disposition of Partnership Property" means any sale, exchange, or other disposition of property of the Partnership which does not constitute a Disposition of Partnership Property, except an involuntary disposition giving rise to insurance or other proceeds.

1.17 Partners. "Partners" means the General Partner and the Limited Partner collectively; "Partner" refers to any one of the Partners.

1.18 Profits and Losses. "Profits and Losses" means the Partnership's annual net profits or losses as determined for the applicable accounting period by the Partnership's accountant for purposes of filing with the Internal Revenue Service for federal income tax purposes.

1.19 Project. The "Project" means the housing apartment project consisting of 98 rental units and 1 management unit (designated as Project No. RI-43-H023-041) and attendant facilities which the Partnership proposes to own, develop and operate upon the Property.

1.20 Property. The "Property" means the parcels of real property together with any existing improvements thereon as described in Exhibit 1 hereto, situated in Providence County, Providence, Rhode Island, upon which the Partnership proposes to own, develop and operate the Project.

1.21 Regulatory Agreement. The "Regulatory Agreement" means collectively the agreements entered into by and between the Partnership and the Authority concerning the financing, ownership and/or operation of the Project, which agreement was executed at the Initial Closing on January 16,

1978.

1.22 Substitute Operating General Partner. The "Substitute Operating General Partner" means any person or other entity designated by the Limited Partner and admitted into the Partnership as a general partner having the rights set forth in this Agreement upon the happening of any of the events specified in Section 7.3 hereof and designated by the Limited Partner as the Substitute Operating General Partner pursuant to Section 5.2.6 hereof.

2. CONTINUATION AND PURPOSE OF PARTNERSHIP.

2.1 Continuation. The parties hereto do hereby continue the Partnership formed pursuant to the provisions of a certificate of limited partnership in accordance with the laws of the State of Rhode Island.

2.2 Name of Partnership. The name of the Partnership shall continue to be FOX POINT ASSOCIATES.

2.3 Recordation and Filing of Partnership Documents. The parties shall sign, execute, acknowledge, and verify this Agreement and shall cause it to be filed and/or recorded as the Partnership's certificate of limited partnership, as required by law.

2.4 Purpose of Business. The purpose and business of the Partnership shall be to hold title to the Property; to develop thereon the Project; to operate the Project; and to undertake such other activities related to the foregoing as may be necessary, advisable, or convenient to the promotion or conduct of the business of the Partnership.

2.5 Term. The Partnership shall remain in existence until dissolved:

- (a) by mutual consent of all of the Partners;
- (b) as otherwise provided in this Agreement;
- (c) on December 31, 2027;
- (d) by operation of law; or
- (e) upon the Disposition of Partnership Property.

2.6 Place of Business. The principal place of busi-

ness of the Partnership shall be at 203 Waterman Street, Providence, Rhode Island 02906, or such other location in the State of Rhode Island as may hereafter be determined by the General Partner. The General Partner shall notify the Limited Partner of any change in the principal place of business of the Partnership.

### 3. CAPITAL CONTRIBUTIONS AND LOANS.

3.1 General Partner's Contribution. The General Partner has previously contributed to the Partnership all of its interest in and to the Project, including without limitation, all commitments and contractual rights pertaining thereto, for which the General Partner has received and ~~shall receive no~~ credit\*to its capital account. The General Partner shall have no right or obligation to make any additional capital contributions to the Partnership.\*of \$61,955

3.2 Limited Partner's Capital Contribution. Provided that the General Partner has not failed to fulfill any of its obligations contained in this Agreement or under any other agreements delivered by the General Partner, individually or in its capacity as the General Partner of the Partnership, to the Limited Partner prior to or concurrently with the delivery of this Agreement, the Limited Partner shall, subject to Sections 3.3, 3.8 and 7.4 hereof, contribute to the capital of the Partnership the total sum of \$465,955 (subject to adjustment pursuant to Section 1.3 of the Investment Agreement), in cash, payable as follows:

3.2.1 \$10,000 cash contribution upon execution of this Agreement.

3.2.2 \$45,000 cash contribution upon the last to occur of:

(a) The sale by the Limited Partner of all of the limited partnership units in the Limited Partner pursuant to its offering as set forth in its private placement memorandum therefor;

(b) receipt, if required, of clearance or approval from the Authority of the Limited Partner's investment in the Partnership; and

(c) June 13, 1978.

3.2.3 \$136,985 cash contribution upon the last to occur of:

hereof; (a) the contribution under Section 3.2.2

(b) the Completion of the Project and Final Acceptance; and

(c) May 15, 1979.

3.2.4 \$136,985 cash contribution upon the last to occur of:

hereof; (a) the contribution under Section 3.2.3

(b) Breakeven for 90 days immediately preceding the payment date; and

(c) May 15, 1980.

3.2.5 \$136,985 cash contribution upon the last to occur of:

hereof; (a) the contribution under Section 3.2.4

(b) Breakeven for 90 days immediately preceding the payment date; and

(c) May 15, 1981.

3.3 Conditions to Limited Partner's Capital Obligation. The Limited Partner shall be under no obligation to contribute to the Partnership any of the sums provided for in Section 3.2 hereof (as adjusted, if at all, pursuant to Section 1.3 of the Investment Agreement) except in accordance with the terms and conditions of the Investment Agreement.

3.4 No Interest on Capital. No interest shall be paid on capital contributions or on balances of capital accounts.

3.5 Withdrawals and Returns of Capital.

3.5.1 No Partner shall have the right to withdraw or reduce its contributions to the capital of the Partnership except in accordance with this Agreement, except as otherwise provided in Section 3.5.2 hereof. Except as otherwise provided herein, no Partner shall have the right to demand or receive property, other than cash, in return for its capital contribution or have priority over any other

Partner, either as to the return of contributions of capital or as to profits, losses, or distributions.

3.5.2 The Operating General Partner shall receive a return of his contributions to the capital of the Partnership as follows:

3.5.2.1 \$9,485 shall be paid upon receipt by the Partnership of the capital contribution described in Section 3.2.3 hereof.

3.5.2.2 \$13,485 shall be paid upon receipt by the Partnership of the capital contribution described in Section 3.2.4 hereof.

3.5.2.3 \$38,985 shall be paid upon receipt by the Partnership of the capital contribution described in Section 3.2.5 hereof.

3.6 Default. In the event that the Limited Partner defaults in its obligation to pay any capital contribution on or prior to the due date therefor set forth in Section 3.2 hereof and shall fail to correct such default within ten days from such due date, it shall be deemed to be in default hereunder. Upon such default, the General Partner shall have the option, exercisable as hereinafter provided, to purchase the Limited Partner's limited partnership interest (including any interest assigned to an additional General Partner pursuant to Section 7.3 hereof, which for the purposes of this Section 3.6 shall be considered as the interest of the Limited Partner), including all cash flow of the Partnership, and net cash proceeds attributable to such losses otherwise allocable to the Limited Partner from and after the date of purchase of such limited partnership interest by (a) paying the Limited Partner an amount, in cash, equal to (i) 100% of the outstanding principal and any accrued interest upon all loans made to the Partnership by the Limited Partner, plus (ii) 20% of the difference between (A) the amount contributed by the Limited Partner to the capital of the Partnership and (B) any cash distributions actually made by the Partnership to the Limited Partner, less (iii) any expenses incurred by the General Partner in connection with the purchase of such interest (the "Purchase Price"), and (b) undertaking to make the additional contributions required to be made by the Limited Partner to the extent that such additional contributions were not made by the Limited Partner. The purchase may be made by the General Partner, or its designee or designees, other than the Partnership, in such proportion as it may determine, by

giving notice to the Limited Partner of its intent to exercise such right within 60 days after the default. Upon the giving of the notice to purchase the interest of the Limited Partner pursuant to the provisions of this Section, the Limited Partner shall have no obligation to make the contribution which it failed to make and shall have no obligation to make any future contributions pursuant to Section 3.2 hereof. If the General Partner or its designee or designees purchase the defaulting Limited Partner's interest, the purchaser or purchasers shall consummate such purchase within the foregoing 60-day period and shall, within ten days after such purchase is consummated, pay the capital contribution to the Partnership which the Limited Partner fails to make. In the event the General Partner elects to exercise its option hereunder and the General Partner or its designee or designees fails to consummate the purchase and make the capital contribution within the required period, the Limited Partner shall have the right to withdraw from the Partnership without any obligation or liability for its unpaid capital contribution as well as the balance of its capital contributions as and when due and to collect an amount equal to the Purchase Price from the General Partner and/or its designee or designees. If the General Partner fails to exercise this option to purchase the Limited Partner's limited partnership interest, in addition to any other remedies available to the Partnership under law or statute, the Partnership may proceed to collect the unpaid capital contribution of the Limited Partner as well as the balance of the Limited Partner's capital contributions as and when due, together with interest thereon at the rate of eight percent per annum and all costs and expenses of collection incurred by the Partnership (including reasonable fees and disbursements of counsel) from the Limited Partner.

3.7 Waiver of Partition. The Partners hereby waive and forfeit all rights arising out of statute or operation of law, to seek, bring or maintain in any court an action for partition pertaining to any asset of the Partnership.

3.8 Special Right of Withdrawal. If Final Acceptance has not occurred on or before October 15, 1979, then at any time thereafter until the occurrence of Final Acceptance, the Limited Partner shall have the right, in its sole discretion, to withdraw from the Partnership upon notice thereof to the Operating General Partner, whereupon the Operating General Partner shall refund to the Limited Partner the amount of the Limited Partner's contribution contributed to the Partnership prior to receipt of such

notice. Upon withdrawal by the Limited Partner from the Partnership pursuant hereto, the Limited Partner shall have no further interest in profits, losses or distributions of the Partnership, nor shall it have any obligation to fund any or all of the capital contributions contemplated in Section 3.2 hereof, and the Operating General Partner shall file or record, as required by law, an amendment to the Partnership's certificate of limited partnership to evidence the withdrawal of the Limited Partner from the Partnership.

3.9 To secure the Limited Partner's obligation to make its capital contributions required pursuant to Section 3.2 hereof, the Limited Partner and the Partnership shall enter into an escrow agreement, in the form attached hereto as Exhibit 2.

#### 4. PROFITS, LOSSES AND DISTRIBUTIONS

##### 4.1 Allocation.

Profits and losses shall be allocated as follows:

4.1.1 All profits other than those resulting from the Disposition or Partial Disposition of Partnership Property shall be allocated 99% to the Limited Partner and 1% to the General Partner.

4.1.2 All profits resulting from the Disposition or Partial Disposition of Partnership Property, including upon dissolution and termination of the Partnership, shall be allocated as follows:

4.1.2.1 99% to the Limited Partner and 1% to the General Partner until the Limited Partner has been allocated profits equal to the excess of (i) losses previously allocated to the Limited Partner plus cash previously or concurrently distributed to the Limited Partner pursuant to Section 4.2 and 4.3 and 4.4 hereof, over (ii) profits previously allocated to the Limited Partner plus capital contributions theretofore made by the Limited Partner pursuant to this Agreement; and thereafter

4.1.2.2 50% to the Limited Partner and 50% to the General Partner.

4.1.3 All losses shall be allocated 99% to the Limited Partner and 1% to the General Partner.

##### 4.2 Distribution of Cash from Operations. Cash from

Operations shall be distributed to the Partners from time to time, but not less often than annually and with all distributions in respect of any one calendar year to be distributed not later than 90 days after the end of such year, 99% to the Limited Partner and 1% to the General Partner.

4.3 Distributions of Cash from Refinancing. Surplus cash resulting from a refinancing of the Mortgage Loan or the obtaining of additional financing (after the funding of reserves for the Project) shall be distributed as follows:

4.3.1 First, to the Limited Partner until the Limited Partner has received cash pursuant to this Section 4.3.1 in the amount which equals 135% of the total capital contributions theretofore made by the Limited Partner pursuant to this Agreement; and thereafter

4.3.2 To the Operating General Partner in repayment of funds advanced, if any, to pay for "excess Operating Disbursement" (as such term is used in the Agreement Concerning Completion) pursuant to its obligation under the Agreement Concerning Completion; and thereafter

4.3.3 50% to the Limited Partner and 50% to the General Partner.

4.4 Distributions of Cash from Disposition or Partial Disposition of Partnership Property. Surplus cash resulting from a Disposition or Partial Disposition of Partnership Property, including but not limited to a dissolution and termination of the Partnership, shall be distributed to the Partners in the following order of priority:

4.4.1 To the Limited Partner until the Limited Partner has received cash pursuant to this Section 4.4.1 in the amount which together with cash previously distributed to the Limited Partner pursuant to Section 4.3.1 hereof, if any, equals 135% of the total capital contribution theretofore made by the Limited Partner pursuant to this Agreement; and thereafter

4.4.2 To the Operating General Partner in repayment of funds advanced, if any, to pay for "excess Operating Disbursements" (as such term is used in the Agreement Concerning Completion), pursuant to its obligation under the Agreement Concerning Completion (to the extent not previously or concurrently repaid pursuant to Section 4.3.2 hereof); and thereafter

4.4.3 50% to the Limited Partner and 50% to the General Partner.

4.5 Capital Accounts. All profits and losses allocated to, capital contributions from, and distributions to the Partners, other than repayment of the principal amount of, and any accrued interest on, any loans, shall be credited or debited, as the case may be, to their capital accounts.

4.6 Allocations to General Partner. Profits, losses and distributions to the General Partner shall be allocated 99% to the Operating General Partner and 1% to the Corporation.

5. RIGHTS, POWERS AND OBLIGATIONS OF THE PARTNERSHIP AND THE PARTNERS.

5.1 The Partnership. Subject to the specific limitations as set forth in this Agreement, the Operating General Partner is hereby authorized on behalf of the Partnership:

5.1.1 To acquire any property, real or personal, in fee or under lease, and any interest therein or appurtenant thereto, which may be necessary or appropriate for accomplishment of the purposes and objectives of the Partnership.

5.1.2 To develop land acquired by the Partnership with off-site and on-site improvements, and to construct, maintain, operate, and manage the housing units and other facilities relating thereto which together constitute the Project.

5.1.3 To assist and further the provision of housing and to provide dwelling accommodations for persons displaced from urban renewal areas or as a result of governmental action.

5.1.4 To borrow funds, execute and issue mortgage notes and other evidences of indebtedness and secure the same by mortgage, deed of trust, pledge, or other lien; provided, however, that the Operating General Partner shall have no power or authority to modify or amend the Mortgage Loan with the result that (a) it shall be other than a non-recourse mortgage which contains exculpatory clauses to the effect that neither the Partnership nor any Partner shall have any personal liability for the debt or for any

deficiency judgment which may be entered upon foreclosure of the said mortgage, and that the mortgagee shall look only to the mortgaged property for collection of any sum due under or in connection with the mortgage note or (b) it shall adversely affect the business or financial condition of the Partnership, the Project or the Property.

5.1.5 To apply for and obtain from HUD and/or the Authority and/or other Federal or State agencies contracts for leasing, interest subsidies, tax abatement and tax limitation, as well as other supplemental payments and subsidies; provided, however, that the Operating General Partner shall have no power or authority to amend or modify any such contracts if it shall adversely affect the business or financial condition of the Partnership, the Project or the Property.

5.1.6 To sell, lease, or otherwise dispose of the Project.

5.1.7 To apply for and obtain a contract or contracts of mortgage insurance.

5.1.8 To enter into and perform the Regulatory Agreement and to enter into or execute such other agreements and documents as are required by HUD and/or the Authority and any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project in connection with the Project; and to require any incoming partner, as a condition to receiving an interest in the Partnership, to agree to be bound by the Mortgage Note, Mortgage, and Regulatory Agreement and any other documents required in connection with the Mortgage Loan to the same extent and on the same terms as the Partners.

5.1.9 To execute a deed and other documents required in order to convey title to the Limited Partner, without consideration, in the event foreclosure of the Project is imminent, with such conveyance to occur only at such time as it is reasonably apparent to the General Partner or Operating General Partner that such foreclosure cannot be reasonably avoided by the Partnership.

5.1.10 To do any and all things necessary and proper for the accomplishment of the objects herein enumerated, or necessary or incidental to the protection and benefit of the Partnership.

## 5.2 The Operating General Partner.

5.2.1 Management of the Partnership's Business. The Operating General Partner shall manage and conduct the business of the Partnership. Both of the individuals constituting the Operating General Partner shall act together on behalf of the Partnership. The Operating General Partner may take any and all actions with respect to the Project and the Partnership without limitation, except to the extent specifically limited by this Agreement or by law. The Operating General Partner shall determine:

5.2.1.1 All matters relating to the management, operating conduct, assets and property of the Partnership; and

5.2.1.2 All matters not expressly provided for by this Agreement.

5.2.2 Compliance by Partnership with Laws and Regulations. The Operating General Partner shall promptly take any and all action which may be necessary or appropriate to perfect and maintain the Partnership as a limited partnership under state law, and to develop, maintain, and operate the Project in accordance with the provisions of this Agreement and the Regulatory Agreement, and applicable Federal, state, and local laws and regulations.

5.2.3 Fiduciary Duties. The Operating General Partner shall at all times exercise its responsibilities in a fiduciary capacity, and in a manner consistent with the objectives of the Partnership.

5.2.4 Tax Actions. The Operating General Partner shall, with the approval of the Limited Partner, do all acts, make all elections, and take whatever steps are required pursuant to the advice of the Partnership's independent accountant to maximize the Federal, state and local income tax advantages available to the Partnership.

5.2.5 Affiliated Persons. There are no existing contracts between the Partnership and Affiliated Persons, other than William J. Canning Management Co., and William J. Canning doing business as COIN-0-LAUNDRY. The Operating General Partner may, subject to the provisions of this Section and Section 5.2.12 hereof, contract with Affiliated Persons on terms reasonably competitive with those which may be obtained in the open market for property or services required by the Partnership. Any such contract or contracts

hereafter entered into with Affiliated Persons shall be fully disclosed to the Limited Partner within 30 days after the end of each calendar year.

5.2.6 Management by Substitute Operating General Partner. Upon the admission of an additional General Partner pursuant to Section 7.3 hereof, such additional General Partner shall, at the option of the Limited Partner, (i) be the Substitute Operating General Partner and (ii) have the full, exclusive, and complete right to manage and conduct the business of the Partnership.

5.2.7 Action by Operating General Partner. With respect to each contract or agreement entered into by the Partnership with any third party, the Operating General Partner shall use its best efforts to ensure that each such contract or agreement entered into by the Operating General Partner or the Substitute Operating General Partner on behalf of the Partnership shall provide that such third party acknowledges that he is dealing with a limited partnership whose only general partner is the General Partner and that in any subsequent action against the Partnership by such party he will proceed only against the Partnership and/or the General Partner and their successors and assigns.

5.2.8 Outside Activities. The Operating General Partner shall devote such time and attention to the Partnership business as may be necessary for the proper performance of its duties. It may, however, engage or hold interests in other business ventures of every kind and description, in which the Partnership and the Limited Partner shall have no interest.

5.2.9 Indemnification of General Partner. The General Partner (and the Substitute Operating General Partner, if any) shall be entitled to indemnity from the Partnership for any act performed by it pursuant to this Agreement, except for acts of malfeasance,\*negligence, or misrepresentation, provided that any indemnity under this Section shall be paid out of and to the extent of Partnership assets only. \*gross

5.2.10 Liability of General Partner. The General Partner (and the Substitute Operating General Partner, if any) shall not be liable, responsible or accountable in damages or otherwise to the Partnership or the Limited Partner for any act performed by the General Partner within the scope of the authority conferred upon it by this Agreement, except for acts of malfeasance,\*negligence, or mis-  
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representation.

5.2.11 Insurance. The Operating General Partner shall cause the Partnership, at the Partnership's expense, to obtain and maintain at all times, such insurance, in such amounts, on such terms and with such carriers, as is customary for a project similar to the Project, but which at a minimum shall include the following insurance policies to be issued by a qualified insurance company or companies rated at least A+AAA by Best's Insurance Guide:

(a) All-risk property insurance in an amount satisfactory to the Authority.

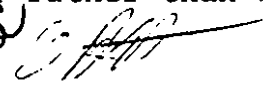
(b) Comprehensive general liability insurance with minimum coverage of \$1,000,000 single limit, including extensions of coverage for contractual liability, incidental malpractice liability and host liquor liability.

(c) Worker's compensation insurance as required by law.

The Operating General Partner shall deliver to the Limited Partner copies of such policies and a certificate or certificates of the insurance carrier or carriers from which such policies have been obtained, in form and substance satisfactory to the Limited Partner, to the effect that the foregoing insurance has been obtained and is in force and shall provide that each such policy requires the insurance carrier to notify the Limited Partner at least 60 days prior to any proposed cancellation of such policy.

5.2.12 Management Agent. The Operating General Partner shall have the responsibility for managing the Project and obtaining a management agent (the "Management Agent"), the choice of which shall be subject to the reasonable control of the Limited Partner; the Management Agent shall initially be William J. Canning Management Co. The Operating General Partner shall cause the Partnership to enter into an agreement with the Management Agent which agreement shall be subject to the approval, if required, of HUD and/or the Authority and/or any other governmental agency or financing entity involved in the Project. A copy of such agreement shall be promptly provided to the Limited Partner. The management agreement may be with an Affiliated Person as Management Agent. If the management agreement is not with an Affiliated Person such Management Agent shall provide a fidelity bond, naming the Partnership as insured, in an amount equal to two months' gross income. If at any

\*but shall include the real estate taxes, utilities, water and heating expenses of the prior calendar year rather than such expenses for the current calendar year

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time after Completion of the Project (a) the Project shall be subject to a substantial building code violation or violations which shall not have been cured within a reasonable time after notice from the Limited Partner, (b) the Partnership over any calendar year after Completion does not achieve Breakeven (for this purpose, Breakeven does not include releases from reserves for operating deficits\*) or (c) the Operating General Partner is in default under the Agreement Concerning Completion, the Operating General Partner shall forthwith give to the Limited Partner notice of such event, and thereafter the Partnership shall forthwith terminate its management agreement with the Management Agent, unless the consent of the Limited Partner is obtained to the retention of the Management Agent as the manager of the Project. If such consent is not obtained, the Operating General Partner shall immediately proceed to select a substitute Management Agent for the Project, which Management Agent shall be a firm regularly engaged in the business of providing services as a management agent of the type contemplated by this Section in Providence, Rhode Island and which firm shall not be an Affiliated Person. The Operating General Partner shall have the duty to manage the Project during any period in which there is no Management Agent. In all cases, no management fee shall be payable to any person unless the management contract with such person shall provide for termination of the same upon the occurrence of any of the events described in this Section 5.2.12 and in any event upon 30 days' notice.

5.2.13 Section 167(k) Compliance. In the event rehabilitation expenditures are contemplated, the Operating General Partner shall take all steps necessary to cause the Partnership to be in full compliance with the continuing requirements of Section 167(k) of the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder.

### 5.3 The Limited Partner.

5.3.1 The Limited Partner shall not take part in the management of the Partnership's business, transact any business for the Partnership, nor have any power to sign for or to bind the Partnership or to subject the Partnership to any liability or obligation.

5.3.2 The Limited Partner shall not be personally liable in excess of its capital contributions which have become payable pursuant to the terms of this Agreement.

5.4 The Regulatory Agreement. The Regulatory Agreement shall be binding upon the Partnership, its successors and assigns so long as a mortgage on the property of the Partnership which is insured or held by HUD is outstanding and/or HUD is otherwise subsidizing the Project. The Partnership shall comply in every respect with the Regulatory Agreement and all applicable federal, state, and local statutes and regulations. Any requirements imposed on the Partnership under the Regulatory Agreement or any other agreement with HUD and/or the Authority or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, if inconsistent with any of the provisions of this Agreement, shall be controlling and shall govern the rights and obligations of the parties hereto. Any incoming Partner shall accept his interest in the Partnership subject to the Mortgage Note, Mortgage, Regulatory Agreement and other documents required by the Authority. Upon any dissolution of the Partnership no title or right to possession or control of the Property and no right to collect the rent therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Authority, if the Regulatory Agreement is then in effect.

6. PAYMENTS TO OPERATING GENERAL PARTNER.

6.1 Management Fees. The Operating General Partner shall be paid management fees as hereinafter set forth for the day-to-day management of the Partnership activities and the Project, including but not limited to, the rendition of accounting and bookkeeping services, preparation and submission of reports for relevant governmental agencies and others, communications with federal, state and city agencies, supervision of community relations, supervision of the Partnership's compliance with all contractual obligations, supervision of the Partnership's payment of all financial obligations, and securing a qualified general contractor and a qualified operations manager, for which a salary shall be paid by the Partnership to the Operating General Partner without regard to partnership income, as a guaranteed payment, payable as follows:

\$16,000

6.1.1 ~~\$24,000~~ shall be earned by the Operating General Partner in calendar year 1978 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution described in Section 3.2.2 hereof.

\$25,000 *22* *GA*

6.1.2 ~~XXXXXXX~~ shall be earned by the Operating General Partner in calendar year 1979 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution described in Section 3.2.3 hereof.

6.1.3 \$26,000 shall be earned by the Operating General Partner in calendar year 1980 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution describe in Section 3.2.4 hereof.

6.1.4 \$12,000 shall be earned by the Operating General Partner in calendar year 1981 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution described in Section 3.2.5 hereof.

6.1.5 \$6,000 shall be earned by the Operating General Partner in calendar year 1982 for services rendered during that calendar year, payable in calendar year 1982 but in no event prior to receipt by the Partnership of the contribution described in Section ~~XXXX~~ hereof.

3.2.5 *30* *GA*

6.2 Additional Fees to the Operating General Partner. The Partnership shall pay to the Operating General Partner the following additional fees for services rendered by the Operating General Partner to the Partnership as described and payable at the time or times specified below:

6.2.1 For the initial rent up of the Project:

6.2.1.1 \$4,000 shall be earned by the Operating General Partner in calendar year 1978 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution described in Section 3.2.2 hereof.

6.2.1.2 \$26,000 shall be earned by the Operating General Partner in calendar year 1979 for services rendered during that calendar year payable upon receipt by the Partnership of the contribution described in Section 3.2.3 hereof.

6.2.2 For the Operating General Partner's independent undertaking to fund certain operating cash deficits of the Project after Completion of the Project:

\$3,000 *wzc*  
6.2.2.1 ~~\$5,000~~ shall be earned by the Operating General Partner in calendar year 1978 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution described in Section 3.2.2 hereof.

\$7,000 *wzc*  
6.2.2.2 ~~\$10,000~~ shall be earned by the Operating General Partner in calendar year 1979 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution described in Section 3.2.3 hereof.

6.2.2.3 \$5,000 shall be earned by the Operating General Partner in calendar year 1980 for services rendered during that calendar year, payable upon receipt by the Partnership of the contribution described in Section 3.2.4 hereof.

6.2.3 The Partnership shall pay to the Operating General Partner a fee of \$20,000 for the development and sponsorship of the Project, which fee shall be earned in, and for services rendered during, the calendar year 1981, payable upon receipt by the Partnership of the contribution described in Section 3.2.5.

6.2.4 An aggregate builder's fee of \$100,000 shall be paid to the Operating General Partner for its services as follows:

6.2.4.1 \$15,000 shall be earned in, and for services rendered during, the calendar year 1979, payable upon receipt by the Partnership of the contribution described in Section 3.2.3.

6.2.4.2 \$25,000 shall be earned in, and for services rendered during, the calendar year 1980, payable upon receipt by the Partnership of the contribution described in Section 3.2.4.

6.2.4.3 \$60,000 shall be earned in, and for services rendered during, the calendar year 1981, payable upon receipt by the Partnership of the contribution described in Section 3.2.5.

6.2.5 An aggregate fee of \$140,000 shall be paid for the Operating General Partner's undertaking to guarantee Completion of the Project as follows:

6.2.5.1 \$22,500 shall be earned in, and for services rendered during, the calendar year 1978, payable upon receipt by the Partnership of the contribution described in Section 3.2.2.

6.2.5.2 \$50,000 shall be earned in, and for services rendered during, the calendar year 1979, payable upon receipt by the Partnership of the contribution described in Section 3.2.3.

6.2.5.3 \$67,500 shall be earned in, and for services rendered during, the calendar year 1980, payable upon receipt by the Partnership of the contribution described in Section 3.2.4.

6.3 Reimbursement for General Partner's Expenses. In addition to the foregoing fees, the Operating General Partner shall be entitled to reimbursement for certain expenses incurred by it on behalf of the Partnership as follows:

6.3.1 Up to \$3,000 shall be paid to the Operating General Partner as a reimbursement for out-of-pocket expenses for office rent and other miscellaneous expenses relating to the Partnership payable as follows:

6.3.1.1 Up to \$1,500 shall be paid in, and for such expenses incurred during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2.

6.3.1.2 Up to \$1,500 shall be paid in, and for such expenses incurred during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3.

6.3.2 The Operating General Partner shall be paid the sum of up to \$6,000 as a reimbursement for out-of-pocket expenses relating to professional fees paid on behalf of the Partnership, payable as follows:

6.3.2.1 Up to \$3,000 shall be paid in, and for such expenses incurred during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2.

6.3.2.1 Up to \$3,000 shall be paid in, and for such expenses incurred during, the calendar year 1979,

but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3.

6.4 No Reimbursement of General Partner. The General Partner shall be entitled to receive payments from the Partnership only as specifically provided for by Sections 3.5.2, 4.2, 4.3, 4.4, 5.2.9, 6.1, 6.2, 6.3, 7.4 and 10.2 hereof and shall receive no other compensation for services rendered to the Partnership and no reimbursement for expenses (including overhead) of the General Partner.

## 7. RELATIONSHIP OF GENERAL AND LIMITED PARTNERS.

### 7.1 Limitations on Sale of Partnership Assets by General Partner.

7.1.1 Prior to January 1, 1996, the General Partner may not, without the prior written consent of the Limited Partner, sell or lease (except to individual tenants in the ordinary course of business) or otherwise transfer or dispose of (a) the Project, or (b) all or substantially all of the Partnership's assets.

7.1.2 On or after January 1, 1996, the General Partner may dispose of all or substantially all of the Partnership's assets, without the consent of the Limited Partner, but only if the cash proceeds to be distributed to the Limited Partner therefrom are at least equal to the state and federal capital gains tax payable by the Limited Partner on the profit therefrom, computed at the highest rate of such taxes.

### 7.2 Reports to Limited Partner.

7.2.1 The Operating General Partner shall promptly notify the Limited Partner upon the receipt of any notice of default under the Mortgage Loan, breach of the Regulatory Agreement, non-payment of taxes, filing of liens against the Project or the Property, or non-compliance with any federal, state, or local law, ordinance, or regulation, commencement of any lawsuit against the Partnership, cancellation or non-renewal of any insurance, cancellation or non-renewal of any subsidy agreements, or any other circumstances which, either in amount or time or otherwise materially affect the business of the Partnership or the interests of the Partners.

7.2.2 During the period of initial occupancy of the Project until the Project is 95% occupied, the Operating General Partner shall deliver to the Limited Partner, within seven days after the end of each week a report showing

occupancy of the Project.

7.2.3 During the period of occupancy and operation of the Project following the period set forth in subsection 7.2.2 hereof, the Operating General Partner shall deliver to the Limited Partner within 30 days after the end of each calendar month an operating report showing rental occupancy of the Project, cash receipts and accrued expenses.

7.2.4 Throughout the term of this Agreement, the Operating General Partner shall furnish the Limited Partner with notice of any fact causing a breach of any of the representations and warranties contained in Article 3 of the Investment Agreement or any provision of this Agreement.

7.2.5 Upon request of the Limited Partner, the Operating General Partner shall deliver to the Limited Partner a copy of its balance sheet as of the end of the most recent calendar year.

7.2.6 Throughout the term of this Agreement the Operating General Partner shall deliver to the Limited Partner at reasonable intervals reports updating the reports to be delivered pursuant to Section 2.2.1.3 of the Investment Agreement, and to the extent then applicable shall deliver to the Limited Partner copies of the following:

7.2.6.1 Monthly construction requisitions.

7.2.6.2 Occupancy approvals.

7.2.6.3 Photographs of completed Project buildings.

7.2.6.4 Cost certification of owner and builder.

7.2.6.5 All proposed change orders.

7.2.6.6 Monthly statements of cash receipts and disbursements within 15 days after the end of each month comparing the actual operations to the budget of the Project for the current month and the year-to-date, including: (a) bank reconciliation; (b) listing of accounts payable; (c) computation of surplus cash; and (d) aging of accounts receivable.

7.2.6.7 Copies of all reports provided to HUD and/or the Authority, subject to Section 11.5 hereof.

7.2.6.8 Copy of HUD -- and/or Authority -- approved rental schedule as presently in force.

7.2.6.9 Copy of annual physical inspection reports provided to HUD and/or the Authority.

7.2.6.10 An annual operating budget by no later than December 1 as to the following calendar year.

7.3 Net Worth of General Partner; Additional General Partner. The Operating General Partner agrees to maintain at all times during the term of the Partnership sufficient net worth so as to satisfy then applicable Federal tax laws and Internal Revenue Service regulations and rulings prescribing minimum net worth requirements for general partners in order to maintain the Partnership as a partnership for federal tax purposes. If (a) the General Partner or the Partnership shall be in material default in the performance of any of their respective obligations so as to seriously impair the operations or prospects of the Partnership and/or the Project, or (b) the net worth of the Operating General Partner has become impaired so as to endanger the status of the Partnership as a partnership for Federal tax purposes, or (c) the Operating General Partner shall retire or cease to exist, the Limited Partner may designate an additional or successor General Partner, who shall be admitted with whatever partnership interest he or it shall have or acquire from the Limited Partner and that of the General Partner (in the event of mandatory retirement pursuant to Section 8.3 hereof) and who shall, at the option of the Limited Partner, be the Substitute Operating General Partner, but the General Partner shall continue with its interest in profits, losses and distributions as General Partner (except in the event of mandatory retirement pursuant to Section 8.3 hereof.)

7.4 Loans from the Partners. In the event of a material default under this Agreement, under any requirements imposed upon the Partnership by the Mortgage Loan or Regulatory Agreement or otherwise that would materially adversely affect the Partnership or the Project, the General Partner (to the extent not otherwise obligated to provide the funds therefor) and the Limited Partner have the right, but not the obligation, to advance funds by way of loan to the Partnership for the purpose of curing any such default, for which each Partner who advances funds shall receive a promissory note of the Partnership bearing interest at a rate of the lesser of the maximum rate permitted under the

laws of the State of Rhode Island, or ten percent per annum and payable prior to any distributions pursuant to Sections 4.2, 4.3, or 4.4 hereof. Any such loans made by the Limited Partner shall, at the Limited Partner's sole option, be repaid as to principal and interest by reduction, in whole or in part as the case may be, of the amount of any forthcoming capital contribution or contributions payable by the Limited Partner pursuant to Section 3.2 hereof.

8. TRANSFERABILITY AND ASSIGNABILITY OF PARTNERS' INTERESTS

8.1 General Partner. The General Partner shall not sell, assign, transfer, mortgage, pledge, or otherwise encumber or dispose of its interest in the Partnership or any part or portion thereof. Any such attempted sale, assignment, transfer, mortgage or charge in violation hereof shall be void.

8.2 Limited Partner.

8.2.1 Unless the Limited Partner has first obtained the written consent of the General Partner, the Limited Partner may not assign the whole or any part of its interest in the Partnership as a Limited Partner to any person, firm, or entity; provided, however, that the foregoing shall not limit in any way the Limited Partner's right to designate a Substitute Operating General Partner or to transfer a portion of its interest in the Partnership to the Substitute Operating General Partner pursuant to Section 7.3 hereof.

8.2.2 The admission of an assignee of the Limited Partner as a substituted limited partner shall be further conditioned upon:

8.2.2.1 The assignee's being lawfully empowered to become a limited partner of the Partnership.

8.2.2.2 The written consent thereto of HUD and/or the Authority and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, if required.

8.2.2.3 The assignment instrument being in form and substance reasonably satisfactory to the Operating General Partner.

8.2.2.4 The assignor and assignee named

therein executing and acknowledging such other instrument or instruments as the Operating General Partner reasonably may deem necessary or desirable to effectuate such admission.

8.2.2.5 The assignee's written acceptance and adoption of all of the terms and conditions of this Agreement, as the same may have been amended, and written acceptance of all of the conditions of the Regulatory Agreement.

8.2.2.6 The assignee's paying or obligating itself to pay, as the Operating General Partner may determine, all reasonable expenses incurred in connection with such admission, including but not limited to, the cost of preparing, filing, and publishing any amendment to the Partnership's certificate of limited partnership, as from time to time amended, to effectuate such admission; and

8.2.2.7 The assignee's paying or obligating itself to pay when due all capital contributions owed or to be owed to the Partnership relating to the Partnership interest acquired by the assignee.

8.3 Mandatory Retirement of General Partner. Upon the occurrence of any of the events hereinafter described, the Operating General Partner shall tender its resignation in writing to the Limited Partner, which resignation shall become effective only if accepted in writing by the Limited Partner within 30 days of the date of such resignation:

(a) Any material breach of the General Partner's duty or obligations under this Agreement, the Investment Agreement, or any other agreement delivered concurrently with this Agreement which has continued for a period of ten days.

(b) Any material breach of the Mortgage or Mortgage Note, the Regulatory Agreement or any other agreement given with respect to the financing of the Project.

(c) Termination, withdrawal or reduction of any governmental subsidy relating to the Project, unless a comparable subsidy has been obtained.

(d) Failure of the Operating General Partner to meet the test for ruling purposes of a sole corporate general partner, under Internal Revenue Service Rev. Proc. 72-13, or the then-current such test applicable to the Operating General Partner at any time during the term

hereof.

If the Operating General Partner resigns pursuant to this Section, or suffers an event of default, then the Operating General Partner shall transfer all of the voting stock of the Corporation to the Limited Partner, and the Operating General Partner shall transfer all of its interest in the Partnership to a successor Operating General Partner or, if none is selected by 100% in interest of the limited partners of the Partnership, to the Partnership. In the event the Operating General Partner resigns pursuant to this Section, it shall deliver to the Limited Partner prior to the effectiveness of such resignation the documents for the Project containing the information described in Section 2.4.1.7 of the Investment Agreement.

8.4 Acquisition of General Partner Interest Following Dissolution. In the event of a dissolution of the Partnership pursuant to Section 10.1.1 hereof, the Limited Partner shall have the right to purchase the entire Partnership interest of each and all of the persons constituting the General Partner for an aggregate amount of \$1,000.

8.5 Withdrawal Rights.

8.5.1 The Withdrawing Limited Partner hereby withdraws from the Partnership.

8.5.2 At any time after the Limited Partner's capital contribution pursuant to Section 3.2.5 hereof ~~comes~~ is paid, ~~Orlando A. Andreoni~~ may withdraw as a general partner of the Partnership, provided that:

8.5.2.1 The prior written consent of the Authority has been obtained, if required; and

8.5.2.2 The Limited Partner has received an opinion of counsel satisfactory to the Limited Partner that such withdrawal will not adversely affect the classification, or result in a termination, of the Partnership for federal income tax purposes.

Upon any such withdrawal, Orlando A. Andreoni shall receive no consideration for his interest in the Partnership, all of which interest, together with any interest he may have in the stock of the Corporation, shall be transferred upon such withdrawal to William J. Canning.

9. ALLOCATION OF INCOME AND EXPENSE.

9.1 Manner of Allocation. Each item of income, gain, expense or loss of the Partnership and any tax credits shall, for purposes of the Internal Revenue Code of 1954, as amended, for each taxable year be deemed to be allocated among the Partners in the same manner as profits and losses are divided among the Partners during that taxable year pursuant to Section 4.1 hereof. The Limited Partner shall participate in profits and losses and distributions as provided in Sections 4.1, 4.2, 4.3 and 4.4 hereof from and after the date of admission into the Partnership.

9.2 Transferee Limited Partner. If the Limited Partner transfers its interest in the Partnership pursuant to the terms and conditions of this Agreement, the net profits or net losses for the fiscal year during which the transfer occurs shall be allocated between the Limited Partner and the transferee as they shall agree; provided that if the Partnership does not receive notice of the manner in which such parties have agreed such profits or losses are to be allocated between them on or before January 31 of the year following the year in which the transfer occurs, then all of such profits or losses shall be allocated as between the Limited Partner and its transferee as of the date of admission to the Partnership of the transferee.

9.3 An Election to Adjust Tax Basis. In the event of the transfer of a Partnership interest or upon the death of an individual limited partner, or in the event of the distribution of Partnership property to any limited partner, the Partnership may file an election, in accordance with applicable Treasury Regulations, to cause the basis of the Partnership property to be adjusted for Federal income tax purposes as provided by Sections 734, 743 and 754 of the Internal Revenue Code of 1954, as amended.

10. DISSOLUTION - DISTRIBUTIONS.

10.1 Dissolution. The Partnership shall terminate and dissolve upon the happening of any of the following events

10.1.1 The retirement, death, informal composition of its creditors, the making of an assignment for the benefit of creditors of, or the filing of a petition under any provision of the Bankruptcy Act of the United States by or against (unless such petition shall have been dismissed within 30 days after filing), or the insolvency, dissolu-

tion, or other cessation to exist as a legal entity of any general partner of the Partnership, unless each of the remaining persons or entities, if any, then constituting the General Partner elects to continue the business of the Partnership. In the event such remaining persons or entities do not elect to continue the business of the Partnership within 30 days after receipt of notice by the Partnership of such event otherwise causing a termination and dissolution, the Partnership shall dissolve. Upon the happening to the Operating General Partner of any of the events described in the first sentence of this Section 10.1.1, the Operating General Partner shall transfer all of the stock of the Corporation to the Limited Partner.

10.1.2 The determination by the General Partner and 100% in interest of the limited partners that the Partnership should be dissolved, in accordance with state law.

10.2 Sale of Project - Distributions Upon Dissolution and Termination. If upon the occurrence of any of the events set forth in Section 10.1 hereof the remaining general partners of the Partnership do not elect to continue, then, the Partnership shall dissolve and terminate and the Operating General Partner shall take full account of the Partnership assets and liabilities and the assets shall be liquidated as promptly as is consistent with the obtaining of the fair market value thereof. In the event there is a surplus available for distribution, such surplus, together with assets distributed in kind, shall be applied and distributed to the Partners in accordance with Section 4.4 hereof.

10.3 Authority Consent to Dissolution and Distribution. As long as any property of the Partnership is encumbered by any mortgage insured, owned, or held by the Authority, the Partnership shall not voluntarily be dissolved without the prior written approval of the Authority, and no distribution (as defined in the Regulatory Agreement) shall be made except in accordance with the requirements of the Regulatory Agreement.

10.4 Operating General Partner's Death or Retirement.

~~\*\*~~ upon the death or retirement of an Operating General Partner the remaining general partners of the Partnership elect to continue the business of the Partnership, the interest of the Operating General Partner shall be converted to that of a limited partner with the right to receive thereafter the profits, losses and distributions\*\* which such retired or deceased Operating General Partner was entitled

\*Except as otherwise provided in this Agreement, if

\*\*upon Disposition or Partial Disposition of Partnership Property and distribution upon refinancing of Partnership Property

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\*minus such portion thereof as is necessary to give the remaining General Partner an interest therein in the aggregate of no less than 1%.

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to receive prior to his death or retirement\*.

11. BOOKS OF ACCOUNT AND REPORTS.

11.1 Books of Account.

11.1.1 The Operating General Partner, at the expense of the Partnership, shall at all times keep and maintain complete and accurate books, records, and accounts of the Partnership, in accordance with practices generally used in the real estate industry applied in a consistent manner and as reported in the Partnership return of income for Federal income tax purposes, and in a manner and form acceptable to the C.P.A. firm appointed to prepare the Partnership audited financial statements, tax returns and cost certification for the Project, which firm shall be Laventhol & Horwath. The Operating General Partner shall cause to be provided, at the expense of the Partnership, to the Limited Partner (a) by November 15th of each year an estimate of the profits and losses of the Partnership for the year ending December 31st and (b) by July 20th of each year an unaudited balance sheet and statement of profit and loss of the Partnership for the preceding six months, unless the Partnership or the Limited Partner is required by regulatory authorities to obtain such unaudited balance sheets and statements of profit and loss more often, in which case the Operating General Partner shall cause to be provided, at Partnership expense, such unaudited balance sheets and statements of profit and loss as are so required, within 20 days after the close of the applicable period.

11.1.2 The books, records, and accounts of the Partnership shall be kept at the principal office of the Partnership. All of the Partners and their duly authorized representatives shall have the right to audit, examine, and make copies of the same during business hours.

11.1.3 The Partnership's books shall be kept on an accrual basis. No later than 60 days after the end of the fiscal year, the Operating General Partner shall furnish the Limited Partner with a statement of profits and losses of the Partnership, a detailed balance sheet of the Partnership, and a statement showing the amounts credited to or charged against the capital accounts of all of the Partners pursuant to this Agreement, all of which shall be audited.

11.2 Fiscal Year. The fiscal year of the Partnership shall be the calendar year.

11.3 Bank Accounts. The funds of the Partnership shall be deposited in the name of the Partnership in bank accounts insured by the Federal Deposit Insurance Corporation (the "FDIC"). Each Partner may at any time fully examine the Partnership's bank balances, statements, and accounts. All deposits, including security deposits and funds required by HUD and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project to be escrowed, and other funds not currently needed in the operation of the Partnership business shall, to the extent permitted by applicable requirements of HUD and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, be deposited in the name of the Partnership in such interest-bearing bank accounts insured by the FDIC or invested in such short-term obligations (maturing within one year) issued or guaranteed by the United States Government as shall be selected by the Operating General Partner.

11.4 Tax Returns. The Operating General Partner shall cause to be prepared at Partnership expense by Laventhol & Horwath, the required federal, state, and local tax returns. Based on the fiscal year of the Partnership, said returns shall be prepared in such a way as to maximize tax benefits to the Partners and in accordance with methods set forth by the Limited Partner, and shall be submitted to the Partners not more than 45 days after the close of each fiscal year.

11.5 Reports to HUD and/or Authority. The Operating General Partner shall cause to be provided to the Limited Partner at least 20 days prior to its submission to HUD and/or the Authority, a copy of the Partnership's annual report or audit to HUD and/or the Authority.

11.6 Financial Statements. The Operating General Partner shall advise the Limited Partner immediately of any adverse change in its financial condition of 20% or more, and upon such advice shall provide the Limited Partner with its current interim financial statements.

12. DEATH/INCOMPETENCY OF LIMITED PARTNER.

The Partnership shall not be terminated or dissolved upon the death or legal incompetency of a limited partner, or, in the case of a limited partner that is a partnership, joint venture, association, corporation, or trust, the dissolution of such limited partner. The personal representative, guardian, or other successor in interest of the

limited partner, as the case may be, shall be substituted as a limited partner in the Partnership, with all of the rights, powers, duties and obligations of such deceased, legally incompetent, or dissolved limited partner when approved by the Partnership and, if required, HUD and/or the Authority.

### 13. GENERAL PROVISIONS.

13.1 Amendments. This Agreement may be amended upon the written consent or vote of a majority in interest of the General Partner and the Limited Partner, each voting as a separate class, and upon the approval of the Authority, if required. Upon amendment of this Agreement, the Partnership's certificate of limited partnership shall also be amended, if required by law, to reflect the change.

13.2 Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be given to a party hereto by any other party hereto shall be in writing, and shall be deemed duly given \*X business \*10 days after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows: L.D.

13.2.1 If to the Partnership, the Operating General Partner, or the Corporation, to:

c/o Orlando A. Andreoni  
203 Waterman Street  
Providence, Rhode Island 02906

13.2.2 If to the Limited Partner, to:

Real Estate Partners Limited  
1901 Avenue of the Stars  
Suite 1200  
Los Angeles, California 90067

The Partnership, the Operating General Partner, the Corporation, or the Limited Partner may change its address for the purpose of this Section by giving written notice of such change to the other parties in the manner provided in this Section.

13.3 Governing Law. This Agreement shall be governed by the laws of the State of Rhode Island.

13.4 Headings. The headings of the articles and

sections of this Agreement are inserted for convenience only and are not to be deemed to constitute a part of this Agreement.

13.5 Further and Additional Documents. Each of the parties hereto agrees to execute, acknowledge, and verify, if required to do so, any and all further or additional documents as may be reasonably necessary to fully effectuate the terms of this Agreement.

13.6 Counterparts. This Agreement may be executed in counterparts, which taken together shall constitute a single document. Each executed copy of this Agreement shall be considered an original.

13.7 Binding on Successors and Assigns. Except as otherwise specifically provided herein, this Agreement shall be binding upon and inure to the benefit of the executors, administrators, successors, and assigns of the respective Partners.

13.8 No Waiver. The waiver of any breach of any term, covenant, or condition of this Agreement by any of the parties hereto shall not constitute a continuing waiver or waiver of any subsequent breach, either of the same or of any other additional or different term, covenant, or condition of this Agreement.

13.9 Severability. The parties hereto agree that in the event any court of competent jurisdiction determines that any provision of this Agreement is unlawful or unenforceable, then, and in that event each and all remaining provisions of this Agreement shall remain in full force and effect.

13.10 Attorneys' Fees. The parties hereto agree that in the event any party to this Agreement shall be required to initiate legal proceedings to enforce performance of any term or condition of this Agreement, including but not limited to, the payment of monies or the enjoining of any action prohibited hereunder, the prevailing party shall be entitled to recover such sums, in addition to any other damages or compensation awarded, as will reimburse such prevailing party for reasonable attorneys' fees and court costs incurred on account thereof.

13.11 Conflict With Agreements. In the event that any provision of this Agreement in any way tends to contradict, modify, or any way change the terms of the Regulatory

Agreement or any other agreement entered into between the Partnership and HUD and/or the Authority and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, the terms of the Regulatory Agreement or such other agreement entered into between the Partnership and HUD and/or the Authority and/or such other agency shall prevail and govern so long as the Regulatory Agreement or such other agreement is in effect and by its terms requires such result; or if any provision hereof in any way tends to limit HUD and/or the Authority and/or such other agency in the subsidizing of the Project, or the regulations and restrictions thereunder, this Agreement shall be deemed amended so as to comply with the requirements of HUD and/or such other agency. This Section 13.11 shall automatically become void as to HUD and such other agency, respectively, at such time as the Mortgage Loan upon the Project is no longer held by the Authority or HUD is no longer subsidizing the Project and at the time such other agency is no longer subsidizing the Project.

13.12 Project Inspections. Each of the Partners and their duly authorized representatives shall have the right to visit the site of the Project and to make inspections of the progress and quality of construction and management of the Project and inquiries of the General Partner, the Partnership and their representatives as to the foregoing.

13.13 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the Partnership or of the General Partner.

13.14 Consent. If at any time there is more than one limited partner in the Partnership, the term "consent of the Limited Partner" when used herein shall be interpreted to mean the consent of the majority in interest of the limited partners except where a specified vote is required, in which event such specified vote shall be required.

13.15 Remedies. Except as provided in Section 3.6 hereof, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute

or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this Section to make clear the agreement of the parties hereunder that this Agreement shall be enforceable in equity as well as at law or otherwise.

13.16 Exculpation. The Partnership and the General Partner, and creditors of either of them, shall look only to the assets of the Limited Partner for the performance of any and all obligations of the Limited Partner hereunder, it being understood and agreed that no general partner or limited partner of the Limited Partner shall have any personal liability under the terms of this Agreement or any agreement given in connection herewith.\*except for fraud or gross negligence,

13.17 Operating General Partner, General Partner and Limited Partner. The terms "Operating General Partner" and "General Partner" includes, where the context requires or permits, all or any of the general partners, or any person or entity who becomes a successor or additional

*WCC*  
*[Signature]*

general partner pursuant to this Agreement. The term "Limited Partner" shall include any person becoming an assignee or substitute Limited Partner pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Certificate of Limited Partnership the day and year first above written:

ADDITIONAL GENERAL PARTNER      GENERAL PARTNER:

Fox Point Manor Corporation

By: William J. Canning  
President

Orlando A. Andreoni

William J. Canning  
William J. Canning

WITHDRAWING LIMITED PARTNER:

Orlando A. Andreoni

William J. Canning  
William J. Canning

LIMITED PARTNER:

Real Estate Partners Limited,  
a California limited Partnership by its corporate general partner Sonnenblick-Goldman Corp. of California a California corporation

By Chal B...  
Its Chairman

State of Rhode Island )  
County of Providence ) SS.

On this 24<sup>th</sup> day of April, 1978, before me, the undersigned, a notary public in and for said county and state, personally appeared William J. Canning, known to me to be the person who is named in the within instrument, and acknowledged to me that he executed the same and swore to the truth of the above.

[SEAL]

Louise Trufee

State of Rhode Island )  
County of Providence ) SS.

On this 25<sup>th</sup> day of April, 1978, before me, the undersigned, a notary public in and for said county and state, personally appeared Orlando A. Andreoni, known to me to be the person who is named in the within instrument, and acknowledged to me that he executed the same and swore to the truth of the above.

[SEAL]

Louise Trufee

State of Rhode Island )  
County of Providence ) SS.

On this 24<sup>th</sup> day of April, 1978, before me, the undersigned, a notary public in and for said county and state, personally appeared William J. Canning, known to me to be the person who is named in the within instrument, and acknowledged to me that he executed the same and swore to the truth of the above.

[SEAL]

Louise Trufee

State of Rhode Island )  
County of Providence ) SS.

On this 25<sup>th</sup> day of April, 1978, before me, the undersigned, a notary public in and for said county and state, personally appeared Orlando B. Androni, known to me to be the person who is named in the within instrument, and acknowledged to me that he executed the same and swore to the truth of the above.

[SEAL]

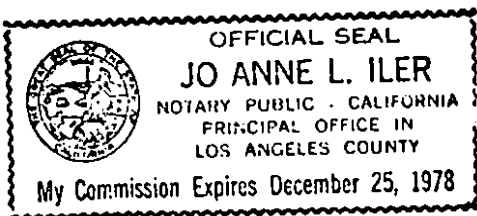
Louise Turlee

State of California )  
County of Los Angeles ) SS.

On this 11<sup>th</sup> day of April, 19  , before me, the undersigned, a notary public in and for said county and state, personally appeared Charles Batenbauer, known to me to be the Chairman of the Board of Sonnenblick-Goldman Corp. of California, the corporation that executed the within instrument and known to me to be one of the general partners of Real Estate Partners Limited, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same and swore to the truth of the above.

[SEAL]

Charles Batenbauer



State of Rhode Island

County of Providence

In Providence, in said County, on April 24, 1978, personally appeared before me WILLIAM J. CANNING to me known and known by me to be the President of Fox Point Manor Corporation and the party executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of Fox Point Manor Corporation, and swore to the truth of the above.

Louise Tingle



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