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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Office of the Secretary of State  
Corporations Division  
100 North Main Street  
Providence, Rhode Island 02903-1335

LIMITED PARTNERSHIP

CERTIFICATE OF AMENDMENT TO  
CERTIFICATE OF LIMITED PARTNERSHIP  
(To Be Filed In Duplicate Original)

The undersigned, desiring to amend the Certificate of Limited Partnership under and by virtue of the power conferred by Section 7-13-9 of the General Laws, 1956, as amended, hereby execute the following Certificate of Amendment to the Certificate of Limited Partnership:

1. The name of the limited partnership is:

Stephens Hall Development Associates, L.P.

2. The date of filing of the Certificate of Limited Partnership is November 15, 1992

3. The Certificate of Limited Partnership (as previously amended on None)  
(List dates of prior amendment(s), if applicable. If none, so state.)

is amended as follows:

[Insert amendment]

In accordance with the terms and provisions of the  
First Amended And Restated Agreement Of Limited  
Partnership Of Stephens Hall Development Associates,  
L.P. attached hereto.

RECEIVED  
SECRETARY OF STATE  
CORPORATIONS DIV.  
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**FIRST AMENDED AND RESTATED AGREEMENT  
OF  
LIMITED PARTNERSHIP  
OF  
STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P.**

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**FIRST AMENDED AND RESTATED AGREEMENT  
OF  
LIMITED PARTNERSHIP  
OF  
STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P.**

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1                                   **FIRST AMENDED AND RESTATED AGREEMENT**

2   **OF**

3   **LIMITED PARTNERSHIP**

4   **OF**

5                                   **STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P.**

6           This First Amended and Restated Agreement of Limited Partnership of Stephens Hall  
7 Development Associates, L.P., dated and effective as of the \_\_\_\_ day of June, 2000, is made by  
8 and among:

9  
10                                   SH Development Corp.  
11                                   a Rhode Island corporation,  
12                                   as the General Partner;

13  
14                                   West Elmwood Housing Development Corporation,  
15                                   a Rhode Island Corporation,  
16                                   as the Withdrawing Limited Partner;

17  
18   and

19  
20                                   The Housing Outreach Fund VIII Limited Partnership ("HOF VIII"),  
21                                   a District of Columbia limited partnership,

22  
23   and

24  
25                                   Enterprise Housing Partners III Limited Partnership ("EHP III"),  
26                                   a Delaware limited partnership,  
27                                   as the substitute Limited Partners

28   **RECITALS**

29           Stephens Hall Development Associates, L.P. (the "**Partnership**") was formed as a limited  
30 partnership under the Uniform Limited Partnership Act of the State of Rhode Island pursuant to a  
31 Certificate of Limited Partnership dated November 12, 1999 and filed with the State of Rhode  
32 Island Secretary of State on November 15, 1999, having SH Development Corp., a Rhode Island  
33 corporation, as the General Partner and West Elmwood Housing Development Corporation, a  
34 Rhode Island corporation, as the limited partner. The Partnership has been operating pursuant to  
35 a written partnership agreement dated November 12, 1999.

36           The parties hereto desire to amend and restate the partnership agreement dated November  
37 12, 1999 in order to cause the withdrawal of the Withdrawing Limited Partner and the admission



of the Limited Partner as limited partners, and to set forth more fully the rights, obligations, and duties of the General Partner and Limited Partner.

Accordingly, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

## **ARTICLE I**

### **Continuation and Business Purpose**

#### **1.01 Restatement and Continuation of Partnership**

The Withdrawing Limited Partner hereby withdraws as a limited partner of the Partnership and acknowledges having received a full refund of its Capital Contribution and each Limited Partner is hereby admitted as a limited partner of the Partnership. The General Partner and the Limited Partner, constituting all of the Partners of the Partnership, hereby amend and restate the original agreement of Stephens Hall Development Associates, L.P. in its entirety and continue the Partnership under the Act.

#### **1.02 Partnership Name**

The name of the Partnership is "Stephens Hall Development Associates, L.P.."

#### **1.03 Principal Place of Business**

The principal office of the Partnership and the office to be maintained pursuant to the Act shall be located at c/o SH Development Corp., 392 Cranston Street, Providence, Rhode Island 02907. The principal place of business of the Partnership shall be located at 392 Cranston Street, Providence, Rhode Island 02907.

#### **1.04 Registered or Resident Agent**

The name and address of the registered or resident agent of the Partnership for service of process are Sharon Conard-Wells, c/o West Elmwood Housing Development Corporation, 352 Cranston Street, Providence, Rhode Island 02907.

#### **1.05 Title to Partnership Property**

Legal title to the Partnership Property shall be in the name of the Partnership, and no Partner, individually, shall have any ownership of such Partnership Property.

#### **1.06 Purposes of the Partnership**

The purposes, nature, and general character of the business of the Partnership shall consist of:

1 (a) Acquiring, owning, developing, constructing and/or rehabilitating, leasing,  
2 managing, operating, and, if appropriate or desirable, selling or otherwise disposing of the  
3 Partnership Property or any substantial part thereof;

4 (b) During the Compliance Period, operating one hundred percent (100%) of the  
5 Units in compliance with the provisions of Section 42 of the Code; and

6 (c) Carrying on any and all activities related to the foregoing in accordance with this  
7 Agreement.

8 The purposes of this Partnership and the nature and character of its business shall not be  
9 extended, by implication or otherwise, except by written consent of the Partners.

## 10 **1.07 Partnership Term**

11 The term of the Partnership commenced on November 15, 1999 and shall continue until  
12 December 31, 2041, unless sooner terminated in accordance with Article XII. Upon termination  
13 of the Partnership, the General Partner shall take all actions necessary to terminate the  
14 Partnership in accordance with requirements of the Act.

## 15 **1.08 Filing of Certificate**

16 Immediately after the execution of this Agreement by the Partners, the General Partner  
17 shall, if required, cause the Certificate to be amended and filed in accordance with the Act. The  
18 General Partner shall immediately cause a copy of such Certificate, with evidence that the  
19 Certificate was filed in accordance with the Act, to be furnished to the Limited Partner.

# 20 **ARTICLE II**

## 21 **Certain Definitions**

### 22 **2.01 General Terms**

23 The following defined terms used in this Agreement shall have the meanings specified  
24 below:

25 **Accountants:** Finkel, DiSanto, Forsythe, Sciuto, Martin, Inc., 128 Dorrance Street,  
26 Providence, Rhode Island 02903 or such other firm of independent certified public accountants  
27 that is acceptable to ESIC.

28 **Act:** The Uniform Limited Partnership Act of Rhode Island or any corresponding  
29 provision or provisions of succeeding law, as it or they may be amended from time to time.

30 **Additional Capital Contribution:** An installment of the Limited Partner's Capital  
31 Contribution to the Partnership, the due date of which is subsequent to the Admission Date.

1           **Additional Capital Contribution Due Date:** The later of:

2                   (i)     The scheduled due date of such Additional Capital Contribution in  
3 accordance with the schedule of payments listed on Exhibit A-1; or

4                   (ii)    Thirty (30) days after receipt by the Limited Partner of the Additional  
5 Capital Contribution Notice.

6           **Additional Capital Contribution Notice:** The Notice to be delivered to the Limited  
7 Partner by the General Partner stating the date on which any Additional Capital Contribution is  
8 due, the amount of the Additional Capital Contribution and, in reasonable detail, the manner of  
9 calculation thereof.

10           **Adjusted Capital Account Deficit:** With respect to the Limited Partner, the deficit  
11 balance, if any, in the Partner's Capital Account as of the end of the relevant Fiscal Year, after  
12 giving effect to the following adjustments:

13                   (i)     Credit to such Capital Account any amounts that such Partner is obligated  
14 to restore pursuant to any provision of this Agreement, is otherwise treated as being obligated to  
15 restore under Treasury Regulation Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to  
16 restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g) and  
17 1.704-2(i)(5); and

18                   (ii)    Debit to such Capital Account the items described in Treasury Regulation  
19 Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

20           The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the  
21 provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted  
22 consistently therewith.

23           **Admission Date:** The date on which the Limited Partner is admitted to the Partnership,  
24 which shall be deemed to be the later of:

25                   (i)     The date of payment by the Limited Partner of its Capital Contribution due  
26 on the Admission Date in accordance with the schedule of payments listed on Exhibit A-1;

27                   (ii)    The date the Certificate, amended to admit the Limited Partner, if  
28 necessary, is filed as the Partnership's certificate of limited partnership in accordance with the  
29 Act; or

30                   (iii)   The execution of this Agreement by all parties hereto.

31           **Affiliate:** As to any Partner: (i) any such Partner or member of his Immediate Family;  
32 (ii) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of,  
33 any such Partner or member of his Immediate Family; (iii) any entity of which a majority of the

1 voting interests is owned by any one or more of the Persons referred to in the preceding clauses  
2 (i) and (ii); (iv) any officer, director, trustee, employee, stockholder (ten percent (10%) or more)  
3 or partner of any Person referred to in the preceding clauses (i), (ii) and (iii); and (v) any Person  
4 directly or indirectly controlling (ten percent (10%) or more), or under direct or indirect common  
5 control with, any Person referred to in the preceding clauses (i), (ii), (iii), or (iv).

6 **Agency:** The Rhode Island Housing and Mortgage Finance Corporation.

7 **Agreement:** This First Amended and Restated Agreement of Limited Partnership of  
8 Stephens Hall Development Associates, L.P., including all of the Exhibits attached hereto and  
9 made a part hereof, as amended and in effect from time to time.

10 **Appraised Value:** The value determined in the manner provided in Section 14.01.

11 **Architect:** Durkee & Brown Architects.

12 **Break-even:** The achievement, for any period, of income actually received from the  
13 normal operation of the Project (provided, however, that any rental incentives will be amortized  
14 over 12 months) which equals or exceeds all Project Expenses.

15 **Budget:** A budget prepared in accordance with Section 5.19 for the ownership and  
16 operation of the Project, reflecting the reasonably projected income and expenses for the  
17 following calendar year, that has been reviewed and accepted by the Limited Partner.

18 **Capital Account:** The capital account maintained by the Partnership for each Partner,  
19 determined in accordance with Section 7.01.

20 **Capital Contribution:** The total amount of cash or any cash equivalents contributed or  
21 agreed to be contributed to the Partnership by each Partner, including all adjustments thereto, as  
22 provided in this Agreement and Exhibit A. Any reference in this Agreement to the Capital  
23 Contribution of a substituted Partner shall include all Capital Contributions previously made by  
24 any predecessor or former Partner in respect of the Interest acquired by the substituted Partner,  
25 subject to all adjustments thereto pursuant to this Agreement.

26 **Capital Proceeds:** Sale Proceeds and Refinancing Proceeds.

27 **Cash Flow:** The amount, determined for any Fiscal Year or portion thereof, equal to the  
28 excess, if any, of

29 (i) All gross revenue collected directly or indirectly from the operations of  
30 the Project (excluding Capital Proceeds) and the Partnership plus any amounts no longer deemed  
31 necessary for the efficient operations of the Partnership by the General Partner, in the reasonable  
32 exercise of its discretion (with the consent of the Limited Partner), released from Partnership  
33 reserves which are deposited into the Partnership's general accounts, over

1 (ii) Project Expenses.

2 Cash Flow shall not be reduced by payments of any items described in the preceding clause (ii)  
3 made from the proceeds of any loans, from condemnation or insurance proceeds or directly from  
4 any reserve, or by depreciation and amortization taken into account for federal income tax  
5 purposes.

6 **Certificate:** The certificate of limited partnership for the Partnership that is prepared and  
7 filed in accordance with the Act, as such Certificate may be amended from time to time.

8 **Code:** The Internal Revenue Code of 1986, as amended from time to time, or any  
9 corresponding provision or provisions of succeeding law.

10 **Completion Date:** The later of:

11 (i) The date on which the Partnership has completed the construction and/or  
12 rehabilitation of the buildings in accordance with the relevant Project Documents, as evidenced  
13 by a certificate prepared and executed by the Architect indicating that construction and/or  
14 rehabilitation of the buildings has been completed in accordance with the relevant Project  
15 Documents, except for punch list items that are not material and do not impede the rental of the  
16 space in the buildings on a full rent paying basis, provided the Partnership has furnished funds or  
17 cash equivalents in escrow to provide for the completion of such punch list items; and

18 (ii) The receipt of a certificate of occupancy for the buildings comprising the  
19 Partnership Property including one hundred percent (100%) of the Units in the Project.

20 The intended Completion Date (the "**Target Completion Date**") is March 1, 2001.

21 **Compliance Audit Termination Date:** The date that is three (3) full tax years plus three  
22 and one-half (3.5) months after the expiration of the Compliance Period or, if the period of  
23 limitations on assessment is extended by the Partnership, the date upon which such extended  
24 period ends.

25 **Compliance Period:** The period specified in Section 42(i)(1) of the Code, as applicable  
26 to the Project.

27 **Consent of the General Partner:** The written consent or approval of the General Partner,  
28 which shall be obtained prior to the taking of any action for which it is required hereunder. If  
29 there is more than one General Partner, Consent of the General Partner shall require the  
30 affirmative consent of General Partners holding at least a majority of the aggregate Percentage  
31 Interests of the General Partners.

32 **Consent of the Limited Partner:** The written consent or approval of the Limited Partner,  
33 which shall be obtained prior to the taking of any action for which it is required hereunder. If  
34 there is more than one Limited Partner, Consent of the Limited Partner shall require the

1 affirmative consent of Limited Partners holding at least a majority of the aggregate Percentage  
2 Interests of the Limited Partners.

3 **Cost Certification:** Certification by the Accountants and approval by ESIC and the  
4 Agency, as soon as practicable after the Completion Date, of the costs of the Project, based on  
5 the Partnership's accounting records and any other documentation deemed appropriate by the  
6 Accountants.

7 **Credit:** The Low-Income Housing Tax Credit provided for under Section 42 of the Code,  
8 including the seventy percent (70%) present value new construction and rehabilitation credit  
9 and/or the thirty percent (30%) present value acquisition credit, as applicable.

10 **Credit Adjuster Advance:** An advance to the Partnership pursuant to Sections 3.03 and  
11 3.05, by the General Partner, which shall not affect its Interest or Percentage Interest.

12 **Credit Deficiency:** The amount by which the Credits received by the Limited Partner are  
13 less than the Projected Credits as adjusted by any reductions in Capital Contributions and any  
14 Credit Adjuster Advances pursuant to Sections 3.03(b) and (c). For this purpose, the Limited  
15 Partner shall be considered to have received Credits in the amount allocated to the Limited  
16 Partner on the Partnership's federal income tax returns reduced by: (i) any adjustment of the  
17 Credits reported on the Partnership's tax return that is made by the IRS or a court in a Final  
18 Determination; and (ii) the amount of any recapture or claimed recapture of such Credits other  
19 than recapture caused by the action of the Limited Partner.

20 **Designated Proceeds:** The sum of: (i) proceeds of the Loans and any grants; (ii)  
21 insurance proceeds arising out of casualties as available from time to time; (iii) net rental income  
22 prior to the Completion Date; and (iv) Capital Contributions due by the Completion Date which  
23 are to be used for construction of the Project pursuant to the Projections.

24 **Development Advance:** The advances to the Partnership to be made by the General  
25 Partner in the amounts and under the circumstances provided in Section 5.13(b).

26 **Development Fee:** The fees pursuant to the Development Services Agreement attached  
27 hereto as Exhibit C and payable to the Person indicated on Exhibit A-4.

28 **Environmental Hazard:** Any hazardous or toxic substance, waste or material, or any  
29 other substance, pollutant, or condition that poses a risk to human health or the environment,  
30 including, but not limited to: (i) any "hazardous substance" as that term is defined under the  
31 Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.  
32 Section 9601, *et seq.* as amended; (ii) petroleum in any form, lead-based paint, asbestos, urea  
33 formaldehyde insulation, methane gas, polychlorinated biphenyls ("PCBs") or radon, except for  
34 ordinary and necessary quantities of office supplies, cleaning materials and pest control supplies  
35 stored in a safe and lawful manner and petroleum products contained in motor vehicles; (iii) any  
36 underground storage tanks; (iv) accumulations of debris, mining spoil or spent batteries, except  
37 for ordinary garbage stored in receptacles for regular removal; or (v) any other condition that

could result in liability for an owner or operator of the Project under any federal, state, or local law, rule, regulation or ordinance.

**Environmental Laws:** (i) The Clean Air Act; (ii) the Clean Water Act; (iii) the Resource Conservation and Recovery Act; (iv) the Toxic Substance Control Act; (v) the Safe Drinking Water Control Act; (vi) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.* as amended; (vii) the Occupational Safety and Health Act; and (viii) any other federal, state, or local law, regulation, rule, or ordinance pertaining to public health or employee health and safety.

**Environmental Reports:** The Phase I environmental assessment report dated September 17, 1999 prepared by Environmental Concepts; the Asbestos Inspection Report dated November 22, 1999 by RI Analytical Laboratories, Inc. and the Underground Storage Tank Investigation Report dated November 26, 1997 prepared by UST Corporation.

**Equity Advance:** The loan made by EHP III to the Partnership pursuant to Section 3.10.

**Equity Advance Due Date:** The date that is ten (10) days after receipt by EHP III of the Equity Advance Notice.

**Equity Advance Notice:** The Notice to be delivered to EHP III by the General Partner stating the date on which any advance under the Equity Advance Note is due, the amount of the Equity Advance and, in reasonable detail, the manner of calculation thereof, and the certifications described in Section 3.02(c) required to be provided by the General Partner to EHP III in the Equity Advance Notice.

**Equity Advance Note:** The note evidencing the Equity Advance.

**ESIC:** The Enterprise Social Investment Corporation, a Maryland corporation, which is the general partner of The Housing Outreach Fund VIII Limited Partnership and of Enterprise Housing Partners III Limited Partnership.

**Event of Bankruptcy:** With respect to any Person:

(i) The entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(ii) The commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by such Person to the appointment of

1 or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other  
2 similar official) for such person or for any substantial part of his or its property, or the making by  
3 such Person of any assignment for the benefit of creditors, or the taking of action by such Person  
4 in furtherance of any of the foregoing;

5 (iii) The commencement against such Person of an involuntary case under the  
6 federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable  
7 federal or state bankruptcy insolvency or similar laws which has not been vacated, discharged or  
8 bonded within sixty (60) consecutive days;

9 (iv) The admission by such Person of his or its inability to pay his or its debts  
10 as they become due; or

11 (v) Such Person becoming "insolvent" by the taking of any action or the  
12 making of any transfer or otherwise, as insolvency is or may be defined pursuant to the federal  
13 bankruptcy laws, the Uniform Fraudulent Conveyances Act, any state or federal act or law, or the  
14 ruling of any court.

15 **Extended Use Agreement:** The agreement to be entered into between the Partnership and  
16 the Agency as required pursuant to Section 42(h)(6) of the Code.

17 **Extended Use Period:** The period specified in Section 42(h)(6)(D) of the Code.

18 **Fair Market Value:** A calculation, reviewed by the Accountants, of the amount the  
19 Partners would receive upon a distribution pursuant to Article XII upon the liquidation of the  
20 Partnership after the sale of the Partnership Property by the Partnership for its Appraised Value  
21 and allocation of the resulting gain or loss pursuant to Section 7.02.

22 **Fee Agreements:** The fee agreements of even date herewith described on Exhibit A-4,  
23 and which are attached hereto as Exhibits.

24 **Fee Guaranty Advance:** An advance to the Partnership pursuant to Section 5.15 by the  
25 General Partner, which shall not affect its Interest or Percentage Interest.

26 **Final Determination:** With respect to any issue, the earliest to occur of: (i) a decision,  
27 judgment, decree, or other order being issued by any court of competent jurisdiction, which  
28 decision, judgment, decree, or other order has become final (i.e., all allowable appeals requested  
29 by the parties to the action have been exhausted or the time for such appeals has expired); (ii) the  
30 IRS having entered into a binding agreement with the Partnership or having reached a final  
31 administrative or judicial determination which, whether by law or agreement, is not subject to  
32 appeal; or (iii) the expiration of the applicable statute of limitations.

33 **Fiscal Year:** The calendar year or such other year that the Partnership is required by the  
34 Code to use as its taxable year.



1       **Gain:** The income and gain of the Partnership for federal income tax purposes arising  
2 from a sale or other disposition of all or any portion of the Partnership Property. If the value at  
3 which an asset is carried on the books of the Partnership pursuant to the capital account  
4 maintenance rules of Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis  
5 and gain is recognized from a disposition of such asset, the gain shall be computed by reference  
6 to the asset's book basis rather than its adjusted tax basis.

7       **General Partner:** SH Development Corp., a Rhode Island corporation, and any additional  
8 or substitute general partners of the Partnership named in any duly adopted amendment to this  
9 Agreement. If there is more than one general partner, the term "General Partner" shall refer  
10 collectively to all such general partners.

11       **Guarantor:** West Elmwood Housing Development Corporation, a Rhode Island  
12 corporation.

13       **Guaranty Agreements:** The guaranty agreements of even date herewith described on  
14 Exhibit A-4, and which are attached hereto as Exhibits.

15       **Home Loans:** The two (2) HOME loans in the amount of \$69,439 and \$430,561 made  
16 by the Agency in December, 1999 to the Partnership, to finance the acquisition and rehabilitation  
17 of the Partnership Property.

18       **Immediate Family:** With respect to any Person, his or her spouse, children, including  
19 adopted children, stepchildren, parents, parents-in-law, nephews, nieces, brothers, sisters,  
20 brothers-in-law, and sisters-in-law, each whether by birth, marriage, or adoption, as well as any  
21 *inter vivos* trusts created for the benefit of such Person or any of the foregoing.

22       **Interest:** As to any Partner, such Partner's right, title, and interest in and to any and all  
23 assets, distributions, losses, profits and shares of the Partnership, whether cash or otherwise, and  
24 any other interests and economic incidents of ownership whatsoever of such Partner in the  
25 Partnership.

26       **Interest Component:** An amount equal to the accrued interest under the Equity Advance  
27 Note.

28       **IRS:** The Internal Revenue Service.

29       **Lease-up Date:** The date on which (i) 95% of the residential Units are occupied by  
30 Qualifying Tenants, (ii) actual rental income for the prior month is at least 95% of the estimated  
31 potential rent shown on the Projections and (iii) the Project is operating at Break-even for 3  
32 consecutive months.

33       **Lease-up Period:** The period commencing on the closing date and ending when the  
34 Project achieves one hundred percent (100%) Qualified Occupancy.

1       **LIH Adjustment Limit:** The amount determined as of any relevant date by which the  
2 sum of (i) the Development Fee paid or to be paid to the General Partner or its Affiliates and (ii)  
3 all distributions actually made as of such date to the General Partner or its Affiliates, exceeds the  
4 aggregate Credit Adjuster Advances previously made pursuant to Sections 3.03 and 3.05.

5       **Limited Partner:** The Housing Outreach Fund VIII Limited Partnership, a District of  
6 Columbia limited partnership, Enterprise Housing Partners III Limited Partnership, a Delaware  
7 limited partnership, and any Person who becomes a Substitute Limited Partner as provided  
8 herein, in each such person's capacity as a limited partner. If there is more than one limited  
9 partner of the Partnership, the term "Limited Partner" shall refer collectively to all such limited  
10 partners.

11       **Loan Documents:** With respect to each Loan, any and all documents executed by the  
12 Partnership in connection with such Loan, including, without limitation, any of the following:  
13 loan applications, loan commitments, notes, mortgages, regulatory agreements, building loan  
14 agreements, security agreements, and financing statements.

15       **Loans:** The loans shown on Exhibit A-3, and any other loans made to the Partnership  
16 with the Consent of the Limited Partner that are secured by the Project.

17       **Loss:** The loss of the Partnership for federal income tax purposes arising from a sale or  
18 other disposition of all or any portion of the Partnership Property. If the value at which an asset  
19 is carried on the books of the Partnership pursuant to the capital account maintenance rules of  
20 Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis and loss is recognized  
21 from a disposition of such asset, the loss shall be computed by reference to the asset's book basis  
22 rather than its adjusted tax basis.

23       **Management Agent:** Ferland Property Management, a Rhode Island corporation.

24       **Minimum Gain:** The amount determined by computing for each Nonrecourse Liability  
25 and Partner Nonrecourse Debt, the amount of Gain, if any, that would be realized by the  
26 Partnership if it disposed of the asset securing such liability for no consideration other than full  
27 satisfaction of the liability, and by then aggregating the separately computed Gains. For  
28 purposes of determining the amount of such Gain with respect to a particular Nonrecourse  
29 Liability or Partner Nonrecourse Debt, the adjusted basis for federal income tax purposes (or its  
30 adjusted book value if it is carried on the Partnership's books, maintained in accordance with  
31 Treasury Regulation Section 1.704-1(b)(2)(iv), at a value different from its adjusted tax basis) of  
32 the asset securing the liability shall be allocated among all the liabilities that the asset secures in  
33 the manner set forth in Treasury Regulation Section 1.704-2(d)(2)(ii) (or successor provisions).  
34 It is the intent that Minimum Gain shall be computed in accordance with Treasury Regulation  
35 Section 1.704-2.

36       **Mortgagees:** The payees under the Loans, together with any successors or assigns in  
37 such capacity.

1       **Mortgage Notes:** The notes executed by the Partnership in favor of the Mortgagees for  
2 each of the Loans.

3       **Net Cash Flow:** The amount, determined for any Fiscal Year or portion thereof, equal to  
4 the excess, if any, of

5               (i)     Cash Flow, over

6               (ii)    the aggregate amount of the fees payable from Cash Flow in such year set  
7 forth on Exhibit A-4.

8       **Net Losses:** The net loss of the Partnership for federal income tax purposes for each  
9 taxable year, calculated without regard to Gain or Loss and without regard to those items that are  
10 specially allocated in accordance with Regulatory Allocations or otherwise pursuant to Section  
11 7.03; *provided, however*, that in determining net loss (i) any tax-exempt income received by the  
12 Partnership shall be included as an item of gross income, (ii) any expenditure of the Partnership  
13 described (or treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(b) as described) in  
14 Section 705(a)(2)(B) of the Code shall be treated as a deductible expense, (iii) if the fair market  
15 value on the date that the asset is contributed to the Partnership (or if the basis of such asset for  
16 book purposes is adjusted under the Income Tax Regulations, such adjusted book basis) differs  
17 from its adjusted basis for federal income tax purposes at the beginning of such year or other  
18 period, in lieu of the depreciation, amortization and other cost recovery deductions taken into  
19 account in computing such taxable income or loss, the amount for depreciation, amortization and  
20 other cost recovery deductions shall be equal to an amount which bears the same ratio to such  
21 beginning fair market value (or adjusted book basis) as the federal income tax depreciation,  
22 amortization or other cost recovery deduction for such year or other period bears to such  
23 beginning adjusted tax basis, and (iv) if the value at which an asset is carried on the books of the  
24 Partnership differs from its adjusted tax basis and gain or loss is recognized from a disposition of  
25 such asset, the gain or loss shall be computed by reference to the asset's book basis rather than its  
26 adjusted tax basis.

27       **Net Profits:** The taxable income of the Partnership for federal income tax purposes for  
28 each taxable year, calculated without regard to Gain or Loss and without regard to those items  
29 which are specially allocated in accordance with the Regulatory Allocations or otherwise  
30 pursuant to Section 7.03; *provided, however*, that in determining taxable income (i) any tax-  
31 exempt income received by the Partnership shall be included as an item of gross income, (ii) any  
32 expenditure of the Partnership described (or treated under Treasury Regulation Section 1.704-  
33 1(b)(2)(iv)(b) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible  
34 expense, (iii) if the fair market value on the date that the asset is contributed to the Partnership  
35 (or if the basis of such asset for book purposes is adjusted under the Income Tax Regulations,  
36 such adjusted book basis) differs from its adjusted basis for federal income tax purposes at the  
37 beginning of such year or other period, in lieu of the depreciation, amortization and other cost  
38 recovery deductions taken into account in computing such taxable income or loss, the amount for  
39 depreciation, amortization and other cost recovery deductions shall be equal to an amount which  
40 bears the same ratio to such beginning fair market value (or adjusted book basis) as the federal

1 income tax depreciation, amortization or other cost recovery deduction for such year or other  
2 period bears to such beginning adjusted tax basis, and (iv) if the value at which an asset is carried  
3 on the books of the Partnership differs from its adjusted tax basis and gain or loss is recognized  
4 from a disposition of such asset, the gain or loss shall be computed by reference to the asset's  
5 book basis rather than its adjusted tax basis.

6 ***Nonrecourse Liability:*** Any liability to the extent that no Partner or related person bears  
7 (or is deemed to bear) the economic risk of loss within the meaning of Treasury Regulation  
8 Section 1.752-2.

9 ***Notice:*** A writing containing the information required by this Agreement and sent by  
10 registered or certified mail, postage prepaid, return receipt requested, or sent by commercial  
11 delivery service, by hand delivery, or by telecopy, paid for by the sender, to a Partner at the last  
12 address or addresses designated for such purpose by such Partner in Section 15.02 or as provided  
13 therein, the date of receipt of such registered mail or certified mail or the date of actual receipt of  
14 such writing by commercial delivery service, hand delivery or telecopy, being deemed the date  
15 of such Notice.

16 ***Notice Certifications:*** The certifications described in Section 3.02(c) and more fully set  
17 forth in Exhibit A-7 required to be provided by the General Partner to the Limited Partner in the  
18 Additional Capital Contribution Notices.

19 ***Operating Deficit:*** With respect to any period of time beginning after the Completion  
20 Date, the amount by which Project Expenses exceed the sum of: (i) collected gross receipts from  
21 the Project (including government subsidies actually received during such period); and (ii)  
22 amounts available for the payment of such Project Expenses in the Operating Reserve.

23 ***Operating Deficit Contribution:*** A capital contribution to the Partnership by the General  
24 Partner, which shall be required under the circumstances described in Section 5.14.

25 ***Operating Reserve:*** The reserve to be funded in accordance with Section 5.18.

26 ***Partner or Partners:*** The General Partner and the Limited Partner, either individually or  
27 collectively.

28 ***Partner Nonrecourse Debt:*** Any Partnership liability to the extent the liability is  
29 nonrecourse for purposes of Treasury Regulation Section 1.1001-2 and a Partner (or related  
30 person (within the meaning of Treasury Regulation Section 1.752-4(b)) bears the economic risk  
31 of loss under Treasury Regulation Section 1.752-2.

32 ***Partnership:*** Stephens Hall Development Associates, L.P., a limited partnership formed  
33 under and pursuant to the Act.

34 ***Partnership Property:*** The Partnership's fee simple interest in the land and  
35 improvements comprising a project known as Stephens Hall, which contains thirty-two (32)

Units in one (1) building plus parking and which also has a separate parcel for parking and which is located on two (2) sites in Providence, Rhode Island, the legal description and street address of which is set forth on Exhibit B attached and made a part hereof, together with such additions or improvements thereto as may hereafter be acquired by the Partnership in accordance with this Agreement.

**Percentage Interest:** As to any Partner, the percentage in the Partnership shown opposite the name of such Partner in Exhibit A, as it may be amended from time to time in accordance with this Agreement.

**Person:** An individual or entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, cooperative, or association and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so requires.

**Project:** The aggregate of all of the individual buildings and dwelling Units and the common areas located in or around the Partnership Property.

**Project Documents:** The construction contracts, plans and specifications, agreements with architects and engineers, the Fee Agreements, the Guaranty Agreements, any Grant Documents, the Extended Use Agreement and any other document or instrument executed in connection with any of the aforesaid documents.

**Project Expenses:** All costs and expenses of any type incurred on an accrual basis incident to the equipping, financing, ownership and operation of the Project, including payments of fees to the Partners or their Affiliates (other than fees the payment of which is contingent on the amount of Cash Flow), taxes, required payments of principal and interest on any Loans and any other Partnership loans or obligations (including loans from Partners except for Credit Adjuster Advances or Fee Guaranty Advances), costs of capital improvements to the Partnership Property incurred after the Completion Date and not funded or to be funded from the Partnership's Replacement Reserve (described on Exhibit A-6), and the funding of required Replacement Reserves in accordance with Exhibit A-6.

**Projected Credits:** The aggregate amount of Credits projected to be received by the Limited Partner based on the projections prepared in accordance with Section 3.03(a).

**Projections:** The General Partner's projections of the anticipated results of the operation of the Partnership attached hereto as Exhibit H to this Agreement.

**Qualified Occupancy:** The occupancy of a Unit by a Qualifying Tenant or the state of being held for occupancy by a Qualifying Tenant after such Unit becomes vacant subsequent to its rental to a Qualifying Tenant.

**Qualifying Tenant:** A tenant whose income does not exceed the relevant limit set forth in Section 42(g)(1) of the Code.

1       **Refinancing Proceeds:** The excess of the gross proceeds of any borrowings by the  
2 Partnership other than the Loans over the sum of the following to the extent paid out of such  
3 gross proceeds: (i) any amounts disbursed to repay then existing loans of the Partnership and to  
4 pay and provide for all debts and obligations of the Partnership then to be paid or which are  
5 otherwise then due (not including, however, any Operating Deficit Contributions made to the  
6 Partnership by the General Partner), (ii) all reasonable expenses of such borrowings, including,  
7 without limitation, all commitment fees, brokers' commissions, and attorneys' fees, (iii) all  
8 amounts paid to improve the Partnership Property or for any other purpose in order to satisfy  
9 conditions to or established in connection with such borrowings, (iv) the amount of any deferred  
10 portion of management fees, and (v) any amounts used to meet the operating expenses of the  
11 Partnership Property or set aside by the General Partner for reserves.

12       **Regulatory Allocations:** The special allocations set forth in Sections 7.03(a), (b), (c), and  
13 (e), which are intended to comply with certain requirements of Treasury Regulation Sections  
14 1.704-1(b) and 1.704-2.

15       **Replacement Reserve:** The reserve to be funded in accordance with Section 5.18.

16       **Sale Proceeds:** The excess of all cash receipts and other consideration arising from the  
17 sale or other disposition of all or any portion of the Partnership Property or any proceeds realized  
18 from condemnation, insured casualty, or insured title defect, but excluding proceeds from rental  
19 interruption insurance or a temporary condemnation in the nature of a lease, if any, over the sum  
20 of the following to the extent paid out of such cash receipts and other consideration: (i) the  
21 amount of cash disbursed or to be disbursed in connection with or as an expense of such sale or  
22 other disposition, (ii) the amount necessary for the payment of all debts and obligations of the  
23 Partnership arising from or otherwise related to such sale or other disposition or to which the  
24 Partnership Property is subject and which are otherwise then due (not including, however, any  
25 Operating Deficit Contributions made to the Partnership by the General Partner), (iii) the amount  
26 of any deferred portion of management fees, and (iv) any amounts set aside by the General  
27 Partner for reserves.

28       **State or state:** All states and the District of Columbia.

29       **Substitute Limited Partner:** Any Person admitted from time to time to the Partnership as  
30 a Limited Partner in accordance with the provisions of Article X hercof and so reflected on  
31 Exhibit A, as such Exhibit A may be amended from time to time in accordance with this  
32 Agreement.

33       **Tax Matters Partner:** The General Partner.

34       **Tenant Income Certification:** A tenant's initial tax credit certification, including the  
35 tenant income certification/certificate of resident eligibility, all sources used in verifying income  
36 and assets (including, but not limited to, third party verification, checking and savings accounts,  
37 pay stubs, verification of assets, etc.), a copy of one completed lease signed and dated for each

1 building, and a copy of the first and last page of each resident lease in each building showing the  
2 start date of the lease and signature of the resident(s) and owner.

3 **Term:** The period of time the Partnership shall continue in existence as stated in Section  
4 1.07.

5 **Title Policy:** That certain title policy issued by Stewart Title Guaranty Company in the  
6 amount (the "**Owner's Title Policy Amount**") shown on Exhibit A-2, in favor of the Partnership  
7 and in force as of the date hereof insuring the Partnership's title to the Partnership Property.

8 **Total Benefit Amount:** The total benefit amount set forth in Exhibit A-2 and more fully  
9 described in Section 7.02(a).

10 **Total LIH Reduction Amount:** The amount defined in Section 3.03(b)(iv).

11 **Treasury Regulations:** The temporary and final regulations promulgated under the Code,  
12 as such regulations may be amended from time to time (including corresponding provisions of  
13 succeeding regulations).

14 **Units:** The individual units of residential rental housing located on the Partnership  
15 Property.

## 16 **2.02 Rules of Construction**

17 (a) Unless the context clearly indicates to the contrary, the following rules apply to  
18 the construction of this Agreement:

19 (i) Words importing the singular number include the plural number and  
20 words importing the plural number include the singular number;

21 (ii) Words of the masculine gender include correlative words of the feminine  
22 and neuter genders, and vice-versa;

23 (iii) The table of contents and the headings or captions used in this Agreement  
24 are for convenience of reference and do not constitute a part of this Agreement, nor affect its  
25 meaning, construction, or effect;

26 (iv) Words importing persons include any individual, corporation, partnership,  
27 limited liability company, joint venture, association, joint stock company, trust, unincorporated  
28 organization, or government or agency or political subdivision thereof;

29 (v) Any reference in this Agreement to a particular "Article," "Section," or  
30 other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the  
31 context shall otherwise require;

(vi) Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

(vii) When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

(b) In the event there is more than one Limited Partner or more than one General Partner, the following additional rules of construction shall apply unless otherwise provided:

(i) Allocations to the General Partner and Limited Partner of Gain, Net Profits, Net Losses, Loss and credits under Article VII, and distributions of Net Cash Flow and Capital Proceeds under Article VIII shall be further allocated and/or distributed between or among the General Partners and/or Limited Partners in proportion to each General or Limited Partner's respective Percentage Interest as set forth on Exhibit A. Unless otherwise provided herein, no General Partner shall have a superior right to receive distributions than any other General Partner and no Limited Partner shall have a superior right to receive distributions than any other Limited Partner;

(ii) With respect to any matter on which the approval or ratification of the General or Limited Partners is required or may be given, such approval or ratification shall not be deemed to have been given unless given by Consent of the General or Limited Partners, as the case may be;

(iii) With respect to any matter on which the approval or ratification of the General or Limited Partners is required or may be given, each General or Limited Partner, as the case may be, shall be entitled to vote; and

(iv) Unless otherwise provided herein, the General Partner's obligation to make Credit Adjuster Advances pursuant to Sections 3.03 and 3.05, Development Advances pursuant to Section 5.13, Operating Deficit Contributions pursuant to Section 5.14, and Fee Guaranty Advances pursuant to Section 5.15, and the General Partner's obligation to purchase the Limited Partner's Interest pursuant to Section 5.17, shall be joint and several as to each General Partner.

### ARTICLE III

#### Partnership Interests and Sources of Funds

##### 3.01 Identity of Partners and Percentage Interests

The names and business addresses of the General Partner and the Limited Partner are as identified on Exhibit A, as such Exhibit may be amended from time to time in accordance with this Agreement and each such Partner has the Percentage Interest indicated next to its name.



1   **3.02   Capital Contributions**

2           (a)   *General Partner.* Subject to the provisions of this Section 3.02, the General  
3 Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of  
4 the Partnership, by wire transfer or other form of available funds, the aggregate amount set forth  
5 after the General Partner's name on Exhibit A. In addition, in exchange for its Interest, the  
6 General Partner agrees to perform the following services:

7                   (i)   Syndication Services. The General Partner will perform services in  
8 connection with syndication and sale of the Limited Partner Interest to the Limited Partner,  
9 including providing the Limited Partner with all relevant information; preparation of a financial  
10 plan to admit the Limited Partner; conducting due diligence on behalf of the Partnership in  
11 connection with the admission of the Limited Partner; and preparation of appropriate disclosure  
12 documents related to the admission of the Limited Partner in compliance with all federal, state  
13 and local securities laws.

14                   (ii)   Financing Services. The General Partner will perform services in  
15 connection with financing, including obtaining commitments for all permanent financing for the  
16 Project, including providing information to prospective lenders; negotiating final loan  
17 commitments; coordinating all loan closing checklist requirements with lenders; and monitoring  
18 loan requirements during the term of the loans.

19                   (iii)   Acquisition Services. The General Partner will perform services in  
20 connection with the acquisition of the Partnership Property, including negotiating the purchase  
21 agreement with the seller of the Partnership Property acting on behalf of the Partnership with  
22 federal, state and local authorities with respect to the Project; monitoring compliance with  
23 zoning, land-use and other requirements; and preparing or causing to be prepared such third  
24 party studies as it deems necessary in connection with the acquisition of the Partnership  
25 Property.

26           (b)   *Limited Partner.* Subject to the provisions of this Section 3.02, the Limited  
27 Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of  
28 the Partnership, by wire transfer or other form of available funds, the aggregate amount set forth  
29 after the Limited Partner's name on Exhibit A, plus an amount equal to the accrued interest under  
30 the Equity Advance Note (the "*Interest Component*"). The Interest Component shall be  
31 contributed to the Partnership on the due date of the Equity Advance Note. EHP III may satisfy  
32 its obligation to contribute \$1,708,068 (as part of the Third Installment set forth on Exhibit A-1)  
33 and the Interest Component by retaining such amounts in satisfaction of the principal balance  
34 and accrued interest on the Equity Advance Note owed by the Partnership to EHP III.

35                   The Limited Partner shall pay its Capital Contribution in installments, in the  
36 amounts and at the times indicated on Exhibit A-1; *provided, however*, that the date for payment  
37 of any Additional Capital Contribution shall be the Additional Capital Contribution Due Date,  
38 which may be deferred in accordance with Section 3.02(d). Except as provided in this Section  
39 3.02(b) and Exhibit O, the Limited Partner shall not be obligated to make any Capital

Contributions to the Partnership, and all required Capital Contributions shall be subject to any applicable adjustments.

(c) *Notice Certifications.* The General Partner shall deliver an Additional Capital Contribution Notice to the Limited Partner as set forth in Exhibit A-7 not more than forty-five (45) days and not less than thirty (30) days in advance of the due date of each Additional Capital Contribution; and (b) an Equity Advance Notice to EHP III not more than fifteen (15) days and not less than ten (10) days in advance of the due date of each advance under the Equity Advance Note.

(d) *Deferral of Additional Capital Contribution Due Date.* Should the General Partner fail to certify that each of the relevant Notice Certifications is true and correct in its Additional Capital Contribution Notice, and to reconfirm the accuracy of the relevant Notice Certifications as of the due date of any given Additional Capital Contribution, or should any of the relevant Notice Certifications be in fact untrue, the Additional Capital Contribution Due Date shall be deferred until thirty (30) days after such time as the General Partner is able to and does certify that each of the relevant Notice Certifications is true, and each of the relevant Notice Certifications is in fact true, and failure to pay such Additional Capital Contribution prior to such time shall not constitute a default of the Limited Partner.

(e) [Intentionally Omitted]

(f) *Discretion to Waive Preconditions.* The Limited Partner, in its sole and absolute discretion, may waive, in whole or in part, any one or more preconditions to the payment of any Additional Capital Contribution and may accelerate or otherwise pay all or a portion of the amount of such Additional Capital Contribution that would have been due had all of the preconditions been satisfied. The waiver of any precondition, in whole or in part, shall not prevent the Limited Partner from asserting the failure of the precondition as a defense against the requirement of paying the remainder of an Additional Capital Contribution or any other Additional Capital Contribution. Upon request from the Limited Partner, the General Partner, with the assistance of the Accountants, shall provide the information necessary for the Limited Partner to determine the necessity and amount of an acceleration of any Additional Capital Contribution.

(g) *Default.* In the event that the Limited Partner fails to pay any portion of any Additional Capital Contribution (as such Additional Capital Contribution may be adjusted in accordance with Section 3.03) by the Additional Capital Contribution Due Date (as the same may be deferred pursuant to Section 3.02(d)) and any such failure is not cured within forty-five (45) days after written Notice of such failure, the Limited Partner shall be deemed to be in default of its obligations under this Agreement and the General Partner shall be entitled to take all actions available to the Partnership, including, without limitation, instituting a suit at law or in equity; *provided, however*, in the event of a Final Determination in favor of the Partnership, the defaulting Limited Partner shall pay to the Partnership all Additional Capital Contributions and accrued interest at the prime rate as published from time to time by The Wall Street Journal plus two percent (2%) thereon, such payment shall constitute the sole remedy of the Partnership under

1 this Section 3.02. Notwithstanding any provisions of Section 3.02, upon payment of all amounts  
2 owed pursuant to the terms of this Section 3.02(g) as a result of the default of the Limited  
3 Partner, and provided such payment is received prior to the acquisition by another of the  
4 defaulting Limited Partner's Interest, the Limited Partner shall be fully reinstated to its former  
5 Interest and Percentage Interest in the Partnership, including, but not limited to, the defaulting  
6 Limited Partner's former share of distributions, as though a default under this Section 3.02(g) had  
7 not occurred.

8 (h) *Sale of Limited Partner's Interest.* Subject to the provisions of Section 3.02(g) in  
9 the event of a default pursuant to Section 3.02(g), the Partnership may offer to sell the defaulting  
10 Limited Partner's Interest first to the non-defaulting Limited Partners, and if they do not  
11 collectively purchase all of the defaulting Limited Partner's Interest, then the balance to any other  
12 Person on such commercially reasonable terms and conditions as the General Partner deems  
13 most favorable under the circumstances. Any amount that the Person acquiring the Interest of  
14 the defaulting Limited Partner shall pay in consideration of the acquisition of such Interest shall  
15 be applied in the following order: (i) to the payment of all reasonable fees and expenses incurred  
16 by the Partnership in connection with such sale; (ii) to the payment of the Additional Capital  
17 Contribution payment and any interest thereon then required to be paid by the defaulting Limited  
18 Partner; (iii) to the payment, if any, of any future Additional Capital Contributions of the  
19 defaulting Limited Partner; and (iv) any balance to the defaulting Limited Partner. In no event  
20 may a sale under this Section 3.02(h) be made to the General Partner or any Affiliate thereof.

21 (i) *Obligations of Defaulting Limited Partner upon Sale.* The obligations of a  
22 defaulting Limited Partner to the Partnership shall be extinguished upon completion of the  
23 transfer of the defaulting Limited Partner's Interest to a purchaser described in Section 3.02(h);  
24 *provided, however,* that the obligation of the defaulting Limited Partner to make Additional  
25 Capital Contributions shall only be extinguished by, and to the extent of, the aggregate of  
26 payments to be made by the purchaser or purchasers of the defaulting Limited Partner's Interest.  
27 The obligation of the Limited Partner to make payments of its Capital Contributions is  
28 nonrecourse to the partners of the Limited Partner, and the partners of the Limited Partner shall  
29 have no personal liability in the event of any default by the Limited Partner.

30 (j) *Rights of Nondefaulting Limited Partners.* All rights and benefits of a defaulting  
31 Limited Partner attributable to such Partner's Interest in the Partnership shall be suspended  
32 during the period of default, and such suspension shall terminate on the date of the curing of such  
33 default (if such curing is permitted under Section 3.02(g)), or upon the admission of a purchaser  
34 of such Interest pursuant to this Section as a Substitute Limited Partner. Upon the termination of  
35 such defaulting Limited Partner's Interest in the Partnership, all rights and benefits of such  
36 defaulting Limited Partner attributable to such Partner's Interest in the Partnership shall  
37 terminate. If such suspension is in effect at the end of the Partnership's Fiscal Year, the profits  
38 and losses and Credits attributable to the defaulting Limited Partner's Interest during the period  
39 of suspension that have not been allocated to such defaulting Limited Partner in a tax return filed  
40 by the Partnership shall be allocated to the extent permitted under the Code and the Treasury  
41 Regulations thereto and this Agreement, to the non-defaulting Limited Partners, pro rata in

1 accordance with their Interests, until the admission of a Substitute Limited Partner in place of the  
2 defaulting Limited Partner.

3 (k) *Disputes.* In the event of a dispute between the Limited Partner and the General  
4 Partner and/or the Partnership as to the obligation to make, or the amount of, any Additional  
5 Capital Contribution, the Limited Partner may (but shall not be obligated to) deposit such  
6 Additional Capital Contribution in an escrow account pending a resolution of such dispute.  
7 Interest earned on such Additional Capital Contribution shall be paid to the Partnership at the  
8 time such Additional Capital Contribution is paid to the Partnership. If such Additional Capital  
9 Contribution is not paid to the Partnership as an installment of the Limited Partner's Capital  
10 Contribution, the interest earned on the Additional Capital Contribution shall be returned to the  
11 Limited Partner. In the event that the Limited Partner so deposits an Additional Capital  
12 Contribution or any disputed portion thereof in an escrow account, the Limited Partner shall not  
13 be in default under Section 3.02(g) and the Partnership and/or the General Partner shall not be  
14 entitled to exercise any of the rights or remedies contained in Section 3.02(g), (h), or (i).

### 15 3.03 LIH Adjustments to Capital Contributions

16 (a) *Adjustment at Cost Certification and upon Receipt of IRS Form 8609.* As of the  
17 date of Cost Certification, the Partnership shall prepare projections of the Credits available and  
18 allocable to the Limited Partner (the "**Projected Credits**") for the Project based upon the  
19 Accountant's calculation of the eligible basis of the Project and the credit percentage applicable  
20 to the Project. If the Projected Credits are less than the "**LIH Target Amount**" shown on Exhibit  
21 A-2, the Limited Partner's Capital Contribution (including Capital Contributions already paid to  
22 the Partnership) shall be reduced by an amount equal to the product of (i) 0.84 multiplied by (ii)  
23 the amount by which the Projected Credits are less than the LIH Target Amount. Any decrease  
24 in the Limited Partner's Capital Contribution that is attributable to installments of the Limited  
25 Partner's Capital Contribution already paid to the Partnership will be subtracted from the  
26 Additional Capital Contribution due as of Cost Certification, and if insufficient, from the next  
27 succeeding Additional Capital Contributions until the full reduction has been taken into account.  
28 In addition, the Total Benefit Amount shown on Exhibit A-2 shall be adjusted in accordance with  
29 the projections prepared in accordance with this Section 3.03(a). In connection with the  
30 foregoing, if the amount of the reduction computed in this Section 3.03(a) exceeds the sum of all  
31 subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03(b)  
32 and 3.03(c)), the General Partner shall immediately make a Credit Adjuster Advance equal to the  
33 amount of such excess, and the Partnership shall thereafter make a special distribution to the  
34 Limited Partner, which shall neither reduce nor be limited by Net Cash Flow, equal to such  
35 amount. The adjustments required under this Section 3.03(a) shall also be made based on the  
36 final IRS Forms 8609 for the Project.

#### 37 (b) *Adjustments for Credit Reductions.*

38 (i) *Events Causing Adjustments.* In the event the portion of Credit to be  
39 allocated to the Limited Partner that the Partnership claims (as determined by the Accountants)  
40 with respect to any taxable year is less than the Projected Credits for that year, and/or the

Partnership or the Accountants determine that the Partnership must recapture any of the Credit allocated to the Limited Partner that the Partnership claimed in any previous taxable year (either event constituting a "*Credit Reduction*"), the Limited Partner's Additional Capital Contributions shall be reduced in the manner provided in Section 3.03(b)(ii).

(ii) *Additional Capital Contributions Subject to Adjustment.* Upon the occurrence of a Credit Reduction, the amount of the next succeeding Additional Capital Contribution, after adjusting such Additional Capital Contribution as provided in Section 3.03(c), shall be reduced by the lesser of (A) the Total LIH Reduction Amount (as defined in Section 3.03(b)(iv)) or (B) the LIH Adjustment Limit. In the event that the Total LIH Reduction Amount exceeds the amount of the next succeeding Additional Capital Contribution, such excess shall reduce the second succeeding Additional Capital Contribution, and subsequent Additional Capital Contributions, until such excess is eliminated (in each case, not to reduce Capital Contributions, including any adjustments provided in Section 3.03(c), by an amount in excess of the LIH Adjustment Limit).

(iii) *Credit Adjuster Advances.* If, during the Compliance Period, the Total LIH Reduction Amount exceeds the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections 3.03(a) and 3.03(c), or if all Additional Capital Contributions have been made, the General Partner shall immediately make a Credit Adjuster Advance equal to the amount of such excess (but in no event in excess of the LIH Adjustment Limit) and the Partnership shall thereafter make a special distribution to the Limited Partner, neither to reduce nor to be limited by Net Cash Flow, equal to such amount.

(iv) *Total LIH Reduction Amount.* The Total LIH Reduction Amount shall equal 54% of the sum of (A) the amount by which the portion of the Credit to be allocated to the Limited Partner that the Partnership claims for that year (based on the lesser of the General Partner's estimate for such year provided to the Limited Partner or the actual tax return) is less than the Projected Credit for that year, and (B) the portion of the Credit allocated to the Limited Partner that the Partnership claimed but that the Partnership or the Accountants determine must be recaptured during such taxable year, if any.

The Partners intend that the adjustments in this Section 3.03(b) shall not duplicate adjustments made in Section 3.03(a).

(c) *Adjustment for Delay in Lease-up.*

(i) In order to take into account a delay in lease-up, in addition to the adjustments provided for in Sections 3.03(a) and 3.03(b), if the Projected Credits for 2001 are less than the amount (the "*Initial Year LIH Amount*") shown on Exhibit A-2 when the fourth installment of the Limited Partner's Capital Contribution is due, the third and fourth installments shall be reduced by \$0.86 for each dollar that the Initial Year Projected Credits is less than the Initial Year LIH Amount. If the third and fourth installments are insufficient, the next succeeding Additional Capital Contributions will be reduced until the full reduction has been taken into account. In connection with the foregoing, if the amount of the reduction computed in

1 this Section 3.03(c)(i) exceeds the sum of all subsequent Additional Capital Contributions (as  
2 previously reduced pursuant to Sections 3.03(a) and 3.03(b)), the General Partner shall make a  
3 Credit Adjuster Advance equal to the amount of such excess, and the Partnership shall thereafter  
4 make a special distribution to the Limited Partner, which shall neither reduce nor be limited by  
5 Net Cash Flow, equal to such amount.

6 (ii) In addition to the adjustment described above, if the Limited Partner is not  
7 entitled to claim Credits for 2001 (based on the lesser of the General Partner's estimate for such  
8 year provided to the Limited Partner or the filed tax return) in at least the amount of the Initial  
9 Year LIH Amount shown on Exhibit A-2 (as adjusted to take into account any reduction  
10 pursuant to Section 3.03(c)(i)), when the fifth installment of the Limited Partner's Capital  
11 Contribution is ultimately paid, the fifth installment shall be reduced by \$0.86 for each dollar  
12 that the Initial Year LIH Amount exceeds the actual Credits that the Limited Partner will claim  
13 for 2001. If the fifth installment is insufficient, the next succeeding Additional Capital  
14 Contributions will be reduced until the full reduction has been taken into account. In connection  
15 with the foregoing, if the amount of the reduction computed in this Section 3.03(c)(ii) exceeds  
16 the sum of all subsequent Additional Capital Contributions (as previously reduced pursuant to  
17 Section 3.03(a) and 3.03(b)), the General Partner shall make a Credit Adjuster Advance equal to  
18 the amount of such excess, and the Partnership shall thereafter make a special distribution to the  
19 Limited Partner, which shall neither reduce nor be limited by Net Cash Flow, equal to such  
20 amount.

21 There shall be no duplicate reduction in the amount of the Limited Partner's  
22 Capital Contributions under this Section 3.03(c)(i) and (ii) and under Sections 3.03(a) and  
23 3.03(b).

24 (d) *Adjustment for Federal Grants Received by Partnership or Reduced*  
25 *Depreciation.*

26 In the event that (i) the Partnership accepts any federal grant of funds after the  
27 Admission Date without the Consent of the Limited Partner, or (ii) if for any taxable year any  
28 building in the Project is not treated as "residential real property" under Section 168(c) and  
29 168(e)(2) of the Code and the Limited Partner is not allocated depreciation in at least the amount  
30 shown on the Projections, attached hereto as Exhibit H, the Limited Partner's next succeeding  
31 Capital Contributions shall, at the option of the Limited Partner, be reduced to reflect the  
32 reduction in tax benefits due to such acceptance of a federal grant or to reduced depreciation.  
33 The reduction in the Limited Partner's Capital Contribution shall be made in such an amount that  
34 will result in the Total Benefits Amount as determined in Section 7.02(a)(i). In connection with  
35 the foregoing, if the amount of the reduction computed in this Section 3.03(d) exceeds the sum of  
36 all subsequent Additional Capital Contributions (as previously reduced pursuant to Sections  
37 3.03(a), 3.03(b), and 3.03(d)), the General Partner shall make a Credit Adjuster Advance equal to  
38 the amount of such excess, and the Partnership shall thereafter make a special distribution to the  
39 Limited Partner, which shall neither reduce nor be limited by Net Cash Flow, equal to such  
40 amount.

**3.04 [Intentionally Omitted]**

**3.05 Additional Credit Adjuster Advances**

In the event that the amount of an Additional Capital Contribution is reduced for any taxable year by reason of Section 3.03, the General Partner shall advance to the Partnership, in addition to any Credit Adjuster Advances required by Section 3.03, a Credit Adjuster Advance in an amount required by the Partnership in order to pay in full prior to their respective due dates, the amounts to be paid by the Partnership from such Additional Capital Contribution pursuant to the Projections; *provided, however*, (i) the maximum amount that the General Partner is required to fund under this Section 3.05 to pay expenditures other than the Development Fee resulting from reductions in Additional Capital Contributions pursuant to Section 3.03, shall be the LIH Adjustment Limit, and (ii) if applicable, the General Partner shall also fund any unpaid portion of the Development Fee. The General Partner's obligations under this Section 3.05 shall be guaranteed by West Elmwood Housing Development Corporation pursuant to the terms of the Guaranty Agreement, attached as Exhibit D to this Agreement.

**3.06 No Interest on Capital Contributions**

No interest shall accrue or be payable to any Partner by reason of its Capital Contribution or its Capital Account.

**3.07 Right to Require Repayment of Capital**

A Partner shall not have the right to withdraw from the Partnership all or any part of its Capital Contribution. No Partner shall have any right to demand and receive property of the Partnership in return for its Capital Contribution or in respect of its Interest, except as provided in this Agreement. No Limited Partner shall have priority over any other Limited Partner as to any return of Capital Contributions or as to any distributions made by the Partnership under Article VIII.

**3.08 Deficit Restoration**

If, upon liquidation of the General Partner's Interest (whether or not in connection with the liquidation of the Partnership), the General Partner has a negative balance in its Capital Account (as determined after taking into account Capital Account adjustments pursuant to Section 7.01 as well as adjustments for the Partnership taxable year during which the liquidation of the General Partner's Interest occurs, other than those for contributions made pursuant to this Section 3.08), then the General Partner shall be required to contribute to the capital of the Partnership, immediately prior to the liquidation of the General Partner's Interest, the amount necessary to restore its Capital Account to zero. Such contributions shall be receipts of the Partnership available for payment of operating expenses and debts of the Partnership or distribution to the Partners, in accordance with the terms of this Agreement. If, upon liquidation

of the Limited Partner's Interest (whether or not in connection with the liquidation of the Partnership), the Limited Partner has a negative balance in its Capital Account, the Limited Partner shall have no obligation to make any contribution to the capital of the Partnership and the negative balance of the Limited Partner's Capital Account shall not be considered a debt owed by the Limited Partner to the Partnership or any other Person for any reason whatsoever.

### **3.09 No Third-Party Beneficiary**

None of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of the Partnership or for the benefit of any creditor of the Partners, and no provision shall be enforceable by a party not a signatory to this Agreement.

### **3.10 Equity Advance**

EHP III will make an Equity Advance to the Partnership in the amount of \$1,708,068 in accordance with the terms set forth on Exhibit O to be used by the Partnership for the costs of construction and/or the payment of fees. The Equity Advance shall bear interest and be repayable in accordance with the terms of the Equity Advance Note. \$205,800 of the proceeds of the Equity Advance shall be disbursed to the Partnership on the Admission Date. The remainder of the proceeds of the Equity Advance shall be disbursed to the Partnership: (i) on a monthly basis during construction within five (5) working days of ESIC's receipt of a construction draw request, in a form satisfactory to ESIC with respect thereto, subject to ESIC's receipt of any approval from the Mortgagees. Notwithstanding the foregoing, so long as that certain Pledge of Syndication Proceeds by and between the Partnership and the Agency dated of even date herewith (the "Agency Pledge Agreement") remains in effect, such foregoing conditions shall not apply with respect to the Agency's enforcement of its rights under the Agency Pledge Agreement. Notwithstanding any other provision of this Section 3.10 to the contrary, EHP III hereby covenants to the Agency, unless previously paid to the Agency, for so long as the First Mortgage Loan and Targeted Loan are outstanding, to pay the installments due pursuant to Schedule 1 attached to this Agreement directly to the Agency in accordance with the dates in Schedule 1, whether or not the Partnership meets the conditions of such advances.

## **ARTICLE IV**

### **Right to Mortgage; General Partner Bound by Loan Documents**

#### **4.01 Right to Mortgage**

(a) The Partnership shall be authorized to borrow from the Mortgagees whatever amounts may be required, subject to the provisions hereof, in connection with the acquisition, development, construction and/or rehabilitation of the Partnership Property, and the meeting of the expenses of operating the Project (including, without limitation, any items for which the Mortgagees may provide mortgage funds), and shall secure the same by mortgages on the Partnership Property (the "*Mortgages*"). Such borrowing shall not at any given time exceed the amount of unpaid principal due including accrued interest, nor be at a higher interest rate, nor



change the payment terms, under the initial Mortgage Notes. The General Partner shall not have any authority to enter into any loan which has not closed as of the Admission Date without the Consent of the Limited Partner.

(b) The Mortgages shall provide that no Partner shall have any personal liability for the payment of all or any part of such Mortgage Notes, except for customary exclusions for fraud, misappropriation of funds or waste.

(c) All loan documents executed by the Partnership in connection with any of the Mortgages must contain a prohibition on any sale or conveyance of the indebtedness represented thereby (or any interest therein) by the lender to Fannie Mac, or the inclusion of such indebtedness (or interest therein) by such lender in a pool of loans to be sold or transferred to Fannie Mae.

#### **4.02 General Partner Bound by Loan Documents**

The General Partner shall be bound by the terms of the Loan Documents and the Project Documents. Any incoming general partner of the Partnership shall as a condition of receiving any Interest agree to be bound by the Loan Documents and the Project Documents to the same extent and on the same terms as any other General Partners.

### **ARTICLE V**

#### **Rights, Powers and Obligations of the General Partner**

##### **5.01 Authority of General Partner**

(a) Subject to the terms of this Agreement, the General Partner shall have the right, power, and authority, acting for and on behalf of and in the name of the Partnership, to: (i) execute and deliver on behalf of the Partnership any contract, agreement, or other instrument or document required or otherwise appropriate to acquire, construct, rehabilitate, renovate, improve, lease, operate, sell, encumber, mortgage, convey, or refinance the Partnership Property (or any part thereof); (ii) convey the Partnership Property by deed, mortgage, certificate, bill of sale, agreement, or otherwise, as appropriate; and (iii) bring, compromise, settle, and defend actions at law or in equity.

(b) Except for items for which Consent of the Limited Partner is required, all decisions made for and on behalf of the Partnership by the General Partner shall be binding upon the Partnership. Except as expressly otherwise set forth in this Agreement, the General Partner (acting for and on behalf of and in the name of the Partnership), in extension and not in limitation of the rights and powers given it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Partnership's day-to-day business, to do any and all acts and things necessary, proper, ordinary, customary or advisable to effectuate the purposes of the Partnership. In so doing, the General Partner shall take all actions necessary or appropriate to protect the interests of the

Limited Partner and of the Partnership. In furtherance and not in limitation of the foregoing provisions of this Article V and of the other provisions of this Agreement, the General Partner is, as is more fully set forth in Section 5.01(a), specifically authorized and empowered to execute any and all instruments and documents as shall be required by any lender in connection with any loan or loans, including but not limited to executing the Mortgages, Mortgage Notes, any contract, building loan agreement, bank resolution and signature card, release, discharge, or any other document or instrument in any way related thereto or necessary or appropriate in connection therewith, all of which must be in accordance with this Agreement.

(c) The Tax Matters Partner shall maintain the books and records of the Partnership, and shall be responsible, on a timely basis, for (i) preparing all required tax returns and related information, (ii) making all tax elections, if appropriate, and (iii) preparing all financial information, all in accordance with Sections 5.03(c) and 13.03 hereof.

## **5.02 Limitations on the Authority of the General Partner**

Notwithstanding any other provision of this Agreement, the General Partner shall have no authority to perform any act in violation of any applicable law or regulations, the Loan Documents, or the Project Documents; to do any act required to be approved, consented to, voted on, or ratified by the Limited Partner under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained; to cause the Partnership to engage in any business other than as set forth in Section 1.06; or do any act that would make it impossible to carry out the business of the Partnership as contemplated herein. The General Partner shall have no authority to engage in the following activities without the prior Consent of the Limited Partner and, if required, the consent of the Mortgagees:

(a) Effect a sale of all or any portion of the Partnership Property, including the Units and any commercial and/or community space;

(b) Effect a refinancing, encumbrance, mortgage, conveyance, or other disposition of all or a substantial portion of the Partnership Property after the Completion Date other than the Loans;

(c) Lease as an entirety the Partnership Property, or lease any portion of the Partnership Property except in the normal course of business;

(d) Become subject to any economic risk of loss within the meaning of Treasury Regulation Section 1.752-2 with respect to the Mortgage Notes, the Mortgages, or any of the Loan Documents;

(e) Following the Completion Date, construct any new capital improvements or replace any existing capital improvements costing in excess of ten thousand dollars, (\$10,000) or not contemplated in the Budget;

1 (f) Acquire any real property in addition to the Partnership Property (other than  
2 easements or similar rights necessary or convenient for the operation of the Project);

3 (g) During the Compliance Period, lease or otherwise operate any of the Units in such  
4 a manner that such Units would fail to be treated as a "low-income unit" under Section 42(i)(3)  
5 of the Code, or lease or operate the Project in such a manner that the Project would fail to be  
6 treated as a qualified low-income housing project under Section 42(g)(1)(B) of the Code;

7 (h) Incur debt or arrange for the receipt of any grant of funds not in the ordinary  
8 course of business, nor incur debt or arrange for the receipt of any grant of funds in the ordinary  
9 course of business in excess of ten thousand dollars (\$10,000) in the aggregate at any one time  
10 outstanding, except as specifically permitted in this Agreement;

11 (i) Change the nature of the Partnership's business;

12 (j) Voluntarily file a bankruptcy petition on behalf of the Partnership;

13 (k) Dissolve or wind up the Partnership;

14 (l) Confess any judgment except as provided by the Loan Documents;

15 (m) Modify or amend this Agreement;

16 (n) Prepay the Mortgage Notes;

17 (o) Admit any Person as a Partner, except as otherwise provided in this Agreement;

18 (p) Borrow from the Partnership or commingle Partnership funds with the funds of  
19 any Person;

20 (q) Permit the Partnership to pay directly or indirectly the General Partner a  
21 commission or fee in connection with the reinvestment or distribution of Capital Proceeds or  
22 liquidating distributions belonging to the Partnership except as provided for herein;

23 (r) Receive any rebates or give-ups or participate in any reciprocal business  
24 relationships in circumvention of this Agreement;

25 (s) Make application for or accept increase or increases in the principal amount of  
26 Loans or materially modify the Loans in any way that may affect the nature of the business of the  
27 Partnership and/or in the opinion of the Accountants (which opinion shall be required prior to  
28 any modification) may affect the ability of the Limited Partner to receive the Credit in the  
29 amount of the Projected Credits; or

30 (t) Dismiss or replace the Management Agent except as provided in Section 11.01  
31 hereof.

1    **5.03   Overall Management of Business**

2           (a)    The General Partner shall have full and exclusive power and right to manage and  
3   control the business and affairs of the Partnership. Any action required or permitted to be taken  
4   by the General Partner hereunder may be taken by such of its proper officers or agents as it shall  
5   validly designate and duly authorize for such purpose.

6           (b)    The General Partner may delegate its authority, power, and right to manage the  
7   Partnership Property to the Management Agent; *provided, however*, that any such delegation  
8   shall not relieve the General Partner of its obligations and responsibilities to ensure the proper  
9   management of the Partnership Property.

10          (c)    The Tax Matters Partner shall prepare or cause to be prepared all tax and  
11   information returns required of the Partnership or considered necessary by the General Partner  
12   (including, but not limited to, federal, state, and local income tax and information returns and  
13   any amended returns), which returns shall be reviewed in advance by the Accountants. The Tax  
14   Matters Partner shall, after consultation with the Limited Partner, be responsible for making all  
15   elections required or allowed under the Code or the Treasury Regulations including, but not  
16   limited to, elections pursuant to Sections 42, 168, 709, and 754 of the Code, and all elections  
17   required or allowed under State or local law. To the extent possible, no election shall be made  
18   which would create a benefit to the General Partner and a detriment to the Limited Partner.

19   **5.04   Duty of the General Partner to Maintain the Low-Income Housing Status**  
20   **of the Partnership Property**

21          (a)    During the Extended Use Period, the General Partner shall hold for occupancy  
22   one hundred percent (100%) of the Units in the Project in such a manner as to qualify each such  
23   Unit as a "low-income unit" under Section 42(i)(3) of the Code and the Project as a "qualified  
24   low-income housing project" under Section 42(g)(1)(B) of the Code, as such sections of the  
25   Code are interpreted from time to time in Treasury Regulations and rulings promulgated  
26   thereunder. The General Partner shall not, by act or omission, permit any act to be taken that  
27   would cause the termination or discontinuance of the qualification of each Unit as a "low-income  
28   unit" under Section 42(i)(3) of the Code or the qualification of the Project as a "qualified low-  
29   income housing project" under Section 42(g)(1)(B) of the Code.

30          (b)    During the Extended Use Period, the General Partner shall prepare and submit to  
31   the Secretary of the Treasury (or any other governmental authority designated for such purpose),  
32   on a timely basis, any and all annual reports, information returns, and other certifications and  
33   information and shall take any and all other action required (i) to insure that the Partnership (and  
34   its Partners) will continue to qualify for the Credit for each of the Units and the Partnership  
35   Property, and (ii) to avoid recapture or reduction of the Credit or the imposition of penalties or  
36   interest on the Partnership or any of the Partners for failure to comply with Section 42 of the  
37   Code.

(c) The General Partner shall use its best efforts to develop strategies to maintain the Units as low-income housing after the end of the Compliance Period for the Extended Use Period under Section 42 of the Code and thereafter.

(d) In addition to the requirements of Section 5.04(a), the General Partner shall at all times hold at least forty percent (40%) of the Units available for occupancy for families having fifty percent (50%) or less of the area median income, as required by Section 42(i)(2)(E) of the Code relating to HOME Investment Partnerships Act financing.

#### **5.05 Outside Activities**

The General Partner shall devote to the management of the business of the Partnership so much of its time as it deems reasonably necessary to the efficient operation of the Partnership Property, the Project, and the Units and in order to comply with this Agreement. The General Partner may engage in and possess any interest in other business ventures (including limited partnerships) of every kind, nature, and description whatsoever, independently or with others, whether existing at the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships that own, directly or through interests in other partnerships, housing projects similar to, or in competition with, the Project. Neither the Partnership nor the Partners shall have any rights by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business venture.

#### **5.06 Liability to Partnership and Limited Partner**

The General Partner shall not be liable, responsible, or accountable in damages or otherwise to the Limited Partner or to the Partnership for any acts performed in good faith and within the scope of authority of the General Partner pursuant to this Agreement; *provided, however,* that the General Partner shall be liable for its actions and/or omissions to the extent they are attributable to gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant, or agreement under this Agreement, breach of fiduciary duty, or actions performed outside the scope of its authority.

#### **5.07 Indemnification of General Partner**

(a) The Partnership shall indemnify, defend, and hold harmless the General Partner from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) arising out of or alleged to arise out of any demands, claims, suits, actions, or proceedings against the General Partner, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Partnership and within the scope of the authority of the General Partner pursuant to this Agreement, and any amount expended in any settlement of any such claim of liability, loss, or damage; *provided, however,* that: (i) the General Partner must have in good faith believed that such action was in the best interests of the Partnership, and such course of action or inaction must not have constituted gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation,

warranty, covenant or agreement set forth in this Agreement, or breach of its fiduciary duty; and (ii) any such indemnification shall be recoverable from the assets of the Partnership, not from the assets of the Limited Partner, and no Partner shall be personally liable therefor. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by any Partner or any Affiliate thereof against another Partner.

(b) The Partnership shall not pay for any insurance covering liability of the General Partner for actions or omissions for which indemnification is not permitted hereunder.

(c) Notwithstanding anything contained in this Section 5.07, the General Partner shall not be indemnified or saved harmless from any liability, loss, damage, cost, or expense incurred by it in connection with: (i) any civil or criminal fines or penalties imposed by law; (ii) any claim or settlement involving the allegation that federal or state securities laws were violated by the General Partner or the Partnership; or (iii) any claim involving gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of a fiduciary duty, unless (A) the General Partner is successful in defending such action on the merits, (B) such claims have been dismissed in favor of the General Partner with prejudice on the merits by a court of competent jurisdiction, or (C) a court of competent jurisdiction approves a settlement and determines that the General Partner is entitled to costs.

(d) The provision of advances from the Partnership to the General Partner for reasonable legal expenses and other costs as a result of a legal action pursuant to Section 5.07(e) is permissible only if the following three conditions are satisfied: (i) the legal action relates to the performance of the duties or services by the General Partner on behalf of the Partnership; (ii) the legal action is initiated by a third party who is not a Partner or Affiliate thereof; and (iii) the General Partner covenants in advance to repay the advance of funds to the Partnership in accordance with Section 5.07(e) in the event it is determined that the General Partner is not entitled to indemnification hereunder.

(e) The General Partner, when entitled to indemnification pursuant to this Section 5.07, shall be entitled to receive, upon application therefor, reasonable advances to cover the costs of defending any proceedings against it; *provided, however*, that the General Partner agrees that if it receives such advances, it shall repay such advances to the Partnership, with interest thereon, at an annual rate equal to fifteen percent (15%), computed on a daily basis, from the date made until repaid, if the General Partner is determined not to be entitled to indemnification under this Section 5.07. All rights of the General Partner to indemnification shall survive the dissolution of the Partnership and the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the General Partner.

(f) The indemnification rights contained in this Section 5.07 shall be limited to out-of-pocket loss or expense. Nothing contained herein shall constitute a waiver by the Limited Partner or its Affiliates of any right that it may have against any party under federal, state, or common law principles.

1           The indemnification authorized by this Section 5.07 shall include, but not be  
2 limited to, the costs and expenses (including reasonable attorneys' fees) of the removal of any  
3 liens affecting any property of the indemnitee as a result of such legal action.

#### 4   **5.08   Indemnification of Partnership and Limited Partner**

5           The General Partner shall defend, indemnify, and save harmless (i) the Partnership and  
6 each Partner from any loss, liability, damage, cost, or expense (including reasonable attorneys'  
7 fees) incurred by reason of any demands, claims, suits, actions, or proceeding arising out of the  
8 General Partner's gross negligence, fraud, willful misconduct, malfeasance, material breach of  
9 any representation, warranty, covenant, or agreement set forth in this Agreement, breach of  
10 fiduciary duty, or actions performed outside the scope of the authority of the General Partner  
11 pursuant to this Agreement, and (ii) the Limited Partner from any liability incurred by it for  
12 Partnership obligations (including, without limitation, the Mortgage Notes) in excess of its  
13 Capital Contribution, except to the extent that a Final Determination has been made that the  
14 Limited Partner has taken actions or exercised rights with respect to the operation of the  
15 Partnership in excess of those actions or rights granted or allowed under this Agreement or the  
16 Act. The foregoing indemnification shall be a recourse obligation of the General Partner, and  
17 shall survive the dissolution of the Partnership and/or the death, retirement, incompetency,  
18 insolvency, bankruptcy, or withdrawal of the General Partner. The indemnification authorized  
19 by this Section 5.08 shall include, but not be limited to, the costs and expenses (including  
20 reasonable attorneys' fees) of the removal of any liens affecting any property of the indemnitee  
21 as a result of such legal action.

#### 22   **5.09   Environmental Indemnification**

23           In the event that the Partnership or the Limited Partner becomes liable under any  
24 Environmental Law, the General Partner shall indemnify and hold harmless the Limited Partner  
25 and any partner of the Limited Partner (the "**Indemnified Parties**") from any and against all  
26 claims, actions, causes of action, damages, costs, liability and expense (including, without  
27 limitation, attorneys' fees, court costs and remedial response costs) incurred or suffered by, or  
28 asserted by any Person, entity or governmental agency against the Indemnified Parties due to  
29 breach of the General Partner's representations, warranties or covenants, or a violation of the  
30 Environmental Laws, or the presence of Environmental Hazards in, on or under the Partnership  
31 Property. Notwithstanding the foregoing, the General Partner shall not have an indemnification  
32 liability if the violation of the Environmental Laws or the presence of the Environmental Hazards  
33 arises after the effective date of the General Partner's removal, if any, or withdrawal, sale,  
34 transfer or assignment of its Interest pursuant to a right to do so under this Agreement. The  
35 foregoing indemnification shall be a recourse obligation of the General Partner, and shall survive  
36 the dissolution of the Partnership and/or the death, retirement, incompetency, insolvency,  
37 bankruptcy, or withdrawal of the General Partner. The indemnification authorized by this  
38 Section 5.09 shall include, but not be limited to, the costs and expenses (including reasonable  
39 attorneys' fees) of the removal of any liens affecting any property of the indemnitee as a result of  
40 such legal action.

## 5.10 Representations and Warranties of the General Partner

The General Partner hereby represents and warrants to the Limited Partner that the following are true and correct as of the date hereof and will be true and correct for the Term, unless specifically otherwise provided.

(a) The Partnership is a duly organized limited partnership validly existing and in good standing under the laws of the State of Rhode Island, and the Partnership has complied with all filing requirements necessary under the Act for the preservation of the limited liability of the Limited Partner.

(b) The Partnership has undertaken all acts, including without limitation, the filing of all certificates and the payment of all fees, taxes, and other sums necessary for the Partnership to operate as a limited partnership in the State of Rhode Island and has taken all action under the laws of the State of Rhode Island and any other applicable jurisdiction that is necessary to protect the limited liability of the Limited Partner and to enable the Partnership to engage in its business.

(c) None of the Partners or the Partnership has or will have, pursuant to the terms of the Loans, any personal liability as maker, guarantor, partner or otherwise with respect to the payment of principal or interest on the Loans, and in the event of default thereon, the sole recourse of any Mortgagee or other lender shall be to the Project and pledged collateral.

(d) The Partnership has obtained a 1999 carryover allocation of Credit from the Agency in the amount (the "**Annual Credit Allocation**") shown on Exhibit A-2, such allocation is in full force and effect, all information contained in any application for reservation of the Credit is complete and correct in all material respects, and the Project will have eligible basis with respect to the seventy percent (70%) present value credit (the "**Refurbishment Basis Amount**") and the thirty percent (30%) present value credit (the "**Acquisition Basis Amount**") respectively in the amounts shown on Exhibit A-2. The eligible basis takes into account the fact that the Project qualifies for the one hundred thirty percent (130%) factor for eligible basis under Section 42(d)(5)(c) of the Code.

(e) No litigation, action, investigation, event, or proceeding is pending or, to the best of its knowledge, is threatened that, if adversely resolved, would: (i) have a material adverse effect on the Partnership or the Partnership Property; (ii) have a material adverse effect on the ability of the General Partner or any of its Affiliates to perform their respective obligations under this Agreement; (iii) have an adverse effect on any adjacent or other property that would have a material adverse effect on the Partnership Property or the Partnership's investment in the Partnership Property; (iv) have a material adverse effect on the financial condition of the General Partner; or (v) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement.

(f) No default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any of the Loan Documents, the Project Documents, or any other contract, agreement, or instrument to which the Partnership or



1 the General Partner is subject, and the Loan Documents and the Project Documents are in full  
2 force and effect and the Partnership is entitled to the benefit of the Loan Documents and the  
3 Project Documents.

4 (g) All building, zoning, and other applicable certificates, permits, and licenses  
5 necessary to permit the construction and/or rehabilitation, use, occupancy, and operation of the  
6 Partnership Property and the Project have been obtained (other than such as will be issued only  
7 after the completion of the Project or any specified portion thereof), all improvements  
8 constructed or to be constructed on the Partnership Property have been or will be constructed and  
9 equipped in full compliance with the requirements of all governmental authorities having  
10 jurisdiction over the Partnership Property and neither the Partnership nor the General Partner has  
11 received any notice of or has any knowledge of any violation with respect to the Partnership  
12 Property of any law, rule, regulation, order, or decree of any governmental authority having  
13 jurisdiction that would have a material adverse effect on the Partnership Property or the Project  
14 or the Partnership's investment in the Partnership Property (including the Partnership's ability to  
15 transfer the Partnership Property in accordance with terms of this Agreement) or the construction  
16 and/or rehabilitation, use, occupancy, or operation thereof.

17 (h) No Event of Bankruptcy has occurred with respect to the General Partner or any  
18 of its Affiliates.

19 (i) There are no outstanding loans or advances from the General Partner to the  
20 Partnership, and, except as provided in Section 5.16, the Partnership has no unsatisfied  
21 obligation to make any payments of any kind to the General Partner or its Affiliates.

22 (j) The Partnership owns the Partnership Property, the buildings comprising the  
23 Project, and each of the Units, free and clear of any liens, charges, or encumbrances other than  
24 the Mortgages, matters set forth in the Title Policy, and mechanics' or other liens that have been  
25 bonded against in such a manner as to preclude the holder of such lien from having any recourse  
26 to the Partnership Property, the Project, any of the Units, or the Partnership for payment of any  
27 debt secured thereby and the General Partner has not received notice of any such liens, charges,  
28 or encumbrances.

29 (k) The General Partner (i) is a corporation validly existing and in good standing  
30 under the laws of the State of Rhode Island and (ii) has full power to enter into and consummate  
31 this Agreement and all instruments pertaining hereto and to perform all acts related thereto; and  
32 the consummation of all transactions contemplated herein and in the Loan Documents and the  
33 Project Documents to be performed by the General Partner or its Affiliates does not and will not,  
34 result in any material breach or violation of, or default under, any governing instrument of the  
35 General Partner or its Affiliates or any agreements by which the General Partner or its Affiliates  
36 or any of its property is bound, or under any applicable law, administrative regulation, or court  
37 decree.

1 (l) All consents or approvals of any governmental authority, or any other Person,  
2 necessary in connection with the transactions contemplated by this Agreement or necessary to  
3 admit the Limited Partner to the Partnership, have been obtained by the General Partner.

4 (m) All appropriate roadways and public utilities necessary to the operation of the  
5 Partnership Property, including, but not limited to, sanitary and storm sewers, water, gas (if  
6 applicable), and electricity, are available to the Partnership Property and each of the Units and  
7 are or will be connected to each Unit in the Project on or before the date that a certificate of  
8 occupancy is obtained for each Unit.

9 (n) All Loan Documents and Project Documents are in accord with applicable laws,  
10 codes and regulations and the construction of the Partnership Property will be completed in  
11 accordance therewith.

12 (o) No event has occurred that has caused, and the General Partner has not acted in  
13 any manner that will cause (i) the Partnership to be treated for federal income tax purposes as an  
14 association taxable as a corporation, (ii) the Partnership to fail to qualify as a limited partnership  
15 under the Act, or (iii) the Limited Partner to be liable for Partnership obligations.

16 (p) The Partnership is under no obligation, and neither the General Partner nor any of  
17 its Affiliates have taken any action that would cause the Partnership to be obligated, under any  
18 federal or State law, rule, or regulation to register the Interests or to comply with any exemption  
19 available for the sale of interests without registration.

20 (q) The General Partner has delivered to the Limited Partner true copies of all  
21 documents material to the Limited Partner's investment in the Partnership and true copies of all  
22 amendments to such documents.

23 (r) There are no restrictions on the sale or refinancing of the Project, other than the  
24 restrictions set forth in the Loan Documents, the Project Documents or under Section 42 of the  
25 Code.

26 (s) Neither the General Partner nor any of its Affiliates nor the Partnership have  
27 entered into any agreement or contract for the payment or offset of any construction loan or loan  
28 discounts, additional interest, yield maintenance or other charges or financing fees or any  
29 agreement to incur any financial responsibility with respect to the Project or providing for the  
30 guaranty of payment of any such interest charges or financing fees relating to the Construction  
31 Loan or the Loan Documents, other than those disclosed in this Agreement; and in no event have  
32 they or the Partnership entered into any such agreement or guaranty of any kind whatsoever  
33 (such as an escrow arrangement or letter of credit arrangement) that would subject the  
34 Partnership or any of its Partners or Affiliates to personal liability or economic risk of loss as to  
35 the Loans nor has the General Partner made any loan which shall be personally enforceable by  
36 any lender on the Loans or which may in any way affect allocation of the Projected Credit to the  
37 Limited Partner.

1 (t) No building in the Project is federally subsidized as defined in Section 42(i)(2) of  
2 the Code.

3 (u) The Partnership has not made any elections under the Code without the Consent  
4 of the Limited Partner that would affect the amount, timing, availability, or allocation of Credits.

5 (v) The Partnership has used diligent efforts to construct and/or rehabilitate the  
6 Project and thereafter operate it, as low-income housing as required by the Code in order to  
7 qualify for and maintain the Credit and other tax benefits anticipated in connection therewith.

8 (w) Amounts paid to the General Partner and/or its Affiliates for services in  
9 accordance with the applicable Fee Agreements are reasonable in relation to the value of services  
10 provided and relate solely to the services actually rendered to the Partnership pursuant to the  
11 applicable Fee Agreements.

12 (x) The General Partner reasonably believes that, during the entire Term of the  
13 Partnership, the fair market value of the Project or the Partnership Property will exceed the  
14 amount of nonrecourse indebtedness and any accrued interest thereon secured by the Project.

15 (y) The Partnership will not elect to be treated other than as a partnership for federal  
16 income tax purposes.

17 (z) The Partnership has complied with the requirements of Section 42(h)(1) of the  
18 Code, including, without limitation, the requirement that the Partnership basis in the Project as of  
19 the end of 1999 will equal more than ten percent (10%) of the reasonably anticipated basis of the  
20 Project as of the end of 2001.

21 (aa) The General Partner is not presently under any commitment to any real estate  
22 broker, rental agent, finder, syndicator or other intermediary with respect to the Project or any  
23 portion thereof except for the arrangements specifically described in this Agreement and the  
24 arrangements previously disclosed in writing to the Limited Partner.

25 (bb) The General Partner has provided the Limited Partner with true and correct copies  
26 of any papers relevant to the Loan commitments and all documents evidencing or securing the  
27 Loans and, if requested by the Limited Partner, a complete set of the plans, drawings and  
28 specifications of the Project, and all other material information relevant to the Project or to the  
29 admission of the Limited Partner to the Partnership; to the best of its knowledge, all such  
30 information provided to the Limited Partner is accurate and complete in all material respects and  
31 it has not failed to provide the Limited Partner with any information necessary to make the  
32 information provided by it complete and accurate in all material respects.

33 (cc) No amendments, modifications or other changes or additions have been made to  
34 the Environmental Reports.

1           The General Partner warrants and represents that to the best of the General  
2 Partner's knowledge, after due inquiry, there presently are not, in, on or under the Partnership  
3 Property nor will be, in, on or under the Partnership Property, upon completion of the  
4 construction any Environmental Hazard. If any Environmental Hazard (including lead-based  
5 paint and asbestos) was found to exist or be present, it has been either removed from the  
6 Partnership Property and disposed of or encapsulated and/or otherwise corrected, contained and  
7 made safe and inaccessible, all in strict accordance with federal, state, and local statutes, laws,  
8 rules and regulations, any recommendations set forth in the Environmental Reports, and any  
9 requirements in the Loan Documents.

10           The General Partner further warrants and represents to the best of the General  
11 Partner's knowledge, after due inquiry, that the Partnership Property is in compliance with all  
12 applicable Environmental Laws and the General Partner has not received notice of any violations  
13 of the Environmental Laws. The General Partner covenants and agrees to take all necessary  
14 action within its control to ensure that the Partnership Property is in compliance with the  
15 Environmental Laws at all times and that the Partnership Property remains free from the  
16 presence of any Environmental Hazards in, on or under the Project. The General Partner shall  
17 promptly deliver any notice it may receive of any violation of the Environmental Laws to the  
18 Partnership.

19           At any time during the term of the Partnership the Limited Partner determines that  
20 the foregoing representations may not have been true when made, or may have become untrue,  
21 the Partnership shall promptly obtain an environmental audit of the Partnership Property. The  
22 scope of such audit and the company performing it shall be determined by the General Partner  
23 with the Consent of the Limited Partner.

24           (dd) In the event the Federal Drug Free Workplace Act of 1988 and the Regulations  
25 promulgated thereunder, including without limitation, 54 Code of Federal Regulations 4956  
26 (1989), as such Act and Regulations have been amended are applicable, the General Partner has  
27 complied with and has caused the Partnership to comply with such Act.

28           (ee) No federal appropriated funds have been paid or will be paid, by or on behalf of  
29 the General Partner or the Partnership, to any Person for influencing or attempting to influence  
30 an officer or employee of any agency, a Member of Congress, an officer or employee of  
31 Congress, or an employee of a Member of Congress in connection with the awarding of any  
32 federal contract, the making of any federal grant, the making of any federal loan, the entering  
33 into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or  
34 modification of any federal contract, grant, loan or cooperative agreement.

35           (ff) No funds have been paid for influencing or attempting to influence an officer or  
36 employee of a Member of Congress in connection with a federal contract, grant, loan and/or  
37 cooperative agreement benefiting the Partnership and/or the General Partner. The Partnership  
38 and the General Partner have complied with all restrictions, certifications and disclosure  
39 requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for

1 the U.S. Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by  
2 any federal entity in connection therewith ("*Byrd Amendment*"), if applicable.

3 (gg) The General Partner is working to resolve the potential impact of the year 2000 on  
4 the ability of the General Partner's computerized information systems to accurately process  
5 information that may be date-sensitive. The General Partner believes that the cost of addressing  
6 this issue will not have a material or adverse impact on the General Partner's financial position.  
7 The General Partner plans to devote all resources required to resolve any significant year 2000  
8 issues in a timely manner.

9 (hh) No portion of the Partnership Property is or will be treated as tax-exempt use  
10 property as defined in Section 168(h) of the Code and, in furtherance thereof, the General Partner  
11 has made an election in accordance with Section 168(h)(6) of the Code.

12 (ii) Prior to the date the rehabilitation expenditures were incurred, the Partnership  
13 Property was acquired by purchase within the meaning of Section 179(d)(2) of the Code and at  
14 the time of the acquisition, the Partnership and the seller were not related Persons within the  
15 meaning of Sections 267(b), 707(b), and 42(d)(2)(D) of the Code.

16 (jj) There has been at least ten years between the date of the acquisition of the  
17 Partnership Property owned by the Partnership and the later of (i) the date the Partnership  
18 Property was last placed in service, or (ii) the date of the most recent nonqualified substantial  
19 improvement of the Partnership Property in accordance with Section 42(d)(2) of the Code.

20 (kk) The Partnership Property was not previously placed in service by the Partnership  
21 or by a Person who was a related person within the meaning of Sections 267(b) or 707(b),  
22 179(d)(2) of the Code or with respect to the Partnership as of the time the buildings were  
23 previously placed in service.

## 24 **5.11 Covenants of the General Partner**

25 The General Partner covenants to the Limited Partner that for the Term:

26 (a) The General Partner shall at all times maintain a positive net worth and shall take  
27 any and all actions as may be necessary from time to time to maintain such net worth.

28 (b) The General Partner shall cause the Partnership to do all things necessary to  
29 maintain its status as a limited partnership in good standing and had, has, and shall continue to  
30 have full power and authority to acquire the Partnership Property and to develop, construct,  
31 operate, and maintain the Project in accordance with the terms of this Agreement, and shall  
32 continue to take all action under the laws of the State of Rhode Island and any other applicable  
33 jurisdiction that is necessary to protect the limited liability of the Limited Partner and to enable  
34 the Partnership to engage in its business.

1 (c) The General Partner shall at all times during the Compliance Period and Extended  
2 Use Period rent one hundred percent (100%) of the Units to Qualifying Tenants, charge such  
3 tenants rental rates no greater than permitted under Section 42 of the Code, and in all other  
4 respects comply with the provisions of Section 42 of the Code and any State or local law  
5 necessary to qualify for the Credit with respect to those Units.

6 (d) The General Partner agrees that neither it nor any of its Affiliates will at any time  
7 become subject to any economic risk of loss within the meaning of Treasury Regulation Section  
8 1.752-2 with respect to any Partnership obligation. The General Partner agrees that it will not  
9 cause the Limited Partner to become, and it will take all steps necessary to prevent the Limited  
10 Partner at any time from becoming, personally liable for payment or performance under the  
11 Mortgage Notes or the Mortgages. The sole recourse of the Mortgagees under the Mortgage  
12 Notes with respect to the principal thereof, interest thereon or any other obligation thereunder,  
13 shall be to the assets of the Partnership and the Mortgage Notes shall contain similar nonrecourse  
14 provisions.

15 (e) Prior to the exercise of any of the voting rights of the Limited Partner required by  
16 this Agreement, the Limited Partner shall have the right to obtain an opinion of counsel stating  
17 that the exercise of such voting rights will not constitute taking part by the Limited Partner in the  
18 control of the Partnership's business. The cost of obtaining such an opinion will be borne by the  
19 Limited Partner.

20 (f) The General Partner will cause the Partnership to maintain insurance against risks  
21 that are of a character usually insured by Persons engaged in a similar business and in form and  
22 amount and covering such risks as is usually carried by such Persons including, but not limited  
23 to, insurance of the type described in the Insurance Requirements Checklist attached as Exhibit  
24 N; *provided, however*, that: (i) in addition to such requirements, the Partnership shall at all times  
25 comply with the insurance requirements imposed by the Mortgagees; (ii) all such insurance  
26 policies are and shall be in full force and effect during the Term of the Partnership; and (iii) the  
27 Limited Partner shall be named as a certificate holder and an additional insured on each such  
28 policy and shall have the right to receive thirty days' notice prior to any termination or reduction  
29 of coverage by the insurer.

30 (g) The General Partner or its Affiliates shall cause the construction and/or  
31 rehabilitation to be completed substantially in accordance with the relevant Project Documents.  
32 In addition, the General Partner shall use its best efforts to obtain a final certificate of occupancy  
33 for the Project no later than the Target Completion Date. The General Partner or its Affiliates  
34 shall obtain all building, zoning, and other applicable certificates, permits, and licenses necessary  
35 to permit the construction and/or rehabilitation, use, occupancy, and operation of the Partnership  
36 Property and the Project that are obtainable only after completion of the Partnership Property and  
37 the Project or a specified portion thereof. All improvements constructed or to be constructed on  
38 the Partnership Property shall be constructed and equipped in full compliance with the  
39 requirements of all governmental authorities having jurisdiction over the Partnership Project.

1           (h)     The General Partner shall furnish to the Limited Partner, within ten (10) business  
2 days of receipt thereof, a copy of any notice of default under the Mortgage Notes, the Mortgages,  
3 any of the Project Documents, or any of the Loan Documents given to the Partnership or the  
4 General Partner.

5           (i)     The General Partner will cause the Partnership Property, including each of the  
6 Units, to be operated in compliance with all applicable zoning regulations, ordinances, and  
7 subdivision laws, rules, and regulations.

8           (j)     The General Partner will cause the Partnership to comply in all material respects  
9 with all of the terms and conditions of the residential lease agreement for each of the Units.

10          (k)     The General Partner will cause the Partnership to keep all public utilities  
11 necessary to the operation of the Partnership Property, including, but not limited to, sanitary and  
12 storm sewers, water, gas (if applicable), and electricity, operating in working condition, to the  
13 extent required by law and pursuant to the residential lease agreement of any of the Units.

14          (l)     The General Partner shall not act in any manner that will cause (i) the Partnership  
15 to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the  
16 Partnership to fail to qualify as a limited partnership under the Act, or (iii) the Limited Partner to  
17 be liable for Partnership obligations.

18          (m)     The General Partner shall not employ any Person as an employee of the  
19 Partnership.

20          (n)     The General Partner shall take all actions necessary to ensure that the Partnership  
21 Property contains no, and is not affected by the presence of, any Environmental Hazard, and to  
22 ensure that the Partnership Property is not in violation of any federal, state, or local, statute, law,  
23 regulation, rule or ordinance, including any Environmental Law. The General Partner shall  
24 promptly deliver to the Limited Partner any notice received from any source whatsoever of the  
25 existence of any Environmental Hazard on the Partnership Property or of a violation of any  
26 federal, state, or local, statute, law, regulation, rule or ordinance, including any Environmental  
27 Law with respect to the Partnership Property. If any Environmental Hazard (including lead-  
28 based paint and asbestos) is found to exist or be present, the General Partner shall commence  
29 promptly the taking of action to assure it will be either removed from the Partnership Property  
30 and disposed of or encapsulated and/or otherwise corrected, contained and made safe and  
31 inaccessible, all in strict accordance with federal, state and local statutes, laws, rules and  
32 regulations, any recommendations set forth in the Environmental Reports, and any requirements  
33 in the Loan Documents.

34          (o)     The General Partner shall take all actions necessary or required to maintain the  
35 Partnership in good standing in the State of Rhode Island, including, without limitation, the  
36 making of all necessary filings.

1 (p) The General Partner shall use funds of the Partnership attributable to Capital  
2 Contributions, Credit Adjuster Advances made pursuant to Sections 3.03 and 3.05, or Fee  
3 Guaranty Advances prior to using any other Partnership funds to pay the Development Fee.  
4 Nothing in this Section 5.11(p) is intended to affect the obligation of the General Partner to make  
5 such Credit Adjuster Advances or Fee Guaranty Advances.

6 (q) The General Partner will cause all of (i) the fixtures, maintenance supplies, tools,  
7 equipment and like owned or to be owned by the Partnership or to be appurtenant to, or to be  
8 used in the operation of the Project as well as (ii) the rents, revenues and profits earned from the  
9 operation of the Project, to be free and clear of all security interests and encumbrances except for  
10 the Loans described herein.

11 (r) The General Partner shall, during and after the period in which it is a Partner,  
12 provide the Partnership with such information and sign such documents as are necessary for the  
13 Partnership to make timely, accurate and complete submissions of federal and state income tax  
14 returns.

15 (s) The General Partner will not cause or allow restrictions on the sale or refinancing  
16 of the Project, other than the restrictions set forth in the Loan Documents and the Project  
17 Documents.

18 (t) Neither the General Partner nor any of its Affiliates nor the Partnership shall enter  
19 into any agreement or contract for the payment or offset of any construction loan or loan  
20 discounts, additional interest, yield maintenance or other interest charges or financing fees or any  
21 agreement to incur any financial responsibility with respect to the Project or providing for the  
22 guaranty of payment of any such interest charges or financing fees relating to the Loans, other  
23 than those disclosed to the Partnership; in no event shall the General Partner, its Affiliates, or the  
24 Partnership enter into any such agreement or guaranty of any kind whatsoever (such as an  
25 escrow arrangement or letter of credit arrangement) that would subject the Partnership or any of  
26 its Partners, or any partner of any Limited Partner, to personal liability or economic risk of loss  
27 as to the Loans nor shall the General Partner make any loan that shall be personally enforceable  
28 by any lender on the Loans or that may in any way affect allocation of the Projected Credit to the  
29 Limited Partner.

30 (u) The General Partner shall investigate and report to the Limited Partner any  
31 proposal or offer of any Person, including the General Partner, to acquire the Partnership  
32 Property or the Interest of the Limited Partner.

33 (v) The General Partner shall furnish to counsel for the Limited Partner promptly as  
34 and when requested in connection with the rendering of any legal opinion concerning federal  
35 income tax relating to the Limited Partner's investment in the Partnership, all documents  
36 requested by counsel for the Limited Partner.



1 (w) The General Partner will secure from the general contractor a construction  
2 completion guarantee, to be secured with a letter of credit, a one hundred percent (100%)  
3 payment and performance bond, or other assurances acceptable to the Limited Partner.

4 (x) The General Partner will (i) execute on behalf of the Partnership all documents  
5 necessary to elect, pursuant to Sections 734, 743, and 754 of the Code, to adjust the basis of the  
6 Partnership's property, if, in the sole opinion of the accountants for the Limited Partner, such  
7 election would be advantageous to the Limited Partner; (ii) provide to the accountants for the  
8 Limited Partner for review and approval before filing each IRS Form 8609, Tax Credit  
9 Allocation, for the Project; and (iii) make such elections on the IRS Form 8609, Tax Credit  
10 Allocation, which in the sole opinion of the accountants for the Limited Partner, are  
11 advantageous to the Limited Partner. In addition, the General Partner shall obtain the Consent of  
12 the Limited Partner to make any election under the Code that would affect the amount, timing,  
13 availability, or allocation of Credits.

14 (y) The General Partner shall promptly inform the Partnership and the Limited  
15 Partner upon receiving any notice of or having any knowledge of any violation with respect to  
16 the Partnership Property of any law, rule, regulation, order, or decree of any governmental  
17 authority having jurisdiction, which would have a material adverse effect on the Partnership  
18 Property (including the Partnership's ability to transfer the Partnership Property in accordance  
19 with the terms of this Partnership Agreement) or the Project or the construction, rehabilitation,  
20 use, occupancy, or operation thereof.

21 (z) The General Partner shall promptly inform the Partnership of any litigation,  
22 action, investigation, event, or proceeding that is pending or, to the best of its knowledge, is  
23 threatened which, if adversely resolved, would (i) have a material adverse effect on the  
24 Partnership or the Partnership Property; (ii) have a material adverse effect on the ability of the  
25 General Partner or any of its Affiliates to perform their respective obligations under this  
26 Agreement; (iii) have an adverse effect on any adjacent property, which would have a material  
27 adverse effect on the Partnership Property or the Partnership's investment in the Partnership  
28 Property; (iv) have a material adverse effect on the financial condition of the General Partner; or  
29 (v) constitute or result, if true, in a material breach of any representation, warranty, covenant, or  
30 agreement set forth in this Agreement.

31 (aa) The General Partner will cause the Project to be constructed and/or rehabilitated,  
32 and thereafter operated, as low-income housing as required by the Code in order to qualify for  
33 and maintain the Credit and other tax benefits anticipated in connection therewith.

34 (bb) The General Partner will obtain a valid carryover allocation of Credit by  
35 December 31, 1999 and will comply with the requirements of Section 42(h)(1) of the Code,  
36 including, without limitation, the requirement that the basis of the Project as of December 31,  
37 1999 will equal more than ten percent (10%) of the reasonably anticipated basis of the Project as  
38 of December 31, 2001.

1 (cc) In the event the Federal Drug Free Workplace Act of 1988 and the Regulations  
2 promulgated thereunder, including without limitation, 54 Code of Federal Regulations 4956  
3 (1989), as such Act and Regulations may be amended are applicable, the General Partner shall  
4 comply with and will cause the Partnership and the Management Agent to comply with such Act  
5 and Regulations.

6 (dd) The General Partner will comply and will cause the Partnership to comply with  
7 the restrictions, certifications and disclosure requirements contained in the Byrd Amendment, if  
8 such Act is applicable.

9 (ee) The General Partner will not cause the Partnership to accept any federal grant of  
10 funds after the Admission Date without the Consent of the Limited Partner.

11 (ff) Except as specified herein, no Partner or Affiliate of any Partner shall make a loan  
12 to the Partnership. Any such Partner or Affiliate is referred to as a "Lender." For the purposes of  
13 this paragraph, "Affiliate" includes any person having an equity interest in any Partner that is a  
14 pass-through entity for federal income tax purposes. A Partner or an Affiliate may be a Lender if  
15 one of the following conditions is satisfied:

16 1. *Less than a 10 Percent Partner.*

17 (a) The Lender's or Affiliate's percentage Partnership Interest in each  
18 item of income, gain, loss, deduction and credit of the Partnership (directly or indirectly through  
19 a Partner of the Partnership) is less than ten percent (10%) for every year that the Lender or  
20 Affiliate is a Partner;

21 (b) The Limited Partner is informed of such relationship; and

22 (c) The loan made by such Partner or Affiliate will not (based on an  
23 analysis by accountants employed by the Limited Partner, or based on an opinion of counsel)  
24 affect the basis of any Partner in the Partnership, the basis of any partner in the Limited Partner,  
25 nor the allocation of any tax items among the Partners or among the partners of a Partner, under  
26 Section 752 or Section 704 of the Code, nor result in recapture of any tax credits previously  
27 allocated to the Partners, to such an extent that the amount and timing of tax credits and tax  
28 losses allowable to the Limited Partner and the partners thereof is less favorable than that  
29 assumed in the Projections; or

30 2. *10 Percent or More Partner.* If a Lender's or Affiliate's percentage Partnership  
31 Interest in the Partnership (directly or indirectly through a Partner of the Partnership), determined  
32 as described in paragraph 1(a), above, is ten percent (10%) or more, then the Partner or Affiliate  
33 may make the loan if the Limited Partner Consents. As part of any request for such Consent, the  
34 General Partner shall furnish to the Limited Partner an analysis from the Accountants, or an  
35 opinion of counsel to the Partnership (unless the Limited Partner elects to obtain an analysis  
36 from its accountant or an opinion of its counsel), to the effect that such loan will not affect the

basis or allocations of tax items or recapture of tax credits of the Partnership, or of or among the Partners, or the partners thereof, as described in paragraph 1(c) above.

(gg) The General Partner will take all actions necessary or appropriate to prevent any portion of the Partnership Property from being treated as 'tax exempt use property' as defined in Section 168(h) of the Code, and in furtherance thereof, the General Partner shall make an election in accordance with Section 168(h)(6) of the Code.

(hh) No separate fee will be charged to the tenants of the Project for the use of any of the common area facilities (other than the coin-operated laundry facilities that may be leased by the Partnership and used on the premises).

(ii) The General Partner shall elect to begin the Credit Period in 2001.

(jj) If the General Partner has stockholders, it shall not permit its stockholders to convey more than twenty-five percent (25%) of the stock outstanding at any time without the Consent of the Limited Partner; except that up to fifty percent (50%) of the stock may be conveyed to Affiliates of the General Partner without obtaining the Consent of the Limited Partner.

(kk) Continual or frequent nursing, medical or psychiatric services will not be available to tenants in the Project.

(ll) The Project will not be operated as a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally or physically handicapped.

## **5.12 No Compensation**

Except as provided in the Fee Agreements, the General Partner shall not be entitled to receive any compensation in connection with its performance of its duties as General Partner.

## **5.13 Obligation to Complete Construction**

(a) The General Partner shall complete the construction and/or rehabilitation of the Partnership Property or cause the same to be completed in a good and workmanlike manner, free and clear of all mechanics', materialmen's, or similar liens, and shall equip the Partnership Property or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, including refrigerators and ranges, all in accordance with the Loan Documents and the Project Documents, and shall provide for, or cause to be provided for, all other actions and performance required to arrive at Cost Certification in conformity with the Loan Documents and shall meet all requirements for obtaining and maintaining all necessary [certificates of occupancy and] use permits for all the Units in the Project. In addition, the General Partner shall cause to be completed and provided to the Limited Partner in a timely manner Monthly Construction and Lease-up Status Reports in the form attached as Exhibit M to this Agreement.

(b) If the Designated Proceeds are insufficient to:

(i) Complete the construction and/or rehabilitation of the Project or cause the same to be completed in a good and workmanlike manner, free and clear of all mechanics', materialmen's, or similar liens, and equip the Partnership Property or cause the same to be equipped, all in accordance with the Loan Documents and the Project Documents;

(ii) Arrive at Cost Certification in conformity with the Loan Documents;

(iii) Discharge all Partnership liabilities and obligations arising out of any casualty giving rise to insurance proceeds;

(iv) Meet all requirements for obtaining and maintaining all necessary certificates of occupancy and use permits;

(v) Pay or provide for all requirements of the ongoing business operations of the Partnership applicable to the period prior to the Completion Date; and

(vi) Pay or provide for all amounts necessary to correct latent defects occurring within one year after the Completion Date, including all obligations, expenses, costs, liabilities, or expenditures in respect thereof, applicable to the period prior to the Completion Date; the General Partner shall pay to the Partnership all funds ("**Development Advances**") that shall be necessary to accomplish the foregoing at such time as those costs and expenses become due and payable. Any funds provided by the General Partner pursuant to this Section 5.13 shall be deemed to be Capital Contributions by the General Partner. The General Partner's obligations under this Section 5.13 shall be guaranteed by West Elmwood Housing Development Corporation] pursuant to the Unconditional Construction Completion Guaranty Agreement attached hereto as Exhibit G to this Agreement.

#### 5.14 Operating Deficit Contributions

If, at any time or from time to time after the Completion Date, an Operating Deficit exists which is not funded from the Operating Reserve, then the General Partner shall contribute funds (an "**Operating Deficit Contribution**") to the Partnership as a contribution to capital in an amount equal to the amount of the Operating Deficit; The General Partner's obligation under this Section 5.14 shall be unlimited through the Lease-up Date *provided, however*, that the General Partner's obligation to make Operating Deficit Contributions after the Lease-up Date shall be limited to the "**Maximum Operating Deficit Contribution**," as shown on Exhibit A-2, plus all distributions made by the Partnership to the General Partner or its Affiliates as of such date. The obligation of the General Partner to make Operating Deficit Contributions shall terminate on the date that the following have occurred simultaneously: (i) the Project has operated at Break-even for at least three (3) consecutive calendar years following the Completion Date of the Project; and (ii) the combined balance in the Operating Reserve equals or exceeds the sum of the "**Operating Reserve Amount**," which is shown on Exhibit A-2. Operating Deficit Contributions shall be repayable, without interest, solely as provided in Article VIII hereof. The General

1 Partner's obligations under this Section 5.14 shall be guaranteed by the Guarantor pursuant to the  
2 terms of the Guaranty Agreement, attached as Exhibit D.

### 3 **5.15 Fee Guaranty Advances**

4 If as of the date that any installment of the Development Fee is due (i) there is a  
5 continuing deferral of the Additional Capital Contribution Due Date pursuant to Section 3.02(d),  
6 or (ii) the Limited Partner has deposited any Additional Capital Contribution in an escrow  
7 account pursuant to Section 3.02(k), the General Partner shall make a Fee Guaranty Advance to  
8 the Partnership equal to the excess of (x) the amount of the Development Fee for the taxable  
9 year, over (y) the amount of any Credit Adjuster Advance made pursuant to Section 3.05 for the  
10 year. The amount of any Fee Guaranty Advance shall be advanced to the Partnership prior to the  
11 due date of the Development Fee and used by the Partnership to pay the amount of the  
12 Development Fee for the taxable year. As soon as the Additional Capital Contribution has been  
13 made or paid to the Partnership, there shall be specially distributed to the General Partner  
14 (neither to reduce nor to be limited by Net Cash Flow) an amount equal to the amount of all  
15 unrepaid Fee Guaranty Advances. The General Partner's obligations under this Section 5.15  
16 shall be guaranteed by the Guarantor pursuant to the terms of the Guaranty Agreement, attached  
17 as Exhibit D.

### 18 **5.16 Dealing with Affiliates; Fees**

19 (a) The General Partner may, for, in the name of and on behalf of, the Partnership,  
20 enter into agreements or contracts for performance of services for the Partnership with an  
21 Affiliate thereof and may authorize the Management Agent to enter into such agreements and  
22 contracts, and the General Partner may obligate the Partnership to pay compensation for and on  
23 account of any such services and may authorize the Management Agent to so obligate the  
24 Partnership; *provided, however*, such compensation and services shall be at costs to the  
25 Partnership not in excess of those that would be incurred in making arms-length purchases of  
26 comparable services on the open market.

27 (b) The Partnership shall pay fees to the Partners and their Affiliates, which fees, and  
28 the agreements governing them, are described on Exhibit A-4.

29 (c) The Partnership shall pay the Management Agent from gross rental income, a  
30 Management Fee pursuant to the Property Management Agreement attached as Exhibit F to this  
31 Agreement.

### 32 **5.17 Obligation to Purchase Interest of Limited Partner**

33 (a) The General Partner shall be obligated, as provided in Section 5.17(b), to  
34 purchase the Limited Partner's Interest for a sum equal to the total Capital Contributions made to  
35 date by the Limited Partner if: (i) the basis of the Project as of December 31, 1999 does not  
36 equal at least ten percent (10%) of the reasonably anticipated basis of the project as of December  
37 31, 2001 or the Partnership does not receive a valid carryover allocation by December 31, 1999;

or (ii) all buildings in the Project have not been placed in service in accordance with the requirements of Section 42 of the Code by December 31, 2001 or the Partnership does not receive IRS Form(s) 8609 by January 1st of the calendar year following the date the Project is placed in service. The General Partner's obligations under this Section 5.17(a) are hereby guaranteed by the Guarantor pursuant to the terms of the Guaranty Agreement, attached hereto as Exhibit D.

(b) Upon the occurrence of any of the events specified in Section 5.17(a), the General Partner shall, within ten (10) days thereafter, give Notice to the Limited Partner of the occurrence of such event and of the General Partner's obligation to purchase the Limited Partner's Interest. The Limited Partner by Consent of the Limited Partner may, by Notice to the General Partner within the earlier of (i) thirty (30) days after the General Partner's Notice, or (ii) forty (40) days but no sooner than ten (10) days after becoming aware of the events specified in Section 5.17(a), regardless of whether the General Partner has complied with the ten (10) day Notice requirement described in this Section 5.17(b), elect to require the General Partner to purchase the Limited Partner's Interest. If the Limited Partner elects to have its Interest purchased, the General Partner shall purchase such Interest within ten (10) days after Notice from the Limited Partner of its election to have its Interest purchased. The Limited Partner may unconditionally waive at any time its right to require the General Partner to purchase its Interest by reason of the application of any of the numbered clauses of Section 5.17(a). After such waiver the General Partner shall have no further obligation to purchase by reason of the application of the clause to which such waiver relates; *provided, however*, that the Limited Partner's election not to have its interest purchased by reason of the application of one such clause shall not constitute a waiver with respect to any future obligation of the General Partner to purchase its Interest by reason of the application of any other such clause.

## **5.18 Reserves**

The General Partner shall cause the Partnership to establish the reserves described on Exhibit A-6.

## **5.19 Proposed Budget**

The General Partner has delivered to the Limited Partner a copy of the budget for the current Fiscal Year. No later than December 1 of each year, the General Partner shall submit to the Limited Partner a budget (the "**Proposed Budget**") for the ownership and operation of the Project, reflecting the reasonably projected income and expenses for the following calendar year on a monthly basis. The Limited Partner shall review the Proposed Budget and satisfy itself as to the reasonableness of the projected figures. Thereafter, the Proposed Budget shall become the "**Budget**" for the following year.

## **5.20 Action for Breach**

The representations warranties and covenants in Sections 5.10 and 5.11 are being made by the General Partner to the Limited Partner in consideration for the investment in the

Partnership by the Limited Partner. Upon the occurrence of any breach of any representation, warranty, covenant or agreement contained herein, the General Partner shall diligently attempt to cure such breach. If such breach is not susceptible to cure, or if the General Partner fails to pursue a cure diligently, or if within 30 days no cure has been achieved, then the Limited Partner may pursue any available legal or equitable remedy against the General Partner, without being required to dissolve the Partnership and notwithstanding the availability of any other remedy; *provided, however*, that with respect to any breach that results solely in a loss or reduction of the Credit, if such breach occurred despite the General Partner's good faith, diligent efforts to prevent such breach, the Limited Partner shall be limited to its remedies under Sections 3.03 and 9.02.

## ARTICLE VI

### Rights and Obligations of the Limited Partner

#### 6.01 Management of the Partnership

The Limited Partner shall not take part in the management or control of the business of the Partnership or transact any business in the name of the Partnership. The Limited Partner shall not have the power or authority to bind the Partnership or to sign any agreement or document in the name of the Partnership.

#### 6.02 Limitation on Liability of the Limited Partner

Notwithstanding any other provision of this Agreement, the liability of the Limited Partner shall be limited to its Capital Contributions at any given time as and when payable under the provisions of this Agreement. The Limited Partner shall not be obligated to contribute money to, or in respect of the liabilities, obligations, debts or contracts of the Partnership, nor shall the Limited Partner be personally liable for any liabilities, obligations, debts or contracts of the Partnership. The Limited Partner shall not be obligated to make loans to the Partnership.

#### 6.03 Outside Activities

Nothing herein contained in this Agreement shall be construed to constitute the Limited Partner hereof the agent of any other Partner hereof or to limit in any manner the Limited Partner in the carrying on of its own businesses or activities. The Limited Partner may engage in and possess any interest in other business ventures (including limited partnerships) of every kind, nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships which own, directly or through interests in other partnerships, housing projects similar to, or in competition with, the Project. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in or to any such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

1   **6.04   Execution of Amendments**

2           The Limited Partner agrees to sign and acknowledge any amendment to this Agreement  
3   adopted in accordance with the terms of this Agreement and to execute whatever further  
4   instruments shall be necessary or appropriate in connection therewith. The General Partner shall  
5   cause the due execution, acknowledgment, and filing for record (and publication, if required by  
6   Act) of any such amendment or further instruments in accordance with the Act, and shall cause a  
7   copy of the endorsed copy thereof to be furnished to the Limited Partner.

8   **6.05   Inspection of the Project**

9           The Limited Partner and/or its agent or designee shall have the right to inspect the Project  
10   at any time and the General Partner shall provide all reasonable assistance to the Limited Partner  
11   in such effort.

12                                   **ARTICLE VII**

13                                   **Allocations of Profits and Losses**

14   **7.01   Maintenance of Capital Accounts**

15           The Partnership shall maintain a Capital Account for each Partner. Such Capital Account  
16   shall be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). To each  
17   Partner's Capital Account there shall be credited such Partner's Capital Contributions, and its  
18   distributive share of Net Profits and Gains and any item in the nature of income or gain allocated  
19   to such Partner under Section 7.02 hereof. To each Partner's Capital Account there shall be  
20   debited the amount of cash and the fair market value (as of the date of distribution) of any  
21   Partnership property (net of liabilities securing the distributed property that such Partner assumes  
22   or subject to which such Partner takes the distributed property) distributed to such Partner  
23   pursuant to any provision of this Agreement and such Partner's distributive share of Net Losses  
24   and Loss and any items in the nature of expenses or deductions that are allocated to such Partner  
25   pursuant to Section 7.02 hereof.

26   **7.02   Profits and Losses**

27           (a)   After giving effect to the special allocations set forth in Section 7.03, the Net  
28   Profits, Net Losses, Loss and credits of the Partnership shall be allocated one-hundredth of one  
29   percent (0.01%) to the General Partner and ninety-nine and ninety-nine/one-hundredths percent  
30   (99.99%) to the Limited Partner (pro rated to each Limited Partner in accordance with their  
31   percentage interests); *provided, however*, that Gain shall be allocated among the Partners as  
32   follows:

33                   (i)   To each Limited Partner until the balance in said Limited Partner's Capital  
34   Account equals the sum of (x) the amount of the federal income tax liability imposed on said  
35   Limited Partner and its partners from the receipt of Sale or Refinancing Proceeds assuming all



1 such Persons are subject to a federal income tax rate of thirty-five percent (35%), (y) the Credit  
2 Deficiency and (z) an amount necessary to provide the Limited Partner with total benefits from  
3 the Partnership equal to the amount (the "*Total Benefit Amount*") shown on Exhibit A-2 (adjusted  
4 in accordance with Section 3.03(a)). The Total Benefit Amount shall be computed as the sum of  
5 the following items, discounted at fifteen percent (15%):

6 (A) One hundred percent (100%) of Credits allocated to the Limited  
7 Partner on the Partnership's tax returns; plus

8 (B) The federal income tax benefit derived by said Limited Partner and  
9 its partners from the amount of Net Losses allocated to the Limited Partner on the Partnership's  
10 tax returns, assuming a federal income tax rate of thirty-five percent (35%); plus

11 (C) All distributions to the Limited Partner of Net Cash Flow and Sale  
12 and Refinancing Proceeds pursuant to Sections 8.02(b) and (c); minus

13 (D) The federal income tax liability of said Limited Partner and its  
14 partners associated with the amount of Net Profit and Gain allocated to said Limited Partner on  
15 the Partnership's tax returns, assuming a federal income tax rate of thirty-five percent (35%);

16 (ii) To the General Partner until the balance in its Capital Account equals the  
17 unrepaid portion of any Operating Deficit Contribution; and

18 (iii) The balance, among the Partners so that, to the extent possible, the ratio of  
19 (x) the balance of the Limited Partner's Capital Account in excess of the balance described in  
20 Section 7.02(a)(i) to (y) the balance in the General Partner's Capital Account in excess of the  
21 balance described in Section 7.02(a)(ii) is ninety-nine and ninety-nine one-hundredths (99.99) to  
22 one one-hundredth (0.01).

23 (b) For purposes of the allocations of Gain and Loss, a Partner's Capital Account  
24 shall be determined immediately prior to the event giving rise to the Gain and Loss as if, at such  
25 time, the books of the Partnership had been closed as though at the end of the taxable year.

### 26 **7.03 Special Allocations and Limitations**

27 The following provisions shall apply notwithstanding the provisions of Section 7.02. In  
28 the event that there is a conflict between any of the following provisions, the earlier listed  
29 provision shall govern.

30 (a) If there is a net decrease in Minimum Gain attributable to Nonrecourse Liabilities  
31 during any taxable year, each Partner who has a share of the Minimum Gain attributable to such  
32 Nonrecourse Liabilities (as such share is determined pursuant to Treasury Regulation Section  
33 1.704-2(g)) shall be specially allocated items of Partnership income and gain for such year (and,  
34 if necessary, for succeeding years) equal to each Partner's share of the net decrease in Minimum  
35 Gain (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)(2)).

1 Notwithstanding the preceding sentence, a Partner shall not be specially allocated items of  
2 Partnership income and Gain to the extent:

3 (i) Such Partner's share of the net decrease in the Minimum Gain is caused by  
4 a guarantee, refinancing, or other change in the debt instrument causing it to become partially or  
5 wholly recourse debt or Partner Nonrecourse Debt, and such Partner bears the economic risk of  
6 loss (within the meaning of Treasury Regulation Section 1.752-2) for the newly guaranteed,  
7 refinanced, or otherwise changed liability;

8 (ii) Such Partner contributes capital to the Partnership that is used to repay the  
9 Nonrecourse Liability, and such Partner's share of the net decrease in Minimum Gain results  
10 from the repayment; or

11 (iii) If the Commissioner of the IRS waives or excepts such an allocation  
12 pursuant to Treasury Regulation Sections 1.704-2(f)(4) or (5).

13 It is the intent that items to be so allocated shall be determined and the allocations made in  
14 accordance with the minimum gain chargeback requirement of Treasury Regulation Section  
15 1.704-2(f), and this Section 7.03(a) shall be interpreted consistently therewith.

16 (b) If there is a net decrease in Minimum Gain attributable to Partner Nonrecourse  
17 Debt during any taxable year, each Partner who has a share of the Minimum Gain attributable to  
18 such Partner Nonrecourse Debt (as such share is determined pursuant to Treasury Regulation  
19 Section 1.704-2(g)) shall be specially allocated items of Partnership income and gain for such  
20 year (and, if necessary, for succeeding years) equal to such Partner's share of the net decrease in  
21 such Minimum Gain (as such share is determined pursuant to Treasury Regulation Section  
22 1.704-2(g)(2)). Notwithstanding the preceding sentence, a Partner shall not be specially  
23 allocated items of Partnership income and gain to the extent:

24 (i) The net decrease in such Minimum Gain arises because the liability ceases  
25 to be Partner Nonrecourse Debt due to a conversion, refinancing, or other change in the debt  
26 instrument that causes it to become partially or wholly a Nonrecourse Liability; or

27 (ii) Treasury Regulation Section 1.704-2(i) otherwise so provides.

28 It is the intent that items to be so allocated shall be determined and the allocations made in  
29 accordance with the minimum gain chargeback requirement of Treasury Regulation Section  
30 1.704-2(i) and this Section 7.03(b) shall be interpreted consistently therewith.

31 (c) In the event a Partner unexpectedly receives in any taxable year any adjustments,  
32 allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5),  
33 or (6) that cause or increase an Adjusted Capital Account Deficit of such Partner, items of  
34 Partnership income and gain shall be specially allocated to such Partner in such taxable year  
35 (and, if necessary, in succeeding taxable years) in an amount and manner sufficient to eliminate,  
36 to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such

1 Partner as quickly as possible. It is the intent that items to be so allocated shall be determined  
2 and the allocations made in accordance with the qualified income offset provision of Treasury  
3 Regulation Section 1.704-1(b)(2)(ii)(d) and Section 7.03(c) shall be interpreted consistently  
4 therewith.

5 (d) No Net Losses, Losses or Partnership deductions for any taxable year shall be  
6 allocated to the Limited Partner to the extent such allocation would cause or increase an  
7 Adjusted Capital Account Deficit with respect to such Partner, and such Net Losses, Losses or  
8 Partnership deductions shall instead be allocated to the General Partner.

9 (e) If in any taxable year there is a net increase during such year in the amount of  
10 Minimum Gain attributable to a Partner Nonrecourse Debt, any Partner bearing the economic  
11 risk of loss with respect to such debt (within the meaning of Treasury Regulation Section 1.752-  
12 2) shall be specially allocated items of Partnership loss or deduction in an amount equal to the  
13 excess of (i) such Partner's share of the amount of such net increase, over (ii) the aggregate  
14 amount of any distributions during such year to such Partner of the proceeds of such debt that are  
15 allocable to such increase in Minimum Gain. It is the intent that items to be so allocated shall be  
16 determined and the allocations made in accordance with the required allocation of "partner  
17 nonrecourse deductions" pursuant to Treasury Regulation Section 1.704-2(i), and this Section  
18 7.03(c) shall be interpreted consistently therewith.

19 (f) The General Partner's interest in each material item of Partnership income, gain,  
20 loss, deduction, and credit will be equal to at least one one-hundredth of one percent (0.01%) of  
21 each such item at all times during the existence of the Partnership.

22 (g) The special allocations set forth in Section 7.03(a), (b), (c), and (e) (the  
23 "Regulatory Allocations") are intended to comply with certain requirements of Treasury  
24 Regulation Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations shall be taken into  
25 account in allocating other profits, losses and other items of income, gain, loss and deduction to  
26 the Partners so that, to the extent possible, the net amount of such allocations of profits and  
27 losses and other items shall be equal to the amount that would have been allocated to each  
28 Partner had the Regulatory Allocation not occurred. In the event that in any year the Regulatory  
29 Allocations alter the allocations of tax items to the Partners, to the extent possible, depreciation  
30 deductions shall nevertheless be allocated ninety-nine and ninety-nine/one-hundredths percent  
31 (99.99%) to the Limited Partner and one one-hundredth of one percent (0.01%) to the General  
32 Partner.

33 (h) The respective interest of the Partners in the Net Profits, Net Losses, Gain, and  
34 Loss or items thereof shall remain as set forth above unless changed by amendment to this  
35 Agreement or by an assignment of a Partnership Interest authorized by the terms of this  
36 Agreement. Except as otherwise provided herein, for tax purposes, all items of income, gain,  
37 loss, deduction, or credit shall be allocated to the Partners in the same manner as are Net Profits  
38 from operations; *provided, however*, that with respect to property contributed to the Partnership  
39 by a Partner, such items shall be shared among the Partners so as to take into account the

1 variation between the basis of such property and its fair market value at the time of contribution  
2 in accordance with Section 704(c) of the Code.

3 (i) In accordance with Section 704(c) of the Code and the Treasury Regulations  
4 thereunder, income, gain, loss, and deduction with respect to any property contributed to the  
5 capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to  
6 take account of any variation between the adjusted basis of such property to the Partnership for  
7 federal income tax purposes and its initial fair market value (as used as book value of the  
8 property by the Partnership). In the event the book value of any Partnership property is adjusted  
9 upon: (i) acquisition of a Partnership interest by any Person in exchange for a capital  
10 contribution; or (ii) any non-pro rata distribution to Partners of Partnership property other than  
11 cash; subsequent allocations of income, gain, loss, and deduction with respect to such asset shall  
12 take account of any variation between the adjusted basis of such asset for federal income tax  
13 purposes and its book value in the same manner as under Section 704(c) of the Code.  
14 Allocations pursuant to this Section 7.03 are solely for purposes of federal, state, and local taxes  
15 and shall not affect, or in any way be taken into account in computing, any Partner's Capital  
16 Account or share of Net Profits or Net Losses, other items, or distributions pursuant to any  
17 provision of this Agreement.

18 (j) Solely for purposes of determining a Partner's proportionate share of the "excess  
19 nonrecourse liabilities" of the Partnership within the meaning of Treasury Regulation Section  
20 1.752-3(a)(3), the General Partner's interest in Partnership profits shall equal one-hundredth of  
21 one percent (0.01%) and the Limited Partner's interest in Partnership profits shall equal ninety-  
22 nine and ninety-nine/one-hundredths percent (99.99%) (prorated between the Limited Partners in  
23 accordance with their percentage interest in the Partnership).

24 (k) In the event the General Partner makes an Operating Deficit Contribution in a  
25 particular year, the General Partner shall be specially allocated an amount of deduction equal to  
26 the amount of the Operating Deficit Contribution, but in no event shall the General Partner be  
27 allocated any depreciation deductions.

28 (l) If any Partner's Capital Contribution is used to fund any syndication fees or  
29 expenses referred to in Section 709 of the Code, such Partner shall be specially allocated such  
30 fees or expenses.

## 31 **ARTICLE VIII**

### 32 **Cash Distributions**

#### 33 **8.01 Distributions of Net Cash Flow**

34 Net Cash Flow, to the extent available, shall be distributed to and among the Partners,  
35 within seventy-five (75) days after the close of each Fiscal Year, as follows:

36 (i) First, to the General Partner to repay any Operating Deficit Contribution; and

(ii) The balance, one-hundredth of one percent (0.01%) to the General Partner and ninety-nine and ninety-nine/ one-hundredths percent (99.99%) to the Limited Partner (prorated between the Limited Partners in accordance with their percentage interest in the Partnership).

## **8.02 Distributions of Capital Proceeds**

Any Capital Proceeds other than net proceeds upon liquidation of the Partnership resulting from the sale of the Partnership Property, which shall be governed by Article XII, shall be distributed to and among the Partners in the following amounts and order of priority:

(a) To each Limited Partner in the amount of the federal income tax liability that would be imposed on said Limited Partner and its partners from the receipt of Sale or Refinancing Proceeds assuming all such Persons are subject to federal income tax at a rate of thirty-five percent (35%);

(b) To the Limited Partner an amount equal to the Credit Deficiency;

(c) To the Limited Partner until the Limited Partner's total benefits as determined under Section 7.02(a)(i), from the Partnership equal the Total Benefit Amount (adjusted in accordance with Section 3.03(a));

(d) To the General Partner to repay any Operating Deficit Contribution; and

(e) The balance, one hundredth of one percent (0.01%) to the General Partner and ninety-nine and ninety-nine/one hundredths percent (99.99%) to the Limited Partner.

## **ARTICLE IX**

### **Admission of Successor and Additional General Partners; Removal and Withdrawal of General Partner**

#### **9.01 Admission of Successor or Additional General Partners**

(a) The General Partner shall not have any right to retire or withdraw voluntarily from the Partnership or to sell, transfer, or assign all or any portion of its Interest, without the Consent of the Limited Partner, which consent may be withheld at the sole discretion of the Limited Partner. In the event that the Consent of the Limited Partner has been obtained by the General Partner, the General Partner shall designate one or more persons to be its successor. In no event shall the Interests of the other Partners be affected thereby. The designated successor General Partner shall be admitted as such to the Partnership upon approval of the Limited Partner of such successor General Partner and upon satisfying the conditions of this Article IX and Section 15.01. Any voluntary withdrawal by the General Partner from the Partnership or any sale, transfer, or assignment by the General Partner of its Interest shall be effective only upon the admission in accordance with this Section 9.01(a) and Section 15.01 of a successor General Partner.

(b) The successor General Partner shall pay to the Partnership all costs and expenses incurred in connection with such substitution, including, without limitation, legal and other costs incurred in the review and processing of the assignment, in amending this Agreement, and in filing the amended Certificate.

(c) The successor General Partner shall by its execution of this Agreement and as a condition precedent to receiving any Interest in the Partnership or the Partnership Property agree to be bound by this Agreement to the same extent and on the same terms as the predecessor General Partner.

(d) Upon the admission of the successor General Partner, an amendment to this Agreement reflecting such admission, and stating the agreement set forth in Section 9.01(c) and in all respects in compliance with the requirements of the Act shall be executed and an amendment to the Certificate shall be executed and filed in accordance with the Act.

## **9.02 Removal of a General Partner, Management Agent, or Accountant**

(a) The Limited Partner, by Consent of the Limited Partner, shall have the right to remove a general partner of the Partnership as the General Partner and shall have the right to remove the Management Agent (and upon the exercise of such right the General Partner shall so remove the Management Agent) for any of the following reasons:

(i) The General Partner or Management Agent (if applicable) has committed an act or acts of negligence, willful misconduct, substantial mismanagement of the Project or Partnership, malfeasance, fraud, or an act or acts outside the scope of its authority, has breached any representation, warranty, agreement or covenant contained in this Agreement which breach has a material adverse effect on the Partnership, or has breached its fiduciary duties as the General Partner;

(ii) The Partnership has violated in any material respect any provision of any document or agreement with the Mortgagees or any governmental regulation; and/or the occurrence of a default on any Loan made to the Partnership that is not cured within applicable cure periods;

(iii) The General Partner or the Partnership has taken any action or failed to take any action that would (A) cause the termination of the Partnership for federal income tax purposes, (B) cause the Partnership to be treated for federal income tax purposes as an association taxable as a corporation, (C) violate any federal or state securities laws, (D) cause the Partnership to fail to qualify as a limited partnership under the Act, (E) cause a material reduction in the tax benefits or a material increase in the tax liability of the Limited Partner, or (F) cause the Limited Partner to be liable for Partnership obligations in excess of its Capital Contributions;

(iv) During the Compliance Period, the General Partner or the Management Agent has operated the Partnership Property or the Project in a manner so as not to qualify as a "qualified low-income housing project" under Section 42(g)(1) of the Code;

(v) The occurrence of material unanticipated construction cost overruns, and/or Operating Deficits, unless such overruns and/or Operating Deficits are funded in such a manner so as not to materially adversely affect the Project and the allocation of Credits to the Limited Partner;

(vi) A filing of a foreclosure or other creditor's action or exercise of control over the Project by a lender or other creditor, or the filing of a bankruptcy petition or similar creditor's action by or against the Partnership or the General Partner;

(vii) Failure to comply with its obligations under this Agreement, including without limitation, failure to maintain records as required under the low income housing tax credit requirements and failure to provide timely reports to the Limited Partner as required pursuant to the provisions of this Agreement;

(viii) The General Partner directly or indirectly causes the construction schedule set forth in the Project Documents to be delayed by more than ninety (90) days; and

(ix) Any other event under the Act which permits removal or withdrawal of the General Partner.

In addition to the circumstances described in the preceding paragraphs (i) through (ix), by the Consent of the Limited Partner, the Limited Partner shall have the right to remove the Management Agent if upon thirty (30) days notice, or such longer period if such breach cannot be cured in thirty (30) days and the General Partner is diligently pursuing such cure, the following events or situations are not remedied by the Management Agent to the satisfaction of the Limited Partner: (i) any serious problem or repair requiring immediate action by the Management Agent has not been remedied; or (ii) the vacancy rate for the Project is greater than ten percent (10%) for any six (6) month period.

By the Consent of the Limited Partners, the Limited Partners shall have the right to require the General Partner to replace the Accountant or to obtain additional accounting services if there is mismanagement of the Project or there is financial mismanagement of the Partnership, including the failure to provide the reports required under this Agreement on a timely basis.

(b) Upon the removal of the General Partner for any reason pursuant to Section 9.02(a), the remaining or successor General Partner shall cause the Partnership to redeem the removed General Partner's Interest for one hundred dollars (\$100), and such removed General Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership; *provided, however*, such removed General Partner and its Affiliates shall be entitled to receive any fee, pursuant to this Agreement,

1 that has been earned by the General Partner and its Affiliates as of the time of its removal. In  
2 addition, except as noted above, upon any sale by a General Partner under this Section 9.02(b),  
3 all agreements between the Partnership and any Affiliates of such General Partner may, at the  
4 election of the Partnership, be terminated and the Partnership shall have no further obligation  
5 under such agreements.

6 (c) In the event that the General Partner is removed, it shall be and shall remain liable  
7 for all obligations and liabilities incurred by it as General Partner of the Partnership before such  
8 removal shall become effective, including but not limited to the obligations and liabilities of the  
9 General Partner set forth in Sections 5.13 and 5.14 of this Agreement with regard to  
10 Development Advances and Operating Deficit Contributions; provided, however that if amounts  
11 otherwise payable to the General Partner or its Affiliates as a Development Fee are applied by  
12 the Partnership to meet the General Partner's obligations stated in Sections 5.13 and 5.14 of this  
13 Agreement, such application shall be treated as payment of such Development Fee, followed by  
14 satisfaction by the General Partner of an equal amount of the General Partner's liability to the  
15 Partnership and shall serve to reduce any such liabilities of the General Partner or any successor,  
16 except for any liability incurred as a result of its negligence, misconduct, fraud or breach of its  
17 fiduciary duties as General Partner of the Partnership.

18 (d) In the event that the General Partner or the Management Agent has been removed,  
19 the Limited Partner shall have the right, without the consent of any of the other Partners, to  
20 designate a successor General Partner or the Management Agent and the Limited Partner may,  
21 within ninety (90) days of the sole General Partner's removal, elect to continue the business of  
22 the Partnership.

23 (e) The removed General Partner shall be liable for all costs and expenses incurred in  
24 the admission of a successor General Partner and for all other costs, expenses, or damages  
25 incurred by the Partnership as a result of the removal.

26 (f) The Limited Partner shall not have the right to exercise any of its remedies  
27 pursuant to this Section as a result of any failure or violation described in Section 9.02(a)(i)  
28 (relating to a breach of any representation, warranty, agreement or covenant contained in the  
29 Agreement) or Section 9.02(a)(ii) if the failure or violation is curable and if any General Partner  
30 shall cure such failure or violation within thirty (30) days after notice; provided that (i) the  
31 foregoing thirty (30) day cure period shall not apply in the event of any failure or violation that  
32 constitutes an event of default as defined in any Loan Document and as to which no cure period  
33 is provided to the Partnership or if the cure period is shorter than thirty (30) days; (ii) the  
34 aforesaid cure period shall commence as provided above, but in any event shall be deemed to  
35 commence simultaneously with the cure period provided in any Loan Documents; and (iii) the  
36 aforesaid cure period shall not apply to the matters described in Section 9.02(a)(i), except for the  
37 matters relating to a breach of a representation, warranty, covenant or agreement contained in  
38 this Agreement, and shall not apply to the occurrence of an event described in Sections  
39 9.02(a)(iii) – (ix).



1   **9.03   Event of Bankruptcy of a General Partner**

2           (a)    A General Partner shall cease to be a General Partner upon an Event of  
3 Bankruptcy with respect to such General Partner, or, with the Consent of the Limited Partner,  
4 upon the occurrence of such General Partner's insolvency. Upon such an Event of Bankruptcy,  
5 or, with the Consent of the Limited Partner, such insolvency, the remaining or successor General  
6 Partner shall cause the Partnership to redeem the General Partner's Interest for one hundred  
7 dollars (\$100) and such General Partner shall thereafter cease to have any interest in the capital,  
8 profits, losses, distributions, and all other economic incidents of ownership of the Partnership;  
9 *provided, however,* such General Partner or its Affiliates, as the case may be, shall be entitled to  
10 receive any fee, pursuant to this Agreement, that has been earned by the General Partner or its  
11 Affiliates, as the case may be, as of the time of such Event of Bankruptcy or insolvency. In  
12 addition, upon any sale by a General Partner under this Section 9.03(a), all agreements between  
13 the Partnership and any Affiliates of such General Partner may, at the election of the Partnership,  
14 be terminated and the Partnership shall have no further obligation under any such agreements.

15           (b)    If, at the time of an Event of Bankruptcy with respect to a General Partner, such  
16 General Partner was the sole General Partner, the Limited Partner shall have the right, in its sole  
17 discretion, to designate the successor General Partner and the Limited Partner may, within the  
18 maximum number of days permitted by the Act after the General Partner's ceasing to be a  
19 General Partner of the Partnership, elect to continue the business of the Partnership.

20   **9.04   Liability of a Removed or Withdrawn General Partner**

21           Any General Partner who for any reason voluntarily or involuntarily withdraws or is  
22 removed from the Partnership or sells, transfers, or assigns its Interest shall be and remain liable  
23 for all obligations, liabilities, and guarantees incurred by it as a General Partner prior to the time  
24 when the withdrawal, removal, sale, transfer, or assignment becomes effective, and for any  
25 obligation or liability to the Limited Partner that may arise at any time under Section 5.09 except  
26 that such General Partner shall continue to be liable pursuant to the provisions of Section 5.06  
27 with respect to its acts and omissions occurring on or prior to the effective date of such  
28 withdrawal or removal.

29   **9.05   Restrictions on Transfer of General Partner's Interest**

30           Notwithstanding anything to the contrary in this Article IX, the assignment or transfer of  
31 a General Partner's Interest shall at all times be subject to any additional restrictions applicable to  
32 an assignment or transfer of the Interest of a Limited Partner as set forth in Article X hereof. No  
33 assignee or transferee of all or any part of the Interest of a General Partner shall have any right to  
34 become a General Partner except as provided in this Article IX.

35   **9.06   Continuation of the Business of the Partnership**

36           (a)    If, at the time of an event described in Section 9.02 or Section 9.03 or any other  
37 event described in the Act with respect to a General Partner, such General Partner was not the

1 sole General Partner, the remaining General Partner or General Partners may elect to continue  
2 the business of the Partnership and shall immediately: (i) give Notice to the Limited Partner of  
3 such event; and (ii) make any amendments to this Agreement and execute and file for recording  
4 any amendments or other documents or instruments necessary to reflect the termination of the  
5 Interest of the General Partner as to which such event has occurred and such General Partner's  
6 having ceased to be a General Partner and in order to comply with the requirements of the Act.

7 (b) A Person shall be admitted as a successor or additional General Partner with the  
8 Consent of the Limited Partner if an amendment to the Certificate evidencing the admission of  
9 such Person as a General Partner shall have been filed for recordation. Each General Partner  
10 hereby agrees to execute promptly any such amendment to the Certificate, if required in the  
11 event of its withdrawal or removal pursuant to the provisions of this Article IX, and, in addition,  
12 hereby appoints ESIC as its attorney-in-fact to execute any such amendment on its behalf and in  
13 its place and stead in the event of its withdrawal or removal. The election by the Limited Partner  
14 to remove any General Partner under Section 9.02 shall not limit or restrict the availability and  
15 use of any other remedy that the Limited Partner or any other Partner might have with respect to  
16 any General Partner in connection with its undertakings and responsibilities under this  
17 Agreement, and they are understood by the parties hereto to be permitted by the Act as the  
18 exercise of powers not constituting participation in the control of the business so as to convert  
19 the limited partner interest of the Limited Partner into a general partner interest for any purpose  
20 or to any extent.

## 21 ARTICLE X

### 22 Assignability of Interests of Limited Partner

#### 23 10.01 Substitution and Assignment of a Limited Partner's Interest

24 (a) A Limited Partner may not sell, transfer, assign, pledge, or otherwise dispose of  
25 all or any part of its Interest without the Consent of the Limited Partner and the Consent of the  
26 General Partner, the granting or denying of such Consent being in the General and Limited  
27 Partners' absolute discretion, and the payment by such Limited Partner or its assignee of all costs  
28 of such assignment including the costs of filing the amended certificate, if applicable; *provided,*  
29 *however,* the Limited Partner shall have a one-time absolute right to transfer up to fifty percent  
30 (50%) of its Interest without obtaining the consent of the General Partner (a "***Permitted***  
31 ***Transfer***"). The Partnership shall not be required to recognize any such assignment until the  
32 instrument conveying such Interest has been delivered to the General Partner for recordation on  
33 the books of the Partnership. If an assignee of the Limited Partner pursuant to this Section  
34 10.01(a) does not become a Substitute Limited Partner pursuant to Section 10.01(b), the  
35 Partnership shall not recognize the assignment, and the assignee shall not have any rights  
36 hereunder or any rights exercisable against the Partnership to receive any portion of the share of  
37 profits, losses and distributions of the Partnership to which the Limited Partner would have been  
38 entitled if no such assignment had been made by the Limited Partner. Any such profits, losses  
39 and distributions shall continue to be allocated as if there were no assignment.

(b) An assignee of the Interest of a Limited Partner, or any portion thereof, shall become a Substitute Limited Partner entitled to all the rights of a Limited Partner if, and only if:

(i) The assignor grants to the assignee such right;

(ii) The General Partner, with the Consent of the Limited Partner, consents to such substitution, the granting or denying of which consent being in the General Partner's absolute discretion;

(iii) The assignor or assignee pays to the Partnership all costs and expenses incurred by the Partnership in connection with such substitution, including, without limitation, legal fees and costs incurred in the review and processing of the assignment, and in amending, if necessary, the Partnership's then current Agreement; and

(iv) The assignee executes and delivers such instruments, in form and substance satisfactory to the General Partner, as the General Partner may deem necessary or desirable to effect such substitution and to confirm the agreement of the assignee to be bound by all of the terms and provisions of this Agreement.

(c) Upon the admission of any Substitute Limited Partner, an amendment to this Agreement, reflecting such admission, shall be executed by the Partners. Such amendment shall reflect the name, address and Capital Contribution of such Substitute Limited Partner, and anything else required by the Act, and shall set forth the agreement of such Substitute Limited Partner to be bound by all the provisions of this Agreement. The General Partner shall file such amended Certificate as the Act requires.

(d) The Partnership and the General Partner shall be entitled to treat each Person set forth on Exhibit A as the absolute owner of its Interest in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such owner until such time as a written assignment of such Interest has been received and accepted by the General Partner and recorded on the books of the Partnership. The General Partner may refuse to accept an assignment until the end of the next successive quarterly accounting period.

## ARTICLE XI

### Management Agent

#### 11.01 General Partner to Engage Management Agent

The General Partner shall have responsibility for engaging a management agent (which may be an Affiliate of the General Partner) acceptable to the Limited Partner, the Mortgagees and any other governmental authority having jurisdiction over the Project who shall manage and operate the Partnership Property in accordance with the requirements of the Mortgagees, any other lenders and any other governmental authority having jurisdiction with respect thereto. Any removal of the Management Agent listed in Article IX hereof or hiring of a new Management

1 Agent shall be made only upon obtaining the consents or approvals, if any, required by the Loan  
2 Documents or Project Documents. If the General Partner shall at any time select a management  
3 agent other than the Management Agent, such successor to the Management Agent may (subject  
4 to any required consent or approval of the Limited Partner or the Mortgagees) be an Affiliate of  
5 the General Partner, but shall not be the General Partner. The Management Agent shall be  
6 entitled to receive such management fees as are included in the Budget and that are acceptable to  
7 the Mortgagees. Any successor management agent shall be entitled to receive such management  
8 fees as may be agreed upon between the General Partner and such agent consistent with the  
9 Budget, and which shall be acceptable to the Mortgagees if their consent is required.

## 10 ARTICLE XII

### 11 Dissolution of Partnership

#### 12 12.01 Dissolution

13 The Partnership shall be dissolved, and the business of the Partnership shall be terminated  
14 in accordance with the Act, upon the occurrence of any of the following events:

15 (a) The dissolution, liquidation, withdrawal, retirement, removal, death, insanity,  
16 disability and/or Event of Bankruptcy of a General Partner, under such circumstances where no  
17 other remaining General Partner desires to continue the Partnership; *provided, however*, that the  
18 Partnership shall not be dissolved as aforesaid if the Limited Partner shall, within the maximum  
19 number of days permitted by the Act, elect to continue the Partnership and the Partnership  
20 business, and shall designate a successor General Partner, which upon its admission to the  
21 Partnership shall immediately obtain all of the General Partner's rights to receive Net Cash Flow,  
22 Sale and Refinancing Proceeds, and the unpaid portion of any fees pursuant to this Agreement, to  
23 the extent not already earned by the General Partner, for a purchase price of one hundred dollars  
24 (\$100);

25 (b) An election to dissolve the Partnership made in writing by all of the Partners in  
26 accordance with the Act;

27 (c) The sale or other disposition of all or substantially all of the Partnership Property;

28 (d) The expiration of the Term; or

29 (e) The occurrence of any other event causing the dissolution of a limited partnership  
30 under the laws of the State of Rhode Island.

#### 31 12.02 Distribution of Partnership Assets

32 Upon the dissolution of the Partnership, the Partnership business shall be wound up and  
33 its assets liquidated; and the net proceeds of such liquidation shall be distributed in the following  
34 order of priority (but in all events in accordance with the Act):

1 (i) To the payment of the debts and liabilities of the Partnership (including  
2 any amounts that may be owed to any Partner) and the expenses of liquidation;

3 (ii) To establishing any reserves that the General Partner or liquidator, in  
4 accordance with sound business judgment, deems reasonably necessary for any contingent or  
5 unforeseen liabilities or obligations of the Partnership, which reserves may be paid over to an  
6 escrow agent to be held by such agent for the purpose of (A) distributing such reserves in  
7 payment of the aforementioned contingencies, and (B) upon the expiration of such period as the  
8 General Partner or such liquidator may deem advisable, distributing the balance thereof in the  
9 manner provided in this Section 12.02; and

10 (iii) To the Partners in accordance with the then remaining balances in their  
11 respective Capital Accounts.

12 Notwithstanding any other provision of this Agreement, upon liquidation of a Partner's entire  
13 interest in the Partnership, whether in liquidation of the Partnership or otherwise, such Partner  
14 shall receive a distribution in accordance with the positive balance in its Capital Account no later  
15 than the end of the taxable year of such liquidation or, if later, within ninety (90) days of such  
16 liquidation.

### 17 **12.03 Termination of the Partnership**

18 The Partnership shall terminate when all Partnership Property shall have been disposed of  
19 (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any  
20 other liquid assets of the Partnership, have been distributed to the Partners as provided in this  
21 Article XII and in accordance with the Act.

## 22 **ARTICLE XIII**

### 23 **Accounting and Reports**

#### 24 **13.01 Bank Accounts**

25 The General Partner shall deposit the funds of the Partnership in the name of the  
26 Partnership in such separate bank account or accounts, and with such bank or banks whose  
27 deposits are insured by an agency of the federal government, as shall be determined by, and in  
28 the sole discretion of, the General Partner. The General Partner shall arrange for the appropriate  
29 conduct and operation of such account or accounts.

#### 30 **13.02 Books of Account**

31 There shall be kept at the principal office of the Partnership true, correct, and complete  
32 books of account, maintained in accordance with generally accepted accounting principles,  
33 consistently applied, in which shall be entered fully and accurately each and every transaction of  
34 the Partnership. For federal income tax and financial reporting purposes, the Partnership shall

1 use the accrual method of accounting. Each Partner shall have access thereto to inspect and copy  
2 such books of account at all reasonable times. Any Partner shall further have the right to a  
3 private audit of the books and records of the Partnership, provided that such audit is made at the  
4 expense of the Partner desiring the same and is made at reasonable times during normal business  
5 hours after due Notice. The Partnership shall retain all books and records for the longest of the  
6 period required by applicable laws and regulations, Section 42 of the Code, the Project  
7 Documents and Loan Documents.

### 8 13.03 Reports

9 (a) The General Partner shall cause to be prepared and delivered to the Limited  
10 Partner and, when required, shall cause the Partnership to file with relevant governmental  
11 agencies, each of the following:

12 (i) *Quarterly Financial Statements of the Partnership.* As soon as available  
13 and in any event not later than thirty (30) days after the end of each of the first three quarters of  
14 each year, unaudited financial statements of the Partnership, including a balance sheet as of the  
15 end of such quarter, statements of changes in Partners' capital accounts during such quarter,  
16 statements of profit and loss for such quarter, statements summarizing the amount of Credits,  
17 and depreciation for such quarter, statements of sources and uses of cash flow for such quarter  
18 and for the Fiscal Year through the end of such quarter, statement of any compensation paid to or  
19 for the benefit of the General Partner or its Affiliates and copies of the rent rolls for the Project  
20 indicating the rent, family size, family income and area median income for each tenant, certified  
21 by the General Partner as presenting fairly the financial condition of the Partnership at the date of  
22 such statements. Each such statement shall be prepared in accordance with generally accepted  
23 accounting principles applied on a consistent basis.

24 (ii) *Annual Audited Financial Statements of the Partnership.* As soon as  
25 available and in any event not later than sixty (60) days after the end of each year, the audited  
26 financial statements of the Partnership, as of the end of such year, including balance sheet,  
27 statement of changes in Partners' capital accounts, statement of sources and uses of funds,  
28 statements summarizing the amount of Credits, and depreciation, statement of any compensation  
29 paid to or for the benefit of the General Partner or its Affiliates with the report of the  
30 Accountants thereon stating that an audit of such financial statements has been made in  
31 accordance with generally accepted auditing standards, stating the opinion of the Accountants in  
32 respect of the financial statements and the accounting principles and practices reflected therein  
33 and as to the consistency of the application of the accounting principles, and identifying any  
34 matters to which the Accountants takes exception, and stating, to the extent practicable, the  
35 effect of each such exception of such financial statements.

36 (iii) *Annual Audited Financial Statements of the General Partner and the*  
37 *Guarantor.* As soon as available and in any event not later than one hundred fifty (150) days  
38 after the end of the General Partner's and the Guarantor's fiscal year, the audited financial  
39 statements of the General Partner and the Guarantor as of the end of each such year, including  
40 the balance sheets, related statements of income and retained earnings, and statement of changes

1 in financial positions for such year, with the report of certified public accountants thereon to the  
2 effect that such statements present fairly the financial position at the end of such year and the  
3 results of their operations and changes in its financial position for the year then ended, in  
4 conformity with generally accepted accounting principles applied on a consistent basis.

5 (iv) *Annual Partnership Return.* As soon as available and in any event not  
6 later than sixty (60) days after the end of each year, all information necessary for the preparation  
7 of the Limited Partner's federal income tax return for each year in respect of income, gains,  
8 losses, deductions, or credits and the allocation thereof to each Partner, including a Form K-1 (or  
9 other comparable form subsequently required by the IRS) and a copy of the federal "Partnership  
10 Return" and any state or local Partnership tax return required to be filed by the Partnership. The  
11 General Partner shall not file such Partnership return without providing the Limited Partner at  
12 least thirty (30) days to review and approve such return.

13 (v) *Periodic Reports Requiring Limited Partner Approval.* Any and all  
14 periodic reports required to be provided to the Limited Partner by any federal, state, or local  
15 government agency having jurisdiction over the Project, the Partnership Property, or the  
16 Partnership.

17 (vi) *Notice of Defaults, IRS Proceedings.* Immediately upon receipt thereof  
18 (A) notice of any default under any Loan or financial obligation of the Partnership, (B) notice of  
19 any IRS proceeding involving the Partnership, or (C) any payment or draw made under any  
20 operating deficit guaranty, construction completion guaranty, performance bond or letter of  
21 credit, and any other significant developments affecting the Partnership, its business or assets.

22 (vii) *Preliminary Analysis of Benefits and Capital Accounts.* As soon as  
23 available and in any event not later than thirty (30) days after the end of each Fiscal Year, a  
24 preliminary analysis of the Net Profits, Net Losses, and Credits to be allocated to each Partner  
25 and each Partner's projected ending Capital Account balance for such fiscal year.

26 (viii) *Construction and Lease-up Progress.* As soon as available, and in no  
27 event later than fifteen (15) days after the end of each month, a monthly report on the progress of  
28 construction and lease-up in the form attached as Exhibit M to this Agreement.

29 (ix) *Deficits; Draws on Bonds, Guaranties, or Reserves.* Within five (5)  
30 business days of the exercise thereof, any draw, call or demand for payment of any Operating  
31 Deficit, contractor performance bonds or construction completion guarantee, and any draw on  
32 the Operating Reserve.

33 (x) *Nonrecourse Liabilities.* As soon as possible, notice of any contemplated  
34 repayment or guarantee of any nonrecourse obligation of the Partnership or any other conversion  
35 of such nonrecourse obligation to a recourse obligation.

1 (xi) Within ten (10) days of filing or receipt, copies of all annual reports or  
2 other filings (including the Extended Use Agreement) submitted to the Agency and copies of all  
3 correspondence with the Agency with respect to the Partnership or the Project.

4 (xii) *Information Requested by the Limited Partner.* Such other information  
5 regarding the state of the business, financial condition and affairs of the Partnership, as the  
6 Limited Partner, from time to time, may reasonably request, including, but not limited to, a  
7 certification by the General Partner that (A) all Loan payments and taxes and insurance payments  
8 with respect to the Project are current as of the date of the year-end report, (B) there is no default  
9 under any material provision of the Loan or Project Documents or this Agreement, or if there is  
10 any default, a description thereof, and (C) there is no building, health or fire code violation or, to  
11 the best of its knowledge, similar violation of a governmental law, ordinance or regulation  
12 against the Project or, if there is such violation, a description thereof.

13 (b) The General Partner shall promptly respond to all reasonable requests for  
14 information made by the Limited Partner.

15 (c) The General Partner shall deliver to the Limited Partner from time to time, and  
16 within ten (10) days after request therefor, all such further statements and information as the  
17 Limited Partner may request in order to enable the Limited Partner to determine or verify the  
18 amounts of all payments that the General Partner shall be required to make to the Partners and  
19 the amounts of credits, and all such statements and information needed by the Limited Partner in  
20 connection with reports and forms required to be filed by the Limited Partner pursuant to federal  
21 or state securities law.

#### 22 **13.04 Tax Matters Partner**

23 (a) The Tax Matters Partner shall have and perform all of the duties required under  
24 the Code, including the following duties:

25 (i) Furnish the name, address, profits interest, and taxpayer identification  
26 number of each Partner to the IRS; and

27 (ii) Within five (5) calendar days after the receipt of any correspondence or  
28 communication relating to the Partnership or a Partner from the IRS, the Tax Matters Partner  
29 shall forward to each Partner a photocopy of all such correspondence or communication(s). The  
30 Tax Matters Partner shall, within five (5) calendar days thereafter, advise each Partner in writing  
31 of the substance and form of any conversation or communication held with any representative of  
32 the IRS.

33 (b) The Tax Matters Partner shall not without the Consent of the Limited Partner:

34 (i) Extend the statute of limitations for assessing or computing any tax  
35 liability against the Partnership (or the amount or character of any Partnership tax items);



(ii) Settle any audit with the IRS concerning the adjustment or readjustment of any Partnership tax item(s);

(iii) File a request for an administrative adjustment with the IRS at any time or file a petition for judicial review with respect to any such request;

(iv) Initiate or settle any judicial review or action concerning the amount or character of any Partnership tax item(s);

(v) Intervene in any action brought by any other Partner for judicial review of a final adjustment; or

(vi) Take any other action not expressly permitted by this Section 13.04 on behalf of the Partners or the Partnership in connection with any administrative or judicial tax proceeding.

(c) In the event of any Partnership-level proceeding instituted by the IRS pursuant to Sections 6221 through 6233 of the Code, the Tax Matters Partner shall consult with the Limited Partner regarding the nature and content of all action and defense to be taken by the Partnership in response to such proceeding. The Tax Matters Partner also shall consult with the Limited Partner regarding the nature and content of any proceeding pursuant to Sections 6221 through 6233 of the Code instituted by or on behalf of the Partnership (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous IRS proceeding against the Partnership or otherwise).

## ARTICLE XIV

### Buyout Option

#### 14.01 Buyout Option

At all times after the Compliance Audit Termination Date, and only if at such time or times the General Partner represents and warrants that (a) all of the buildings comprising the Project have been maintained in a decent, safe and sanitary condition and in a rentable state of repair, all in accordance with the Project rules and regulations and local codes, (b) the Units comprising the Project are operated as low-income housing in accordance with the provisions of Section 42 of the Code, and (c) the General Partner is not in default under any of the Project Documents, the Loan Documents or this Agreement, and no Event of Bankruptcy has occurred or is impending with respect to the General Partner or any of its Affiliates, the General Partner shall have the option (the "**Buyout Option**"), to purchase the Limited Partner's entire Interest in the Partnership for the "**Buyout Price**." The Buyout Option shall be exercisable upon at least thirty (30) days and not more than ninety (90) days prior written Notice to the Limited Partner. The Buyout Price shall equal the greater of (i) the Fair Market Value of the Limited Partner's Interest, subject to continued use of the Project for low-income housing for at least fifteen (15) years after the end of the Compliance Period, and at least through the end of the Extended Use

1 Period, as of the date of the closing of the Buyout, or (ii) the sum of (A) all federal, state and  
2 local income taxes attributable to such sale, including those incurred or to be incurred by the  
3 partners of the Limited Partner; and (B) an amount required to provide the Limited Partner with  
4 the return described in Section 8.02(c) as of the date of said closing.

5 The General Partner's Notice to the Limited Partner (the "*Buyout Notice*") shall include  
6 (i) an appraisal of all of the assets of the Partnership (the "*Appraised Value*") by an appraiser  
7 selected by the General Partner, and (ii) a calculation by the Accountants of (A) the value of the  
8 Limited Partner's Interest based on such Appraised Value and (B) the Buyout Price, all  
9 calculated as of the closing date proposed by the General Partner in its Buyout Notice. The  
10 Limited Partner shall have thirty (30) days after receipt of the Buyout Notice in which either to  
11 accept the Buyout Price set forth in the Buyout Notice or to notify the General Partner of its  
12 desire to appoint a second appraiser to evaluate the Buyout Price. In the event that the Limited  
13 Partner fails to notify the General Partner within the aforesaid thirty (30) day period that it  
14 desires to appoint a second appraiser, it shall be deemed to have accepted the Buyout Price, in  
15 which event the Buyout Price shall be the price calculated by the Accountants and set forth in the  
16 Buyout Notice, and the General Partner shall purchase the Interest of the Limited Partner on the  
17 date specified in the Buyout Notice. In the event that the Limited Partner notifies the General  
18 Partner of its desire to appoint a second appraiser, the Limited Partner shall appoint such  
19 appraiser within thirty (30) days after it notifies the General Partner of its election, and the two  
20 appraisers shall together appoint a third appraiser within fifteen (15) days after the appointment  
21 of the second appraiser. The three appraisers so appointed shall each determine the Appraised  
22 Value of the assets of the Partnership within thirty (30) days after the appointment of the third  
23 appraiser, and the Appraised Value of such assets for the purpose of determining the Buyout  
24 Price shall be the average of the three appraisers' determinations; provided that if one or more of  
25 the appraisers' determinations is more than ten percent (10%) higher or lower than the average of  
26 the three determinations, such appraiser's determination shall be disregarded in determining the  
27 Appraised Value of the assets, and provided, further, that if none of the appraisers'  
28 determinations is equal to or less than ten percent (10%) higher or lower than the average of the  
29 three determinations, the Appraised Value shall be the middle of the three determinations.

30 The Accountants shall determine the Buyout Price within fifteen (15) days after the three  
31 appraisers complete their determinations and prong (i) of the Buyout Price formula set forth in  
32 the first paragraph of this Section 14.01 shall be based on the amount of Sales Proceeds the  
33 Limited Partner would receive if the Property were sold for its Appraised Value, and the closing  
34 of the sale of the Limited Partner's Interest to the General Partner shall occur within sixty (60)  
35 days after the Accountants determine the Buyout Price. The entire Buyout Price shall be paid to  
36 the Limited Partner at the closing in cash or immediately available funds. The Limited Partner  
37 shall be responsible for the costs of the second appraiser and fifty percent (50%) of the costs of  
38 the third appraiser, if any, and for its own attorneys' fees incurred in connection with the closing.  
39 All other costs associated with the exercise of the Buyout Option, including the costs of the  
40 appraiser appointed by the General Partner, the Accountants' fees and any filing fees, shall be  
41 paid by the General Partner.

## 14.02 Right of First Refusal

In accordance with the Right of First Refusal attached hereto as Exhibit K to this Agreement, the Partnership will not transfer, sell, alienate, assign, give, bequeath or otherwise dispose of the Partnership Property to any Person without first offering the Partnership Property for a period of forty-five (45) days to West Elmwood Housing Development Corporation (if it then qualifies as an organization described in Section 42(h)(5)(C) of the Code) (the "**Purchaser**") at a price equal to the sum of (i) the principal amount of all outstanding indebtedness secured by the Partnership Property, all other loans from the General Partner or its Affiliates, and any accrued interest on any of such debt; (ii) all federal, state and local income taxes attributable to such sale, including those incurred or to be incurred by the partners of the Limited Partner; and (iii) an amount required to provide the Limited Partner with the return described in Section 8.02(c) as of the date of Closing; *provided, however*, that such right of first refusal shall be conditioned upon an agreement by the Purchaser to maintain the Project for low-income use for at least fifteen (15) years after the later of the end of the Compliance Period (but in no event can such low-income use terminate before the end of the Extended Use Period) under Section 42 of the Code or the date of the buyout and provided, further, that such restriction shall be recorded as a restriction against the Partnership Property.

## ARTICLE XV

### Miscellaneous Provisions

## 15.01 Amendments to Agreement

(a) Each Partner, including any additional Limited Partner and Substitute Limited Partner, additional General Partner, and successor General Partner shall become a signatory hereto by signing counterpart signature pages to this Agreement or an amendment to this Agreement or by granting a power of attorney to the General Partner therefor, and by signing any other instrument or instruments deemed necessary by the General Partner. By so signing, each Partner, including any additional Limited Partner and Substitute Limited Partner, additional General Partner, or successor General Partner, as the case may be, shall be deemed to have adopted, and to have agreed to be bound by, all the provisions of this Agreement.

(b) No amendments shall be adopted pursuant to this Section 15.01 unless, pursuant to an opinion of counsel for the Partnership if requested as hereinafter provided, the adoption of such amendment does not affect the limited liability of the Limited Partner under the Act or the status of the Partnership as a partnership for federal income tax purposes, or cause loss or recapture of the Credit.

(c) In making any amendments, there shall be prepared and timely filed for recordation by the General Partner all documents and certificates required to be prepared and filed under the Act and under the laws of any other jurisdiction in which the Partnership is then formed or qualified.

(d) The proposal of an amendment may only be made:

(i) By the General Partner, upon Notice to the Limited Partner which shall include (A) the text of the amendment, (B) a statement of the purpose of the amendment, and (C) an opinion of counsel to the Partnership obtained by the General Partner at the request of the Limited Partner (which counsel shall have been approved by the Limited Partner in advance) to the effect that such amendment is permitted by the Act and conforms with the requirements of the Act, such amendment will not affect the limited liability of the Limited Partner, such amendment will not adversely affect the classification of the Partnership as a partnership for federal income tax purposes, and such amendment will not result in any loss or recapture of the Credit.

(ii) By the Limited Partner, upon Notice to the General Partner which shall include (A) the text of such amendment, (B) a statement of the purpose of the amendment, and (C) an opinion of counsel to the Partnership obtained by the Limited Partner at the request of the General Partner to the effect that such amendment is permitted by the Act and conforms with the requirements of the Act, and such amendment will not adversely affect the classification of the Partnership as a partnership for federal income tax purposes.

(e) Within thirty (30) days after Notice is given pursuant to Section 15.01(d), each Partner shall consent to or reject, in writing, the proposed amendment. Amendments to this Agreement shall become effective only upon the Consent of the General Partner and the Consent of the Limited Partner. Consent may be withheld in the sole discretion of any Partner and upon compliance with this Article XV.

(f) The cost of the opinions of counsel described in this Section 15.01 shall be borne by the Partnership.

## **15.02 Notices**

All Notices to be given under this Agreement shall be sent to the Persons shown on Exhibit A-5. Any Partner may change its Notice address by providing Notice thereof to all other Partners.

## **15.03 Meetings of the Partnership**

Meetings of the Partnership may be called by the General Partner or by the Limited Partner for any matters upon which the Partners may vote, as set forth in this Agreement. The calling of a meeting shall be made:

(a) By the General Partner, which shall give Notice to the Limited Partner, which Notice shall include (i) a statement of the purposes of the meeting, and (ii) the date of the meeting which shall be a date no fewer than fifteen (15) days and no more than thirty (30) days after the date of the Notice;

(b) By the Limited Partner, which shall give Notice to the General Partner, which Notice shall include a statement of the purposes of the meeting. No more than fifteen (15) days after receipt of such Notice, the General Partner shall provide Notice of the meeting to the Limited Partner in accordance with Section 15.03(a).

#### **15.04 Action for Breach**

The representations, warranties, covenants, agreements, and duties of the General Partner contained in this Agreement are being made in order to induce, and in consideration of, the Limited Partner's acquisition of its Interest. Upon the breach of any representation, warranty, covenant, agreement, or duty, the Limited Partner, if decided by Consent of the Limited Partner, may pursue any available legal or equitable remedy against the General Partner without being required to dissolve the Partnership and notwithstanding the availability of any other remedy.

#### **15.05 Consent and Voting**

No vote or Consent of the Limited Partner shall ever be construed to make the Limited Partner liable as a general partner or cause the Limited Partner to be liable for Partnership obligations.

#### **15.06 Survival of Representations**

All representations, warranties, and indemnifications contained herein shall survive the dissolution and final liquidation of the Partnership.

#### **15.07 Entire Agreement**

This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

#### **15.08 Applicable Law**

It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Rhode Island without regard to principles of conflicts of laws.

#### **15.09 Severability**

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be

enforced to the greatest extent permitted by law. In the event that any provision of this Agreement or the application thereof shall be invalid or unenforceable, the Partners agree to negotiate (on a reasonable basis) a substitute valid or enforceable provision providing for substantially the same effect as the invalid or unenforceable provision.

#### **15.10 Binding Effect**

When entered into by the parties hereto, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

#### **15.11 Counterparts**

This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties, hereto, notwithstanding that all the parties shall not have signed the same counterpart.

#### **15.12 Successor Statutes and Agencies**

Any reference contained in this Agreement to specific statutory or regulatory provisions or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

#### **15.13 No Implied Waiver**

No failure on the part of any Partner to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

[ SIGNATURES BEGIN ON THE FOLLOWING PAGE ]

STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P.

FIRST AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP

Signature Page

WITNESS/ATTEST:

SH DEVELOPMENT CORP.,  
General Partner

James A. O'Leary

By:

Sharon Conard-Wells  
Executive Director

STATE OF RI )

) ss.

CITY/COUNTY OF PROVIDENCE )

I hereby certify that on this 10th day of July, 2000, before me personally appeared Sharon Conard-Wells, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she/he is duly authorized to execute the same.

My term of office expires: 6-17-2001

James A. O'Leary  
Notary Public James A. O'Leary

STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P.

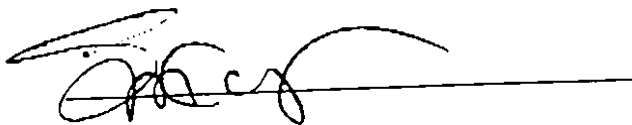
FIRST AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP

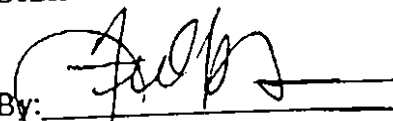
Signature Page

WITNESS/ATTEST:

THE HOUSING OUTREACH FUND VIII  
LIMITED PARTNERSHIP,  
Limited Partner

By: The Enterprise Social Investment  
Corporation,  
General Partner

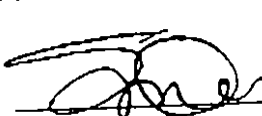


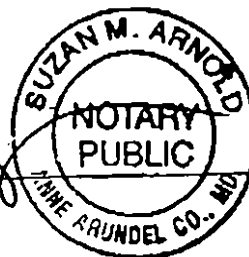
By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Maryland )  
CITY/COUNTY OF Baltimore ) ss.

I hereby certify that on this 7 day of July, 2000, before me personally  
appeared Suzan M. Arnold, to me known to be the person described in and  
who executed the foregoing instrument, and acknowledged that she/he is duly authorized to  
execute the same.

My term of office expires: October 1, 2003

  
Notary Public





STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P.


FIRST AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP

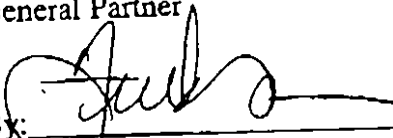
Signature Page

WITNESS/ATTEST:

ENTERPRISE HOUSING PARTNERS III  
LIMITED PARTNERSHIP,  
Limited Partner

By: The Enterprise Social Investment  
Corporation,  
General Partner


  
\_\_\_\_\_

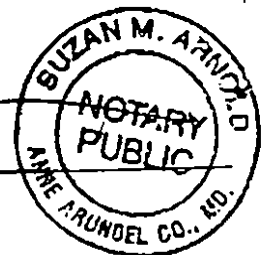
By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Maryland )  
CITY/COUNTY OF Howard ) ss.

I hereby certify that on this 7 day of July, 2000, before me personally  
appeared Frank Warren, to me known to be the person described in and  
who executed the foregoing instrument, and acknowledged that she/he is duly authorized to  
execute the same.

My term of office expires: October 1 2003

  
Notary Public



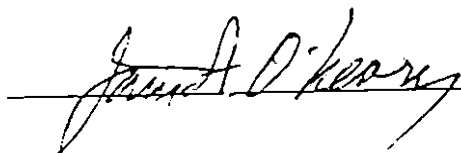
STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P.

FIRST AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP

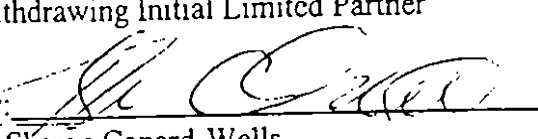
Signature Page

WITNESS/ATTEST:

WEST ELMWOOD HOUSING  
DEVELOPMENT CORPORATION,  
Withdrawing Initial Limited Partner



By:

  
Sharon Conard-Wells  
Executive Director

STATE OF RHODE ISLAND

)


) ss.

COUNTY OF PROVIDENCE

)

I hereby certify that on this 10th day of July, 2000, before me personally appeared Sharon Conard-Wells, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she/he is duly authorized to execute the same.

My term of office expires: 6-17-2001

  
Notary Public James A. O'Leary

## Exhibit A

### Partners; Percentage Interests; Capital Contribution Commitments

	<u>Percentage Interests</u>	<u>Capital Contributions*</u>
<u>General Partner:</u> SH Development Corp.	0.01%	\$100
<u>Limited Partner:</u> The Housing Outreach Fund VIII Limited Partnership	50.995%	\$1,875,737
Enterprise Housing Partners III Limited Partnership	48.995%	\$1,802,179
	<u>100%</u>	<u>\$3,678,016</u>
TOTALS		

\*The Capital Contribution of the Limited Partner will be paid in installments as described on the following page. Each installment, except for the first installment, is due on the later of the scheduled due date or thirty (30) days after the General Partner gives the Notice Certifications, in accordance with Section 3.02(c). In addition, the Capital Contributions are subject to reduction as provided in this Agreement.

**Exhibit A-1**  
**Capital Contribution Installments**

<u>Installment</u>	<u>Amount of Installment</u>	<u>Due Date of Contribution</u>
<u>First</u>	\$214,200	Admission Date.
<u>Second</u>	\$1,563,585	During construction in accordance with an approved draw schedule and subject to draw requests approved by the Limited Partner. The dates for payment are set forth on Schedule 2, attached to this Agreement.
<u>Third</u>	\$1,750,048	Latest of: (a) Completion Date; (b) receipt and approval of Cost Certification by ESIC (and by the Project's lenders if required by them); (c) receipt by ESIC of evidence that there are no recorded mechanics liens that have not been released or bonded against so as to preclude the holder of such lien from having any recourse to the Partnership Property, the Project, any of the Units, or the Partnership for the debt secured thereby; (d) delivery of the Partnership's tax returns (including K-1s) for 2000; (e) receipt by ESIC of copies of all insurance binders (including title insurance) on the Partnership Property acceptable to ESIC; (f) receipt by ESIC of evidence that the Extended Use Agreement has been recorded in the land records of the city/county in which the Property is located; (g) satisfactory inspection by ESIC of completed Project that it has been completed in conformity with plans and specifications; (h) receipt by ESIC of evidence of the General Partner's Section 168(h)(6)(F)(ii) election; or (i) receipt by ESIC of evidence that all Partnership reserve accounts required on Exhibit A-6 have been established.
<u>Fourth</u>	\$69,967	Latest of: (a) receipt and approval by ESIC of IRS Form 8609; (b) receipt by ESIC of the Partnership's projection of the Projected Credits prepared pursuant to Section 3.03(a) and 3.03(c); (c) achievement of 90% Qualified Occupancy; (d) ESIC's receipt of all initial Tenant Income Certifications; or (e) the Closing of all of the Loans and delivery of all executed loan documents related thereto.

<u>Fifth</u>	\$27,986	Latest of: (a) delivery of the Partnership's tax returns (including K-1s) for 2001; (b) achievement of 100% Qualified Occupancy; or (c) March 1, 2002.
<u>Sixth</u>	\$52,130	One year after the Completion Date.
TOTAL	\$3,677,916	

**Exhibit A-2**  
**Fixed Dollar Amounts**

Reference Term	Section Reference	Amount
Annual Credit Allocation	5.10(d)	\$469,526
LIIH Target Amount	3.03(a)	\$4,512,340
Initial Year LIIH Amount	3.03(c)	\$173,930
Maximum Operating Deficit Contribution	5.14	\$73,500
Operating Reserve Amount	5.14	\$125,000
Owner's Title Policy Amount	2.01	\$4,805,624
Rehab/NC Basis Amount	5.10(d)	\$5,204,226
Total Benefit Amount	7.02(a)	\$2,571,655
Acquisition Basis Amount	5.10(d)	\$259,327

**Exhibit A-3**  
**Loans to the Project**

<u>Mortgage Priority</u>	<u>Lender</u>	<u>Loan Amount</u>
First	Rhode Island Housing – "First Mortgage Loan"	\$45,000
Second	Rhode Island Housing – "Targeted Loan"	\$265,082
Third	Rhode Island Housing – "HOME Loan"	\$500,000
Fourth	Rhode Island Housing Threshold Program	\$257,626
Fifth	Equity Advance Loan by EHP III	\$1,708,068

**Exhibit A-4  
Fees and Guaranties**

**Fees**

<u>Fee</u>	<u>Governing Agreement</u>	<u>Fee Recipient</u>
Development Fee	Development Services Agreement	West Elmwood Development Corporation
Property Management Fee	Property Management Agreement	Ferland Property Management
Partnership Administration Fee	Partnership Administration Agreement	West Elmwood Development Corporation

Payment of fees and other expenses contingent on Cash Flow shall be made in the following order of priority:

First to fund and maintain a balance in the Operating Reserve of \$125,000;

Second, to pay the Partnership Administration Fee in accordance with the Partnership Administration Agreement, attached hereto as Exhibit E; and

Third, to the Partners in accordance with Section 8.01 of this Agreement.

**Guaranties**

<u>Guaranty Agreement</u>	<u>Guarantor</u>
Unconditional Construction Completion Guaranty Agreement	West Elmwood Housing Development Corporation
Operating Deficit, Fee Guaranty Advance, and Credit Adjuster Advance Guaranty Agreement	West Elmwood Housing Development Corporation



**Exhibit A-5  
Notice Addresses**

**General Partner**

SH Development Corp.  
392 Cranston Street  
Providence, Rhode Island 02907  
[ [Tel: ( ) \_\_\_\_\_; Fax: ( ) \_\_\_\_\_ ]  
Attn: Sharon Conard-Wells

With a copy to:  
James O'Leary, Esquire  
Moses & Alfonso, Ltd. ("BC")  
170 Westminster Street  
Providence, RI 02903  
Tel: (401) 453-3600; Fax: (401) 453-3604

**Limited Partner**

The Housing Outreach Fund VIII Limited  
Partnership  
Enterprise Housing Partners III Limited  
Partnership  
c/o The Enterprise Social Investment  
Corporation  
10227 Wincopin Circle, Suite 810  
Columbia, Maryland 21044  
Tel: (410) 964-0552; Fax: (410) 964-1376  
Attention: Mr. Michael Curran

With a copy to:  
Kenneth S. Gross, Esq.  
Gallagher, Evelius & Jones, LLP  
218 North Charles Street  
Suite 400  
Baltimore, Maryland 21201  
  
Tel: (410) 727-7702; Fax: (410) 837-3079

**Exhibit A-6**  
**Partnership Reserves**

The General Partner shall establish the following reserves in the name of the Partnership:

(i) *Operating Reserve.* An Operating Reserve of at least \$125,000, to be funded from the Limited Partner's second and sixth installments of Capital Contribution in the amounts of \$72,870 and \$52,130, respectively. In addition, the General Partner shall fund the Operating Reserve from Net Cash Flow (calculated for this sole purpose prior to deducting contributions to the Operating Reserve) in order to maintain, to the extent possible, a balance at all times in the Operating Reserve of at least \$125,000. The Operating Reserve shall be held by the Agency in an interest bearing account with ESIC as a co-signatory on the account for disbursements. Interest earned, if any, on the Operating Reserve shall be added to the Operating Reserve. The General Partner may use funds in the Operating Reserve (but only after the Lease-Up Date), with the Consent of the Limited Partner, for any Partnership purpose, but only to the extent the revenues of the Partnership are insufficient to accomplish such purposes. The Operating Reserve shall be maintained throughout the Term of the Partnership. Upon termination and winding up of the Partnership, subject to the provisions of Section 12.02, the balance in the Operating Reserve shall be used to pay the exit taxes of the Partners.

(ii) *Replacement Reserve.* A Replacement Reserve to be funded in the amount of \$300 per unit per year. The annual deposit is a Project Expense. The Partnership shall utilize amounts in the Replacement Reserve to fund major repair, capital expenditures and replacement of capital items in the Project. The Partnership may not utilize the Replacement Reserve for any capital expenditure costing \$5,000 or more unless the Partnership has obtained Consent of ESIC to make such an expenditure. The Replacement Reserve shall be held by the Agency in an interest-bearing bank account with ESIC as co-signatory on the account for disbursements in excess of \$5,000. Interest earned on the Replacement Reserve shall be added to the Replacement Reserve. Any disbursements from the Replacement Reserve in excess of \$5,000 shall require the approval of ESIC. Upon any sale of the Project, amounts in the Replacement Reserve shall be utilized to make any capital expenditures, repairs or improvements in connection with such sale or other uses approved by the Limited Partner; subject to the provisions of the Agency's loan documents.

(iii) *Other Reserves.* Such other reserves as are identified in the Projections, to be funded in the amounts and at the times shown in the Projections.

(iv) *Investment of Reserve Accounts.* Funds in the reserve accounts shall be deposited in a banking institution whose deposits are insured by an agency of the federal government. If funds in Partnership reserve accounts deposited in any banking institution exceed \$100,000, the Partnership accounts shall be deposited in a commercial bank having combined capital and surplus of not less than \$100,000,000. The General Partner (or the Management Agent, as directed by the General Partner) may invest funds in the reserve accounts in domestic bank certificates which are insured by an agency of the federal government; in direct obligations of the federal government; in federal government agencies with an AA rating or better, federally

government or federal agencies, or which are specifically collateralized by federal government obligations; or in short term commercial paper receiving one of the two highest ratings from Moody's or Standard and Poors. Any exceptions to the above policy must be approved by ESIC. The General Partner (or the Management Agent as directed by the General Partner) shall select investment vehicles and maturities on such investment so as to maximize the Partnership's return taking into account the anticipated need for available cash in the reserve account(s). The term of any investment shall not exceed five (5) years.

## Exhibit A-7

### Notice Certifications

The General Partner hereby certifies that the following representations and warranties remain true, correct, and not misleading on the due date for the \_\_\_\_\_ installment of the Limited Partner's Capital Contribution in the amount of \$\_\_\_\_\_ and for the Equity Advance pursuant to Article 3.10. The following certifications (i) - (xii) in this Exhibit A-7 are hereinafter referred to as "*Notice Certifications*."

(i) *Occupancy.* After the occurrence of the Completion Date, each Unit (0% with respect to the Third Installment and 90% with respect to the Fourth Installment) that is included in the computation of the eligible basis of the Project in the Projections and for which a certificate of occupancy has been obtained is either (A) occupied by Qualifying Tenants or (B) held available for occupancy by Qualifying Tenants after having been rented to Qualifying Tenants, at the time of payment of each Additional Capital Contribution, and the operation of the Project and each Unit in all respects complies with the provisions of Section 42 of the Code.

(ii) *No Defaults; Documents in Force; No Jeopardizing Events.* No default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any Loan Document, Project Document, the Master Lease, or the Agreement; the Loan Documents, the Project Documents, the Master Lease, and the Agreement are in full force and effect; and no event has occurred and is continuing that materially jeopardizes or is likely to materially jeopardize the ability of the Partnership to continue to operate the Project as housing eligible for the Credit.

(iii) *No Liens.* The Partnership owns the Partnership Property, the Project, and each of the Units free and clear of any liens (including mechanics' liens), charges, or encumbrances other than matters set forth in the Title Policy.

(iv) *No Bankruptcies.* No Event of Bankruptcy has occurred and is continuing, and no event has occurred that, with the passage of time, could become an Event of Bankruptcy, with respect to the General Partner or any of its Affiliates.

(v) *No Breach.* The General Partner is not in breach in any material respect of any provision of this Agreement to be observed or performed by it including, but not limited to, all representations, warranties, and covenants given by the General Partner, pursuant to this Agreement and all representations and warranties herein remain true and correct in all material respects.

(vi) *Advances Paid.* All Credit Adjuster Advances, Development Advances, Fee Guaranty Advances, Operating Reserve deposits, Replacement Reserve deposits, Operating Deficit Contributions and any other deposits, advances, or contributions required to be made by the General Partner or its Affiliates pursuant to this Agreement (and any Exhibits attached hereto) have been made.

(vii) *Environmental.* To the best knowledge of the General Partner after due inquiry, the Partnership Property contains no, and is not adversely affected by the presence of, any Environmental Hazard, nor is it in violation of any federal, state, or local law, regulation, rule, or ordinance, and no violation of any Environmental Law has occurred or is continuing. The General Partner has not received any notice from any source whatsoever of the existence of any Environmental Hazard or of a violation of any federal, state, or local law, regulation, rule or ordinance with respect to the Partnership Property. If any Environmental Hazard (including lead-based paint and asbestos) was found to exist or be present, it has been either removed from the Partnership Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state, and local statutes, laws, rules and regulations, any recommendations set forth in the Environmental Reports, and any requirements in the Loan Documents.

(viii) *Document Compliance.* All documents required by Section 13.03 of the Agreement to be provided to the Limited Partner as of such date have been delivered to the Limited Partner.

(ix) *No Audit.* There is no ongoing audit by the IRS in which the IRS is asserting, by means of a thirty day letter, that the Credit available to the Partnership for any taxable year is less than ninety-five percent (95%) of the amount of Credit claimed by the Partnership for that year or that all or a portion of the Credit claimed with respect to any prior taxable year(s) must be recaptured pursuant to Section 42(j) or other relevant sections of the Code, or is unavailable to the Partnership.

(x) *Conformity with Laws.* The Project conforms in all material respects with applicable law.

(xi) *Prior Qualification.* The Partnership qualified for, and subject to adjustment as provided in the Agreement, has received all prior Additional Capital Contributions.

(xii) *All Prerequisites Satisfied.* The preconditions to payment of the Additional Capital Contribution described on Exhibit A-1 to the Agreement have occurred.

SH DEVELOPMENT CORP.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit B**

**DESCRIPTION OF PROJECT**

[Reserved]

## Exhibit C

### FIRST AMENDED DEVELOPMENT SERVICES AGREEMENT

THIS FIRST AMENDED DEVELOPMENT SERVICES AGREEMENT (this "*Agreement*"), dated and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2000, is made by and between STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P., a limited partnership formed under the laws of the State of Rhode Island (the "*Partnership*") and WEST ELMWOOD HOUSING DEVELOPMENT CORPORATION, a Rhode Island corporation, (the "*Developer*").

#### Recitals

The Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a thirty-two (32) unit residential project in one (1) building plus parking located on two (2) sites in Providence, Rhode Island (the "*Project*"). The Partnership is operating by a First Amended and Restated Agreement of Limited Partnership in the form to which this Agreement is attached as an exhibit (the "*Partnership Agreement*").

The Partnership and the Developer entered into a Development Services Agreement dated as of November 17, 1999 (the "Original Development Agreement").

The Partnership and the Developer desire to amend the Original Development Agreement.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Appointment and Term.** The term of this Agreement commenced on November 17, 1999 and shall end on December 31, 2010.

2. **Authority and Obligations.** Subject to the provisions of the Partnership Agreement, the Developer shall have the authority and obligation to:

(a) Obtain construction financing on behalf of the Partnership in an amount sufficient to fund the acquisition of the Partnership Property and the construction of the Project pursuant to the Projections ;

(b) Conduct a market survey of the area in which the Project is situated to determine the demand for low-income housing in that area;

(c) Prepare or cause to be prepared such environmental and neighborhood impact studies or reports, engineering surveys, and plans and specifications as may be required in connection with the construction of the Project.

(d) Prepare and submit to the Partnership for approval a construction budget and make recommendations to the Partnership regarding any necessary modifications thereto.

(e) Make available to the Partnership upon request copies of all contracts, option agreements, financing commitments, surveys, budgets, plans and specifications or other items prepared or obtained.

(f) Obtain a construction contract (the "*Construction Contract*") in an amount not to exceed the amount provided therefor pursuant to the Projections from a reputable general contractor (the "*Contractor*"), which may be an affiliate of Developer, which Construction Contract shall require the Contractor to post a payment and performance bond in the full amount of the Construction Contract or letter of credit in an amount acceptable to the Partnership.

(g) Perform or cause to be performed, in a diligent and efficient manner, general administration and supervision of construction of the Project, including but not limited to the following:

(i) administration and supervision of the activities of the Contractor and all other contractors, subcontractors and others employed in connection with the construction of the Project;

(ii) preparation of construction schedules pursuant to which all phases of construction are to be completed on or before the Completion Date and supervision of the scheduling of construction in conformity with such construction schedules;

(iii) periodic inspection of construction in progress, including but not limited to inspection at completion, for defects in construction and to assure compliance with the plans and specifications, and supervision of correction of any and all deficiencies noted pursuant to such inspections.

(iv) processing and payment of applications for progress payments made by the Contractor, including verification of such applications against the progress of construction as indicated by the aforementioned periodic inspections; and

(v) analysis of requests for any and all change orders to or variations from the Projections and the plans and specifications and submission of such requests to the Partnership for approval.

(h) Perform, or cause to be performed, in a diligent and efficient manner, preparation of contracts, letter agreements, purchase orders, and similar documents as are necessary to complete timely the construction of the Project in accordance with the plans and specifications.

(i) Cause the Project to be completed on or before the Completion Date in a manner consistent with good workmanship, in compliance with the following:



- (i) the plans and specifications;
- (ii) all obligations of the Partnership under any documents executed by the Partnership under the Loan Documents; and
- (iii) all municipal, state, and other governmental laws, ordinances, and regulations governing the construction of the Project and the use thereof for its intended purposes and all other requirements of law applicable to construction of the Project.
- (j) Maintain, or cause to be maintained, builders risk, contractor's liability, and workers' compensation insurance required by law or by the Limited Partner with the Partnership named as an additional insured, the limits of such coverage to be reasonable under the circumstances, but no less than that required by construction lenders or applicable statutes.
- (k) Keep or cause to be kept separate project accounts and cost records and prepare and furnish upon request financial and progress reports and statements with respect to construction of the Project.
- (l) Make available to the Partnership upon request copies of all contracts and subcontracts.
- (m) Deliver to the Partnership copies of all inspection reports and applications for payment given any lender providing a loan to the Partnership.

3. **Accrual Schedule.** The Development Fee shall be earned as follows:

- (a) \$43,250 shall be earned on the date on which the Developer has obtained a commitment for construction financing for the Project, has obtained a favorable notice of survey, and has obtained a favorable Phase I environmental assessment, but in no event later than December 31, 1999.
- (b) The balance of the Development Fee shall be earned upon the Completion Date.
- (c) Once a portion of the Development Fee has been earned, it shall be payable by the Partnership at all events.

4. **Development Fee.** For development services to be performed under this Agreement, the Partnership shall pay the Developer as follows:

- (a) A fee of \$279,866 (the "**Development Fee**") as follows:
  - (i) \$139,933 on the due date of the Limited Partner's First Capital Contribution as set forth on Exhibit A-1 of the Partnership Agreement;
  - (ii) \$41,980 on the due date of the Limited Partner's Third Capital Contribution as set forth on Exhibit A-1 of the Partnership Agreement;

(iii) \$69,967 on the due date of the Limited Partner's Fourth Capital Contribution as set forth on Exhibit A-1 of the Partnership Agreement; and

(iv) \$27,987 on the due date of the Limited Partner's Fifth Capital Contribution as set forth on Exhibit A-1 of the Partnership Agreement.

(b) Any amounts of the Development Fee that has not been paid in full on or before December 31, 2010 shall be paid no later than such date.

5. **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.

6. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. No party may assign this Agreement without the consent of the other party.

7. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

8. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

9. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Rhode Island, without regard to principles of conflicts of laws.

11. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

12. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

13. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

14. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

[ SIGNATURES BEGIN ON THE FOLLOWING PAGE ]

IN WITNESS WHEREOF, the parties have executed this First Amended Development Services Agreement as of the date first written above.

WITNESS/ATTEST:

STEPHENS HALL DEVELOPMENT  
ASSOCIATES, L.P.

By: SH Development Corp.,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Sharon Conard-Wells  
Executive Director

WEST ELMWOOD HOUSING DEVELOPMENT  
CORPORATION,  
Developer

\_\_\_\_\_

By: \_\_\_\_\_  
Sharon Conard-Wells  
Executive Director

## Exhibit D

### OPERATING DEFICIT, FEE GUARANTY ADVANCE, AND CREDIT ADJUSTER ADVANCE GUARANTY AGREEMENT

THIS OPERATING DEFICIT, FEE GUARANTY ADVANCE, AND CREDIT ADJUSTER ADVANCE GUARANTY AGREEMENT (this "**Agreement**"), dated and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2000, is made by and among STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P., a limited partnership formed under the laws of the State of Rhode Island, (the "**Partnership**"), WEST ELMWOOD HOUSING DEVELOPMENT CORPORATION, a Rhode Island corporation, (the "**Guarantor**"), and SH DEVELOPMENT CORP., a Rhode Island corporation, which is the general partner of the Partnership and an Affiliate of the Guarantor (the "**General Partner**").

#### Recitals

The Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a thirty-two (32) unit residential project in one (1) building plus parking located on two (2) sites in Providence, Rhode Island (the "**Project**"). The Partnership is operating by a First Amended and Restated Agreement of Limited Partnership in the form to which this Agreement is attached as an exhibit (the "**Partnership Agreement**").

The Partnership and the General Partner desire that the Guarantor advance funds to the General Partner to the extent needed by the General Partner to make (i) Operating Deficit Contributions pursuant to Section 5.14, (ii) Fee Guaranty Advance pursuant to Section 5.15, and (iii) Credit Adjuster Advances pursuant to Sections 3.03 through 3.05 of the Partnership Agreement, and the Guarantor is agreeable to making such advances.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Operating Deficit Guaranty.** In the event that, at any time or from time to time during the term of this Agreement (i) an Operating Deficit exists (as defined in Article II of the Partnership Agreement) and such Operating Deficit cannot be satisfied from Partnership funds including the Partnership's Operating Reserve, and (ii) the General Partner fails to make an Operating Deficit Contribution to the Partnership as and when required pursuant to Section 5.14 of the Partnership Agreement, within five (5) days after Notice thereof by the General Partner, or if the General Partner fails to give such Notice, Notice from the Limited Partner, Guarantor shall advance funds to the General Partner in the amount necessary for the General Partner to make the required Operating Deficit Contribution.

2. **Fee Guaranty Advance.** In the event that, at any time or from time to time during the term of this Agreement a Fee Guaranty Advance is required, and the General Partner fails to make a Fee Guaranty Advance to the partnership as and when required pursuant to Section 5.15 of the Partnership Agreement, within five (5) days after notice thereof by the

General Partner, or if the General Partner fails to give such Notice, Notice from the Limited Partner, Guarantor shall advance funds to the General Partner in the amount necessary for the General Partner to make the required Fee Guaranty Advance.

3. **Credit Adjuster Advance Guaranty.** In the event that, at any time or from time to time during the term of this Agreement, the General Partner is required to make a Credit Adjuster Advance and the General Partner fails to make the Credit Adjuster Advance as required pursuant to Sections 3.03 and 3.05 of the Partnership Agreement, within five (5) days after Notice thereof by the General Partner, or if the General Partner fails to give such Notice, Notice from the Limited Partner, Guarantor shall advance funds to the General Partner in the amount necessary for the General Partner to make the required Credit Adjuster Advance.

4. **Guaranty of Obligation to Purchase Interest of Limited Partner.** In the event that, at any time or from time to time during the term of this Agreement, the General Partner is obligated pursuant to Section 5.17 of the Partnership Agreement to purchase the Limited Partner's Interest and the General Partner fails to purchase such Interest, within five (5) days after notice thereof by the General Partner, or if the General Partner fails to give such Notice, Notice from the Limited Partner, Guarantor shall advance funds to the General Partner in the amount necessary for the General Partner to purchase the Limited Partner's Interest.

5. **[Intentionally Omitted]**

6. **Term.** This Agreement shall commence as of the date hereof and shall terminate when the General Partner and Guarantor have satisfied in full their obligations (i) to make Operating Deficit Contributions pursuant to Section 5.14 of the Partnership Agreement, (ii) to make Fee Guaranty Advances pursuant to Section 5.15 of the Partnership Agreement, (iii) to make Credit Adjuster Advances pursuant to Sections 3.03 through 3.05 of the Partnership Agreement, and (iv) to repurchase the Limited Partner's Interest pursuant to Section 5.17 of the Partnership Agreement.

7. **Representation.** The Guarantor represents that it will maintain sufficient funds to be able to satisfy its obligations under this Agreement.

8. **Intended Beneficiary.** The parties intend that the Limited Partner of the Partnership be a third party beneficiary of this Agreement and that the Limited Partner in such capacity may enforce the Guarantor's obligations hereunder. No person other than the Limited Partner and the parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

9. **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.

10. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns. No party may assign this Agreement without the consent of the other party.

11. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

12. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

13. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

14. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Rhode Island, without regard to principles of conflicts of laws.

15. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

16. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

17. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

18. **Guaranty of Payment.** This Agreement constitutes a guaranty of payment, not solely a guaranty of collection.

**[ SIGNATURES BEGIN ON THE FOLLOWING PAGE ]**

IN WITNESS WHEREOF, the parties have executed this Operating Deficit, Fee Guaranty Advance, and Credit Adjuster Advance Guaranty Agreement as of the date first above written.

WITNESS/ATTEST:

STEPHENS HALL DEVELOPMENT  
ASSOCIATES, L.P.

By: SH Development Corp.,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

West Elmwood Housing Development Corporation,  
Guarantor

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SH DEVELOPMENT CORP.,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## Exhibit E

### PARTNERSHIP ADMINISTRATION AGREEMENT

THIS PARTNERSHIP ADMINISTRATION AGREEMENT (this "*Agreement*"), dated and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2000, is made by and between STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P., a limited partnership formed under the laws of the State of Rhode Island, (the "*Partnership*") and WEST ELMWOOD HOUSING DEVELOPMENT CORPORATION, a Rhode Island corporation (the "*Administrator*").

#### Recitals

The Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a thirty-two (32) unit residential project in one (1) building plus parking located on two (2) sites in Providence, Rhode Island (the "*Project*"). The Partnership is operating by a First Amended and Restated Agreement of Limited Partnership in the form to which this Agreement is attached as an exhibit (the "*Partnership Agreement*").

The Partnership has agreed to make certain payments to Administrator as an inducement for the efficient administration of the Project.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Services.** Subject to the applicable provisions of the Partnership Agreement, the Administrator shall:

(a) Provide any and all supervisory services designed to cause the Project to operate efficiently, including reviewing and evaluating programs, policies and procedures instituted by the Management Agent for advertising and tenant recruitment, screening and selection;

(b) Investigate and make recommendations with respect to the selection and conduct of relations with consultants and technical advisors (including, without limitation, accountants, depositories, custodians, agents for collection, insurers, insurance agents and banks) if necessary at any given time; and

(c) Formulate programs for owner, tenant, public and government relations.

2. **Partnership Administration Fee.** Subject to the applicable terms and conditions of the Partnership Agreement and the Loans and Project Documents, the Partnership shall pay to the Administrator, over the term of this Agreement, an annual Partnership Administration Fee from 100% of available net rental income, not to exceed 10% of net rental income for such year. The Partnership Administration Fee shall be payable from Net Cash Flow available for payment of such fee pursuant to Exhibit A-4 of the Partnership Agreement.

3. **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.

4. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, personal representatives, successors and assigns. No party may assign this Agreement without the consent of the other party.

5. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

6. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

7. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

8. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Rhode Island, without regard to principles of conflicts of laws.

9. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

10. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

11. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

[ SIGNATURES BEGIN ON THE FOLLOWING PAGE ]

IN WITNESS WHEREOF, the parties hereto have executed this Partnership Administration Agreement as of the date first written above.

WITNESS/ATTEST:

STEPHENS HALL DEVELOPMENT  
ASSOCIATES, L.P.

By: SH Development Corp.,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WEST ELMWOOD HOUSING DEVELOPMENT  
CORPORATION,  
Administrator

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit F**  
**PROPERTY MANAGEMENT AGREEMENT**  
**[SEE ATTACHED]**

## Exhibit G

### UNCONDITIONAL CONSTRUCTION COMPLETION GUARANTY AGREEMENT

FOR VALUE RECEIVED, and to induce The Housing Outreach Fund VIII Limited Partnership, a District of Columbia limited partnership and Enterprise Housing Partners III Limited Partnership, a Delaware limited partnership, (the "**Limited Partner**") to become a limited partner of Stephens Hall Development Associates, L.P., a limited partnership formed under the laws of the State of Rhode Island (the "**Partnership**"), by entering into a First Amended and Restated Agreement of Limited Partnership (the "**Partnership Agreement**") and to induce the Partnership to obtain financing for the construction of a thirty-two (32) unit residential project in one (1) building plus parking located on two (2) sites in Providence, Rhode Island (the "**Project**"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, West Elmwood Housing Development Corporation, a Rhode Island corporation (the "**Guarantor**") and SH DEVELOPMENT CORP., a Rhode Island corporation, (the "**General Partner**"), as of the \_\_\_\_ day of \_\_\_\_\_, 2000, hereby undertake, guarantee, and agree as follows:

1. **Completion of Construction.** Guarantor hereby absolutely and unconditionally guarantees the due and punctual construction (the "**Work**") of the Project in accordance with the terms and requirements of the Partnership Agreement (including the payment of Development Advances by the General Partner under Section 5.13 of the Partnership Agreement), the Loan Documents and the Project Documents, free and clear of any liens or claims of liens (except for the liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents), in the manner and within the time necessary to comply with all of the terms, covenants and conditions of the Partnership Agreement, the Loan Documents and the Project Documents, including all future amendments thereto. Should the cost of completion of the Work exceed the amounts available therefor in loan proceeds and Partnership funds, or should any liens be filed against the Partnership Property or the Project (except for liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents) prior to completion of or in connection with the Work, Guarantor hereby absolutely and unconditionally guarantees the prompt, absolute, and unconditional payment of such sums necessary to complete the Work and discharge such liens. All sums due and payable hereunder by Guarantor shall be payable on demand of the Partnership. Any amounts paid by Guarantor shall not be refundable to Guarantor, but shall be a cost of earning the Development Fee set forth in the Development Services Agreement executed as of the date hereof.

2. **Continuing Guaranty.** It is expressly understood and agreed that this is a continuing guaranty and that the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity, or enforceability of the Partnership Agreement, the Loan Documents, the Project Documents, or any other instruments executed in connection therewith.

3. **Certain Waivers.** To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, and any and all notices of nonpayment, non-performance, and non-observance, and other proof, and

notice of demand, and Guarantor hereby waives all suretyship defenses and defenses in the nature thereof.

4. **Defenses Not Valid.** Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired (a) by reason of the assertion by the Partnership or any Partner thereof of any rights or remedies under or with respect to the Partnership Agreement, or any other instruments executed in connection therewith, against any Person obligated thereunder, (b) by reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty, or (c) by reason of the adjudication in bankruptcy of this Guaranty or any guarantor hereunder, any Person obligated under the Partnership Agreement, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any such Person.

5. **Effect of Certain Assignments, Etc.** Guarantor further covenants that this Guaranty shall remain and continue in full force and effect as to any assignment, modification, extension, or renewal of the Loan Documents, the Project Documents or the release or exchange of any property covered by the Loan Documents or other collateral for any of the Loans, and notwithstanding any amendment of the Partnership Agreement or transfer of the Interest of any Partner thereunder, and that indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done, or suffered without notice to or further consent of the Guarantor.

6. **Enforcement.** Guarantor hereby agrees that this is a Guaranty of payment, not collection, and that this Guaranty may be enforced by the Partnership or any Partner thereof against Guarantor without first resorting to or exhausting any other right or remedy; *provided, however*, that nothing herein contained shall prevent the Partnership or any Partner from suing to enforce the provisions of the Partnership Agreement or from exercising any rights thereunder.

7. **Reimbursement of Expenses.** Guarantor agrees that, in the event this Guaranty is placed in the hands of an attorney for enforcement, Guarantor will reimburse the Partnership and the Partners seeking such enforcement for all expenses incurred in enforcing this Guaranty, including reasonable attorneys' fees (whether or not suit is brought hereon) and all such expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings.

8. **Default.** If Guarantor shall fail or refuse to perform or continue performance of all of Guarantor's obligations under this Guaranty, then the Partnership and/or the Partners thereof shall, at their option, have the right to take all necessary action to complete the Work in accordance with the terms of the Partnership Agreement, the Loan Documents, and the Project Documents to discharge any liens filed against the Project or the land underlying the Project and to take any other actions necessary or advisable to cure the Guarantor's default hereunder, either before or after the exercise of any other remedy. The amounts of any and all expenditures and advances so made by the Partnership or any Partner shall be due and payable by Guarantor immediately upon the incurring or advancement thereof and, if not then paid, shall bear interest at two percent (2%) above the prime rate then in effect at Bank of America, N.A.

9. **Term.** Except as provided herein, this Guaranty shall terminate three (3) months after the last to occur of the following:

(a) A final certificate of occupancy is issued for the Project following the completion of construction of the Project in accordance with the Loan Documents and Project Documents;

(b) Final payment is made under the construction contracts, and the contractor acknowledges in writing that the contractor and all subcontractors have been paid in full and have no further claims under the construction contracts; and

(c) The statutory period within which the contractor and any subcontractors under the construction contracts may file liens against the Partnership Property or the Project has expired.

Notwithstanding the foregoing, at any time within three (3) months after the termination of this Guaranty as provided in this Paragraph 9, the Partnership or any Partner thereof may give written notice (the "**Guaranty Notice**") to Guarantor of any outstanding or disputed amount due to any third party that relates to the construction of the Project and may reserve its rights hereunder with respect to such outstanding amount. In the event the Partnership or any Partner thereof gives such Guaranty Notice to the Guarantor, this Guaranty shall survive to the extent of the matters described in such Guaranty Notice and until such matters have been fully paid or resolved to the satisfaction of the Partnership and the Partners that gave such notice.

10. **Notices.** All notices to the parties hereto shall be given in the manner and (where applicable) to the addresses specified on Exhibit A-6 to the Partnership Agreement, as the same may be amended from time to time by Notice to the parties hereto. Notices to the Partnership shall be sent in care of the General Partner of the Partnership with a copy to the Limited Partner. Notices to Guarantor shall be sent to:

392 Cranston Street  
Providence, Rhode Island 02907  
Attn: Sharon Conard-Wells

11. **Intended Beneficiary.** The parties intend that the Limited Partner of the Partnership be a third party beneficiary of this Agreement and that the Limited Partner, in such capacity, may enforce the Guarantor's obligations hereunder. No person other than the Limited Partner and the Partnership may directly or indirectly rely upon or enforce the provisions of the Agreement, whether as a third party beneficiary or otherwise.

12. **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.

13. **Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of the Partnership, the Partners thereof, and their respective successors and assigns.

14. **Severability of Provisions.** Each provision of this Guaranty shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Guaranty is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Guaranty that are valid.

15. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.

16. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

17. **Governing Law.** This Guaranty shall be governed, construed, and interpreted as to validity and enforcement and in all other respects in accordance with the laws of the State of Rhode Island and cannot be modified, amended, or terminated orally.

18. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

19. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

20. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

21. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE ]



IN WITNESS WHEREOF, Guarantor has duly executed this Unconditional Construction Completion Guaranty Agreement as of the date first above written.

WITNESS/ATTEST:

WEST ELMWOOD HOUSING DEVELOPMENT  
CORPORATION,  
Guarantor

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SH DEVELOPMENT CORP.,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit H**

**PROJECTIONS**

[INSERT PROJECTIONS PRODUCED BY ESIC]

**Exhibit I**

**[INTENTIONALLY OMITTED]**

**Exhibit J**

**[INTENTIONALLY OMITTED]**

## Exhibit K

### RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this "*Agreement*"), dated and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2000, is made by and between STEPHENS HALL DEVELOPMENT ASSOCIATES, L.P., a limited partnership formed under the laws of the State of Rhode Island, (the "*Partnership*") and SH DEVELOPMENT CORP., a Rhode Island corporation (the "*Purchaser*").

#### Recitals

The Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a thirty-two (32) unit residential project in one (1) building plus parking located on two (2) sites in Providence, Rhode Island (the "*Project*"). The Partnership is operating by a First Amended and Restated Agreement of Limited Partnership in the form to which this Agreement is attached as an exhibit (the "*Partnership Agreement*").

The Partnership desires to give, grant, bargain, sell, and convey to Purchaser certain rights to purchase the Property on the terms and subject to the conditions set forth herein.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Right of First Refusal.** After the end of the Compliance Period, the Partnership will not sell the Project or any portion thereof to any Person without first offering the Project for a period of forty-five (45) days to Purchaser (if it then qualifies as an organization described in Section 501(c)(3) of the Code) (the "*Buyout*"), at a price (the "*Buyout Price*") equal to the sum of (i) the principal amount of all outstanding indebtedness secured by the Project, all other loans from the General Partner or its Affiliates, and any accrued interest on any of such debts, (ii) all federal, State, and local taxes attributable to such sale, including those incurred or to be incurred by the partners of the Limited Partner, and (iii) an amount required to provide the Limited Partner with the Total Benefit Amount described in Section 8.02 as of the date of closing; *provided, however*, that such right of first refusal shall be conditioned upon an agreement by Purchaser to maintain the Project for low-income use for at least fifteen (15) years after the later of the end of the Compliance Period (but in no event can such low-income use terminate before the end of the Extended Use Period) under Section 42 of the Code or the date of the buyout and provided, further, that such restriction shall be recorded in the real property records as a restriction against the Partnership Property. All costs of the Buyout including any filing fees, shall be paid by Purchaser. In the event that Purchaser does not purchase the Partnership Property on the terms set forth above, then the right of first refusal granted herein shall lapse.

2. **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.

3. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. No party may assign this Agreement without the consent of the other party.

4. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

5. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

6. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Rhode Island, without regard to principles of conflicts of laws.

8. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

9. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

10. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

11. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Right of First Refusal Agreement as of the date first above written.

WITNESS/ATTEST:

STEPHENS HALL DEVELOPMENT  
ASSOCIATES, L.P.

By: SH Development Corp.,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SH DEVELOPMENT CORP.,  
Purchaser

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit L**

**[INTENTIONALLY OMITTED]**



## Exhibit M

### MONTHLY CONSTRUCTION AND LEASE-UP STATUS REPORT

*Stephens Hall Development Associates, L.P.*

For: Stephens Hall Development Associates, L.P.

This report is to be completed during the first week of each month and sent to: Robert Goldman, at The Enterprise Social Investment Corporation, 10227 Wincopin Circle, Suite 810, Columbia, Maryland 21044.

ATTACH THE DRAW SUMMARY AND THE APPROVED AIA SCHEDULE FROM EACH DRAW.

MONTH	PROJECTED PERCENT COMPLETE	ACTUAL PERCENT COMPLETE	TOTAL CONSTRUCTION FUNDS EXPENDED TO DATE	CONTINGENCY EXPENDED TO DATE	NUMBER OF UNITS OCCUPIED TO DATE
	(Start Date _____ Complete Date _____)	(_____ Buildings)	(Construction Contract Budget: _____)	(Initial Contingency: _____)	(Total Units: _____)

- HAVE THERE BEEN ANY CHANGES IN THE CONSTRUCTION SCHEDULE (DELAYS, ETC)? Please specify and explain effect on construction completion date.
- EXPLAIN HERE ANY LARGE DRAWS FROM CONTINGENCY.

COMPLETED BY: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Exhibit N

### INSURANCE REQUIREMENTS CHECKLIST

#### A. Construction Phase

- \_\_\_ 1. *Owner's Commercial General Liability (Bodily Injury and Property Damage) Insurance* of the real estate development class in amounts not less than \$2,000,000 combined single limits (per occurrence/per location and in the aggregate).
- \_\_\_ 2. *General Contractor's Commercial General Liability and Property Damage Insurance* of the construction exposure class in the same amounts set forth above. Automobile liability, and workers' compensation in the statutory amount.
- \_\_\_ 3. *All-Risk Builder's Risk Insurance* (special form not broad form) providing replacement cost coverage in an amount equal to completed construction value, including soft cost coverage, with an agreed amount endorsement per the attached worksheet. For rehabilitation projects, the building value is to be included in the Builder's Risk policy or under a separate policy.
- \_\_\_ 4. *Architect's Errors and Omissions Insurance* for the greater of \$250,000 or 10% of the construction contract, in a form satisfactory to the Limited Partner.

#### B. Permanent Insurance (after construction)

- \_\_\_ 1. *Owner's Commercial General Liability (Bodily Injury and Property Damage) Insurance* in amounts not less than \$2,000,000 combined single limits (per occurrence per location and in the aggregate).
- \_\_\_ 2. *Owner's Special Form (All-Risk) Property Insurance* on buildings and personal property in an amount not less than the full insurable replacement value of such buildings and personal property, but in no event less than the principle amount of all outstanding loans for the project.
- \_\_\_ 3. *Rental Interruption Insurance* in amounts required by all lenders, but not less than the equivalent of six (6) month's gross rental income.
- \_\_\_ 4. *Special Hazard Insurance* for boiler and machinery, flood, wind, mudslide and/or earthquake areas, in form and amount deemed necessary by all lenders and acceptable by the Limited Partner.
- \_\_\_ 5. *Earthquake or Flood Insurance (if applicable).*

### **C. Evidence of Insurance**

*Insurance coverage must be evidenced by Certificates of Insurance and properly endorsed policies certified as true and correct by the insurance agent, but may not be evidenced solely by Certificates. All evidence of insurance must satisfy the following requirements:*

- ☐ 1. The project operating Partnership should be the named insured.
- ☐ 2. The investor limited partnership should be named as an additional insured.
- ☐ 3. Policies must be written with an A.M. Best rated company of "A" or better.
- ☐ 4. All binders and policies should contain a cancellation clause stating that the policy will not be canceled without at least thirty (30) days prior written notice to the Limited Partner. The Clause should not state that the insurer will "endeavor" to send such notice or that no liability attaches to the insurer for failure to send such notice.
- ☐ 5. Certificates must document the amount of all deductibles.
- ☐ 6. All binders and policies must be accompanied by evidence of premium payment.

**Builder's Risk Insurance  
Replacement Cost Worksheet**

**A.    *Completed Construction Value***

Permanently installed furnishings and fixtures	\$ _____
Construction Costs	\$ _____
Contingency	\$ _____
<i>Subtotal</i>	\$ _____

**B.    *Plus Soft Cost Coverage***

Architect Supervision	\$ _____
Construction Monitoring	\$ _____
Construction Security	\$ _____
Real Estate Taxes	\$ _____
Insurance	\$ _____
Legal	\$ _____
Marketing	\$ _____
Accounting	\$ _____
Lease-Up	\$ _____
Construction Period Interest	\$ _____
Permits and Fees	\$ _____
Credit Fees	\$ _____
Utilities	\$ _____
Other _____	\$ _____
Other _____	\$ _____
Other _____	\$ _____
<i>Subtotal</i>	\$ _____
 Total Replacement Cost	 \$ _____

**Exhibit O**

**EQUITY ADVANCE NOTE**

\$1,708,068

July \_\_\_\_, 2000  
Columbia, Maryland

FOR VALUE RECEIVED, the undersigned **Stephens Hall Development Associates, L.P.**, a Rhode Island limited partnership (the "Borrower"), hereby promises to pay to the order of **Enterprise Housing Partners III Limited Partnership**, a Delaware limited partnership (collectively and together with any successor holders of this Note, the "Lender"), at Lender's office at c/o The Enterprise Social Investment Corporation, 10227 Wincopin Circle, Columbia, Maryland 21044 or at such other place or places as the Lender from time to time may designate in writing, the principal sum of

ONE MILLION SEVEN HUNDRED EIGHT THOUSAND AND SIXTY-EIGHT DOLLARS

(\$1,708,068) or, if less, the aggregate unpaid principal amount of all sums advanced by Lender to the Borrower pursuant to Section 3.10 of the Borrower's First Amended and Restated Agreement of Limited Partnership dated as of July \_\_\_\_, 2000 (the "Partnership Agreement"), in lawful money of the United States of America and in immediately available fund together with interest thereon and such additional sums hereinafter provided.

Except as otherwise provided herein all payments shall be applied first to interest due hereunder, and any balance shall be applied in reduction of principal. In the absence of demonstrable error, the books and records of the Lender shall constitute presumptive evidence of the unpaid principal balance hereof from time to time. All terms defined in the Partnership Agreement and used but not otherwise defined herein shall have the meaning give them in the Partnership Agreement.

1. Maturity Date. If not sooner paid, all outstanding principal and accrued and unpaid interest thereon shall be paid to the Lender on December 31, 2001.

2. Interest. The outstanding unpaid principal balance advanced hereunder shall bear interest compounded semi-annually at a per annum rate equal to eight percent (8.00%). Such interest shall accrue and shall be due and payable upon the maturity of the principal amount hereof, whether the acceleration, prepayment or otherwise. In the event of a partial maturity of the principal amount hereof whether by acceleration, prepayment or otherwise, a ratable portion of any accrued but unpaid interest shall be due and payable.

3. Prepayments. The loan evidenced by this Note shall be subject to prepayment as follows:

a. Optional Prepayments. The Borrower may prepay at any time or from time to time the principal amount of the Note in whole or in part together with all accrued but unpaid interest on the principal amount so prepaid.

b. Required Prepayments.

i. The Borrower shall prepay, from and to the extent of any capital contributions received by it from the Lender after the date hereof, all unpaid principal under this Note together with all accrued but unpaid interest on the principal amount so prepaid.

ii. All unpaid principal under this Note together with all accrued but unpaid interest on such principal may, at the election of the Lender, be applied to payment of a portion of the Third Installment of the Capital Contribution which the Lender has agreed to contribute to the Borrower pursuant to the Partnership Agreement (the "Third Installment").

iii. In the event the Limited Partner shall be in default of its obligation to pay the First Installment, the Borrower may prepay this Note by converting the then outstanding balance hereof to capital of the Borrower and crediting the same against the unpaid portion of the Third Installment as to which such default of the Limited Partner occurred.

4. Right to Set Off. Upon the maturity of all or any portion of the amounts due herein, whether by acceleration, prepayment or otherwise, Lender is hereby authorized at any time and from time to time, without notice to Borrower (any such notice being hereby expressly waived by Borrower) to set off and apply any Capital Contributions or other payments payable to the Borrower by the Lender and other indebtedness at any time owing by Lender to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Note. The rights of Lender under this subsection are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Lender may have.

5. Defaults. It is expressly agreed that the occurrence of any one or more of the following shall constitute an "Event of Default" hereunder: (i) any failure to pay any amount or installment of interest or of principal and interest on any day whereon the same is payable as above expressed; or (ii) an event has occurred under Section 5.17 of the Partnership Agreement under which the Lender is entitled to receive a Purchase Obligation Notice or to demand the repurchase of its Interest; or (iii) the Borrower has failed to advance any funds it is required to advance pursuant to the provisions of the Partnership Agreement. If any such Event of Default hereunder shall occur, the Lender may, at its option, declare to be immediately due and payable the then outstanding principal balance under this Note, with all accrued and unpaid interest hereon, and all other amounts payable to the Lender hereunder, whereupon all such amounts shall become and be due and payable immediately. The failure of the Lender to exercise said option to accelerate shall not constitute a waiver of the right to exercise the same at any other time.

6. Interest Limitation. This Note is subject to the express condition that at no time shall the Borrower be obligated or be required to pay interest on the unpaid principal amount of this Note at a rate which could subject the Lender either to civil or to criminal penalty as a result of being in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay. If by the terms of this Note the Borrower at any time is required or obligated to pay interest on the unpaid principal amount of this Note at a rate in excess of such maximum rate, then the rate of interest under this Note shall be deemed to be immediately reduced to such maximum rate and the interest payable hereunder shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and amount of this Note and any balance shall be refunded to the Borrower by the Lender. The terms and provisions of this paragraph shall control all other terms and provisions contained herein.

7. Waivers and Continued Liability. The granting to the Borrower or any other party of an extension or extensions of time for the payment of any sum or sums due under this Note or for the performance of any term, provision, covenant or agreement under this Note or any other agreement between Borrower, Lender and their respective Affiliates, the taking or releasing of security or collateral for payment of the indebtedness under this Note, or the exercising or failure to exercise of any right or power under this Note or any other agreement between Borrower, Lender and their respective Affiliates, shall not in any way release or affect the liability of the Borrower and any guarantor hereof or any other party obligated to pay the indebtedness evidenced by this Note.

8. Amendments and Modifications. This Note may not be amended or modified except by a written instrument signed by the Lender, nor shall any revision hereof be effective, unless in writing and signed by the Lender.

9. Binding Effect. Wherever the term "the Borrower" is used in this Note, the term shall include (unless otherwise expressly indicated) all of the Borrower's heirs, legal representatives, successors and assigns, as the case may be. This Note shall be binding upon the Borrower and shall inure to the benefit of the Lender and its successors and assigns.

10. Severability. In the event that any provision of this Note is unenforceable or contrary to law, or in the event that the inclusion of such provision would adversely affect the validity, legality or enforcement of this Note, such provision shall be of no force and effect, and in such case all the remaining terms and provisions of this Note shall be fully effective, the same as though no such invalid provision had ever been included herein. If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and the application of such provision to other parties or circumstances shall not be affected thereby, the provisions of the Note being severable in any such instance.

11. Waiver of Presentment, Etc. The Borrower hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

12. Governing Law; Jurisdiction; Service of Process. This Note and the rights and obligations of the Lender and the Borrower hereunder shall be construed in accordance with and

governed by the law of the State of Maryland (without giving effect to the conflict of law principals thereof). Any legal action or proceeding with respect to this Note may be brought in the courts of the State of Maryland, and by execution and delivery of this Note, the Borrower hereby accepts, generally and unconditionally, the jurisdiction of the aforesaid courts. Notwithstanding the foregoing, in the event that the Agency shall enforce its rights under the Agency Pledge Agreement, this Note shall thereupon be governed and controlled as to interpretation, validity, enforcement, and in all other respects, by the laws of the State of Rhode Island.

The Borrower irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, to the Borrower at its address set forth below, and service so made shall be deemed complete seven (7) days after the same shall have been so mailed.

Nothing herein shall affect the right of the Lender to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Borrower in any other jurisdiction.

13. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage and fees prepaid, or delivered personally, in each case addressed to the party hereto to receive such notice or other communication at its respective address as follows:

a. If to the Lender, at c/o The Enterprise Social Investment Corporation, 10227 Wincopin Circle, Columbia, Maryland 21044; and

b. If to the Borrower, SH Development Corp., 392 Cranston Street, Providence, Rhode Island 02907, Attn: Sharon Conard-Wells.

Any party may, by notice to the others, change its address for any subsequent notice.

14. Subordination. Repayment of this Note shall be subordinate to repayment of the Loans as set forth on Exhibit A-3, except to the extent that the indebtedness evidenced by this Note is repaid from the Third Installment of equity, as contemplated by the terms of the Partnership Agreement.



IN WITNESS WHEREOF, the Borrower has duly executed, or caused to be duly executed, this Note as a sealed instrument, in its name and on its behalf, as of the day and year first above written.

WITNESS/ATTEST:

**BORROWER:**

STEPHENS HALL DEVELOPMENT  
ASSOCIATES, L.P.

By: SH Development Corp.,  
General Partner

\_\_\_\_\_

By:

\_\_\_\_\_  
Sharon Conard-Wells  
Executive Director

## SCHEDULE 1

### EQUITY ADVANCE INSTALLMENTS

1.	\$205,800	Admission Date
2.	\$149,167	On August 5, 2000
3.	\$140,271	On September 5, 2000
4.	\$162,321	On October 5, 2000
5.	\$175,580	On November 5, 2000
6.	\$169,108	On December 5, 2000
7.	\$157,994	On January 5, 2001
8.	\$140,418	On February 5, 2001
9.	\$ 97,641	On April 5, 2001
10.	\$112,978	On May 5, 2000
11.	\$ 67,897	On June 5, 2000
12.	<u>\$128,892</u>	On Completion Date
Total = \$1,708,068		

## SCHEDULE 2

### SECOND INSTALLMENT PAYMENT SCHEDULE

\$155,256	On August 5, 2000
\$145,997	On September 5, 2000
\$168,947	On October 5, 2000
\$182,746	On November 5, 2000
\$176,010	On December 5, 2000
\$164,443	On January 5, 2001
\$146,150	On February 5, 2001
\$0.00	On March 5, 2001
\$101,626	On April 5, 2001
\$117,590	On May 5, 2001
\$70,669	On June 5, 2001
\$134,152	On the Completion Date