

75139

CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP
LINWOOD COURT LIMITED PARTNERSHIP II

THIS AGREEMENT is made this 14th day of December, 1993, by and between those persons, as General Partner and Limited Partner, as the case may be, who have signed this Agreement or a counterpart hereof.

R E C I T A L S :

The parties desire to form a limited partnership for the purpose of owning, improving, developing, and maintaining the Property located in Providence, Rhode Island.

Therefore, the parties each in consideration of the agreements of the others, mutually covenant and agree as follows:

ARTICLE I

Creation of Partnership; Name and
Principal Place of Business; Term

1.01 There is hereby created a limited partnership (the "Partnership") pursuant to the Rhode Island Uniform Limited Partnership Act (the "Uniform Act").

1.02 The Partnership shall be conducted under the name of Linwood Court Limited Partnership II.

1.03 The principal place of business of the Partnership shall be at 191 Linwood Avenue, Providence, Rhode Island 02909. The agent for service of process of the Partnership shall be Drew P. Kaplan, Esq., Licht & Semonoff, One Park Row, Providence, Rhode Island 02903.

1.04 The term of the Partnership shall commence on the date of the filing for record of a Certificate of Limited Partnership in the Office of the Secretary of State of Rhode Island, and shall continue until December 31, 2030, unless the Partnership shall be sooner terminated as provided in Section 13.01.

ARTICLE II

Definitions

Wherever used in this Agreement, unless the context clearly indicates otherwise, the following words shall have the meanings indicated:

"Agreement" means this agreement of limited partnership.

"Bankruptcy" means as to any Partner,

- (1) Entry of an Order for Relief by or against such Partner pursuant to the Bankruptcy Code of the United States of America;
- (2) The appointment of a permanent receiver for such Partner of a substantial portion of such Partner's assets;
- (3) The making by such Partner of a general assignment for the benefit of creditors;
- (4) Any attachment of, or the entry of any court order charging, the interest of such Partner in the Partnership which attachment or order shall remain undismitted for at least (30) days; or
- (5) The commencement by such Partner of any proceedings seeking the dissolution or liquidation of such Partner;

"Fiscal Year" means the fiscal year of the Partnership, which shall be the calendar year.

"General Partner" means the person or persons specified in Article IV of this Agreement.

"Limited Partner" means a person specified in Article V of this Agreement and a Substitute Limited Partner.

"Partner" means any partner, whether a General Partner, Limited Partner or Substitute Limited Partner.

"Partnership" means the partnership created in this Agreement.

"Percentage Interest" means, with respect to any Partner, that fraction set forth opposite the Partner's name on Schedule A.

"Profits" or "Losses" means the net income and losses (or items thereof) of the Partnership as determined in accordance with the accounting methods followed by the Partnership for federal income tax purposes.

"Property" means the land and buildings located at 126-130 Linwood Avenue, Providence, Rhode Island, and any other

land, buildings, or other improvements in which the Partnership may hereafter acquire an interest.

"Substitute Limited Partner" means a person admitted to all the rights of a Limited Partner pursuant to the provisions of Article X or Article XII of this Agreement.

"Uniform Act" means Sections 7-13-1 et seq. of the General Laws of Rhode Island, as amended.

ARTICLE III

Purposes and Authorized Acts

3.01 The purposes of the Partnership are to own and maintain the Property. The Partnership shall not engage in any business or activity not related to the Property.

3.02 Subject to the terms hereof and to applicable law, the Partnership, acting through its General Partner without the consent of the Limited Partners, is authorized to perform all acts necessary, convenient or incidental to the effectuation of its purposes, and to perform any other acts permitted by applicable law consistent with Partnership purposes, including without limitation:

(i) To acquire by purchase, lease or otherwise the Property and any other real or personal property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Partnership.

(ii) To construct, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage, lease or otherwise dispose of all or part of the Property and any other real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Partnership.

(iii) To borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Partnership, including borrowings from Partners or their affiliates, and, in the sole discretion of the General Partner, to secure the same by mortgage, pledge or other lien on the Property or any other assets of the Partnership.

(iv) To prepay in whole or in part, refinance, recast, increase, modify or extend any mortgages affecting the Property and in connection therewith to execute any extensions, renewals, or modifications of any such mortgages on the Property.

(v) To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or convenient or incidental to, the accomplishment of the purposes of the Partnership, so long as said activities and contracts may be lawfully carried on or performed by a partnership under the laws of the State of Rhode Island.

ARTICLE IV

General Partner and Its Contributions

The General Partner shall be Linwood Court Development Corporation, a Rhode Island corporation with a business address at P. O. Box 3099, Providence, Rhode Island. The General Partner has contributed or agreed to contribute to the capital of the Partnership the cash specified in Schedule A

ARTICLE V

Limited Partners and Their Contributions

5.01 The initial Limited Partner shall be Advent House, Inc., a Rhode Island non-business corporation with a principal address at P.O. Box 3099, Providence, Rhode Island. The initial Limited Partner has contributed or agreed to contribute to the capital of the Partnership the cash specified in Schedule A. In addition, the initial Limited Partner has contributed to the Partnership an option to purchase the Property. The initial Limited Partner shall not be obligated to make any future contributions to the Partnership.

5.02 Substitute Limited Partners may be admitted to the Partnership pursuant to Section 10.01 hereof. Upon admission to the Partnership, the capital contribution or deemed capital contribution of a Substitute Limited Partner shall be set forth on Schedule A. Except as provided in Section 10.02, the General Partner may admit additional Limited Partners from time to time only with the consent of all the Limited Partners.

ARTICLE VI

Allocation of Profits and Losses Maintenance of Capital Accounts

6.01 Profits and Losses of the Partnership shall be determined annually, without considering Profits or Losses of any prior or subsequent period, and shall be allocated or chargeable to the Partners in proportion to their respective Percentage Interests.

6.02 The Partnership shall maintain on its books a capital account (the "Capital Account") for each Partner. All Profits, income exempt from tax, and gain (or items thereof) and Losses and deductions (or items thereof) shared by the Partners shall be credited or charged, as the case may be, to their Capital Accounts. In addition, each Partner's Capital Account will be credited with the cash and the fair market value of property contributed to the Partnership (net of liabilities assumed by the Partnership and liabilities to which such contributed property is subject) and shall be debited with the cash and the fair market value of property distributed to him (net of liabilities assumed by such Partner and liabilities to which such distributed property is subject) and his distributive share of expenditures of the Partnership that are not deductible in computing taxable income and are not normally chargeable to capital account. The Partners' Capital Accounts will be maintained in accordance with the principles set forth in Treas. Reg. Section 1.704-1(b)(2)(iv) or any successor regulation. Except as otherwise provided in this Agreement, whenever it is necessary to determine the Capital Account of a Partner for purposes of this Agreement, the Capital Account of the Partner shall be determined after giving effect to the allocation for the Partnership's current year of Profits and Losses and all distributions for such year that decrease such Partner's Capital Account.

No Partner shall be liable for the return of the capital contributions, or any portion thereof, of any Partner; it being expressly understood that such return shall be made solely from the assets of the Partnership.

Upon the sale, exchange, or other transfer of a Partnership interest, or the assignment of such interest to a Substitute Limited Partner, the Capital Account of the transferor Partner attributable to that interest shall carry over to the transferee Partner.

Prior to the distribution of any property to a Partner (whether in connection with a liquidation or otherwise), the Capital Accounts of the Partners will first be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in such property (that has not been previously reflected in the Capital Accounts) would be allocated among the Partners if there were a taxable disposition of such property for the fair market value of such property (taking into account Section 7701(g) of the Internal Revenue Code) on the date of distribution.

ARTICLE VII

Distribution of Partnership Revenues

7.01 Partnership cash revenues shall first be applied to the payment of all debts, obligations, and liabilities of the Partnership and to the payment of taxes then due and payable. Thereafter, the balance of Partnership revenues, net of reasonable reserves, shall be distributed to the Partners in proportion to their respective Percentage Interests at such times as the General Partner deems advisable.

7.02 No General or Limited Partner shall have any right to demand or receive property other than cash, in respect of any part of his contribution to the capital of the Partnership or a share of the Partnership's Profits or any distribution. A Partner shall have a right to distributions of cash, including the return of his capital contribution, only in the circumstances set forth herein.

ARTICLE VIII

Powers, Duties and Liabilities of General Partner

8.01 The General Partner shall be responsible for the management of the Partnership and shall transact all business for the Partnership. The General Partner shall have complete discretion in the management of all aspects of Partnership affairs. The Limited Partners hereby consent to the exercise by the General Partner of the powers conferred on it by this Agreement.

8.02 Each General Partner may from time to time, by an instrument in writing delegate all or any of his powers or duties hereunder to another General Partner or Partners. Such writing shall fully authorize such other General Partner to act alone without the requirement of any act or signature of the other General Partners, to take any action permitted by the authorization and to do anything and everything which the General Partner is so authorized to take or do hereunder, provided, however, that any such delegation shall not relieve the General Partner making such delegation of his obligations under this Agreement.

Every contract, deed, mortgage, lease and other instrument executed by any General Partner so authorized shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that at the time of the delivery thereof (a) this Partnership was in existence, (b) this Agreement had not been terminated or cancelled or amended in any manner so as to restrict such authority (except as shown in certificates or other

instruments duly filed in the office of the Secretary of State of the State), and (c) the execution and delivery of such instruments were duly authorized by the General Partners. Any person dealing with the Partnership or the General Partners may always rely on a certificate signed by any General Partner hereunder;

(i) as to who are the General Partners or Limited Partners hereunder,

(ii) as to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the General Partners or are in any other manner germane to the affairs of this Partnership,

(iii) as to who is authorized to execute and deliver any instrument or document of the Partnership,

(iv) as to the authenticity of any copy of this Agreement and amendments thereto, or

(v) as to any act or failure to act by the Partnership or as to any other matter whatsoever involving the Partnership or any Partner.

8.03 Any Partner may engage in any other business of any nature independently or with others, and neither the Partnership nor the other Partners shall have any rights with respect to any such other ventures.

8.04 The General Partner shall be entitled to reimbursement from Partnership funds for all reasonable expenses incurred on behalf of the Partnership.

8.05 The General Partner shall be liable to the Partnership or to the other Partners only for a willful breach of fiduciary duty.

ARTICLE IX

Powers, Duties and Liabilities of Limited Partners

9.01 No Limited Partner (except one who may also be a General Partner and then only in his capacity as General Partner) shall participate in or have any control over the management of the business of the Partnership nor shall any Limited Partner have any power or authority to act for or bind the Partnership.

9.02 Notwithstanding anything to the contrary contained in this Agreement, no Limited Partner (other than one who is also a General Partner) shall in any event be personally

liable for any debt, obligation, or loss of the Partnership except from the capital contributed or agreed to be contributed by him, or except in the circumstances described in the Uniform Act.

ARTICLE X

Assignability of Partnership Interests

10.01 No General Partner shall mortgage, transfer or sell his interest as a General Partner in the Partnership, or substitute an assignee in his place, except with the consent of all of the Limited Partners.

10.02 No Limited Partner may substitute an assignee in his place as a Substitute Limited Partner without the unanimous consent of the General Partner's shareholders which consent may be withheld in their sole and absolute discretion. The General Partner's shareholders may require as a condition to their consent to the admission of a Substitute Limited Partner that:

(a) the assignor designates in writing satisfactory to the General Partner's shareholders his intention that his assignee is to become a Substitute Limited Partner;

(b) the assignee agree in writing to be bound by all of the terms of this Agreement;

(c) the assignee execute and/or deliver such instruments as the General Partner's shareholders deem necessary or desirable to effect his admission as a Substitute Limited Partner and to evidence his acceptance of the terms of this Agreement; and

(d) the assignee pay all reasonable expenses in connection with his admission as a Substitute Limited Partner.

10.03 An assignee who does not become a Substitute Limited Partner shall succeed only to the rights of his assignor to receive distributions from the Partnership as provided in Articles VII and XIII.

ARTICLE XI

Death or Insanity of a Limited Partner

11.01 The death, insanity, incompetency or Bankruptcy of a Limited Partner shall not dissolve or terminate the Partnership. The legally appointed executor, administrator, guardian or conservator, as the case may be, and any legally

appointed successor to such administrator, executor, guardian, or conservator of a deceased, incompetent, or insane Limited Partner shall have all the rights of a Limited Partner for the purpose of settling his estate. The estate of a deceased, incompetent, or insane Limited Partner shall be liable for all his liabilities as a Limited Partner.

ARTICLE XII

Retirement, Death, Insanity or Bankruptcy of a General Partner

12.01 No General Partner may voluntarily retire as a General Partner without the consent of the Limited Partners.

12.02 In the event of the death, adjudication of insanity or incompetence or Bankruptcy of a General Partner, the remaining General Partner or General Partners, if any, may elect to continue the business of the Partnership or to terminate and dissolve the Partnership.

12.03 The legally appointed successors in interest, including without limitation the executor, administrator, guardian, conservator, or trustee in bankruptcy, as the case may be, of a deceased, insane, incompetent or bankrupt General Partner, and any legally appointed successor to such executor, administrator, guardian, conservator, or trustee in bankruptcy, shall become, effective upon the date of death, adjudication of insanity or incompetence, or Bankruptcy of such General Partner, a Limited Partner, and as such shall not have any right to participate in the management of the affairs of the Partnership and shall be entitled to only the allocation of Profits, Losses, distributions of cash revenues upon liquidation attributable to this Percentage Interest.

12.04 In the event of the death, adjudication of insanity, incompetence or Bankruptcy of all General Partners, the Partnership shall terminate and be dissolved unless continued pursuant to the terms of Section 13.01 hereof.

ARTICLE XIII

Termination and Dissolution

13.01 The Partnership shall terminate upon the first to happen of any of the following events:

(a) the expiration of the term specified in Section 1.04; or

(b) the death, adjudication of insanity or incompetence or Bankruptcy of all General Partners; or

(c) the sale of all or substantially all of the Property;

provided, however, that, upon the death, adjudication of insanity or incompetence or Bankruptcy of the sole remaining General Partner, the remaining Partners may elect to reconstitute the Partnership and continue the business of the Partnership for the balance of the term specified in Section 1.04 by selecting a successor General Partner within ninety (90) days after such event.

13.02 Upon termination of the Partnership and the abandonment of further intention of utilizing the properties or business of the Partnership, the assets of the Partnership shall be liquidated as promptly as practicable. The provisions of this Section 13.02 shall be subject to the rights of the General Partner or its successors to continue the business of the Partnership for the purpose of winding up the affairs of the Partnership. During the liquidation of the Partnership, the General Partner in its sole discretion shall determine whether or not any asset is suitable for distribution in kind. In liquidating the assets of the Partnership, all assets of a saleable value which the General Partner determines are not suitable for an equitable distribution in kind, shall be sold at public or private sale as the General Partner may deem it advisable. It is agreed that any Partner may purchase said assets at said sale. The General Partner shall give at least 15 days' prior written notice (in which the assets to be sold and the time, date, location and condition of sale shall be specified) to the Limited Partners of any such liquidating sale of all or any part of the Partnership's assets. Upon liquidation of the assets of the Partnership, the cash proceeds from the sale of Partnership assets and the other unliquidated assets of the Partnership shall be distributed to the Partners in proportion to the respective Percentage Interest after payment of the expenses of liquidation.

13.03 Upon termination and liquidation a statement, prepared by the General Partner, shall be sent to each Partner within sixty (60) days after liquidation setting forth the assets and liabilities of the Partnership.

ARTICLE XIV

Indemnification

Each General Partner shall be entitled to indemnity from the Partnership for any act performed by him within the scope of authority conferred upon him by this Agreement providing such General Partner acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Partnership and its Partners, and such General Partner had

no reasonable grounds to believe that his conduct was unlawful except that no indemnification shall be made in respect to any claim, issue or matter as to which such General Partner shall have been adjudged to be liable for willful misconduct in the performance of his fiduciary duty to the Partnership, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all circumstances of the case, such General Partner was fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper; provided, however, that any indemnity under this provision shall be provided out of and to the extent of Partnership assets only and no Limited Partner shall have any personal liability on account thereof.

ARTICLE XV

Miscellaneous

15.01 The General Partner is hereby designated by each Partner as the "Tax Matters Partner." The Tax Matters Partner shall keep each Partner informed of all administrative and judicial proceedings for the adjustment at the partnership level of the treatment for federal income tax purposes of partnership items within the meaning of Section 6223(g) of the Internal Revenue Code, and shall have all of the obligations, rights, and authority to bind the Partners in connection with such proceedings set forth in Sections 6221 through 6232 of the Internal Revenue Code. The Partnership shall pay all expenses of the Tax Matters Partner incurred in connection with the conduct of such proceedings on behalf of the Partners, including without limitation the fees of legal counsel, accountants, and other experts, but the Partnership shall not be required to pay the expenses of any other Partner who elects to participate in such proceedings. The Partners shall promptly inform the Tax Matters Partner of any change in their addresses. The Tax Matters Partner shall not be liable to the Partnership or to any Partner for any loss or expense, or disallowance of deduction, credit, or beneficial tax treatment of any item of Partnership income or loss arising from the conduct, settlement, or final adverse determination of the administrative or judicial proceedings described above, provided that such Tax Matters Partner acted in good faith and not with misconduct or in willful breach of his fiduciary duties hereunder.

15.02 Any notices required to be given hereunder shall be effective if mailed, postage prepaid, to the Partnership at its principal place of business as set forth in Section 1.03 hereof and to the Partners at their last known addresses appearing on the records of the Partnership.

15.03 The provisions of this Agreement shall be construed, administered and enforced according to the laws of the State of Rhode Island.

15.04 Feminine or neuter pronouns shall be substituted for those of the masculine gender, the plural for the singular and the singular for the plural, in any place in this Agreement where the context may require such substitution.

15.05 The titles of Articles and Sections are included only for convenience and shall not be construed as a part of this Agreement or in any respect affecting or modifying its provisions.

15.06 This Agreement shall be binding upon and inure to the benefit of all parties hereto and their heirs, assigns, and legal representatives.

15.07 This Agreement may be signed in one or more counterparts and all counterpart so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the original or the same counterpart.

15.08 This Agreement may be amended only with the consents of the General Partner and all of the Limited Partners.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day, month and year first above written.

GENERAL PARTNER

LINWOOD COURT DEVELOPMENT
CORPORATION

By: Deborah J. Chubb
Its duly authorized JPC

LIMITED PARTNER

ADVENT HOUSE, INC.

By: Deborah J. Chubb
Its duly authorized JPC

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

At Providence in said county on the 14th day of December, 1993, before me personally appeared Deborah Gray-Clukey, who being by me first duly sworn, declared that she is the President of Linwood Court Limited Development Corporation and the Executive Director of Advent House, Inc., that she signed the foregoing document in her capacities as aforesaid, and that the statements therein are true.


Notary Public

Schedule A

General Partner

Capital Contributed

Percentage Interest

Linwood Court
Development
Corporation

\$1.00

1%

Limited Partner

Capital Contributed

Percentage Interest

Advent House,
Inc.

\$99.00

99%

JUL 17 1993

BY AMT#29

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JUL 17 1993

*LINWOOD COURT LIMITED PARTNERSHIP
102 Linwood Avenue
Providence, Rhode Island 02909*

December 16 , 1993

Office of the Secretary of State
Corporations Division
100 North Main Street
Providence, RI 02903

Dear Sir or Madam:

Please be advised that the undersigned Rhode Island limited partnership hereby consents to the use of the name Linwood Court Limited Partnership II and the formation of a limited partnership by that name notwithstanding the fact that such name may be similar to the name of the undersigned.

LINWOOD COURT LIMITED PARTNERSHIP

By: 
Deborah Gray-Clukey, President
Linwood Court Development Corporation,
General Partner