

SECOND AMENDMENT

50080

TO

CERTIFICATE OF LIMITED PARTNERSHIP

OF

HERITAGE VILLAGE ASSOCIATES

The undersigned, in compliance with the provisions of the Uniform Limited Partnership Act of the State of Rhode Island, Title 7, Chapter 13 of the General Laws of Rhode Island, 1956, as amended, and in order to amend in its entirety the Certificate of Limited Partnership, as heretofore amended by the First Amendment thereto, of Heritage Village Associates, a Rhode Island limited partnership (the "Partnership") filed in the office of the Secretary of State of Rhode Island and to provide for the withdrawal of Paul F. Lischio and Philip W. Noel as Limited Partners and the admission of Rudy Meiselman and Roger L. Clifton as Limited Partners, do hereby certify, acknowledge and submit as to the establishment of the Partnership that the:

1. name of the Partnership;
2. character of the business of the Partnership;
3. location of the Partnership's principal place of business;
4. names and places of residence of the General and Limited Partners;

5. term for which the Partnership is to exist;
6. amount of each Limited Partner's cash contribution;
7. additional contributions agreed to be made by each Limited Partner and times at which or events on the happening of which such contributions shall be made;
8. time when the contribution of each Limited Partner is to be returned;
9. share of the profits or other compensation by way of income which each Limited Partner shall receive by reason of his contribution;
10. right of a Limited Partner to substitute an assignee as a contributor in his place and terms and conditions of the substitution;
11. right of the Partners to admit additional Limited Partners;
12. rights of priority among the Limited Partners;
13. right of the remaining General Partner or Partners to continue the business on the death, retirement, or insanity of a General Partner;
14. the right of the Limited Partners to demand and receive property other than cash in return for their contributions; and other terms and conditions of the Partnership are all as set forth in the copy of the Second Amendment to Agreement of Limited Partnership of Heritage Village Associates annexed hereto as Exhibit A and made a part hereof.

IN WITNESS WHEREOF, the undersigned have signed and sworn

to this Second Amendment to Certificate of Limited Partnership as  
of the 28<sup>th</sup> day of March, 1979.

WITHDRAWING LIMITED PARTNERS

Paul F. Lischio  
Paul F. Lischio

Philip W. Noel  
Philip W. Noel

GENERAL PARTNERS

Paul F. Lischio  
Paul F. Lischio

Philip W. Noel  
Philip W. Noel

LIMITED PARTNERS

Barry Cohen  
Barry Cohen

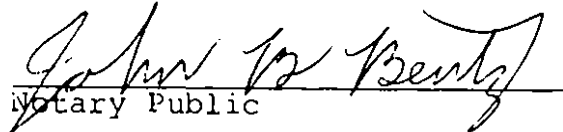
Rudy Meiselman  
Rudy Meiselman

Roger L. Clifton  
Roger L. Clifton

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence, on this 28<sup>th</sup> day of March, 1979, before me personally appeared Paul F. Lischio, to me known and known by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument executed by him to be his free act and deed.

  
Notary Public

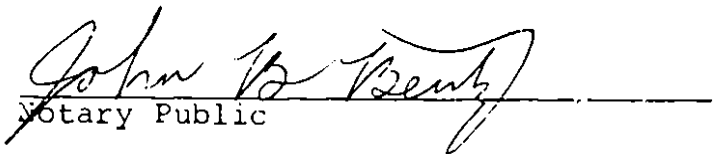
My commission expires: \_\_\_\_\_

**My Commission Expires June 30, 1981**

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence, on this 28<sup>th</sup> day of March, 1979, before me personally appeared Philip W. Noel, to me known and known by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument executed by him to be his free act and deed.

  
Notary Public

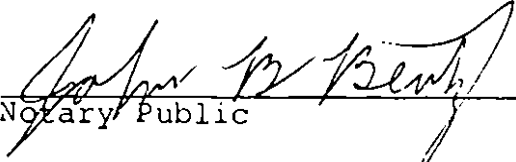
My commission expires: \_\_\_\_\_

**My Commission Expires June 30, 1981**

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence on this 28<sup>th</sup> day of March, 1979, before me personally appeared Barry Cohen, to me known and known by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument executed by him to be his free act and deed.

  
Notary Public


My commission expires: \_\_\_\_\_

STATE OF RHODE ISLAND

My Commission Expires June 30, 1981

COUNTY OF PROVIDENCE

In Providence on this 28<sup>th</sup> day of March, 1979, before me personally appeared Rudy Meiselman, to me known and known by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument executed by him to be his free act and deed.

  
Notary Public

My commission expires: \_\_\_\_\_

My Commission Expires June 30, 1981

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

In Boston on this *30th* day of March, 1979, before me personally appeared Roger L. Clifton, to me known and known by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument executed by him to be his free act and deed.

*Janice L. Flaherty*  
\_\_\_\_\_  
Notary Public

My commission expires:

**My** commission expires June 28, 1985

SECOND AMENDMENT  
TO  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HERITAGE VILLAGE ASSOCIATES

AGREEMENT dated as of the 1st day of March, 1979, by and among Paul F. Lischio of Cranston, Rhode Island, and Philip W. Noel of Warwick, Rhode Island, as General Partners, and as Withdrawing Limited Partners, and the parties executing this Agreement as Limited Partners.

W I T N E S S E T H T H A T:

WHEREAS, Heritage Village Associates was formed as a limited partnership under the laws of the State of Rhode Island (the "Partnership") pursuant to an Agreement of Limited Partnership dated as of May 4, 1978 by and between said Paul F. Lischio and Philip W. Noel as General Partners and as Limited Partners, as amended by amendment thereto dated February 28, 1979, and

WHEREAS, a Certificate of Limited Partnership was filed with the Secretary of State of Rhode Island on May 4, 1978, as amended by certificate dated February 28, 1978, and

WHEREAS, the parties hereto wish to:

(i) provide for the withdrawal of said Paul F. Lischio and Philip W. Noel as Limited Partners;

(ii) enable the Partnership to admit certain additional sophisticated investors as Limited Partners; and

(iii) amend and restate fully the rights, obligations and duties of the General Partners and the Limited Partners;

NOW, THEREFORE, in consideration of the premises and the agreements contained herein and for other valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto hereby restate and amend in its entirety said Agreement of Limited Partnership, and hereby agree as follows:

#### ARTICLE I

##### Defined Terms

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

1.1 "Accountant(s)" means Laventhol & Horwath or such other national firm of independent certified public accountants as may be engaged from time to time by the General Partners.

1.2 "Affiliated Person" means (i) General Partner, (ii) Limited Partner, (iii) member of the Immediate Family of any General Partner or Limited Partner, (iv) legal representative, successor or assignee of any person referred to in the preceding clauses (i) through (iii), (v) trustee for the benefit of any person referred to in the preceding clauses (i) through (iii),



(vi) Entity of which a majority of the voting interest is owned by one or more of the persons referred to in the preceding clauses (i) through (v), or (vii) Person who is an officer, director, trustee, employee, stockholder or partner of any Entity or Person referred to in the preceding clauses (i) through (vi).

1.3 "Agreement" means this Agreement of Limited Partnership as it may be further amended from time to time.

1.4 "Building Loan Agreement" means the agreement dated June 22, 1978, between the Partnership and the Lender, providing for a loan to finance construction of the Project, as such agreement may hereafter from time to time be amended.

1.5 "Capital Contribution" means the total amount of cash contributed or agreed to be contributed to the Partnership by each Partner as shown in the Schedule. Any reference in this Agreement to the Capital Contribution of a then Partner shall include a Capital Contribution previously made by any prior Partner on account of the partnership interest of such then Partner.

1.6 "Cash Flow" shall have the meaning provided in Section 10.2(b).

1.7 "Class Contribution" means the aggregate Capital Contributions of all members of a particular class of Partners (e.g. the General Partners or the Limited Partners).

1.8 "Commitments" means the commitment of the Lender to make the Construction and Permanent Mortgage Loan and shall also include the Building Loan Agreement, the Construction Contract, the Note, the Mortgage, the Regulatory Agreement, and any other instrument or agreement delivered to, or required by, the Lender, FHA, or HUD in connection with the Mortgage or in connection with the Project, including any commitment to insure the Mortgage, the Section 8 Commitment, and, after the Completion Date, the Section 8 Contract.

1.9 "Completion Date" means the date by which a certificate of occupancy for the Project is issued, the supervising architect of the Lender identified in the Commitments certifies that the construction of the Project is entirely completed and the Partnership has entered into the Section 8 Contract.

1.10 "Consent of the Limited Partners" means the written consent or approval of Limited Partners whose Capital Contributions represent eighty-five percent (85%) of the Limited Partner Class Contribution (excluding any interest held by any General Partner as a Limited Partner).

1.11 "Construction Contract" means the Construction Contract dated June 22, 1978, between the Partnership and Homar, Inc., a Rhode Island corporation, to construct the Project for a maximum upset price of two million three hundred sixty-three thousand one hundred forty-eight dollars (\$2,363,148).

1.12 "Entity" means any general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association.

1.13 "FHA" means the Federal Housing Administration, a division of the United States Department of Housing and Urban Development, and shall also mean such Department where the context requires.

1.14 "Final Closing" means the date on which amortization of principal under the Note commences.

1.15 "General Partner" (or "General Partners") means any or all of those Persons designated as General Partners in the Schedule or any Person who becomes a General Partner as provided herein, in such Person's capacity as a General Partner of the Partnership.

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

1.17 "Immediate Family" means, with respect to any Person, his spouse, parents, brothers, sisters, children, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

1.18 "Lender" means Rhode Island Housing and Mortgage Finance Corporation ("RIHMF"), and such other institution as may become the holder of the Note.

1.19 "Limited Partner" or "Limited Partners" means any or all of those Persons designated as Limited Partners in the Schedule or any Person who becomes a Substitute Limited Partner in such Person's capacity as a Limited Partner of the Partnership.

1.20 "Management Agent" means Housing Management Company, Inc., a Rhode Island corporation, or such other firm as provided herein which acts as the managing and rental agent for the Project.

1.21 "Mortgage" means the construction and permanent mortgage indebtedness in the amount of two million nine hundred sixteen thousand dollars (\$2,916,000) of the Partnership evidenced by the note issued to the Lender dated June 22, 1978 (the "Note"), and secured by a mortgage on the real property, located at Devils Foot Road, North Kingstown, Rhode Island, from the Partnership to the Lender as such indebtedness may be increased or decreased on or before the Completion Date. If the Mortgage is replaced by any subsequent mortgage or mortgages, such term shall refer to any such subsequent mortgage or mortgages, and the term "Note"

shall refer to the note secured thereby.

1.22 "Partner" means any General Partner or Limited Partner.

1.23 "Partnership" means the limited partnership continued in accordance with this Agreement by the parties hereto, as said limited partnership may from time to time be constituted.

1.24 "Person" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such persons where the context so admits.

1.25 "Project" means the one hundred (100) unit apartment complex to be constructed pursuant to plans and specifications approved by the Lender, on real property owned by the Partnership and located at Devils Foot Road, North Kingstown, Rhode Island.

1.26 "Project Expenses" means all of the costs and expenses of any type incurred incident to the ownership and operation of the Project, including, without limitation, taxes, capital improvements, payments of principal (if amortization of the Mortgage has commenced) and interest on the Mortgage (without forbearance), the cost of operations, maintenance, and repairs and the funding of any reserves required to be maintained by RIHMFC or FHA. For the purposes of Section 6.10, Project Expenses shall be determined on an accrual basis of accounting regardless of the basis upon which the books of the Partnership are kept for other purposes.

1.27 "Project Expense Loan" means a loan not secured by any liens or other charges upon the property of the Partnership made by the General Partners to the Partnership pursuant to Section 6.10, repayable only with the approval of the Lender and/or HUD and only as provided in Article X.

1.28 "Regulatory Agreement" means the Regulatory Agreement dated June 22, 1978, between the Partnership and the Lender.

1.29 "Residual Receipts Notes" means promissory notes of the Partnership not secured by any liens or other charges upon the property of the Partnership, which notes shall not bear interest and shall be payable with the approval of the Lender and/or HUD at any time prior to the making of the permanent Mortgage Loan in the discretion of the General Partners and thereafter only as provided in Section 6.9 and Article X of this Agreement. As of the date hereof, the General Partners have advanced eight thousand eight hundred eighty-four dollars (\$8,884) to the Partnership against Residual Receipt Notes.

1.30 "Retirement" means as to a General Partner, the occurrence of death, adjudication of insanity or incompetence, Bankruptcy, dissolution or liquidation, voluntary or involuntary withdrawal for any reason or such other event as may result in the dissolution of the Partnership under the Uniform Act. Involuntary Retirement shall be deemed to have occurred whenever a General Partner may no longer continue as a General Partner

by reason of death, adjudication of insanity or incompetence or Bankruptcy. Bankruptcy shall be deemed to have occurred whenever a General Partner shall admit in writing his inability to pay his debts as they become due, or shall be adjudicated a bankrupt or shall execute an assignment for the benefit of creditors, or shall become subject to the direction or control of a receiver for all or a substantial part of his property which receivership proceedings are not dismissed within 60 days of such receiver's appointment, or shall consent to the appointment of a receiver for all or a substantial part of his property, or shall file a petition in bankruptcy or for reorganization or for an arrangement.

1.31 "Schedule" means Schedule A annexed hereto as amended from time to time and as so amended at the time of reference thereto.

1.32 "Section 8 Commitment" means the agreement to enter into a Housing Assistance Payments Contract dated May 26, 1978, between HUD and the Partnership, setting forth the commitment of HUD to furnish housing assistance payments under Section 8 of the Housing Act of 1937, as amended, for each of the 100 apartment units in the Project in the maximum initial amount of four hundred fifty-five thousand five hundred twenty dollars (\$455,520) annually for a term (including renewal terms) of 25 years.

1.33 "Section 8 Contract" means the Housing Assistance Payments Contract to be entered into between HUD and the Partnership pursuant to the Section 8 Commitment.

1.34 "State" means the State of Rhode Island.

1.35 "Substitute Limited Partner" means any Person who is admitted to the Partnership as a Limited Partner under the provisions of Section 8.3 hereof.

1.36 "Uniform Act" means the Uniform Limited Partnership Act as embodied in Title 7, Chapter 13 of the General Laws of Rhode Island, 1956, as amended.

1.37 "Unit" means a portion of the Limited Partner Class Contribution representing a commitment for a capital contribution payable as provided in Section 5.1 in the amount of fifty thousand dollars (\$50,000) subject to reduction as provided in Section 5.3.

## ARTICLE II

### Formation; Name; and Purpose

#### 2.1 Formation

The parties hereto hereby agree to continue the Limited Partnership known as Heritage Village Associates formed pursuant to the provisions of the Uniform Act.



## 2.2 Name and Office

The Partnership shall continue to be conducted under the name and style of Heritage Village Associates. The principal office of the Partnership shall be 11 Beacon Drive, North Kingstown, Rhode Island 02852. The General Partners or any of them may at any time change the location of such principal office within the State by giving due notice of any such change to the Limited Partners.

## 2.3 Purpose

The purposes of the Partnership are to acquire certain real property located at Devils Foot Road, in North Kingstown, Rhode Island, to construct the Project thereon and to maintain, manage, and operate the Project. The Partnership and the General Partners shall use its and their best efforts to operate the Project in accordance with the Commitments and all applicable governmental regulations. The Partnership shall not engage in any other business or activity.

## 2.4 Authorized Acts

In furtherance of its purposes, but subject to all other provisions of this Agreement, the Partnership is hereby authorized to:

(i) acquire by purchase any real or personal property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Partnership;

(ii) construct, renovate, rehabilitate, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage or lease any real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Partnership;

(iii) borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Partnership, and to secure the same by any Mortgage on the Project or any other assets of the Partnership;

(iv) prepay in whole or in part, refinance, recast, increase, modify or extend any Mortgage affecting the Project;

(v) employ a management company, including an Affiliated Person, to manage the Project, and to pay reasonable compensation for such services; provided, however, that such compensation shall not be greater than that usually paid to third parties for similar services;

(vi) enter into, perform and carry out contracts of any kind, including contracts with Affiliated Persons, necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Partnership, specifically including, but not limited to, the execution and delivery of the Commitments, and all other agreements, certificates, instruments or documents required by the Lender, HUD and/or FHA in connection with the Commitments, the acquisition of the property, and the construction, rehabilitation, development, improvement, maintenance and operation of the Project;

(vii) execute leases of some or all of the apartments and facilities of the Project to a public housing authority and/or to a nonprofit corporation, cooperative or other nonprofit Entity; and

(viii) enter into such other kind of activity and to perform and carry out such other contracts in connection with the foregoing as may be lawfully carried on or performed by a partnership under the laws of the State.

## 2.5 Term and Disolution

(a) The Partnership shall continue in force and effect until December 31, 2018 except that the Partnership shall be dissolved prior to such date upon the happening of any of the following events:

(i) the sale or other disposition of all or substantially all of the assets of the Partnership;

(ii) the Retirement of a General Partner if no General Partner remains and the Partnership is not reconstituted with a successor General Partner; or

(iii) the election to dissolve the Partnership made in writing by the General Partners with the Consent of the Limited Partners.

(b) Upon dissolution of the Partnership, the General Partners (or their trustees, receivers, successors, or legal representatives), in accordance with the Uniform Act, shall cause the cancellation of the Partnership's Certificate of Limited Partnership, liquidate the Partnership assets and apply and distribute the proceeds thereof in accordance with Section 10.2(e). Notwithstanding the foregoing, in the event the General Partners shall determine that an immediate sale of part or all of the Partnership's assets would cause undue loss to the Partners, the liquidating General Partners may, in order to avoid such loss, either defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Partnership except those necessary to satisfy the Partnership debts and obligations (except Project Expense Loans and Residual Receipts Notes) or

distribute the assets to the Partners in kind.

## ARTICLE III

### Commitments and Financing

#### 3.1 Authority

The Partnership shall borrow from the Lender or the General Partners, as provided herein, whatever amounts that may be required for the construction and development of the Project and to meet the expenses of operating the Project until the Completion Date and shall, to the extent necessary or desirable, secure any such borrowing from the Lender with mortgages including the Mortgage. Each General Partner is specifically authorized to execute the Commitments and such other documents as he or it deems necessary in connection with the acquisition, construction, development, rehabilitation, renovation, and financing of the Project, including, without limitation (but subject to the other terms of this Agreement), notes, mortgages, conditional assignments, security agreements, and leases.

#### 3.2 Obligations under Commitments

Each General Partner shall be bound by the terms of the Commitments and any other documents required in connection therewith, but in no event shall the Partnership or any Partner be personally liable under the Mortgage or for any indebtedness secured thereby or any other evidence of indebtedness for money borrowed of the Partnership. Any incoming General Partner shall,

as a condition of receiving any interest in the Partnership, agree to be bound by the Commitments to the same extent and on the same terms as the other General Partners. Upon any dissolution of the Partnership or any transfer of the Project while the Mortgage is still outstanding, no title or right to the possession and control of the Project and no right to collect rents therefrom shall pass to any Person or Entity who is not, or does not become, bound by the Commitments in a manner satisfactory to the Lender and/or HUD or FHA.

### 3.3 Modification of Mortgage Indebtedness

The Partnership may decrease, increase, or refinance the Mortgage at or before the Completion Date; provided, however, that in the event of an increase in the principal amount of the Mortgage (i) an increase in rents is instituted, and (ii) if required the FHA shall have approved an increase in the maximum allowable rents for the apartments in the Project, and (iii) HUD shall have increased the Section 8 Commitment which shall be sufficient to cover the resulting increase in the amount the Partnership is required to pay for interest on, and amortization of the principal of, the Mortgage. After the Completion Date, the Partnership may not refinance the Mortgage or transfer or convey any assets of the Partnership for security or mortgage purposes, or sell, lease, exchange, or otherwise transfer or convey all or substantially all of the assets of the Partnership without the prior Consent of the Limited Partners.

## ARTICLE IV

### Partners; Capital

#### 4.1 General Partners

The General Partners of the Partnership shall be Paul F. Lischio of Cranston, Rhode Island and Philip W. Noel of Warwick, Rhode Island, and the amount contributed to the capital of the Partnership by each is set forth on the Schedule.

#### 4.2 Withdrawal of Limited Partners

Paul F. Lischio and Philip W. Noel hereby withdraw as Limited Partners and each shall cease to be a Limited Partner or to have any interest as a Limited Partner in the Partnership.

#### 4.3 Partnership Capital

The capital of the Partnership shall be the aggregate amount of the Capital Contributions of the Partners as set forth in the Schedule. The original capital account of each Partner shall be the amount of his Capital Contribution. No interest shall be paid on any Capital Contribution. The General Partners hereby assign to the Partnership all their right, title and interest in and to the Commitments and any property of the Partnership and expressly agree that their Capital Contributions shall be only the cash amount set forth in the Schedule.

#### 4.4 Withdrawal of Capital

No Partner shall have the right to withdraw all or any part of his Capital Contribution except as otherwise provided in this Agreement. No Partner shall have any right to demand and receive property (other than cash) of the Partnership in return of his Capital Contribution except as otherwise provided in this Agreement.

#### 4.5 Liability of Limited Partners

No Limited Partner shall be liable for any debts, liabilities, contracts or obligations of the Partnership. A Limited Partner shall only be liable to make payment of his Capital Contribution as and when due hereunder. After his Capital Contribution shall be fully paid, no Limited Partner shall, except as otherwise required by the Uniform Act, be required to make any further capital contributions or to loan any funds to the Partnership.

#### 4.6 Limited Partners

(a) The General Partners warrant that as of the date hereof the Persons listed on the Schedule are the only Partners of the Partnership. The General Partners shall not admit other Limited Partners except with the written consent of each of the Limited Partners.

(b) Each person becoming a Limited Partner shall, by reason thereof, be deemed to have agreed, and hereby does agree, to acquire his interest as Limited Partner subject to (i) the Commitments, (ii) any other documents required in connection with the Commitments and (iii) the provisions of this Agreement. Each Limited Partner shall accept such other terms and conditions set forth in writing to them at the time of admission as the General Partners may determine and shall execute and deliver such documents and instruments as the General Partners may reasonably request in order to confirm or carry out the provisions of this Agreement.

(c) The Schedule shall be amended to reflect the name, address and Capital Contribution of each Limited Partner, and an amendment to the Certificate of Limited Partnership, reflecting such admission, shall be filed with the Secretary of State of the State. Each Limited Partner shall become a party hereto by signing either a conformed counterpart of this Agreement or such other agreement appropriate for the purpose, in such manner as the General Partners shall determine, and by so signing such Limited Partner shall be deemed to have adopted and to have agreed to be subject to all the provisions of the Commitments and this Agreement; provided, however, that no such counterpart or agreement shall be binding until it has been signed by one of the General Partners.



## ARTICLE V

### Capital Contributions of Limited Partners

#### 5.1 Payments

(a) Subject to the provisions of this Section 5.1 and Section 5.3 hereof, Limited Partners shall make their Capital Contributions in six (6) Units of fifty thousand dollars (\$50,000) each or in multiples or fractions thereof. Each such Unit shall be paid in five installments as follows:

(i) \$8,333.<sup>4</sup>~~37~~ per Unit (the "First Installment") shall be payable at the time of admission of the Limited Partners pursuant to this Agreement;

(ii) \$15,416.66 per Unit (the "Second Installment") shall be payable on the later of (A) March 1, 1980, (B) the Completion Date, or (C) Final Closing;

(iii) \$8,750.00 per Unit (the "Third Installment") shall be payable on the later of (A) the last day of a calendar quarter ending on or after December 31, 1980 during which the Project shall have achieved 95% occupancy, or (B) one year after the date specified for payment of the ~~Fourth~~ <sup>Second</sup> Installment; 95% occupancy of the Project shall be deemed to be achieved if during the calendar quarter the Partnership shall have received at least 95% of the HUD approved rental income for such period as last determined by HUD or FHA at 100% occupancy from (A) bona fide tenants who have executed FHA approved leases and who have occupied dwelling units under such leases, and (B) payments by HUD made pursuant to the Section 8 Contract.

(iv) \$8,750.00 per Unit (the "Fourth Installment") shall be payable on the later of (A) March 1, 1982 provided that the rental income for the Project for the fiscal year ending December 31, 1981 has been at least equal to the aggregate of the Project Expenses and management fees (in the maximum amount permitted) incurred during such year; (B) 75 days after the end of a period of twelve consecutive months ending on March 31, June 30, September 30, or December 31 thereafter provided that the conditions specified in clause (A) are satisfied for such period; or (C) one year after the date specified for payment of the Third Installment, whichever is later; and

(v) \$8,750.00 per Unit (the "Final Installment") shall be payable on the later of (A) 75 days after the end of a period of twelve consecutive months which commences after the last day of the applicable period referred to in clause (A) or (B) of paragraph (iv) (10) above and which ends on December 31, March 31, June 30, or September 30, during which the rental income for the Project has been at least equal to the aggregate of the Project Expenses and management fees (in the maximum amount permitted) incurred during such period, or (B) one year after the date specified for payment of the Fourth Installment, whichever is later.

*Handwritten initials: PTH, PW, B, FW, CE*

(b) The obligation of the Limited Partners to make each of the Installments of their Capital Contributions hereunder is subject to the condition that the General Partners shall have delivered to the Limited Partners a written certificate (the "Certificate") (i) listing all preconditions, representations and warranties applicable to such Installment provided in this Section 5.1 and in Section 6.6 hereof and (ii) stating that all such preconditions, representations, warranties and agreements have been satisfied. The Certificate shall be delivered on the admission date to the Partnership of the Limited Partners as a precondition to payment by the Limited Partners of the First Installment. As to each of the Second, Third, Fourth

and Final Installments, the General Partners shall give the Limited Partners not less than 21 days' advance written notice of the due date therefor and shall deliver the Certificate to them not less than 10 days prior to the due date set forth in said notice. The obligations of the Limited Partners to make the Third, Fourth and Final Installments shall be subject to receipt from the General Partners of a certificate that as of the due date the Partnership has no outstanding obligations to pay operating expenses of the Project other than normal trade obligations. The determination upon which such a certificate is rendered shall be based on the accrual basis of accounting. In the event that the General Partners cannot furnish said certificate but have made provisions satisfactory to the Limited Partners to pay any operating expenses then outstanding from the proceeds of the Third Installment, Fourth Installment or the Final Installment, then the certificate required herein shall be deemed to have been delivered by the General Partners.

(c) If, as of the date when any Installment would otherwise be due hereunder, any representation or warranty contained in Section 6.6 hereof shall not be true and correct or the General Partners or any Affiliated Person shall be in default under any agreement contained herein, under any of the Commitments or under any other agreement relating to the Project, the Limited Partners shall not be required to make such Installment; provided, however, that, if within three months from such date the General

Partners shall have cured such misrepresentation or default in such manner that none of the Commitments shall have been adversely affected or terminated and the Limited Partners shall not have lost any material part of the projected economic and tax benefits relating to the Project, and neither the General Partners nor any Affiliated Person shall otherwise be in default hereunder, then the Limited Partners shall pay the amount of such Installment to the Partnership 30 days after notice from the General Partners specifying that such misrepresentation or default has been cured and the manner in which the same was cured.

(d) The obligation of the Limited Partners to pay the First Installment is subject, in addition to the conditions specified above, to the issuance of a favorable opinion by special counsel to the Limited Partners with respect to the taxation of the Partnership as a Partnership for Federal income tax purposes.

## 5.2 Default by Limited Partners

(a) In the event any Limited Partner fails to pay any Installment of his Capital Contribution on or prior to the time therefor set forth in Section 5.1, he shall be deemed to be in default hereunder (the "Defaulting Limited Partner"). If such default is not cured by the Defaulting Limited Partner within thirty (30) days of notice thereof from the General Partners, the General Partners shall promptly give notice of such default

to all Limited Partners ("Default Notice") specifying the nature of the default and the aggregate amount of the Capital Contribution theretofore paid in by the Defaulting Limited Partner. The nondefaulting Limited Partners shall have the option to acquire, in the manner hereinafter specified, the Defaulting Limited Partner's entire interest as a Limited Partner including all profits, losses and distributions attributable to such interest accruing or payable from and after the date of such default. Such option may be exercised by a Limited Partner (the "Purchasing Limited Partner") by mailing to the Partnership (within 15 days of the mailing by the General Partners of the Default Notice) written notice of his desire to acquire all or part of the Defaulting Limited Partner's interest as a Limited Partner (the "Purchase Notice") specifying the percentage which the Purchasing Limited Partner desires to acquire. Whether or not this option is exercised, the Defaulting Limited Partner shall have no right to receive such profits, losses, and distributions, but any successor to his interest shall, to the extent allowable for Federal income tax purposes, receive the benefits of the same.

(b) In the event one or more Purchasing Limited Partners desire to acquire all or part of the Defaulting Limited Partner's interest as a Limited Partner and the total of the percentages they desire to acquire (the "Total Percentage") is equal to or less than 100% of such interest of the Defaulting Limited Partner, each Purchasing Limited Partner shall acquire the

percentage specified in the Purchase Notice on the terms listed below. If any part of such interest is not so acquired by Purchasing Limited Partners, then the General Partners shall have the option to acquire on the same terms and conditions such remaining part of such interest of the Defaulting Limited Partner.

(c) In the event two or more Purchasing Limited Partners desire to acquire a Total Percentage greater than 100% of such interest of the Defaulting Limited Partner, and they are unable to agree as to the apportionment thereof, they shall be entitled to acquire portions of such interest based on the ratio which the Capital Contribution of such Limited Partner bears to the total Capital Contributions of all the Purchasing Limited Partners. Any Purchasing Limited Partner and/or any purchasing General Partner shall become a Substitute Limited Partner to the extent of any portion of any interest as a Limited Partner which they, or any of them, may acquire hereunder. The interest of any Limited Partner acquired by a General Partner shall be deemed an interest as a Limited Partner.

(d) In order to acquire the interest of a Defaulting Limited Partner pursuant to this Section 5.2, each Purchasing Limited Partner or General Partner shall (i) pay to the Defaulting Limited Partner his pro rata share of an amount equal to ten percent (10%) of the Capital Contribution, if any, previously paid in by the Defaulting Limited Partner, (ii) agree to pay

to the Partnership his pro rata share of the Installment as to which the default occurred and (iii) agree to assume all other obligations of the Defaulting Limited Partner, if any, to the Partnership. Upon such payment, agreement and assumption, all rights of a Defaulting Limited Partner with respect to his interest so acquired shall terminate without further act. Each Partner agrees to execute and deliver such documents as may be necessary to carry out the provisions of this Section 5.2.

(e) Notwithstanding the foregoing, the obligations of the Defaulting Limited Partner to the Partnership hereunder shall not be extinguished by the existence of any such option, or by its exercise but only by, and to the extent of, the Capital Contributions made in his place by the purchaser of his interest hereunder. If or to the extent such option shall not be exercised within the foregoing periods, unless and until such default shall be cured, all distributions pursuant to Article X hereof in respect of the interest of the Defaulting Limited Partner shall be applied first to interest on the defaulted amount at the maximum legal rate and then to the defaulted amount, and the profits and losses in respect thereof shall be allocated to the General Partners. After such distributions equal the defaulted amount, together with such interest, the Limited Partner interest of the Defaulting Limited Partner shall be deemed to have been acquired by the General Partners in the ratios set forth in Section 10.1(c). Exercise of the options provided

by this Section 5.2 shall be suspended during any period in which exercise thereof would cause a termination of the Partnership referred to in Section 13.1.

### 5.3 Adjustment to Amount of Contribution

(a) If at the Completion Date the amount of the Mortgage is less than \$2,916,000, the amount of the Capital Contribution of each Limited Partners shall be reduced by the same percentage as the percentage by which the face amount of the Mortgage at the Completion Date is less than \$2,916,000, and the amount of the Final Installment will be reduced by the amount of such reduction; provided, however, that if the amount of any reduction shall exceed the amount of the Final Installment, then the Partnership shall return an amount equal to such excess to the Limited Partners.

(b) Notice of any adjustment pursuant to this Section 5.3 shall be included in the notices to be delivered by the General Partners pursuant to the provisions of Section 5.1 hereof.



## ARTICLE VI

### Rights, Powers and Duties of the General Partners

#### 6.1 Restrictions on Authority

(a) The General Partners shall have no authority to perform any act in violation of any of the Commitments, any applicable law or regulation or any other agreement between the Partnership and the Lender, HUD and/or FHA. The General Partners shall not have any authority to do any of the following acts without the Consent of the Limited Partners except as authorized herein:

(i) to borrow on the general credit of the Partnership, except as specifically permitted hereunder as to Project Expense Loans and Residual Receipts Notes;

(ii) following completion of the Project, to construct other capital improvements, or to replace any existing capital improvements, which construction or replacement would substantially alter the character or use of the Project;

(iii) to acquire any real property in addition to that used for the Project;

(iv) to become personally liable on, or in respect of, or to guarantee, the Mortgage;

(v) to do any act required to be approved or ratified by the Limited Partners under the Uniform Act; or

(vi) to refinance, sell or convey the Project.

(b) Notwithstanding the foregoing, subject to Section 3.3, General Partners shall be authorized to increase the amount of the Mortgage at or prior to the Completion Date without the Consent of the Limited Partners.

## 6.2 Personal Services

The General Partners shall receive no compensation for services rendered to the Partnership except as otherwise provided in Section 6.13 or Article XI hereof. Any Partner may engage independently or with others in other business ventures of every nature and description, including, without limitation, the ownership, operation, management, and development of real estate and/or apartment complexes, and neither the Partnership nor any Partner shall have any rights in and to such independent ventures or the income or profits derived therefrom.

## 6.3 Business Management and Control

The General Partners shall have the exclusive right to manage the business of the Partnership and, except as hereinafter provided, shall have equal rights with respect thereto as provided by the Uniform Act, and shall act by unanimous vote or assent. 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 Partnership business, except as required by law. The Limited Partners hereby consent to

the exercise by the General Partners of the powers conferred on them by this Partnership Agreement. No Limited Partner (except one who may also be a General Partner, and then only in his capacity as a General Partner) shall have any authority or right to act for or bind the Partnership.

#### 6.4 Delegation of General Partner Authority

(a) If there shall be more than one General Partner serving hereunder, 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 requirement of any other act or signature of the General Partner, to take any action of any type and to do anything and everything which the General Partners may be 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.

(b) Every contract, deed, mortgage, lease and other instrument executed by any General Partner so authorized shall be conclusive evidence in favor of every Person or Entity relying thereon or claiming thereunder that at the time of the delivery thereof (i) this Partnership was in existence, (ii) 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 (iii) the execution and delivery of such instrument was duly authorized by the General Partners. Any Person or Entity dealing with the Partnership or a General Partner may rely on a certificate signed by any General Partner hereunder, except with respect to matters set forth in the certificates or other instruments duly filed in the office of the Secretary of State of the State:

(A) as to who are the General or Limited Partners hereunder;

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

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

(D) as to the authenticity of any copy of the Agreement and amendments thereto; or

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

#### 6.5 Duties and Obligations

(a) The General Partners shall promptly take all actions which may be necessary or appropriate for the development and completion of the Project and the proper maintenance and operation of the Project in accordance with the provisions of this Agreement, and the Commitments and applicable laws and

regulations. The General Partners shall devote to the Partnership such time as may be necessary or appropriate for the proper performance of their duties.

(b) The General Partners shall obtain and keep in force during the term of the Partnership fire and extended coverage, workmen's compensation and public liability insurance in favor of the Partnership with such companies and in such amounts as may be required by the Commitments or, in the absence of such requirements, in amounts which are commercially reasonable in the circumstances.

#### 6.6 Representations and Warranties

(a) The General Partners hereby jointly and severally represent and warrant to each Limited Partner that the following are true as of the date hereof and will be true on the due date for each Installment of the Capital Contributions of the Limited Partners and at all times thereafter (except as otherwise provided):

(i) the Partnership is a duly organized limited partnership validly existing under the laws of the State and has complied with all filing requirements necessary for the protection of the Limited Partners;

(ii) The Partnership is the sole owner in fee simple of the real property on which the Project is or will be constructed, free and clear of all liens, claims and encumbrances, except the lien of the Mortgage, the lien of current taxes not yet due and payable and such other matters as do not and will not materially interfere with the use and enjoyment of said real property for its intended purpose; and said real property is properly zoned for its intended purposes;

(iii) construction of the Project will be completed (and after the Completion Date, will have been completed) in substantial conformity with the Commitments and the Construction Contract;

(iv) all payments and expenses required to be made or incurred in order to complete construction of the Project in conformity with the Commitments and in order to satisfy all requirements under the Commitments and/or which form the basis for determining the principal sum of the Mortgage, including, without limitation, interest during construction and any escrow payment, will be paid or provided for by, or for the account of, the Partnership utilizing only (A) the funds available from the Mortgage, (B) the Capital Contributions of the Limited Partners, (C) the net proceeds, if any, from rental income earned by the Project prior to the Completion Date, and (D) loans of the General Partners made pursuant to Section 6.9;

(v) no event, occurrence or proceeding is pending or threatened which would (A) materially adversely affect the Partnership or its properties, (B) materially adversely affect the ability of the General Partners or any Affiliated Person to perform their respective obligations hereunder or under any other agreement with respect to the Project or (C) prevent the completion of construction of the Project in conformity with the Commitments, other than legal proceedings which have been bonded against in such manner as to stay the proceedings and which do not and will not materially adversely affect the Project or the Commitments. This subparagraph shall be deemed to include the following: (X) legal actions or proceedings before any court, commission, administrative body or other governmental authority having jurisdiction over the zoning applicable to the Project, (Y) labor disputes and (Z) acts of any governmental authority;

(vi) no material default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under this Agreement, any of the Commitments or any other agreement affecting the Project, and the same are in full force and effect;

(vii) neither the Partnership nor any of its Partners will have any personal liability on the Note or the Mortgage and the General Partners shall not permit any Person to become personally liable for the payment of any part of the Mortgage;

(viii) there is no material violation by the Partnership or the General Partners of any environmental or similar regulation applicable to the Project; all necessary building and other applicable permits have been obtained to permit the construction and completion of the Project; and the Partnership has complied with all applicable municipal and other laws, ordinances and regulations relating to such construction and completion, and use of the Project and the acquisition of the land upon which it is being constructed;

(ix) no event has occurred which would entitle a Limited Partner to require the General Partners to purchase his Limited Partner interest under Section 6.11; and

(x) each of the General Partners of the Partnership has sufficient net worth such that the Partnership satisfies the net worth prerequisites for obtaining an advance ruling from the Internal Revenue Service that the Partnership will be treated as a partnership and not as an association taxable as a corporation.

(b) The General Partners agree that they will not at any time become personally liable for the payment of any part of the Mortgage, and will not permit any other Partner to become personally liable for the payment of any part of the Mortgage.

#### 6.7 Indemnification

Each General Partner shall be entitled to indemnity from the Partnership for any act performed by him within the scope of the authority conferred on him by the Agreement, except for acts of wilful misconduct or gross negligence or

for damages arising from any misrepresentation or breach of covenant or warranty; provided, however, that any indemnity under this Section 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.

#### 6.8 Liability of General Partners to Limited Partners

No General Partner shall be liable, responsible or accountable for damages or otherwise to any Limited Partner for any act performed within the scope of the authority conferred by this Agreement, except for acts of wilful misconduct or gross negligence or for damages arising from any misrepresentation or breach of covenant or warranty.

#### 6.9 Obligation to Complete Construction

The General Partners shall cause the Project to be constructed and completed in the manner set forth in the Building Loan Agreement. In the event the proceeds of the Mortgage, the paid-in Capital Contributions of the Limited Partners and available net rental income of the Project prior to the Completion Date are insufficient to complete construction of the Project in accordance with the Commitments, and to meet all development and other fees and expenses, including escrow payments, required to (i) successfully complete the Project and (ii) pay all Project Expenses until the Completion Date, the General Partners shall advance to the Partnership all such amounts as may be necessary therefor, and such advances shall be evidenced by Residual Receipts



Notes and shall be repayable only as provided in Article X.

6.10 Obligation to Provide for Project Expenses

In the event that at any time after the Completion Date and prior to December 31 of the year in which the Final Installment of Limited Partners' Capital Contributions is made the Partnership requires any funds for Project Expenses, the General Partners shall loan funds to the Partnership in an amount of up to \$40,000 outstanding at any one time. The General Partners may, but shall not be obligated, to advance funds in excess of the foregoing amount or beyond the foregoing time period. Such loans, whether obligatory or voluntary, shall be Project Expense Loans. Voluntary Project Expense Loans shall bear interest at a rate equal to the prime commercial rate charged from time to time by the Industrial National Bank of Rhode Island.

6.11 Repurchase Obligation of the General Partners.

If (i) the Completion Date shall not have occurred on or before December 31, 1979, (ii) or Final Closing shall not have occurred prior to June 30, 1980, or (iii) <sup>at any time prior to the payment of</sup> any of the Commitments <sup>of the</sup> shall have been terminated or withdrawn and shall not have been <sup>final</sup> reinstated within 60 days of such termination or withdrawal, or (iv) at any time prior to the payment of the Final Installment, the Lender shall have commenced proceedings to foreclose the Mortgage or shall have irrevocably refused to make further advances under the Mortgage, or (v) prior to the payment of the Final Installment, there shall prove or become untrue any representation.

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or warranty set forth in Section 6.6 or a default by the General Partners under any agreement made by them herein, which, if curable, shall not have been cured within three (3) months of such breach, then, within 15 days after the occurrence of each such event, the General Partners shall send written notice of such event to each Limited Partner and offer to purchase the entire interest as a Limited Partner of each such Limited Partner. Any Limited Partner desiring to sell his interest to the General Partners shall send written notice thereof to the Partnership at any time within 60 days after the receipt of such notice. The purchase shall be made by the General Partners within 30 days after receipt of such Limited Partner's notice. The purchase price shall be an amount in cash, without interest, equal to the paid-in Capital Contribution of each Limited Partner desiring to sell his interest. Upon receipt of such payment, the interest as a Limited Partner of each such Limited Partner shall terminate, and such Limited Partner shall have no further obligation to pay any subsequent Installments of his Capital Contribution. For all purposes including the sharing of profits, losses and distributions, the interest of any Limited Partner acquired by the General Partners under this Section 6.11 shall be deemed to belong to the General Partners as Limited Partners.

#### 6.12 Joint and Several Obligations

Each obligation of the General Partners shall be the joint and several obligation of each General Partner. The obligations set forth in Sections 6.9, 6.10 and 6.11 shall survive any Retirement of a General Partner from the Partnership other than a voluntary Retirement to which all of the Limited Partners have consented.

#### 6.13 Certain Payments to General Partners

(a) For their services in (i) supervising to completion the construction of the Project, (ii) providing for the full development of the Project, (iii) administering the affairs of the Partnership and the Project until the Project is substantially completed (which is anticipated to occur on or prior to June 30, 1979), the Partnership shall be required to pay to the General Partners a fee equal to one hundred two thousand two hundred eighty dollars (\$102,280) less the aggregate of such amounts, in excess of the proceeds of the Mortgage and available net rental income of the Project prior to the Completion Date, as are used, in accordance with Section 6.9, to complete construction of the Project and to meet all development and other fees and expenses (except fees paid under this Section 6.13). Such fee shall accrue as of June 30, 1979, shall be payable in installments in accordance with the schedule set forth below and shall bear interest on the unpaid balance the

(Subject to reduction  
as stated above)

rate of fifteen percent (15%) per annum:

<u>Date</u>	<u>Fee</u>	<u>Interest</u>
June 30, 1979	\$7,508	\$ 7,108
March 31, 1980	\$23,802	\$11,538
March 31, 1981	\$15,613	\$ 8,887
March 31, 1982	\$18,249	\$ 6,251
March 31, 1983	\$37,108	\$ 1,392

In no event, however, shall the aggregate of such fee and interest exceed one hundred thirty seven thousand four hundred and fifty-six dollars (\$137,456), and in the event it otherwise would, such fee and interest shall be reduced proportionately.

(b) The Partnership shall be required to pay to the General Partners a fee of one hundred twelve thousand dollars (\$112,000) for their services subsequent to the completion of construction of the Project in connection with the initial management of the operations of the Project (which services shall include supervising the initial renting of the Project) and in consideration of the agreement set forth in Section 6.10 hereof. Said fee shall be payable in eight (8) semi-annual installments of fourteen thousand dollars (\$14,000) each commencing on September 30, 1979 and concluding on March 31, 1983, and shall constitute a "Guaranteed Payment" under Section 707(c) of the Internal Revenue Code of 1954, as amended (the "Code").

(c) In addition to the foregoing, the General Partners shall be entitled to an additional fee not exceeding twenty-nine thousand one hundred sixty dollars (\$29,160) for supervising construction which shall be equal to (i) the amount by which any operating reserve fund required by the Lender for the Project is funded by (ii) the sum of (A) Cash Flow from the Project prior to the Completion Date and (B) interest savings or savings with respect to construction.

(d) All fees and payments required pursuant to this Section 6.13 shall be paid from the Capital Contributions of the Limited Partners made pursuant to Section 5.1(a) hereof.

## ARTICLE VII

### Retirement of a General Partner; New General Partners

#### 7.1 Retirement of a General Partner

No General Partner shall have the right to voluntarily retire from the Partnership or to sell, assign, transfer or encumber his interest as a General Partner without the Consent of the Limited Partners. Notwithstanding the above, in the event of an act of Retirement as to a General Partner, such General Partner shall automatically be deemed to have Retired as a General Partner of the Partnership. In the event of the Retirement of a General Partner in violation of any of the foregoing provisions of this Section 7.1 or an involuntary Retirement

due to Bankruptcy, dissolution or liquidation, or pursuant to the provisions of Section 7.5 hereof, the Retiring General Partner shall transfer his interest in the Partnership as provided in Section 7.3 (b) and, without otherwise limiting the rights of the Partnership and the Limited Partners, shall forfeit to the Partnership his right to be repaid for any sums advanced to the Partnership under Sections 6.9 and 6.10 hereof. Notwithstanding any such forfeiture, such Retiring General Partner shall remain liable for the performance of all his obligations under this Agreement. The remaining General Partner or Partners, if any, or the Retiring General Partner (or the legal representative or the successors thereof) if no General Partner remains, shall immediately send written notice of any Retirement made without consent of the Limited Partners to all Limited Partners.

#### 7.2 Retirement of a Sole General Partner

If, following the Retirement of a General Partner, there is no remaining General Partner of the Partnership, then Limited Partners representing one hundred percent (100%) in interest of the Limited Partner Class Contribution (excluding the interests of Limited Partners who may also be General Partners) may elect within thirty (30) days of such Retirement and receipt of notice thereof to reconstitute the Partnership and continue the business of the Partnership for the balance of the term specified in Section 2.5 by selecting a successor General Partner or Partners. If the Limited Partners elect to reconstitute the Partnership

pursuant to this Section 7.2, the provisions of Section 7.3 shall be applicable to such Retiring General Partner or Partners, and the relationship among the then Partners shall be governed by this Agreement. Each Limited Partner (excluding Limited Partners who may also be General Partners) who does not desire to participate in such reconstituted Partnership with such General Partner or Partners shall be paid with a non-recourse note of the reconstituted partnership, bearing interest at 6% per annum, with a term of ten (10) years, in principal amount equal to the fair market value of his interest in the Partnership, as determined by the Partners, or in case of failure to agree, as determined by a committee of three qualified appraisers, one selected by the remaining Partners, one selected by the selling Limited Partner or Partners, and a third appraiser selected by the other two. Such principal amount and interest shall be payable in equal quarter annual installments.

7.3 Transfer of Interest of Retiring General Partner.

(a) Each General Partner shall transfer, at the time of his Retirement, to the remaining General Partner or Partners or to a successor General Partner or Partners selected in accordance with Section 7.2, as the case may be, all or such portion of his general partnership interest as is hereinafter provided in this Section 7.3.

(b) In the event of the Retirement of a General Partner in violation of any of the provisions of Section 7.1 or an involuntary Retirement due to Bankruptcy, dissolution or liquidation, or pursuant to the provisions of Section 7.5, the transfer by the Retiring General Partner of his entire general partnership interest shall be made in consideration of the payment, by the remaining General Partner or Partners or the successor General Partner or Partners to the Retiring General Partner, of an amount in cash equal to the amount, if any, credited to his capital account as of the last day of the calendar quarter prior to such Retirement.

(c) In the event of the Retirement of a General Partner by reason of the General Partner's death or adjudication of insanity or incompetence, or any other reason not described in Section 7.3(b) hereof, the transfer by the Retiring General Partner shall be of (i) ten percent (10%) of his entire interest in the profits, losses and distributions of the Partnership of a nature other than those referred to in the following clause (ii), and (ii) a percentage of his interest in distributions (and the profits and losses associated therewith) of a nature referred to in Sections 10.2(c) and 10.2(e) as follows: initially seventy percent (70%), declining 2% on March 1 of each of the years 1980 through 2004, both inclusive, to a minimum of twenty percent (20%), all such transfers to be made in consideration of the payment, by the remaining General Partner or Partners,



if any, or the successor General Partner or Partners, to the Retiring General Partner, of an amount equal to <sup>the</sup> ~~that~~ percentage of the amount, if any, credited to his capital account as of the last day of the calender quarter prior to such Retirement. Any General Partner interest not required to be so conveyed in accordance with this Section 7.3(c) shall become a Limited Partner interest but shall, for all purposes of this Agreement, be deemed to be an interest held by General Partner as a Limited Partner.

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to clause  
in above)*

(d) In the event of the Retirement of a General Partner with the Consent of the Limited Partners, the transfer by the Retiring General Partner of his general partnership interest in the Partnership shall be made for such consideration as may be agreed upon by the Retiring General Partner and the remaining General Partner or Partners or successor General Partner or Partners, as the case may be.

(e) A general partnership interest transferred in accordance with the provisions of this Section 7.3 shall be transferred in a manner sufficient to ensure the continued treatment of the Partnership as a partnership under the then applicable provisions of the Code and any regulation or ruling thereunder.

(f) For the purposes of Article X hereof, the effective date of the transfer pursuant to the provisions of this Section 7.3 of all or any portion of the general partnership interest of a Retiring General Partner shall be deemed to be the date of Retirement, but the Partnership shall not make any distributions to the designated transferee until the transfer has been made.

#### 7.4 Designation of New General Partner

Subject to the provisions of Section 13.1 hereof, the General Partners may, with the consent of all of the Limited Partners, at any time designate additional General Partners each with such interest as a General Partner in the Partnership as the General Partners may agree. Any incoming General Partner shall, as a condition of receiving any interest in the Partnership, agree to be bound by the Commitments and any other documents required in connection therewith and by the provisions of this Agreement and shall provide such financial statements, guarantees or other assurances as required by counsel to the Partnership or the Accountants.

#### 7.5 Partnership Tax Status

Notwithstanding any provisions in this Agreement to the contrary, any General Partner which is a corporation shall immediately cease to be a General Partner (and be deemed to have automatically withdrawn) if, in the reasonable opinion of legal counsel to the Partnership or the Accountants, (i)

its continuance as a General Partner might adversely affect the status of the Partnership under the then applicable provisions of the Code or any regulation or ruling thereunder, or (ii) such General Partner is not in compliance with the requirements of Section 13.9 hereof, such withdrawal to be effective upon receipt of such opinion.

#### 7.6 Amendment of Certificate

Upon the Retirement or admission of an additional General Partner, the Schedule shall be amended to reflect such Retirement or admission and an amendment to the Certificate of Limited Partnership reflecting such Retirement or admission shall be filed in accordance with the Uniform Act. Each General Partner, including the President or any Vice President acting from time to time of any corporate General Partner, is hereby constituted and empowered to act alone as the attorney-in-fact of all the other General Partners and all Limited Partners with authority to execute, acknowledge, swear to, and deliver such instruments as may be necessary or appropriate to carry out the foregoing provisions of this Article VII, including amendments to the Schedule, amendments to the Certificate of Limited Partnership required by the Uniform Act, business certificates and the like.

## ARTICLE VIII

### Transferability of Limited Partner Interests

#### 8.1 Right to Assign

(a) Subject to the provisions of this Article VIII and Section 13.1, a Limited Partner shall have the right to assign or transfer all or any part of his interest in the Partnership.

(b) Subject to the provisions of this Article VIII and Section 13.1, a Limited Partner may, by written instrument, designate one or more members of his Immediate Family to become the assignee or assignees of all of his interest as a Limited Partner immediately upon his death. Such assignee or assignees shall be entitled to the same rights as would any other assignee of such Limited Partner, and such assignee or assignees, if they shall then be living, shall become such immediately upon the assignor's death, without requirement of any action on the part of the legal representatives of the assignor Limited Partner; and such legal representatives and the estate of such deceased Limited Partner shall have no interest whatsoever in the Partnership. Any such designation must be filed with the General Partners during such Limited Partner's lifetime. Such designation may be revoked from time to time and a new such designation made and so filed with the General Partners. The Partnership need not recognize such designated assignee or assignees until

(i) duly notified in writing of the death of the assignor Limited Partner and (ii) furnished with an opinion of counsel acceptable to the General Partners to the effect that such designation is valid under the applicable laws of descent and distribution.

## 8.2 Restrictions

(a) No sale or exchange of any interest as Limited Partner in the Partnership may be made if such sale or exchange would violate the provisions of Section 13.1 hereof except a sale pursuant to Section 6.11.

(b) In no event shall all or any part of a Limited Partner interest in the Partnership be assigned or transferred to a minor (other than to a member of a Limited Partner's Immediate Family by reason of death) or to an incompetent.

(c) The General Partners may require, as a condition of sale, transfer, exchange or other disposition of any interest in the Partnership, that the transferor (i) assume all costs incurred by the Partnership in connection therewith and (ii) furnish them with an opinion of counsel satisfactory to counsel to the Partnership that such sale, transfer, exchange or other disposition complies with applicable Federal and state securities laws.

(d) Any sale, exchange, transfer or other disposition in contravention of any of the provisions of this Section 8.2 shall be void and ineffectual and shall not bind or be recognized by the Partnership.

### 8.3 Substitute Limited Partners

(a) No Limited Partner shall have the right to substitute an assignee who is not already a Limited Partner as a Limited Partner in his place without the prior written consent of the General Partners. The General Partners shall have the right in their exclusive discretion to permit such assignees to become Substitute Limited Partners. Any Substitute Limited Partners shall, as a condition of receiving any interest in the Partnership assets, agree to be subject to the Commitments, other documents binding the Partnership and by the provisions of this Agreement.

(b) Upon the admission of a Substitute Limited Partner, the Schedule shall be amended to reflect the name and address of such Substitute Limited Partner and to eliminate the name and address of such substituted Limited Partner, and an amendment to the Certificate of Limited Partnership reflecting such admission shall be filed in accordance with the Uniform Act. Each Substitute Limited Partner shall execute such instrument or instruments as shall be required by the General Partners to signify his agreement to be bound by all the provisions of this Agreement.

(c) Each General Partner is hereby constituted and empowered to act alone as the attorney-in-fact of all the other General Partners and all Limited Partners with authority to execute, swear to and deliver such instruments as may be necessary or appropriate to carry out the provisions of this Article VIII, including amendments to the Schedule, amendments to the Certificate of Limited Partnership required by the Uniform Act, business certificates and the like.

#### 8.4 Assignees

(a) In the event of the death or incapacity of any Limited Partner who has not filed a valid designation under Section 8.1 (b), his legal representative shall be deemed to be an assignee of the Limited Partner unless and until the General Partners shall permit such legal representative to become a Substitute Limited Partner on the same terms and conditions as herein provided for assignees generally. The death or incapacity of a Limited Partner shall not dissolve the Partnership.

(b) An assignee of a Limited Partner who does not become a Substitute Limited Partner in accordance with Section 8.3 shall have the right to receive the same share of profits, losses and distributions of the Partnership to which the assigning Limited Partner would have been entitled if no such assignment had been made by such Limited Partner.

(c) Any Limited Partner who shall assign all his interest in the Partnership shall cease to be a Limited Partner of the Partnership and shall no longer have any rights or privileges of a Limited Partner.

(d) In the event of any assignment of a Limited Partner's interest, there shall be filed with the Partnership a duly executed and acknowledged counterpart of the instrument making such assignment. Such instrument shall evidence the written acceptance of the assignee to all the terms and provisions of this Agreement, and if such an instrument is not so filed, the Partnership need not recognize any such assignment for any purpose.

(e) An assignee of a Limited Partner's interest as a Limited Partner who does not become a Substitute Limited Partner as provided aforesaid and who desires to make a further assignment of his interest shall be subject to all of the provisions of this Article VIII to the same extent and in the same manner as any Limited Partner desiring to make an assignment of his interest.

#### 8.5 Right of Refusal

(a) No Limited Partner may transfer, sell, alienate, assign or otherwise dispose of all or any part of his interest in the Partnership, whether voluntarily, involuntarily or by operation of law, or a judicial sale or otherwise, except by gift or bequest, without first offering the same to the other



Partners, at a price and upon terms no less favorable than those which the selling Limited Partner would receive from such sale, assignment or other disposition. Such price and terms and the name of the proposed transferee shall be set forth in a written offer signed by the selling Limited Partner and delivered to all the Partners. Within 10 days after the receipt of such written offer, any Partner may in writing reject or accept such offer and if the Partner so accepts, he shall consummate the purchase and sale of such interest at the price and on the terms of said offer with the Limited Partner at the principal office of the Partnership no later than 90 days' thereafter. Such offer and notice shall be deemed to constitute a valid and enforceable purchase and sale agreement of such Limited Partner interest. In the event two or more Partners so accept such offer, and they are unable to agree as to the apportionment thereof, each such Partner shall be entitled to purchase that portion of the interest which such Partner's Capital Contribution bears to the total Capital Contributions of all the Partners desiring to purchase such interest. If the Partners do not accept such offer within such 10 day period, the selling Limited Partner may at any time within 90 days from the expiration of such 10 day period dispose of such interest to such proposed transferee at a price and on terms not less favorable than those set forth in such offer, and if such interest is not so disposed of within such period, it shall again become subject to the provisions of this Section 8.5(a).

(b) The provisions of Section 8.5(a) shall not apply to a transfer or assignment (in trust or otherwise) by a Limited Partner, of all or any part of his interest in the Partnership:

(i) to or for the benefit of himself or his Immediate Family, or

(ii) to the legal representatives of a deceased or incapacitated Limited Partner.

## ARTICLE IX

### Loans

All Partnership borrowings shall be subject to the restrictions of Section 6.1. To the extent borrowings are permitted, they may be made from any source, including Partners and Affiliated Persons. The Partnership may issue Residual Receipts Notes or Project Expense Loans to evidence such borrowings or in payment for goods and services furnished to the Partnership pursuant to the obligations of the General Partners under Sections 6.9 and 6.10 hereof. If any Partner shall loan any monies to the Partnership, such loan shall be unsecured and the amount of any such loan shall not be an increase of his Capital Contribution nor affect in any way his share of the profits, losses or distributions of the Partnership. Any such loan from a General Partner shall be an obligation of the Partnership to such Partner only if it constitutes a Project Expense Loan or is represented by a Residual Receipts Note.

## ARTICLE X

### Profits and Losses; Distributions; and Capital Accounts

#### 10.1 Profits and Losses

(a) All profits and losses arising from (i) the sale or other disposition of all or substantially all of the assets of the Partnership and (ii) any other transaction the proceeds of which do not constitute Cash Flow shall be shared by the Partners, as follows:

##### (i) As to Profits:

(A) First, to each Partner, an amount of profits equal to the amount of his Negative Basis; provided, however, that if less than the entire amount of the distributable cash and/or property arising from such sale, disposition or other transaction shall have been distributed to the Partners as of the date of the allocation, then, in determining the Negative Basis of each Partner, the amount charged to his capital account on account of distribution of the proceeds of such sale, disposition or other transaction shall not exceed the sum of the amount so distributed and to be distributed to him within the succeeding three months.

(B) Second, the balance, if any, of such profits, up to an aggregate of three hundred twelve thousand five hundred dollars (\$312,500) (less the aggregate of all amounts previously credited under this provision), to the Limited Partners.

(C) Third, the balance, if any, of such profits, up to an aggregate of one hundred dollars (\$100) (less the aggregate of all amounts previously credited under this provision), to the General Partners.

(D) Fourth, the balance, if any, of such profits, thirty percent (30%) to the Limited Partners and seventy percent (70%) to the General Partners.

(ii) As to Losses:

(A) First, to each Partner, an amount of losses equal to the amount of his Positive Basis; provided, however, that if less than the entire amount of the distributable cash and/or property arising from such sale, disposition or other transaction shall have been distributed to the Partners as of the date of the allocation, then, in determining the Positive Basis of each Partner, the amount charged to his capital account on account of distribution of the proceeds of such sale, disposition or other transaction shall not exceed the sum of the amount so distributed and to be distributed to him within the succeeding three months.

(B) Second, the balance, if any, of such losses, thirty percent (30%) to the Limited Partners and seventy percent (70%) to the General Partners.

(iii) Notwithstanding the foregoing provisions of this Section 10.1(a), in no event shall there be allocated to the General Partners under this Section 10.1(a) less than 1/99 of the aggregate profits or losses allocated to the Limited Partners under this Section 10.1(a). In order to carry the immediately preceding sentence into effect, in the event that the amount of the profits or losses allocable to the General Partners hereunder shall not equal 1/99 of the aggregate amount allocable to the Limited Partners (without giving effect to this provision), the aggregate amount otherwise allocable to the Limited Partners shall be reduced in order to assure the General Partners of their 1/99 share.

(iv) As used in this Agreement:

(A) "profits" and "losses" means taxable income or loss as determined for Federal income tax purposes using the accounting method followed by the Partnership but excluding any adjustments made pursuant to Section 12.7.

(B) "Negative Basis" means, as to a Partner as of the relevant date, the amount, if any, by which (x) the aggregate losses and distributions charged prior thereto to his capital account shall exceed (y) the sum of the aggregate profits credited prior thereto to his capital account and his paid-in Capital Contribution.

(C) "Positive Basis" means, as to a Partner, as of

the relevant date, the amount, if any, by which (x) the sum of the aggregate profits credited prior thereto to his capital account and his paid-in Capital Contribution shall exceed (y) the aggregate losses and distributions charged prior thereto to his capital account.

(b) All profits and losses arising from transactions not described in Section 10.1 (a) shall be shared sixty percent (60%) by the Limited Partners and forty percent (40%) by the General Partners.

(c) All profits and losses shared by the Limited Partners shall be shared by each Limited Partner in the ratio of his paid-in Capital Contribution to the paid-in Limited Partner Class Contribution. All profits and losses shared by the General Partners shall be shared by each General Partner in the ratio of his Capital Contribution to the paid-in General Partner Class Contribution. All profits and losses shared by the Partners shall be credited or charged, as the case may be, to their capital accounts.

#### 10.2 Payments and Distributions

(a) Cash Flow of the Partnership during each fiscal year (or portion thereof) from and after the Completion Date shall be applied or distributed in the following order of priorities:

(i) To debt service on the Mortgage, operating expenses of the Project (other than management fees, Project Expense Loans and Residual Receipts Notes) and any reserves required by the terms of the Commitments to be maintained by the Partnership;

(ii) To management fees in the maximum amount permitted by the Lender and/or HUD;

(iii) To the payment of Project Expense Loans;

(iv) To the distribution first of a "limited dividend" in the maximum annual amount of eighteen thousand five hundred fifty-three dollars (\$18,553), which shall be paid sixty percent (60%) to the Limited Partners and forty percent (40%) to the General Partners; and then in satisfaction of arrearages in such limited dividend from prior years (as hereinafter provided). The right of the Partners to receive from the Partnership distributions in such maximum annual amount shall be cumulative from year to year. Distributions in excess of the maximum annual amount for any year shall be applied first in satisfaction of arrearages in the cumulative amount payable to the Limited Partners; and then in satisfaction of arrearages in the cumulative amount payable to the General Partners. The Partnership shall make such distributions for each year prior to March 15 of the following year; and

(v) To the payment of Residual Receipts Notes.

(b) For all purposes of this Agreement, the term "Cash Flow" shall mean the profits of the Partnership from and after the Completion Date subject to the following:

(i) depreciation of buildings, improvements and personal property and amortization of any financing or organization fee shall not be considered as a deduction;

(ii) mortgage amortization shall be considered as a deduction;

(iii) if the General Partners shall so determine, a reasonable reserve shall be deducted to provide for working capital needs, funds for improvements or replacements or for any other contingencies of the Partnership;

(iv) any amounts paid by the Partnership for capital expenditures shall be considered as a deduction, unless paid by cash withdrawal from any replacement reserve for capital expenditures;

(v) gain or loss from any refinancing of the Mortgage or from any sale, exchange, eminent domain taking, damage or destruction by fire or other casualty or other disposition, of all or any substantial part of the Project (other than the proceeds of any business or rental interruption insurance) shall not be included in determining Cash Flow;

(vi) payments of insurance on account of business or rental interruption shall be included as income in Cash Flow; and

(vii) rent supplement or interest subsidy payments shall be included as income in cash flow.

Cash flow shall be determined separately for each fiscal year or portion thereof and shall not be cumulative.

(c) Distributions of Other than Cash Flow

If, prior to dissolution, the General Partners shall determine from time to time that there is cash available for distribution from sources other than Cash Flow (such as, for example, from a refinancing of the Mortgage or a sale or disposition of any substantial part of or all of the Project or from any other transaction, the proceeds of which do not constitute Cash Flow), such cash shall be distributed as follows:

(i) First, to the discharge, to the extent required by the Lender, of debts and obligations of the Partnership for money borrowed, not including Project Expense Loans or Residual Receipts Notes;

(ii) Second, to the General Partners an amount equal to their Project Expense Loans;

(iii) Third, to the Limited Partners, an amount equal to three hundred twelve thousand five hundred dollars (\$312,500) less amounts previously paid to them pursuant to this clause (iv);

(iv) Fourth, to the General Partners an amount equal to one hundred dollars (\$100), less amounts previously paid to them pursuant to this clause (v);

(v) Fifth, to the General Partners an amount equal to their Residual Receipts Notes; and

(vi) Sixth, the balance thereof, thirty percent (30%) to the Limited Partners and seventy percent (70%) to the General Partners.

(d) All distributions to the Limited Partners shall be shared by each Limited Partner in the ratio of his paid-in Capital Contribution to the paid-in Limited Partner Class Contribution. All distributions to the General Partners shall be shared by each General Partner in the ratio of his Capital Contribution to the General Partner Class Contribution. The capital account of each Partner shall be charged with his share of each distribution.

(e) Distributions Upon Dissolution

Upon dissolution, after payment of, or adequate provision for, the debts and obligations of the Partnership, excluding Project Expense Loans and Residual Receipt Notes, the remaining assets of the Partnership (or the proceeds of sales or other



dispositions in liquidation of the Partnership assets, as may be determined by the remaining or surviving General Partners or General Partner) shall be distributed to the Partners in the priority set forth in Section 10.2(c), clauses Second through Sixth. All distributions to the Partners under this Section 10.2(e) shall be shared by the Partners according to the provisions of Section 10.2(d) hereof.

(f) Distribution in Kind

If any assets of the Partnership are to be distributed in kind, such assets shall be distributed on the basis of the fair market value thereof, and any Partner entitled to any interest in such assets shall receive such interest therein as a tenant-in-common with all other Partners so entitled. The fair market value of such assets shall be determined by an independent appraiser selected by the General Partners and approved by the Consent of the Limited Partners who shall be a person of unquestionable integrity and in good standing within his profession.

(g) Sale of the Project

If at any time the Partnership or any Partner shall receive a bona fide offer from a Person who is not an Affiliated Person to purchase all or substantially all of the Partnership assets (the "Purchase Offer"), the General Partners shall promptly deliver a copy of the Purchase Offer to each of the Limited

Partners. If Limited Partners who represent the Consent of the Limited Partners consent in writing to the Partnership's acceptance of the Purchase Offer within 30 days after receipt of notice of such offer, the General Partners shall accept such Purchase Offer on behalf of the Partnership, unless any General Partner or Partners (the "Continuing Partners") desire to reject such Purchase Offer. Any Continuing Partners shall send written notice to the Limited Partners and any General Partner who is not a Continuing Partner (the "Selling Partners") not more than fifteen (15) days after such Limited Partners' notice of consent. Such written notice of the Continuing Partners shall constitute the agreement of the Continuing Partners to purchase from the Selling Partners their interests in the Partnership at a price equal to the net cash proceeds which would be distributed to the Selling Partners as a result of a sale of the Partnership assets pursuant to the Purchase Offer and the dissolution of the Partnership pursuant to Section 10.2(e). The Continuing Partners shall specify the date (which shall be not more than thirty (30) days from the date of such notice) upon which they shall purchase the interests of the Selling Partners. At the closing of the Continuing Partners' purchase of the interests of the Selling Partners, the Continuing Partners shall pay the full amount of the price of such interests in cash, and the Selling Partners shall transfer to the Continuing Partners their entire interests in the Partnership.

## ARTICLE XI

### Management Agent

Housing Management Company shall be the initial Management Agent and shall be entitled to a fee equal to the maximum fee permitted by HUD and RIHMFC. The General Partners shall cause the Partnership to enter into a Management Agreement with the Management Agent in form satisfactory to the Lender and HUD, if required, and may replace the Management Agent from time to time with a management agent of recognized integrity and good standing in the business community. Notwithstanding the foregoing, in the event the maximum distribution to Partners in the amount of eighteen thousand five hundred fifty-three dollars (\$18,553) permitted under the Commitments shall not have been made for at least one year in any consecutive three year period, the Management Agreement with the then Management Agent shall be terminated and a new Management Agent which is not an Affiliated Person of any General Partner shall be retained meeting the requirements of this Article XI, unless it shall be demonstrated to the written satisfaction, as evidenced by a Consent of the Limited Partners, of the Limited Partners that such failure was attributable to general economic conditions or governmental policies and not, in any event, within the control of the Management Agent or the General Partners.

## ARTICLE XII

### Books and Records, Accounting, Tax Elections, Etc.

#### 12.1 Books and Records

The General Partners shall keep or cause to be kept complete and accurate books and records of the Partnership which shall be maintained in accordance with generally accepted accounting principles and shall be maintained and be available at the principal office of the Partnership for examination by any Partner, or his duly authorized representatives, at any and all reasonable times. The Partnership may maintain such books and records and may provide such financial or other statements, including those required from time to time by the Lender, HUD or any other appropriate administrative agency, as the General Partners deem advisable.

#### 12.2 Bank Accounts

The bank accounts of the Partnership shall be maintained in such banking institutions in the State as the General Partners shall determine, and withdrawals shall be made only in the regular course of business on such signature or signatures as the General Partners shall determine. All deposits (including security deposits and other funds required to be escrowed under the Commitments and other funds not needed in the operation of the business) shall be deposited in interest bearing accounts or

invested in short-term United States Government or municipal obligations maturing within one year.

### 12.3 Tax Returns

The General Partners shall cause the Accountants to prepare all tax returns of the Partnership and to audit and certify all annual financial reports to the Partners in accordance with generally accepted accounting principles.

### 12.4 Reports to Limited Partners

(a) Prior to the Completion Date, the General Partners shall within 30 days after the end of each quarterly period occurring after the admission of the Limited Partners, cause to be prepared and sent to each Limited Partner a report which shall state (i) the percentage of completion furnished to the Lender in the most recent submission for a construction loan advance, (ii) the anticipated date of completion of construction of the Project, (iii) whether there are any anticipated cost overruns, and if so, the amount thereof, (iv) a narrative summary of any material deviations from the original construction plan, and (v) other matters material to the completion of construction or commencement of operations of the Project and (vi) after the commencement of operations of the Project, the information specified in clauses (i) and (ii) of Section 12.4(b) hereof.

(b) After the Completion Date, the General Partners shall cause to be prepared and sent to each Limited Partner on or before July 31 in each year a report which shall state (i) the occupancy level of the Project as of the last day of the immediately preceding semi-annual period and the average occupancy level for such period, and (ii) if there are any operating deficits or anticipated operating deficits and, if so, the manner in which such deficits will be funded.

(c) Within 75 days after the end of each fiscal year, the General Partners shall deliver to all Persons who were Limited Partners at any time during the fiscal year, an (i) audited financial report of the Partnership including a balance sheet, a profit and loss statement and all necessary tax information, together with a certification of the Accountants covering the results of their audit of the books of the Partnership for such fiscal year; (ii) a certification by the General Partners that: (A) all Mortgage payments and taxes and insurance payments with respect to the Project are current as of the date of the year-end report, (B) there is no default under the Mortgage, Regulatory Agreement or any other of the Commitments or the Partnership Agreement, or if there be any default, a description thereof, and (C) there is no material building, health or fire code violation or similar violation of a governmental law, ordinance or regulation affecting the Project or, if there be any violation, a description thereof; and (iii) the average monthly occupancy for such year

and the occupancy as of the end of such year. Upon the written request of any Limited Partner for further information with respect to any matter covered in items (ii) or (iii) above, the General Partners shall furnish such information within 15 days of receipt of such request.

(d) Prior to November 1 of each year, the General Partners shall send to each Limited Partner an estimate of each Limited Partners' share of the profits or losses of the Partnership for Federal income tax purposes and distributions for the current fiscal year and a projection of such profits or losses and distributions for the next fiscal year.

#### 12.5 Depreciation and Elections

With respect to all depreciable assets the Partnership shall elect to use, so far as permitted by the provisions of the Internal Revenue Code of 1954, as amended (the "Code"), accelerated depreciation methods. However, on the advice of the Accountants then serving the Partnership, the Partnership shall elect or change to some other method of depreciation so long as such other method is, in the opinion of the Accountants, most advantageous to the Limited Partners. Subject to the provisions of Section 12.7, all other elections required or permitted to be made by the Partnership under the Code shall be made by the General Partners in such manner as will, in the opinion of the Accountants, be most advantageous to the Limited

Partners.

#### 12.6 Other Expenses

The Partnership shall treat as expenses for Federal income tax purposes all amounts incurred by it for real estate taxes, interest and other charges during or relating to the construction of improvements which may, for Federal income tax purposes, be considered as expenses.

#### 12.7 Special Basis Adjustments

In the event of a transfer of all or any part of the interest of any Partner, the Partnership shall elect, pursuant to Section 754 of the Code (or corresponding provisions of succeeding law), to adjust the basis of the Partnership property. However, the determination of profits, losses, distributions and capital accounts, for purposes of Article X of this Agreement, shall be made without taking into account any such special basis adjustments. Each Partner shall furnish the Partnership with all information necessary to give effect to such election.

#### 12.8 Fiscal Year and Accounting Method

The fiscal year of the Partnership shall end on December 31, of each year. The books of the Partnership shall be kept on an accrual basis.



12.9 Notice to Limited Partners of Certain Tax Adjustments  
and Audits of the Partnership's Tax Returns.

The General Partners shall give written notice to each of the Limited Partners of the following matters within 30 days after the General Partners receive notice thereof:

(i) The receipt of a written request from either the Internal Revenue Service or the Rhode Island Division of Taxation for information concerning the preparation of the Federal or State information returns filed on the Partnership's behalf;

(ii) The commencement of an audit of the Partnership's return either by the Internal Revenue Service or the Rhode Island Division of Taxation, which event for purposes of this Agreement will be deemed to have commenced on the date the General Partners first received written notice of such audit; and

(iii) The receipt by the General Partners of written notice from either the Internal Revenue Service or the Rhode Island Division of Taxation of a disallowance or modification of any of the items of income, deduction or credit reported on the Partnership's return or a finding that such items were improperly allocated among the Partners.

In the event the General Partners receive written notice from any of the Limited Partners:

(iv) that the items of income, deduction or credit allocated to such Limited Partner have been modified by either the Internal Revenue Service or the Rhode Island Division of Taxation, other than a disallowance resulting solely from the fact that the losses or deductions allocated to such Limited Partner were in excess of his basis for his interest in the Partnership; or

(v) that a determination, as provided in Section 1313(a) of the Code, has been made modifying the income, deductions and credits allocated to such Partner;

the General Partners shall, within 30 days following the receipt of such notice, give written notice of such events to each of the Limited Partners.

## ARTICLE XIII

### General Provisions

#### 13.1 Restrictions

(a) Except as otherwise provided in Section 6.11 of this Agreement, no sale or exchange of any Partner's interest in the Partnership may be made if the interest sought to be sold or exchanged, when added to the total of all other interests in the Partnership sold or exchanged within the period of 12 consecutive months prior to the proposed date of sale or exchange, would result in the termination of the Partnership under Section 708 of the Code (or any successor statute). However, such a sale or exchange may be made if, prior to the date of transfer, a ruling of the Internal Revenue Service (or its successors) to the effect that such proposed sale or exchange transfer will not result in such termination shall have been published in the Internal Revenue Bulletin or a private ruling to the same effect shall have been granted to the transferring Partner or the Partnership upon the application and at the expense of the Partner desiring to sell or exchange his interest in the

Partnership.

(b) No sale, transfer, exchange or other disposition of any interest in the Partnership may be made except in compliance with the then applicable rules and regulations of any governmental authority with jurisdiction over such disposition, and the General Partners may require as a condition of transfer of such interest that the transferor furnish an opinion of counsel satisfactory to the Partnership, both as to counsel and opinion, that the proposed transfer complies with applicable Federal and state securities laws.

(c) Any sale, exchange or other transfer in contravention of any of the provisions of this Section 13.1 shall be void and ineffective, and shall not bind, or be recognized by, the Partnership.

### 13.2 Appointment of General Partners as Attorneys-in-Fact.

Without limiting the effect of provisions elsewhere in this Agreement appointing each General Partner as attorney-in-fact for the other General Partners and all those who become Limited Partners (including a Substitute Limited Partner) under this Agreement in connection with the doing of certain acts and the filing of certain papers, each General Partner hereby irrevocably constitutes, and empowers to act alone, each other General Partner, and each Limited Partner (including a Substitute Limited Partner) hereby irrevocably constitutes and empowers

to act alone, each General Partner, and the President and each Vice President of any corporate General Partner, as his attorney-in-fact with authority to execute, acknowledge and swear to all instruments and file all documents requisite to carrying out the intention and purpose of this Agreement, including, without limitation, the filing of all business certificates and necessary Certificates of Limited Partnership and amendments thereto from time to time in accordance with all applicable laws and the filing and execution of appropriate documents with RIHMFC. The foregoing appointment shall be deemed to be a power coupled with an interest in recognition of the fact that each of the Partners under this Agreement will be relying upon the power of the General Partners to act as contemplated by this Agreement in such filing and other action by them on behalf of the Partnership. The foregoing power of attorney shall survive the assignment by any Limited Partner of the whole or any part of his interest hereunder or the Retirement of any General Partner.

### 13.3 Amendments to Certificate of Limited Partnership

In any year that cash distributions to any Limited Partner exceed the portion of Partnership profits credited to his respective capital account, the General Partners shall, within 120 days after the end of the fiscal year in which such distributions are made, file as required under the law of the State and elsewhere as the General Partners deem appropriate an amendment to the Certificate of Limited Partnership reducing by the amount of

such excess (or the total amount of such distribution in the event that the Partnership has incurred losses in respect of the year in question) the amount of Capital Contribution of each Limited Partner as stated in the last previous amendment to the Certificate of Limited Partnership with respect to any year. Nothing in this Section 13.3 shall authorize, however, any change in the Schedule to this Agreement or in the application of the provisions of Article X.

#### 13.4 Notices

Any and all notices required under this Agreement shall be deemed adequately given only if in writing and sent by registered or certified mail, postage prepaid, to the party or parties for whom such notices are intended. All such notices in order to be effective shall be addressed to the last address of record on the Partnership books when given by the General Partners and intended for the other Partners and to the address of the Partnership when given by the Limited Partners and intended for the General Partners.

#### 13.5 Word Meanings

The words such as "herein", "hereinafter", "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter,

and vice versa, unless the context otherwise requires.

#### 13.6 Binding Provisions

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assigns of the respective parties hereto.

#### 13.7 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State.

#### 13.8 Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the original or the same counterpart, except that no counterpart shall be binding unless signed by one of the General Partners.

#### 13.9 Internal Revenue Service Requirement

The General Partners shall take all action (other than with respect to the amount of initial losses but including such action with regard to net worth) as may be required from time to time by the Internal Revenue Service (the "Service") as a prerequisite to obtaining a ruling from the Service to the effect

that the Partnership will be treated as a partnership and not as an association taxable as a corporation for Federal income tax purposes, which may be evidenced by (i) any amendment to the Internal Revenue Code of 1954, as amended (the "Code"), enacted after the date hereof, (ii) any regulation promulgated by the Service under the Code as it may be amended, or (iii) any revenue ruling or revenue procedure (including Revenue Procedures 72-13 and 74-17) published by the Service. This provision shall be applicable whether or not such a ruling is sought from the Service.

#### 13.10 Separability of Provisions

Each provision of this Agreement shall be considered separable and (a) if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, or (b) if for any reason any provision or provisions herein would cause the Limited Partners to be deemed to be personally obligated by the obligations of the Partnership, such provision or provisions shall be deemed void and of no effect.

#### 13.11 Investment Representation

Each person who becomes a Limited Partner does hereby represent and warrant by the signing of a counterpart of this Agreement that (a) the interest acquired by him was

acquired for investment and not for resale or distribution,  
(b) he is qualified by his personal experience to analyze the  
risks and the advantages and disadvantages of an investment  
in such interest and (c) he has not relied on the advice of  
the General Partners in making his investment decision.

#### 13.12 Section Titles

Section titles are for descriptive purposes only and shall  
not control or alter the meaning of this Agreement as set forth  
in the text.

#### 13.13 Amendments and Other Actions

(a) This Agreement may not be amended or modified  
except by the General Partners with the Consent of the Limited  
Partners; provided, however, that all Limited Partners must  
give their consent in writing to any amendment which would (i)  
extend the term of the Partnership as set forth in Section 2.5  
hereof, (ii) amend this Section 13.13, (iii) increase the amount  
of Capital Contributions payable by the Limited Partners or  
change or accelerate the date for payment of any Installment  
of said Capital Contributions or (iv) otherwise increase the  
liability of the Limited Partners.



(b) Notwithstanding any other provision of this Agreement, no action may be taken under the Agreement unless such action is taken in compliance with the provisions of the Uniform Act.

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

GENERAL PARTNERS

BY \_\_\_\_\_  
Paul F. Lischio

BY \_\_\_\_\_  
Philip W. Noel

WITHDRAWING LIMITED PARTNERS

BY \_\_\_\_\_  
Paul F. Lischio

BY \_\_\_\_\_  
Philip W. Noel

LIMITED PARTNERS

BY \_\_\_\_\_  
Barry Cohen

BY \_\_\_\_\_  
Rudy Meiselman

BY \_\_\_\_\_  
Roger L. Clifton

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence on this \_\_\_\_\_ day of March, 1979, before me personally appeared Paul F. Lischio, to me known and known by me to be one of the parties executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed.

\_\_\_\_\_  
Notary Public

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence on this \_\_\_\_\_ day of March, 1979, before me personally appeared Philip W. Noel, to me known and known by me to be one of the parties executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed.

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

In Boston on this       day of March, 1979, before me personally appeared Roger L. Clifton, to me known and known by me to be one of the parties executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed.

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Notary Public

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence on this       day of March, 1979, before me personally appeared Barry Cohen, to me known and known by me to be one of the parties executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed.

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Notary Public

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence on this       day of March, 1979, before me personally appeared Rudy Meiselman, to me known and known by me to be one of the parties executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed.

---

Notary Public

SCHEDULE A  
TO SECOND AMENDMENT  
TO  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HERITAGE VILLAGE ASSOCIATES

General Partners

Capital Contribution

Paul F. Lischio  
51 West Blue Ridge Road  
Cranston, Rhode Island 02920

\$ 75.00

Philip W. Noel  
21 Kirby Avenue  
Warwick, Rhode Island 02889

\$ 25.00

Limited Partners

Units

Capital Contribution

Barry Cohen  
112 Tupelo Hill Drive  
Cranston, Rhode Island 02920

3

\$150,000.00

Rudy Meiselman  
148 Waterman Street  
Providence, Rhode Island 02906

2

\$100,000.00

Roger L. Clifton  
126 Homer Street  
Newton Centre, MA 02159

1

\$ 50,000.00