

8057095

**SOUTHDAL ASSOCIATES, A LIMITED PARTNERSHIP  
FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT  
AND  
FIRST AMENDED AND RESTATED CERTIFICATE OF LIMITED PARTNERSHIP**

THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT AND FIRST AMENDED AND RESTATED CERTIFICATE OF LIMITED PARTNERSHIP entered into as of this 14<sup>th</sup> day of November, 1980, by and among GRANT E. MARCH, BRYCE L. PETERSON, PATRICK K. MARCH, and THE HOME COMPANY, a Idaho corporation, as General Partners, and PATRICK K. MARCH as Withdrawing Initial Limited Partner, and HEARTLAND CALDWELL PARTNERS, a Minnesota Limited Partnership (hereinafter referred to as "Heartland" or "Limited Partner").

WITNESSETH THAT:

**PRELIMINARY STATEMENT**

**Formation of Partnership and Restatement of Agreement**

The parties hereto do hereby confirm the formation of Southdale Associates, a limited partnership, as in effect in the State of Idaho, the state in which the Partnership has offices and does business. The parties agree that they shall promptly record this First Amended and Restated Limited Partnership Agreement and any additional or supplemental certificates of limited partnership that may be required, in the appropriate offices of the State of Idaho and that they shall comply with the other provisions and requirements of the Uniform Limited Partnership Act as in effect in Idaho, which Act shall govern the rights and liabilities of the Partners, except as herein or otherwise expressly stated.

This First Amended and Restated Limited Partnership Agreement and First Amended and Restated Certificate of Limited Partnership (i) supersedes, replaces and completely restates the Limited Partnership Agreement and Certificate of Limited Partnership, dated August 8, 1980, (ii) admits Heartland Caldwell Partners as a Limited Partner, and (iii) permits the Initial Limited Partner to withdraw from the Partnership as of the date hereof.

## ARTICLE I

### NAME, PURPOSE AND PARTNERS

**Section 1.1 Formation.** The Partners constitute a limited partnership formed pursuant to the Uniform Limited Partnership Act of the State of Idaho.

**Section 1.2 Name and Office.** The Partnership is and shall be conducted under the name of SOUTHDAL ASSOCIATES. The principal office and place of business of the Partnership shall be located at 212 South Cole Road, Post Office Box 9083, Boise, Idaho 83707. The General Partners shall promptly notify all other Partners of any change in the principal office. The Partnership may maintain such other offices at such other place or places as the General Partners may, from time to time, deem advisable.

**Section 1.3 Names and Addresses - Designation of Partners.** The names and addresses of the Partners and their designation as General Partners and Limited Partner are:

(a) General Partners:

The Home Company  
212 South Cole Road  
Post Office Box 9083  
Boise, Idaho 83707

Grant E. March  
212 South Cole Road  
Post Office Box 9083  
Boise, Idaho 83707

Bryce L. Peterson  
212 South Cole Road  
Post Office Box 9083  
Boise, Idaho 83707

Patrick K. March  
212 South Cole Road  
Post Office Box 9083  
Boise, Idaho 83707

(b) Limited Partner:

Heartland Caldwell Partners  
2828 Fifth Avenue South  
Minneapolis, Minnesota 55408

(c) Withdrawing Initial  
Limited Partner:

Patrick K. March  
Post Office Box 9083  
Boise, Idaho 83707

### Section 1.4 Purposes and Powers.

(a) The purpose of the Partnership and the business to be carried on and the objectives to be effected by it are:

(1) To acquire, own, develop, construct, lease, rent, improve, maintain and operate the property and to construct, own, develop, maintain and operate the Project.

(2) To secure the financing and construction and renting of the Project in accordance with the rules and regulations of the Idaho Housing Agency ("IHA" or "Agency"), with assistance under Section 8 of the Community Development Act.

(3) To execute a note and mortgage in order to secure a loan from IHA and to execute a Regulatory Agreement and other documents required by the Agency in connection with such loan. Upon execution, the Regulatory Agreement shall be binding upon the Partnership and all of the Partners, whether they become partners before or after the execution of the Regulatory Agreement, and said Regulatory Agreement shall remain binding upon the Partnership and the Partners, so long as the mortgage on property owned by the Partnership is outstanding or unpaid. Any incoming partner shall, as a condition of receiving an interest in the Partnership property, agree to be bound by the note, Mortgage and Regulatory Agreement and other documents required in connection with the loan to the same extent and on the same terms as the other Partners. Upon any dissolution, no title or right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Agency.

(4) To acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary or appropriate for the construction and operation of the Project.

(5) To borrow money, in the manner permitted in Section 2.5 hereof, and to issue evidence of indebtedness and to secure the same by mortgage, deed of trust, pledge or other lien, in furtherance of any or all of the purposes of the Partnership, provided that each such borrowing shall not be prohibited herein and provided that any construction and permanent loan and any evidences of indebtedness thereof and any documents amending, modifying or replacing either of them shall provide in substance and legal effect that neither the Partnership nor any Partner shall have any personal liability for payment of any construction or permanent loan, the Mortgage, or other such indebtedness but that the sole recourse of the lender shall be to the property securing the construction loan, the Mortgage or such indebtedness.

(6) To carry on other activities necessary to, in connection with or incidental to the foregoing.

(7) Subject to other limitations expressly set forth in this Agreement in Section 1.5, to negotiate for and

conclude agreements for the sale, exchange or other disposition of all or substantially all of the property of the Partnership, or for the refinancing of any mortgage loan on the property of the Partnership.

(b) Although the Partners may operate other businesses as described in Section 3.4, the Partnership shall not engage in any other business without the prior consent of all of the Partners.

(c) Execution of Closing Documents for IHA Development No. 8N192 known under the name "Southdale Apartments". All closing documents for the designated IHA Project may be signed by the Managing General Partner.

#### Section 1.5 Sale of Assets.

(a) The Partnership shall not, without the consent of Heartland, at any time sell, lease (other than to occupancy tenants), exchange or otherwise transfer or convey all or substantially all of the assets of the Partnership or refinance the Project, if such sale, lease, exchange or other transfer or conveyance or such refinancing is not approved by Heartland, in writing. If the General Partners intend to make such sale, lease, exchange or other transfer or conveyance or to refinance the Project, it shall give prior written notice to Heartland of such intention and the proposed terms thereof. Heartland shall notify the General Partners of its approval or disapproval within thirty days after such notice.

(b) Nothing in this Section 1.5 shall be construed to prohibit an increase of the Mortgage Loan at Final Mortgage Loan Closing in an amount not to exceed five percent (5%) of the amount of the Mortgage Loan as defined in Section 10.1 hereof; provided that Fair Market Rents and all appropriate subsidies are correspondingly increased.

Section 1.6 Term The Partnership shall continue in full effect until December 31, 2011, unless sooner dissolved and terminated as herein provided.

Section 1.7 Limited Dividend Entity. The Partnership shall, among other activities and purposes described herein which are not specifically prohibited thereby, conduct its operations so as to comply with IHA requirements relating to a limited dividend entity as defined under that Agency's rules and regulations.

## ARTICLE II

### CAPITAL

Section 2.1 Capital of the Partnership. The capital of the Partnership shall be the aggregate amount of the cash and the agreed value of property or services contributed by the Partners as set forth herein.

#### Section 2.2 General Provisions.

(a) This Agreement shall be amended from time to time to reflect the withdrawal or admission of Partners, and any changes in the amounts contributed or agreed to be contributed. Except as expressly provided in Articles II, V and VII, no additional Partners shall be admitted to the Partnership.

(b) A capital account shall be established for each Partner and shall be credited with the amounts of his capital contributions to the Partnership from time to time. Any Partner, including any Additional or Substitute Partner, who shall receive an interest in the Partnership or whose Partnership Interest shall be increased by means of the transfer to him of all or part of the Partnership Interest of another Partner shall have a capital account which has been appropriately adjusted to reflect such transfer.

(c) Any Partner who shall acquire any Partnership Interest by means of the transfer to him of all or part of the Partnership Interest of any other Partner shall, with respect to the Partnership Interest so transferred to him, be deemed to be a Partner of the same class as his transferror.

(d) No Limited Partner shall be liable for any of the debts of the Partnership or be required to contribute any capital or lend any funds to the Partnership other than as expressly provided in Section 2.3 hereof.

(e) No interest shall be paid on any capital contributed to the Partnership.

#### Section 2.3 Capital Contributions by Heartland.

(a) Heartland shall contribute \$53,500 to the capital of the Partnership in the manner and at the times hereinafter set forth:

(i) \$26,500 shall be paid in cash upon the latter of (a) the time of admission of Heartland as a Limited Partner in the Partnership, or (b) the time of Initial Mortgage Loan Closing with IHA.

(ii) \$27,000 shall be paid in cash on or before the fifteenth day after whichever of the shall last

occur: (a) Forty (40%) percent completion of construction in a good and workmanlike manner, in accordance with the Plans and Specifications, and any changes thereto, all as approved by the IHA and Heartland as required in Section 9.13(a); or (b) January 30, 1981; and (c) Receipt by Heartland of notice from the Partnership that Heartland's second capital contribution is required to be made.

- (iii) \$37,000 shall be paid in cash on or before the fifteenth day after whichever of the following shall last occur: (a) Completion of construction in a good and workmanlike manner, in strict accordance with the Plans and Specifications, or (b) Issuance of permits by all appropriate state, local or federal governmental agencies, including the IHA, to occupy the entire Project; or (c) Receipt by Heartland of notice from the Partnership that Heartland's third capital contribution is required to be made.
- (iv) \$35,000 shall be paid in cash on or before the fifteenth day after whichever of the following shall last occur: (a) Final Mortgage Loan Closing of the Project by IHA; or (b) January 30, 1982; or (c) Achievement by the Partnership of Initial Renting, as the term is defined herein; and (d) Receipt by Heartland of notice from the Partnership that Heartland's fourth capital contribution is required to be made.
- (v) \$15,000 shall be paid in cash the latter of (a) successful completion of all above items; or (b) January 30, 1983.

Each installment is subject to the occurrence of all events which are conditions precedent to all prior installments. All payments shall be made by check payable to the IHA and marked "For Southdale Associates".

The Limited Partner shall not be obligated to make any additional contributions to the capital of the Partnership or make any loans or pay any assessments to the Partnership.

A required percentage of completion as used herein shall be deemed to occur on that date on which the architect hired by the Partnership who is authorized by the IHA to inspect and approve construction progress (the Project Architect) certifies that construction of the Project is equal to the specific percentage of completion, further evidenced by a certificate from the General Partners to the effect that the undisbursed Mortgage Loan proceeds together with other available funds are adequate to pay all of the costs which will be required to complete construction and development of the Project. The General Partners shall also

certify to the Limited Partner that the events precedent to each installment of capital contribution have been achieved, and that there are no defaults in the undertakings of the General Partners and the Partnership.

(b) No capital contribution to be made by Heartland hereunder shall be required to be paid, if, at the time of payment thereof, (1) any housing assistance commitment from HUD or any financing commitment of IHA has been terminated, (2) the Partnership is in default in making payments due under the Note and Mortgage or is otherwise in default under the terms of the Building Loan Agreement, Regulatory Agreement or any other mortgage closing document, and has not cured such default, (3) if foreclosure or similar proceedings have been commenced against the Project, or (4) the General Partners have not complied with any provision of this Agreement, which noncompliance is continuing or has not been cured within forty-five days after notice thereof from the Limited Partner. At the option of Heartland, the due date of such capital contributions shall be deferred until the General Partners certify in writing that such default is cured and such default is cured in fact.

(c) The General Partners shall enter into an Agreement with Heartland by which Heartland shall have the option to require the General Partners to repurchase Heartland's interest in the Partnership in the event Final Mortgage Loan Closing has not occurred on or before October 1, 1982, or in the event there is a construction stoppage for any six full consecutive calendar months, or in the event that any foreclosure or similar proceeding has been commenced, or in the event that prior to Initial Renting a capital contribution payment shall not be made for a period of three months by reason of any uncured default as set forth in paragraph 2.3(b) above, or if construction shall not have been commenced within ninety days of Initial Mortgage Loan Closing by the IHA. In the event of such repurchase, the General Partners shall pay to Heartland, in cash, the sum of all capital theretofore contributed by Heartland, plus the sum of \$28,500.00. The election of Heartland to have the Partnership Interest of Heartland repurchased shall be made not later than ninety days after the date above, or ninety days after it has received notice of the termination of IHA financing commitment or notice of the commencement of foreclosure proceedings against the Project. Concurrently with such payment and as a condition precedent thereto, Heartland shall withdraw from the Partnership and shall have no further rights or obligations hereunder.

(d) In the event that the Mortgage Loan as finally closed by the IHA is decreased from \$1,102,900, the capital contributions of Heartland shall be reduced by a percentage equal to the percentage reduction in the Mortgage Loan. The entire amount of such reduction shall be deducted from the fourth capital contribution required to be paid pursuant to Section 2.3(a)(iv) above and any subsequent payments, as the case may be, and shall correspondingly reduce the Developer's Fee.

Section 2.4 Default in Making Capital Contributions.

(a) (i) In the event that Heartland fails to make a Capital Contribution to the Partnership or shall make a Capital Contribution in a sum less than that set forth in Section 2.3 due to its own default (and not due to a default by one or more of its limited partners in making a payment of Capital Contribution to Heartland), Heartland shall be liable to the Partnership with regard to such default.

(ii) In the event that Heartland fails to make a Capital Contribution to the Partnership or shall make a Capital Contribution in a sum less than that set forth in Section 2.3 due to a default by one or more of its limited partners, Heartland shall have no liability to any of the parties hereto with regard to such default, and the rights of the Partners and the Partnership shall be limited to those set forth in this Section 2.4. Heartland shall utilize any amounts of capital contributions received from its limited partners to remedy such default.

(b) In the event that Heartland shall fail to make a capital contribution to the Partnership or shall make a capital contribution in a sum less than that set forth in Section 2.3 hereof due to a default by one or more of its Heartland Investor Limited Partners within fifteen (15) days of its due date, the General Partners may, any time after a period of thirty (30) days from that date, commence all appropriate legal remedies to compel payment of any unpaid capital contribution due and owing to Heartland, including costs and legal fees, and pursue such remedies for payment, provided, however, that if on the date on which the General Partners would so commence legal remedies, Heartland is itself diligently taking appropriate action to compel payment by such Heartland Investor Limited Partners, the General Partners shall defer commencement of all such legal remedies for a period of fifteen (15) additional days.

(c) In addition to the remedies provided in subparagraph (b) above, the General Partners may on and after the date they are permitted to exercise legal remedies against the Heartland Investor Limited Partners, declare that proportion of the Partnership Interest of Heartland in profits and losses, cash distributions and residual interests to be surrendered and subject to purchase in the proportion that the unpaid portion of the capital contribution of Heartland bears to the total capital contribution of Heartland due at such date. Thereafter, the General Partners may elect to sell the portion of the Partnership Interest so surrendered at a private sale to any bona fide purchaser who shall be admitted to the Partnership upon payment to Heartland of a sum equal to ten percent (10%) of the cash capital contributions made by Heartland with respect to the portion of its Partnership Interest so surrendered. (For example, if \$15,000 of the \$35,000 fourth installment of Capital Contributions is unpaid, the General Partners may declare 3/7 of Heartland's interest surrendered, which interest may be sold for 10% of 3/7



of the first three Capital Contributions, or \$4,435.71.) Any purchaser of the portion of the Partnership Interest so surrendered shall become the owner thereof effective as of the date upon which such surrendered Partnership Interest became subject to purchase and shall pay to the Partnership the capital contribution in default with respect to the Partnership Interest so purchased. The General Partners are hereby granted an irrevocable power of attorney to execute any and all documents on behalf of the Limited Partner and the Partnership and to file any such documents as may be required to effectuate the provisions of this Section 2.4.

Section 2.5 Partnership Borrowings. Partnership Notes and Project Notes may be issued by the Partnership at the time and for Partnership purposes as set forth herein. In addition to the Mortgage Loan, excluding refinancing, and in addition to any Partnership or Project Notes, in the event that additional funds are required by the Partnership for any purpose relating to the business of the Partnership or any of its obligations, expenses, costs or expenditures, the Partnership may borrow such funds as are needed from any Partner or other person for such period of time and on such terms as the General Partners may determine and at the rate of interest then prevailing for comparable loans; provided, however, that no such loan shall be secured by any mortgage or other incumbrance on the property of the Partnership without the prior approval of Heartland and IHA (if at such time any part of the Mortgage remains outstanding); and provided that (i) such additional borrowing is not prohibited by IHA rules and regulations, (ii) except as above provided, such additional borrowing is not secured by any lien or other charge upon the assets of the Partnership, and (iii) such additional borrowing shall not be utilized to discharge any obligations of the General Partners as set forth in Section 3.3 hereof or to pay any management or other fees to the General Partners or an Affiliate. No Partner shall have any personal liability with respect to any indebtedness of the Partnership for borrowing money, and each instrument evidencing any such indebtedness shall contain a provision to such effect.

### ARTICLE III

#### RIGHTS, POWERS AND DUTIES OF PARTNERS

Section 3.1 Management of Partnership Business. The General Partners shall have the sole right to manage the business of the Partnership. The General Partners shall use their best efforts to carry out the purposes, business and objectives of the Partnership referred to in Section 1.4. In addition to fees paid to the General Partners for management of the financial affairs of the Partnership, as set forth below, if the General Partners or any entity associated with the General Partners manage the Project, they or it shall be entitled to be paid a Management Fee not to exceed the maximum allowable by the IHA.

As long as there is more than one general partner, the general partners may from time to time designate in writing one or more of their number as managing general partner(s) or as authorized representative(s) to represent the Partnership with respect to specific matters or generally.

The public shall be authorized to rely upon such designation(s) and the Partnership shall be bound thereby.

Patrick K. March and Bryce L. Peterson are hereby authorized to represent the Partnership and to act on its behalf in all dealings between the Partnership and the Idaho Housing Agency and other governmental agencies. This authorization extends to the execution of all documents and instruments which may be required to be executed by the Partnership in those dealings.

Section 3.2 Powers of General Partner. The General Partners shall have all necessary powers to carry out the purposes, business and objectives referred to in Section 1.4, and shall possess and enjoy all the rights and powers of partners of a partnership without limited partners except as otherwise provided by Idaho law or expressly provided to the contrary in this Agreement.

Section 3.3 Special Duties and Obligations of General Partner. In addition to their usual and customary duties and obligations, the General Partners:

(a) Shall allow families and individuals of all races, colors, and creeds to be given equal opportunity to the housing and recreational facilities of the Project pursuant to the requirements of Idaho and Federal Law.

(b) Will assure the Project will be constructed in a good and workmanlike manner and in accordance with the usual and customary residential standards and in substantial accordance with the Plans and Specifications signed at Initial Mortgage Loan Closing and delivered to Heartland, and deliver to Heartland a copy of all field change documents and a complete set of As-Built Plans and Specifications.

(c) Subject to the control of the IHA and HUD under the Mortgage Loan and related documents, shall supervise the establishment, maintenance and investment of any and all reserve funds.

(d) Shall cause the construction of the Project to be completed and the Mortgage Loan to be finally closed by the IHA. If, in order to complete construction and pay all necessary costs to achieve Final Mortgage Loan Closing, including, without limitation, payment of both interest costs and real estate taxes required by IHA to be paid prior to Final Mortgage Loan Closing and Total Project Costs, the Partnership shall require funds in addition to the proceeds of the Mortgage, the General Partners

shall pay to the Partnership amounts adequate to pay all additional funds required for such purpose without any reimbursement therefor.

(e) Shall, subsequent to substantial completion and issuance of all necessary consents and certificates authorizing occupancy and prior to Initial Renting, advance such funds as may be necessary to pay all costs of operation of the Project including, without limitation, operating expenses, debt service requirements, taxes and assessments to the extent such costs exceed Partnership accrued gross income (including Section 8 funds for such period), but exclusive of the Fees provided for in Section 3.7. To the extent that such funds are advanced by the General Partners to the Partnership, then the Partnership indebtedness to the General Partners for funds so advanced shall be evidenced by Project Notes.

(f) In addition to the obligations set forth in (d) and (e) above, shall advance funds to the Partnership to the extent the Partnership incurs cash operating deficiencies at any time after completion of the Initial Renting during the term of the Partnership. Provided, however, that the obligation of the General Partners under this paragraph 3.3(f) shall cease three (3) years from Initial Renting, and provided that the General Partners shall not be obligated to advance any sums in excess of \$31,000 pursuant to this paragraph 3.3(f). In exchange for funds advanced to pay cash operating deficiencies pursuant to this Section 3.3(f), the General Partners will receive Partnership Notes.

(i) Partnership Notes shall bear interest as herein set forth and shall be repaid from any or all of the following sources:

- 1 Net Partnership Receipts, and
2. As otherwise provided in Section 6.4 hereof.

(ii) Project Notes shall not bear interest and shall be repaid from any or all of the following sources:

1. Net Partnership Receipts remaining after aggregate distributions to the Limited Partner an amount equal to \$3,500 in such fiscal year; and
2. As otherwise provided in Section 6.4 hereof.

(g) A commitment for an owner's title insurance policy reflecting title to be in the name of the Partnership and showing no defect in title to the land which would prevent the Partnership from having good and marketable title, insurable at regular rates, subject only to such easements, covenants and restrictions of record as shall not affect value and shall be acceptable to the IHA and Heartland. The General Partners shall have the

commitment dated down showing the same quality of title as of each installment of capital contribution paid pursuant to paragraph 2.3 hereof. As of Final Mortgage Loan Closing, the General Partners shall provide to Heartland an owner's title insurance policy showing the same quality of title as the prior commitment, in an amount equal to the mortgage, plus \$182,000.

(h) Shall, at the time of Initial Mortgage Loan Closing, and hereby do, warrant and guarantee to the Limited Partner that the Partnership shall receive title to the Land free and clear of all liens, charges or encumbrances, except the Project Mortgage and the Regulatory Agreement and real estate taxes then not delinquent, easements and restrictions not materially interfering with the Project, and that the Partnership will not be in material default of any of the terms and conditions of any agreement with the mortgagee or IHA or HUD-FHA through and including Final Mortgage Loan Closing, and that the Land is properly zoned for the Project and no legal action or other proceeding is pending before any court or commission, administrative body or other authority having jurisdiction over the zoning applicable to the Project which would prevent completion of construction.

(i) Shall obtain Final Mortgage Loan Closing for the benefit of the Partnership.

(j) Shall use their best efforts to preserve the assets of the Partnership and shall make, or cause to be made, all reasonable and necessary capital expenditures and improvements with respect to the real estate of the Partnership and take all action reasonably necessary in connection with the maintenance, operation and management thereof.

(k) Shall not receive, in connection with the performance of any services by any Affiliate thereof, any rebates or give-ups, nor may the General Partners participate in any reciprocal business arrangements which would have the effect of circumventing restrictions set forth herein upon dealings with Affiliates. Nothing contained in this Agreement shall be deemed to prohibit the General Partners or any Affiliate of the General Partners from providing services relating to the ownership, management, operation and maintenance of Partnership property, and receiving compensation therefor as permitted in Section 3.7 hereof.

(l) Shall undertake to timely provide all notices, certificates and reports required under this Agreement.

(m) Represent that neither the Partnership nor an Partner will have any personal liability with respect to the Note underlying the Project Mortgage.

Section 3.4 Other Interests of Partners. Any of the Partners may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, any real estate activity

or other business which competes directly with the Project, in all of its phases, which shall include, without limitation, ownership, operation, management, syndication, construction and development of real property. Neither the Partnership nor the other Partners shall have any rights in and to such independent ventures or the income or profits derived therefrom. The Partnership may employ or transact business with any person, notwithstanding the fact that any Partner or member of his Immediate Family or associates may be one of, or may have an interest in or be connected with, such persons, and neither the Partnership nor the other Partners shall have any rights in or to any income or profits derived therefrom.

Section 3.5 Limited Partners. To the fullest extent permitted by law, the Limited Partner hereby consents to the exercise by the General Partners of the powers conferred on them by this Agreement. No Limited Partner shall participate in, or have any control over, the Partnership business, or any right or authority to act for or to bind the Partnership.

Section 3.6 Partners Bound by the Regulatory Agreement and by Rules of Idaho Housing Agency.

(a) It is understood between the parties that, at the time of initial closing of a mortgage loan with the IHA or prior thereto, the Partnership or the parties hereto shall be required to enter into a Regulatory Agreement with the IHA and to execute such other documents as may be required by the IHA in connection with the said loan.

(b) The Partnership is authorized to execute a deed of trust note and a deed of trust to secure a mortgage loan to be insured by the IHA and to execute a Regulatory Agreement and other documents required by the IHA in connection with such loan, and so long as any property owned by the Partnership is encumbered by a deed of trust in favor of the IHA or its assigns, it is understood and agreed that the Partnership shall abide by all terms contained in the said documents.

(c) Any incoming partner shall, as a condition of receiving any interest in the Partnership, agree to be bound by the deed of trust note and deed of trust, and the Regulatory Agreement and such other documents as have been executed in connection with the IHA mortgage loan to the same extent and on the same terms as the parties to this Agreement.

(d) Upon dissolution of the Partnership, no title or right of possession and control of the property and no right to collect therefrom shall pass to a person who is not bound by the Regulatory Agreement in a manner satisfactory to the IHA and the IHA's approval in writing by the IHA.

(e) The Partnership Agreement is entered into between the parties with full knowledge that the parties expressly

subject to the requirements and conditions now and hereafter imposed by the IHA, in connection with the provisions of Title 67, Chapter 62, Idaho Code, as amended, and the regulations of the IHA and the U.S. Department of Housing and Urban Development ("HUD") now or hereafter in effect. Any such regulations or requirements shall supersede the provisions of this Partnership Agreement and should any provision, term or condition of this Agreement be inconsistent or in conflict with the provisions of the aforesaid Act, or regulations, then such conflict or inconsistency shall be deemed modified by the provisions of the said Act or regulations so as to conform thereto, and such conflict or inconsistency shall not be deemed to impair, or nullify the remainder of this Agreement which shall remain in full force and effect.

(f) The term of this Agreement shall be at least thirty-one (31) years unless otherwise approved in writing by the IHA.

(g) This Partnership Agreement shall not terminate without the written consent of the IHA.

(h) No distribution, as defined in the Regulatory Agreement entered into between the IHA and the Partnership shall be made except in accordance with the requirements of the said Regulatory Agreement.

(i) In the event that any provision of this Agreement in any way contradicts or modifies the terms of the Regulatory Agreement entered into between the Partnership and the IHA, the terms of the Regulatory Agreement shall prevail.

(j) This Partnership Agreement shall not be amended without the prior written approval of the IHA.

(k) No partner shall transfer his interest in the Partnership without the prior written approval of the IHA.

(l) In the event that the General Partners of this Partnership for any reason fail to remedy or take reasonable steps to remedy any default declared by the IHA within sixty (60) days following notification by the IHA to the Partnership of such default, or are for any reason unable to conduct Partnership business for a period in excess of six (6) months, the Limited Partners of this Partnership, upon vote of Limited Partners holding at least two-thirds (2/3rds) of the total interest held by the Limited Partners, and with the written consent of the IHA, may remove the General Partners and substitute new General Partner(s), which new General Partner(s) must be accepted by the IHA and the Limited Partners.

Section 3.7 Payment of Fees.

(a) (1) Purchase of Certain Rights in the Project.

In consideration of its transfer to the Partnership of all its right, title and interest to the land and all contracts, plans, specifications, commitments and the construction loan related to the Project, and as reimbursement for all funds advanced by the General Partners to pay Total Project Costs except advances evidenced by Project Notes, or are allowed by IHA to be reimbursed out of Mortgage proceeds, the Partnership hereby promises to pay the General Partners the total amount of \$65,000, with interest in the total amount of \$5,100, calculated at 16 percent (16%) per annum (not to exceed \$5,100) on the principal balances outstanding as set forth in the payment schedules of (a)(2) below. No interest shall be paid on account of delays in payment beyond such dates due to the non-occurrence of the events set forth in such schedules.

(2) The Partnership shall pay the General Partners as a Purchase Price the total principal amount of \$65,000 as follows:

(a) \$10,000 upon receipt of funds required under Section 2.3(a)(i);

(b) \$35,000 upon receipt of funds required under Section 2.3(a)(ii);

(c) \$20,000, upon receipt of funds due under Section 2.3(a)(iv);

(3) The Partnership shall pay the General Partner interest in the total amount of \$5,100 as follows:

(a) \$2,100 upon receipt of funds due under Section 2.3(a)(i);

(b) \$3,000 upon receipt of funds due under Section 2.3(a)(ii).

(b) Developer's Fee. The Partnership shall also pay to the General Partners a Developer's Fee for services rendered subsequent to Initial Mortgage Loan Closing, including coordination of construction, coordination of disbursement of mortgage funds and supervision of the construction process. The actual amount of the Developer's Fee will be determined as of Final Mortgage Loan Closing and will be equal to the sum of the total stated capital contributions to the Partnership by the Limited Partner, plus the Project Mortgage Loan, exclusive of any amounts funded and retained by the IHA in the Development Cost Escrow, less the sum of Total Project Costs, operating deficit at Final Mortgage Loan Closing, and other fees to be paid under this Section 3.7. The actual amount of the Developer's Fee cannot be finally calculated

until Final Mortgage Loan Closing and will be paid from the capital contributions to the Partnership by the Limited Partner as and when received. Provided, however, that the estimated Developer's Fee will be \$6,245, payable upon receipt of funds required under Section 2.3(a)(iii).

(c) Management Services Fee. The Partnership shall pay to the General Partners the aggregate amount of \$45,000, without regard to the income of the Partnership, as a fee for services in managing the financial affairs of the Partnership, monitoring Project operations and for other services to the Partnership. Such fee shall be payable as follows:

(1) \$15,000 upon receipt of funds required under Section 2.3(a)(iii);

(2) \$15,000 upon receipt of funds required under Section 2.3(a)(iv); and

(3) \$15,000 upon receipt of funds required under Section 2.3(a)(v).

(d) Initial Rent-Up Fee. The Partnership shall pay to the General Partners the aggregate amount of \$14,371 for initially leasing the Project, locating and investigating prospective tenants, and negotiating leases all as more particularly set forth in the Initial Rent-Up Agreement between the Partnership and the General Partners. Such fee shall be payable upon receipt of the capital contribution described in Sections 2.3(a)(iii).

(e) Repurchase Fee. The Limited Partner shall pay the General Partners a Repurchase Fee of \$28,500 pursuant to the Repurchase Agreement described in Section 2.3(c) hereof at Initial Mortgage Loan Closing.

(f) Repayment of Loan to General Partners. The General Partners have loaned the sum of \$17,984 to the Partnership to pay certain of the costs of Initial Mortgage Loan Closing. That sum shall be repaid to the General Partners out of the capital contributions received from the Limited Partner without interest, at the following times and in the following amounts:

(1) \$14,600 upon receipt of funds required under Section 2.3(a)(i) hereof;

(2) \$2,000 upon receipt of funds required under Section 2.3(a)(ii) hereof;

(3) \$1,384 upon receipt of funds required under Section 2.3(a)(iii) hereof.

(g) Incentive Rental Fee. Once the Partners have received \$3,571 under Section 4.2(a) hereof in any given year, Net Partnership Receipts in excess of \$3,571, up to a maximum of \$1,129.00



in any given year, shall be paid by the Partnership to The Home Company as an Incentive Rental Fee. This amount shall be non-cumulative, and shall be paid before any payment of either Project Notes or Partnership Notes.

Section 3.8 Renewal of Section 8 Subsidy. The Partnership has been granted a rental subsidy under Section 8 of the Community Development Act. The subsidy contract shall be renewed, if possible, by the General Partners, and a decision to terminate the subsidy must be approved by Heartland unless such termination has occurred pursuant to a sale of assets under Section 1.5 hereof.

Section 3.9 Representations, Warranties and Covenants Relating to the Project and the Partnership. The General Partners, hereby jointly and severally represent, warrant and covenant to the Partnership and Heartland that:

(a) The construction and development of the Project will be completed in a timely and workmanlike manner in accordance with applicable requirements of the IHA Construction Contract and of all appropriate governmental entities and in accordance with the Plans and Specifications of the Project that have been or will be delivered to Heartland, and all bills of the Partnership incurred therefor shall be paid in full prior to any lien or claim being filed against the Partnership.

(b) The Land is properly zoned for the Project and at the time of commencement of construction of the Project will conform with all applicable zoning laws.

(c) All appropriate public utilities, including sanitary sewer, water, and electricity are currently or will be available to the Project and will be operating properly for the Project at the time of first occupancy.

(d) At Initial Mortgage Loan Closing, fee simple, marketable title to the Project will be held by the Partnership as evidenced by the Title Insurance Policy described in Section 3.3(g) hereof.

(e) There is, and in the event of a default by the Partnership in the payment of the Mortgage Note, there shall be no direct or indirect personal liability of the Partnership or of any of the Partners for the repayment of any construction loan or for the permanent mortgage loan for the Project.

(f) They are not aware of any default under any agreement, contract, lease or other commitment or any claim, demand, litigation, proceedings, or governmental investigation pending or threatened against or related to the business or assets of the Partnership or of the Project, which claim, demand, litigation, proceeding or governmental investigation could result in any

judgment, order, decree, or settlement which would materially and adversely affect the business or assets of the Partnership or of the Project.

(g) They will at all times while they remain General Partners of the Partnership, furnish funds for all escrows which might be required as a condition to Initial and Final Mortgage Loan Closing, including, without limitation, any amounts necessary for local taxes, insurance premiums and other purposes.

(h) The execution of this Agreement will not violate any provisions of law, any order of any court which is binding upon them, any provision of any indenture, agreement or other instrument to which the Partnership or it is a party or by which the Partnership or the Project will be affected, or be in conflict with, result in a breach of or constitute a default under any such indenture, agreement or other instrument or result in the creating or imposition of any lien (other than the IHA documents), charge, or encumbrance of any nature whatsoever upon the Project.

(i) They will provide to Heartland in writing all material information Heartland has heretofore requested in writing relevant to the admission of Heartland to the Partnership; such information is incorporated in this Agreement by reference; and all such information provided to Heartland in writing will be accurate in all material respects.

(j) The Construction Contract will be entered into at or prior to Initial Mortgage Loan Closing.

(k) A national banking association authorized to do business in the State of Oregon will provide assurance of performance in the form of a letter of credit in the sum of \$218,647.25, for the benefit of the Partnership and IHA. The letter of credit will insure performance and payment, according to the terms of the construction contract, and will remain in full force and effect in accordance with its terms.

(l) An Agreement to enter into a Housing Assistance Payments Contract will be executed by IHA and the Partnership at or prior to Initial Mortgage Loan Closing.

(m) Fire and extended coverage insurance in favor of the Partnership in an amount required by IHA until Final Mortgage Loan Closing and thereafter in an amount equal to the full insurable value of the Project (excluding the value of the Land), but in no event less than the unpaid balance of the Project mortgage, plus \$182,000, and workmen's compensation and public liability insurance in favor of the Partnership in the amount of \$1,000,000, or more, all such insurance being in satisfaction of IHA requirements, will be placed in full force and effect at the time of Initial Mortgage Loan Closing and will be kept in full force and effect during the term of the Partnership.

(n) They agree to hold the Partnership, Heartland and their aff. liates and agents, free and harmless from any injury, loss or damage (including, but not by way of limitation, reasonable attorney's fees, court costs and amounts paid in settlement of any claims, which settlement has been mutually agreed to by the General Partners and the party against whom such claim has been made) arising out of the claims of any person with respect to any liability arising under the Securities Act of 1933, or the Securities and Exchange Act of 1934, or any state or other jurisdiction arising out of or based upon alleged fraud, deceit, or untrue written statement of a material fact with respect or based upon information or statements furnished in writing to Heartland by them in connection with the offer or sale of limited partnership interests in the Partnership or Heartland.

(o) They will provide to Heartland a complete copy of the Initial Mortgage Loan Closing documents and a complete set of the Plans and Specifications for the Project; and shall thereafter continue to provide to Heartland all material changes to these documents and a complete copy of the Final Mortgage Loan Closing documents; and such information is incorporated in this Agreement by reference.

(p) All requirements necessary to obtain (i) housing assistance payments for the Project pursuant to Section 8 of the Community Development Act, in an amount satisfactory to IHA will be accomplished on or before Final Mortgage Loan Closing; (ii) certificates of occupancy, and all other governmental approvals to permit occupancy of all of the apartment units in the Project; and (iii) Final Mortgage Loan Closing, will be met.

(q) The Project will be managed upon the completion of construction so that no less than eighty percent (80%) of the gross rental income from the Project in every year is rental income from dwelling units in the Project used to provide living accommodations not on a transient basis.

(r) While conducting the business of the Partnership they will not knowingly act in any manner which will (i) cause the termination of the Partnership for federal income tax purposes, or (ii) cause the Partnership to be treated for federal income tax purposes as an association taxable as a corporation.

(s) They will exercise good faith in all activities relating to the conduct of the business of the Partnership, including the development, operation and maintenance of the Project, and they will take no action with respect to the business and property of the Partnership which is not reasonably related to the achievement of the purpose of the Partnership.

## ARTICLE IV

### PROFITS AND LOSSES: DISTRIBUTIONS

#### Section 4.1 Profits and Losses.

(a) Commencing with the date hereof, the profits and losses of the Partnership (as differentiated from Partnership distributions, see Sections 4.2 and 4.3), other than profits or losses of the Partnership arising from the sale or other disposition of all or substantially all the assets of the Partnership, shall be allocated as of the end of such fiscal year as follows:

- (1) 98% shall be allocated to the Limited Partner;
- (2) 2% shall be allocated to the General Partners, in the same ratio as cash is distributed pursuant to Section 6.4(h) hereof.

(b) The profits and losses of the Partnership arising from the sale or other disposition of all or substantially all of the assets of the Partnership shall be allocated in a manner which reflects previous allocations of profits and loss as well as allocations of proceeds on sale.

(c) The profits and losses of the Partnership allocated among the Partners shall be credited or charged, as the case may be, to their respective capital accounts as of the date as of which such profits and losses are to be determined. The profits and losses of the Partnership allocated among the Partners other than profits and losses of the Partnership arising from the sale or other disposition of all or substantially all of the assets of the Partnership, shall be credited or charged to their respective capital accounts prior to the allocation of profits and losses of the Partnership arising from such sale or disposition.

(d) All profits and losses of the Partnership shall be determined in accordance with the accounting methods followed by the Partnership for federal income tax purposes.

#### Section 4.2 Net Partnership Receipts - Distribution.

(a) Net Partnership Receipts shall be distributed for each fiscal year and for the portion of that fiscal year in which Final Mortgage Loan Closing occurs, and subject to any applicable HUD-FHA and IHA regulations as soon as possible after the end of each fiscal year ending after Final Mortgage Loan Closing and shall be distributed as follows:

- (1) The First \$3,571.00 thereof shall be distributed as follows: (a) 98% to the Limited Partner; and (b) 2% to the General Partners, which shall be

allocated among them as follows: 1% to The Home Company; and 33% each to Grant E. March, Bryce L. Peterson and Patrick K. March.

- (2) Next, toward the payment of any and all outstanding Project Notes;
- (3) Next, toward the payment of any and all outstanding Partnership Notes, plus accrued interest thereon; and
- (4) The balance, in any, shall be distributed 98% to the Limited Partner and 2% to the General Partners to be allocated as set forth hereinabove.

(b) Net Partnership Receipts for a particular fiscal year shall include all profits and losses of the Partnership for such fiscal year, except profits and losses for such fiscal year arising from the sale of all or substantially all of the assets of the Partnership, and shall be determined by adjusting such profits and losses as follows:

(1) Depreciation of buildings, improvements and personal property shall not be considered as a deduction.

(2) Amortization of any financing fee shall not be considered as a deduction.

(3) Amortization of the Mortgage Loan shall be considered as a deduction.

(4) If the General Partners shall so determine in writing prior to the end of each fiscal year, a reasonable reserve shall be deducted to provide for working capital needs, funds for improvements or replacements or any other contingencies of the Partnership.

(5) Amounts paid into the reserve fund for replacements pursuant to the Regulatory Agreement shall be considered as a deduction.

(6) Any amounts paid by the Partnership for capital expenditures or replacements shall be considered as a deduction, except that amounts withdrawn from any reserve fund for capital expenditures or replacements shall not be considered as a deduction.

(7) Capital contributions to the Partnership, the proceeds of any mortgage refinancing, the profits and losses of any sale, exchange, eminent domain taking, damage or destruction by fire or other casualty, whether insured or uninsured, or other disposition of all or any part of the Property shall not be included in Net Partnership Receipts.

(c) The General Partners shall estimate and distribute Net Partnership Receipts not less than annually. Net Partnership Receipts distributed in anticipation of the year-end distribution thereof shall be subject to year-end adjustment.

(d) The General Partners shall not distribute any Net Partnership Receipts at a time or in excess of the amount permitted to be distributed in accordance with the provisions of the Regulatory Agreement and the then current rules and regulations of IHA and/or HUD.

Section 4.3 Allocation of Distributions Among Partners. All distributions to the Partners shall be charged to their respective capital accounts. All distributions to the Partners pursuant to the provisions of Section 4.2 shall be made and charged to their respective capital accounts prior to the allocation of profits and losses pursuant to Section 4.1(b).

## ARTICLE V

### CHANGES IN GENERAL PARTNERS

Section 5.1 Withdrawal of General Partner. No General Partner may withdraw from the Partnership unless such withdrawal is approved:

(a) By written consent of IHA pursuant to the Regulatory Agreement (so long as a mortgage in favor of IHA encumbers the Project);

(b) By the remaining General Partners, if any, and unless there remains one or more General Partner(s) willing to remain as General Partner, or unless such withdrawing General Partner provides a Substitute General Partner to the Partnership (which is approved by IHA so long as a mortgage in favor of IHA encumbers the Project); and

(c) By the Limited Partner. Approval of the Partners may be given at a special meeting called by the General Partners upon at least thirty (30) days' written notice to all Partners and the IHA.

Section 5.2 Expulsion. General Partners, or any one of them, shall be expelled without further action for "cause" which means:

(a) The filing of a petition in bankruptcy (except that in involuntary bankruptcy proceedings the General Partners shall have sixty (60) days to have the petition withdrawn) or assignment for the benefit of creditors; or

(b) Upon final judicial determination that they (i) were grossly negligent in their failure to perform their obligations under this Partnership Agreement, or (ii) committed a fraud upon the Partners or upon the Partnership, or (iii) committed a felony in connection with the management of the Partnership or its business.

In the event of the expulsion of a General Partner for "cause", he or it shall be deemed to have surrendered to the Partnership his or its entire interest in the Partnership and shall be entitled to no compensation therefor, although such General Partner shall remain liable for his or its obligations to the Partnership set forth in Section 3.3 hereof, and that any loans then outstanding shall not be affected thereby.

Section 5.3 Replacement of a General Partner. In the event of (i) the wrongful withdrawal of a General Partner in violation of Section 5.1 or (ii) the expulsion of a General Partner under Section 5.2, a remaining General Partner(s) or the Limited Partner may call a special meeting of the Partnership for the purpose of replacing a General Partner; at least thirty (30) days' written notice of such meeting shall be given to all Partners and IHA. At such meeting, the General Partner(s) may be replaced in the same manner and subject to the same approvals required in Section 5.1 to approve a Substitute General Partner.

Section 5.4 No Payment for Replaced General Partner's Interest. A Substitute General Partner who has become a General Partner under the provisions of Section 5.3 hereinabove, immediately upon his admission as a General Partner, shall become the owner of the Partnership interest of the replaced General Partner, without payment therefor.

Section 5.5 Alternative to Special Meetings. As an alternative to voting at special meetings of the Partnership pursuant to this Article, the Limited Partner may consent to and approve by unanimous written action any matter; provided, however, that written notice is given to all Partners at least fifteen (15) days before solicitation of signatures is begun.

Section 5.6 Failure to Admit Substitute General Partner. In the event a Substitute General Partner has not been appointed and admitted within sixty (60) days after the special meeting called pursuant to Section 5.3 with the result that no General Partner is then acting, the Partnership shall be dissolved, terminated and liquidated as of such date.

Section 5.7 Transfer of Individual General Partnership By Operation of Law. Notwithstanding anything apparently to the contrary herein contained, in the event of the death or incapacity of any individual General Partner, a transfer by operation of law or otherwise of said deceased or incapacitated General Partner's interest to: (i) any of the surviving General Partners, or (ii) the executors, administrators or trustees and their

successors of said deceased or incapacitated General Partner (hereinafter collectively referred to as "General Partner Transferee") shall not constitute withdrawal or expulsion nor shall such act require the consent of any of the Limited Partners and shall be freely permitted. In the event of any transfer to a General Partner Transferee as herein provided, such transfer shall be reflected as a limited partnership interest and the Certificate of Limited Partnership shall be so amended. In addition, such transfer shall vest in such General Partner Transferee the deceased or incapacitated General Partner's interest in profits and losses of the Partnership, cash flow of the Partnership and rights on dissolution of the Partnership but shall not vest in such General Partner Transferee any management control or power to act for the Partnership nor shall such General Partner Transferee be personally liable for the incapacity of the General Partner unless admitted as a replacement General Partner pursuant to paragraph 5.3. A General Partner Transferee shall not be required to make any payment for the deceased or incapacitated General Partner's interest.

#### ARTICLE VI

##### DISSOLUTION: SUCCESSOR ENTITY AND LIQUIDATION

Section 6.1 No Dissolution. The Partnership shall not be dissolved and shall not have its affairs wound up by the admission or Withdrawal of Partners, including:

(a) the admission of substitute or additional General Partners, or

(b) the Withdrawal of a General Partner provided a General Partner still remains (or a substitute General Partner is admitted).

Upon the foregoing events, the Partnership shall continue with the rights and objectives as defined herein.

Section 6.2 Events Causing Dissolution. The Partnership shall be dissolved and its affairs wound up upon: (a) the sale of all or substantially all of its assets; (b) the Withdrawal of a General Partner if no General Partner remains unless a substitute General Partner is selected by Heartland or it shall elect to become General Partner pursuant to Article V; (c) the expiration of its term; or (d) the occurrence of any event which, under the laws of the State of Idaho and in spite of the terms of this Agreement and of the Certificate of Limited Partnership of the Partnership, shall require liquidation of the Partnership.

Section 6.3 Dissolution. Upon the dissolution and winding up of the affairs of the Partnership, the Certificate of Limited



Partnership of the Partnership shall be cancelled in accordance with the provisions of the Partnership law and the remaining General Partner or any of them, or the person or persons required by law to carry out the winding-up of its affairs, shall promptly notify all the Partners of such dissolution.

**Section 6.4 Liquidation and Winding-Up.** Upon winding up of the affairs of the Partnership, the Partnership shall be liquidated and the General Partners (or other person or persons designated by a decree of court) shall wind up the affairs of the Partnership. The General Partners or the person winding up the affairs of the Partnership shall promptly proceed to the liquidation of the Partnership, and, in settling the accounts of the Partnership, the assets and the property of the Partnership shall be distributed in the following order of priority:

(a) To the payment of all debts and liabilities of the Partnership, excluding any amounts due any of the Partners to the Partnership, in the order of priority as provided by law.

(b) To the establishment of any reasonable reserves deemed necessary by the General Partners or the person winding up the affairs of the Partnership for any contingent or deferred liabilities or obligations of the Partnership.

(c) To the repayment of any loans or advances that may have been made by Heartland to the Partnership in the order of priority as provided by law.

(d) To the repayment of Partnership Notes.

(e) To Heartland, as Limited Partner, in an amount equal to its initial capital contribution to the Partnership. In the event of refinancing, condemnation or casualty loss, followed by a sale, then the distributions to the Limited Partner pursuant to this subsection shall be accumulated so that the Limited Partner receives its initial capital contribution back only once. For example, if 40% of the Limited Partner's initial capital contribution is returned at the time of a refinancing, condemnation, casualty loss of the Project, then only 60% of the Limited Partner's initial capital contribution would be available for crediting under this subsection upon subsequent refinancing or sale of the Project.

(f) \$28,500 to Heartland.

(g) To the holders of any Project Notes in the total amount thereof.

(h) The remaining balance of proceeds shall be distributed 45% to the General Partners and 55% to Heartland, as a Limited Partner. The General Partners' interest shall be distributed as follows: 1% to The Home Company; 14-2/3% each to Grant E. March, Bryce L. Peterson and Patrick K. March.

Section 6.5 Casualty and Condemnation.

(a) Subject to the provisions of the Project Mortgage and the Regulatory Agreement, in the event that the Project is damaged, demolished or destroyed, in whole or in part, the General Partners shall determine whether the Project may be restored to economic usefulness within a reasonable time by application of the proceeds of insurance covering such damage or destruction by application of any other funds available to the Partnership. If, in the opinion of the General Partners, such repair or restoration of the Project is feasible, the General Partners shall apply such proceeds to such purpose, and distribute any balance of such proceeds as provided in Section 6.4. If, in the opinion of the General Partners, such repair or restoration is not feasible, the remaining assets of the Partnership shall be sold, and the proceeds of such sale, together with the insurance proceeds, shall be distributed in accordance with Section 6.4.

(b) Subject to the provisions of the Project Mortgage and the Regulatory Agreement, in the event that any part or all of the Project is taken by any governmental agency by its right of eminent domain, the General Partners shall determine whether continued operation of the Project is economically feasible, the proceeds paid to the Partnership as compensation for such taking shall be applied to repair or restore the Project as required, and any balance shall be distributed in accordance with Section 6.4. If, in the opinion of the General Partners the Project is not economically feasible, the General Partners shall sell any remaining portion of the Project and distribute the proceeds of such sale, together with the proceeds paid to the Partnership as compensation for such taking in accordance with Section 6.4.

(c) Any distribution of proceeds under this Section shall be subject to the rights of the holder of the Mortgage Loan and other creditors of the Partnership.

ARTICLE VII

ASSIGNMENT BY PARTNERS

Section 7.1 Assignment.

(a) The Partnership Interest of a Limited Partner may be assigned only as permitted by the provisions of this Article VII. Neither the Partnership nor any Partner shall be bound by any such assignment until a counterpart of the instrument of assignment, executed and acknowledged by the parties thereto, is delivered to the Partnership.

(b) No Partner may sell, assign, transfer or convey any portion of its Partnership Interest if such sale, assignment, transfer or conveyance shall operate to terminate the Partnership

for Federal Income Tax purposes pursuant to Section 108 of the Internal Revenue Code without the written consent of all other Partners.

(c) The assignment or sale of a Limited Partnership Interest or the admission, withdrawal or bankruptcy of a Limited Partner shall not dissolve or terminate the Partnership. No Limited Partner shall have the right to have the Partnership dissolve or to have his capital contribution returned except as provided in this Agreement.

Section 7.2 Consent.

(a) Except as otherwise provided in this Agreement, no Limited Partner shall transfer, sell, assign, give or otherwise dispose of his Partnership Interest or a part thereof, whether voluntarily or by operation of law, or at judicial sale or otherwise, to any person, unless such Limited Partner first obtains the consent of the General Partners to do so. The General Partners will not give their consent to an assignment of all or part of the Partnership Interest unless it has received an opinion of counsel satisfactory in form and substance to the General Partners to the effect that such assignment will not result in a loss to the Partnership of the applicable registration exemption under the Federal Securities Act of 1933, as amended, and applicable blue sky laws exemption or exemptions.

(b) The provisions of Section 7.2(a) shall not apply to the transfer of assignment by a Limited Partner of all or a part of his Partnership Interest to a person who is otherwise a Partner.

(c) The provisions of Section 7.2(a) shall not apply to the transfer or assignment by a Limited Partner of all or part of his Partnership Interest, whether on death or inter vivos (in trust or otherwise), to or for the benefit of any member of his Immediate Family or to a charitable, religious or educational organization.

(d) The provisions of Section 7.2(a) shall not apply to any transfer or assignment of the Partnership Interest of a deceased or incapacitated Limited Partner to his legal representative or by such a legal representative to accomplish any transfer or assignment described under Section 7.2(c).

(e) No Assignee of a Partnership Interest, whether or not admitted to the Partnership in accordance with Section 7.3, shall have the right to make any further assignment of such Partnership Interest except pursuant to the terms of this Article VII.

Section 7.3 Admission. No Assignee of all or part of the Partnership Interest of any Limited Partner shall have the right to become a substitute or additional Limited Partner unless (i) his assignor has stated such intention in the instrument of assignment, (ii) the General Partners has consented to such

Section 9.13 Review and Consent By Heartland.

(a) All change orders which are likely to result in a decrease in the value of the Project or a down-grading of the quality of the materials used in the Project, or both, shall be routed through Heartland for Heartland's approval prior to the submission of such change orders to the mortgagee. Heartland will be provided with copies of all other change orders simultaneously with submission of such change orders to IHA.

(b) Copies of all title policies and title policy endorsements shall be submitted to Heartland on a timely basis and shall be subject to Heartland's approval.

(c) Copies of all mortgage draw requests shall be submitted to Heartland on a timely basis.

ARTICLE X

DEFINED TERMS

Section 10.1 Defined Terms. The defined terms used in this Agreement shall have the meanings specified below:

"Additional or Substituted Partners" Additional or Substituted general or limited partners shall mean individuals who have transferred to them a Partnership Interest of a limited or general partner in accordance with requirements of Article V with regard to general partners and Section 2.4 (c) and Article VII with regard to limited partners, together with other applicable provisions of the Partnership Agreement.

"Affiliate" or "Affiliated Person" means, when used with reference to a specified person, (i) any person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified persons, (ii) any person which is an officer, partner or trustee of; or serves in a similar capacity with respect to, the specified person or of which the specified person is an officer, partner or trustee, or with respect to which the specified person serves in a similar capacity, (iii) any person which, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified person or of which the specified person is directly or indirectly the owner of 10% or more of any class of equity securities or in which the specified person has a substantial beneficial interest, and (iv) any relative or spouse of the specified person.

"As-Built Plans and Specifications". Construction plans and specifications of the Project which are prepared for and delivered to IHA following completion of construction and which are ac-

cepted by it for purposes of satisfying the requirements of the Regulatory Agreement.

"Auditors" means Berc and Fox, 5001 West 80th Street, Suite 566, Minneapolis, Minnesota 55437, or a firm of independent certified public accountants selected in accordance with Article VIII hereof.

"Construction Contract" means the construction contract dated the date of Initial Closing by and between The Home Company and the Partnership providing for the construction of the Project in accordance with the Plans and Specifications entitled Southdale Associates filed with and approved by the IHA.

"Entity" means any general partnership, limited partnership, corporation, joint venture or association.

"Final Mortgage Loan Closing" means that date on which the Partnership makes and delivers to IHA the amendment to the promissory note secured by the mortgage of the Project granted to IHA evidencing commencement of amortization of the permanent loan for the Project.

"General Partner" means the persons or entity designated as the general partners in Section 1.3 hereof, any person who becomes a substitute General Partner as provided herein, and any person admitted to the Partnership as a General Partner, in such person's capacity as a General Partner of the Partnership. In the event that the Partnership shall have more than one General Partner, the term "General Partner" shall mean all General Partners, collectively or individually, as the context requires.

"Gross Income" means the sum of all monies received from operation of the Project in any given Partnership year.

"HAP Contract" means the Housing Assistance Payments Contract between the Partnership and IHA providing for payments of housing assistance payments to the Project for twenty (20) years pursuant to Section 8 of the Community Development Act.

"HUD-FHA" means the United States Department of Housing and Urban Development, Federal Housing Administration.

"Immediate Family" shall mean with respect to any individual his spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law, and with respect to any Entity, any other Entity directly or indirectly controlling, controlled by, or under common control with, such Entity.

"Initial Renting" means the date on or after Final Mortgage Loan Closing on which the Project has achieved occupancy during the immediately preceding four (4) consecutive calendar months, which has produced income actually received by the Partnership.

calculated on a cash basis (except that interest on the Development Cost Escrow and any other reserve and escrow account and the Section 8 payments from HUD shall be calculated on an accrued basis provided that there has been no violation by the Partnership of the contracts pertaining to the Section 8 program) from normal operations at least equal to the cash requirements of the Project for such four month period (including full real estate taxes as abated, interest, mortgage fees, mortgage amortization and reserve requirements and insurance payments) on an accrual basis, and, on an annualized basis, sufficient to satisfy all projected expenditures, including those of a seasonal nature, which might reasonably be expected to be incurred on an unequal basis during a full annual period of operation. The satisfaction of the four consecutive calendar month project income requirements described above may be agreed to in writing by Heartland and the Managing General Partner, or, if they cannot so agree and at the option of the Managing General Partner, such satisfaction may become the subject of a written opinion of the Partnership Auditors.

"IHA" means the Idaho Housing Agency or any successor agency which shall perform a similar function.

"Initial Mortgage Loan Closing" means that date on which the Partnership makes and delivers a promissory note and grants to IHA a mortgage on the Project to secure payment of such promissory note, in accordance with the commitment to provide construction and permanent financing from IHA.

"Heartland Investor Limited Partners" Such limited partners shall be individuals who are not limited partners of this Partnership, but who, pursuant to an agreement between Heartland and themselves, to which this Partnership is not a party, own part of Heartland's limited partnership interest in this Partnership.

"Land" means that certain tract of land situated in Canyon County, Idaho, legally described in Exhibit A attached hereto.

"Limited Partner" shall mean Heartland or any person admitted herein as a Limited Partner or any substituted Limited Partner as provided herein. Any agreement or consent of a Limited Partner required or permitted herein shall be made unanimously by 100% of the Limited Partners; provided, however, that a majority of the Limited Partners by interest shall be sufficient in any such instance provided that the Partnership has received a favorable opinion of legal counsel acceptable to the consenting Limited Partners that such consent does not affect the legal status of the Limited Partners as Limited Partners rather than as a General Partner, and further does not adversely effect the tax status of the Partnership as Partnership and not as an association taxable as a corporation.

"Management Contract" means that certain management agreement between the Partnership and the Property Management Agent on

the form required by IHA as amended from time to time to recognize the substitution or commission of a different managing agent.

"Managing General Partner" means the individual(s) as may be designated in writing from time to time by the General Partners from among their number as authorized representative(s) of the Partnership with respect to specific matters, or generally, including but not limited to acting on its behalf in all dealings with IHA and other governmental agencies and execution of all documents required to be executed by the Partnership in those dealings.

"Mortgage or Mortgage Loan" means the funds to be obtained by the Partnership pursuant to that certain commitment by IHA designated for Development No. 8N192 to provide construction and permanent financing for the Project in the amount of \$1,102,900.

"Net Partnership Receipts" shall have the meaning set forth in Section 4.2(b) hereof, except that there shall not be distributed in any one year more than the maximum amount of cash generated from operation of the Project which may be distributed in accordance with the then current IHA Regulations.

"Partner" means any general partner or limited partner.

"Partnership" means the limited partnership formed in accordance with the agreement confirmed hereby, as said limited partnership may from time to time be constituted.

"Partnership Interest" means the interest of any Partner in the profits, losses and distributions of the Partnership.

"Partnership Notes" means promissory notes of the Partnership issued in accordance with Section 3.3(g) hereof which are not secured by any liens or other charges upon the Project or upon any other assets or properties of the Partnership, which shall bear interest at a rate equal to the lesser of the maximum legal rate in Idaho or 1-1/2% over the prime rate charged by the Bank of America in San Francisco. For purposes of determining the effective interest rate, the prime rate shall be determined quarterly as of the first day of each calendar quarter and shall be applied in determining the interest rate to be effective during that calendar quarter, and which shall be payable as set forth in Section 3.3 and as permitted by IHA-HUD-FHA Rules and Regulations.

"Person" means any individual or entity.

"Project" means the building and improvements constructed or to be constructed on the Land pursuant to the Construction Contract.

"Project Notes" means those certain non-interest bearing promissory notes of the General Partners issued in accordance with Section 3.3(e) and (g) hereof representing advance of funds as may be necessary to pay all costs of operation of the Project.

"Property Management Agent" means Intermountain Management, Inc. or such other person as may be appointed and approved in accordance with the terms hereof.

"Regulatory Agreement" means that agreement between the Partnership and the IHA, which shall be binding upon the Partnership, its successors and assigns, so long as the Mortgage on the property of the Partnership, which is held by IHA, is outstanding. Each of the Partners, by execution of this Agreement, agrees to be bound by the terms and conditions of the Regulatory Agreement, which includes within its terms, provisions limiting the amount of distributions (as defined in the Regulatory Agreement) to the Partners for each fiscal year, in amounts determined by IHA in accordance with Title 67, Chapter 62, Idaho Code, and IHA Rules and Regulations.

"Retirement" means the voluntary withdrawal or separation of a Partner from the Partnership.

"Total Project Costs" means (a) all costs paid or incurred to acquire and complete construction and development of the Project in accordance with the Plans and Specifications that are filed with IHA prior to commencement of construction, to organize the Partnership, and to obtain Final Mortgage Loan Closing (including without limitation, all Land costs, site preparation costs, architect's fees, engineering fees, construction fees, builder's overhead, builder's general requirements, contractors and/or sponsor's fees, additional contractor's profit, initial leasing fees, survey fees, cost of labor, material and services, commitment fees, brokerage fees, standby fees, mortgage discount fees, interest service charges, purchase and marketing fees, inspection fees, examination fees, attorney's fees, only to the extent paid from mortgage proceeds, mortgage registration taxes, special assessments); (b) all interest on construction mortgage or other loans paid or accrued prior to the cut-off date established by the IHA, and (c) that portion of real estate taxes due and insurance premiums payable prior to the cut-off date.

"Withdrawal" means an event, including the expulsion, Retirement, bankruptcy, death, insanity, incapacity or disability of a Partner which causes or results in a Partner ceasing to be a Partner.



11/12/80:A:22

IN WITNESS WHEREOF, the Partners have signed this Agreement  
as of the date first above set forth.

GENERAL PARTNERS:

Grant E. March  
GRANT E. MARCH

Bryce L. Peterson  
BRYCE L. PETERSON

Patrick K. March  
PATRICK K. MARCH

THE HOME COMPANY, An Idaho  
Corporation

By D. L. Peterson  
Its V. L. Peterson

LIMITED PARTNER:

HEARTLAND CALDWELL PARTNERS, a  
Minnesota Limited Partnership

By: HEARTLAND REALTY INVESTORS, INC.,  
General Partner

By: H. W. Walter  
H. W. Walter, President

WITHDRAWING INITIAL LIMITED PARTNER

Patrick K. March  
Patrick K. March

STATE OF Idaho )  
COUNTY OF Blaine ) SS

The foregoing instrument was acknowledged before me this 26th day of November, 1980, by GRANT E. MARCH, as General Partner of SOUTHDALE ASSOCIATES, an Idaho limited partnership.

[Signature]  
Notary Public

My Commission Expires 11/1/81

STATE OF Idaho )  
COUNTY OF Ada ) SS

The foregoing instrument was acknowledged before me this 17th day of November, 1980, by BRYCE L. PETERSON as General Partner of SOUTHDALE ASSOCIATES, an Idaho limited partnership.

[Signature]  
Notary Public

STATE OF Idaho )  
COUNTY OF Ada ) SS

The foregoing instrument was acknowledged before me this 19th day of November, 1980, by PATRICK K. MARCH as General Partner of SOUTHDALE ASSOCIATES, an Idaho limited partnership.

[Signature]  
Notary Public

STATE OF Idaho )  
COUNTY OF Ada ) SS

The foregoing instrument was acknowledged before me this 19th day of November, 1980, by Bryce L. Peterson, the President of THE HOME COMPANY, an Idaho corporation, as General Partner of SOUTHDALE ASSOCIATES, an Idaho limited partnership.

[Signature]  
Notary Public

STATE OF Idaho )  
COUNTY OF Ada ) SS

The foregoing instrument was acknowledged before me this 19th day of November, 1980, by H. W. WALTER, the President of HEARTLAND REALTY INVESTORS, INC., a Minnesota corporation, as General Partner of Heartland Caldwell Partners, the Limited Partner of SOUTHDALE ASSOCIATES, an Idaho limited partnership, on behalf of said corporation and partnerships.

[Signature]  
Notary Public

STATE OF Idaho )  
COUNTY OF Ada ) SS

The foregoing instrument was acknowledged before me this 19th day of November, 1980, by PATRICK K. MARCH, the Withdrawing Initial Limited Partner of SOUTHDALE ASSOCIATES, an Idaho limited partnership.

[Signature]  
Notary Public

THIS DOCUMENT WAS DRAFTED BY:  
HALPERN & DRUCK  
1709 Cargill Building  
Minneapolis, MN 55402

EXHIBIT A

A part of Block 10, vacated Washington Ave. and vacated Cherry St. in the Mountain View Subdivision No. 2, according to the official plat on file in Book 4 of Plats at page 20, in the office of the Recorder of Canyon County, Idaho; more particularly described as follows:

COMMENCING at the NE Cor. of said Block 10, monumented with a rebar, 24 ins. long,  $\frac{1}{2}$  ins. diam., with a plastic cap mkd. LS 832;

thence N. 89° 55' 00" W., 138.00 ft. along the North boundary of said Block 10 to the POINT OF BEGINNING;

thence continuing N. 89° 55' 00" W., 493.90 ft. along the North boundary of said Block 10;

thence S. 0° 24' 34" W., 325.32 ft. (of record as 325.33 ft. on the official plat) along the center line of vacated Washington Ave.;

thence S. 89° 54' 40" E., 401.89 ft. along the center line of vacated Cherry St.;

thence N. 0° 24' 38" E., 150.68 ft. parallel with the East boundary of said Block 10;

thence S. 89° 54' 50" E., 230.00 ft.;

thence N. 0° 24' 38" E., 40.00 ft. along the East boundary of said Block 10;

thence N. 89° 54' 50" W., 138.00 ft.;

thence N. 0° 24' 38" E., 134.69 ft. (of record as 135.00 ft.) parallel with the East boundary of said Block 10 to the POINT OF BEGINNING.

EXCEPT the East 10 feet thereof.

STATE OF IDAHO, COUNTY OF ADA, ss.

Filed for record at the request of

323

John A. Young

Deputy

Recorder

1980

1980

1980

1980

1980

1980

1980

1980

1980

1980

1980

1980

1980

1980

908167

FILED

DEC 9 2 15 PM '80

BILL A STAKER  
JAN 1 1981

*Shera*

RECEIVED

AT THE REQUEST OF

*Monroe, Cosha*

*Humphrey*

*B + A*

FOR 82.00

GRANTOR

*March, Grant E*  
*et al*

GRANTEE

*March, Grant E*  
*et al*

RETURN TO

*aguc*  
*Received 1110 Bk 7*  
*Ed. B'dg - Boise*  
*83702*