

**AMENDED AND RESTATED**  
**AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP**

**OF**

**ADMIRALTY ASSOCIATES, AN IDAHO LIMITED PARTNERSHIP**

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SECRETARY OF  
STATE

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**AMENDED AND RESTATED**  
**AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP**  
**OF**  
**ADMIRALTY ASSOCIATES, AN IDAHO LIMITED PARTNERSHIP**

**THIS AGREEMENT**, made and entered into as of November 1st, 1986 by and among Marty D. Frantz and James B. Frantz (as general partners), Duane Wheeler (the "Interim Limited Partner") and Rutherford Estates Limited Partnership (the "Investor Limited Partner") both as ("Limited Partners"),

**WITNESSETH:**

**WHEREAS**, the Partnership is presently in existence as a limited partnership under the Uniform Limited Partnership Act of the State of Idaho, having executed its Certificate of Limited Partnership (the "Initial Partnership Agreement") on the 16th day of May, 1986 and filed said Agreement in the Office of the Secretary of State of Idaho on the 22nd day of May, 1986; and

**WHEREAS**, the parties hereto wish to enter into this Agreement for the purpose of (i) admitting the Investor Limited Partner into the Partnership, (ii) amending, restating and superseding in its entirety the Amended Partnership Agreement as hereinafter set forth;

**NOW, THEREFORE**, it is hereby agreed as follows:

**ARTICLE I**

**GENERAL**

**1.1 Definitions.** Reference is made to Article XIX of this Agreement for the definition of certain terms used throughout this Agreement.

**1.2 Partnership Continued.** The parties to this Agreement hereby continue the partnership as a Limited Partnership pursuant to the provisions of the Uniform Limited Partnership Act of the State of Idaho.

**1.3 Name.** The name of the Partnership shall continue to be Admiralty Associates, An Idaho Limited Partnership.

**1.4 Effective Date.** The effective date of this agreement is November

1st, 1986. The Investor Limited Partner is admitted into the Partnership as a limited partner effective for all purposes as of the Admission Date.

**1.5 The Partners.** The General Partners (and any successor to the interest of the General Partners pursuant to the terms of this Agreement) shall be the general partners of the Partnership and the Limited Partners (and any additional or substitute limited partners) shall be the limited partners of the Partnership, as those terms are used in the Uniform Limited Partnership Act of the State of Idaho.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF THE GENERAL PARTNERS**

**2.1 Representations and Warranties.** The following representations and warranties are hereby made to the Limited Partners by the General Partners:

(A) there are no actions, suits or proceedings pending or, to the knowledge of the General Partners, threatened against or affecting the Partnership by or before any federal, state, municipal or other government instrumentality, which might materially adversely affect the business of the Partnership;

(B) the Partnership has and will continue to have the capacity to build, own and operate the Project;

(C) all licenses, permits (including building permits), permissions and approvals necessary for the development, construction and operation of the Project have been or will be obtained from the appropriate Governmental Agency; and

(D) the Partnership is not, to the best of the knowledge of the General Partners, in default with respect to any order, writ, injunction or decree of any court or Governmental Agency.

## **ARTICLE III**

### **TERM**

**3.1 Term.** The Partnership shall continue for a period of sixty (60) years from the date its Initial Partnership Agreement was filed in the Office of the Secretary of State of Idaho.

## ARTICLE IV

### PURPOSES AND POWERS

**4.1 Purpose.** The sole purpose of the Partnership shall be to construct, own, hold, manage, operate, lease, mortgage, sell and otherwise deal with the Project, or any part thereof, and to conduct such other activities as may be necessary or appropriate to promote the business of the Partnership, it being agreed that each of the foregoing is an ordinary part of the Partnership's business.

**4.2 Powers.** The Partnership shall have all powers reasonably necessary to achieve its purposes hereunder, including, without limitation, the power to borrow money for construction of the Project, and to obtain the Permanent Loan for the Project, granting such security as the General Partners may deem appropriate, and to enter into an Interest Credit and Rental Assistance Agreement with FmHA and any other agreements with Governmental Agencies, Affiliates of the General Partners or other third persons as may be deemed appropriate by the General Partners.

**4.3 Investment Objectives.** The investment objectives of the Partnership are to (i) preserve and protect the investment of the Partners and (ii) maximize their economic return through the ownership and operation of the Project, which economic return is expected to consist primarily of long-term capital appreciation.

## ARTICLE V

### PRINCIPAL PLACE OF BUSINESS

**5.1 Location.** The principal place of business of the Partnership shall be at Spruce Grove II Apartments c/o Marty D. Frantz, N. 12425 Gem Shore Road, Hayden Lake, Idaho 83835 or at such other location or locations as the General Partners may determine. The General Partners may establish such additional places of business of the Partnership as may be deemed necessary or desirable by the General Partners for the operation of the Partnership's business.

**5.2 Notification.** The General Partners shall deliver written notice to the Limited Partners of any change in the address of the principal place of business of the Partnership and of the establishment, relocation or discontinuance of any additional place of business of the Partnership. The General Partners shall make any and all necessary filings with Governmental Agencies in connection with the establishment, relocation or discontinuance of any place of business of the Partnership, including, without limitation, the Partnership's principal place of business.

## ARTICLE VI

### CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

**6.1 Capital of General Partners.** \$58,000 has heretofore been contributed to the Partnership by the General Partners.

**6.2 Capital of Limited Partners.** \$13,500 has heretofore been contributed to the Partnership by the Interim Limited Partner. \$197,258 is being contributed herewith by the Investor Limited Partner.

**6.3 Installment Payments.** If any Limited Partner contributes to the capital of the Partnership in installments, such Partner shall execute an Investor Promissory Note containing such terms and conditions and bearing interest at such rate as the General Partners may determine from time to time. Each such Investor Promissory Note shall be a personal, full-recourse and non-contingent obligation of the executing Investor Limited Partner. Each Investor Limited Partner's obligations under his Investor Promissory Note shall be secured by his Partnership Interest as provided by the Limited Partner Security Agreement executed by such Investor Limited Partner.

**6.4 Capital Accounts.** Each Partner shall have a Capital Account which shall be:

(A) increased by (i) the amount of money contributed by him to the Partnership, (ii) the fair market value of property contributed by him to the Partnership (net of liabilities securing such contributed property that the Partnership is considered to assume or take subject to under Code Section 752), and (iii) allocations to him of Partnership income and gain (or items thereof) made pursuant to Article X hereof; and

(B) decreased by (i) the amount of money distributed to him by the Partnership, (ii) the fair market value of property distributed to him by the Partnership (net of liabilities securing such distributed property that such Partner is considered to assume or take subject to under Code Section 752), (iii) allocations to him of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (iv) allocations of Partnership loss and deduction (or item thereof) made pursuant to Article X hereof; and

(C) maintained strictly in accordance with the capital accounting rules of paragraph (b)(2)(iv) of Reg. 1.704-1.

**6.5 Determination of Capital Accounts.** The Capital Account of a Partner shall be determined after giving effect to all allocations of net income, net gains and net losses of the Partnership for the current year and all distributions for such year in respect of transactions effected prior to the



date as of which such determination is to be made. A Partner shall not be entitled to withdraw any part of his Capital Account or to receive any distribution from the Partnership, except as specifically provided in this Agreement, and no Partner shall be entitled or required to make any additional Capital Contribution to the Partnership other than as provided in Sections 6.10 and 7.1 hereof. Any Partner, including any additional or substitute Partner, who shall receive a Partnership Interest or whose Partnership Interest shall be increased by means of a transfer to him of all or part of the Interest of another Partner, shall have a Capital Account which reflects such transfer. Loans by any Partner to the Partnership shall not be considered Capital Contributions and shall not increase the Capital Account of the lending Partner.

**6.6 No Additional Capital Contributions.** The Limited Partners shall not be entitled or required to contribute any capital to the Partnership in addition to the Capital Contributions required herein.

**6.7 Acquired Interest Same Class.** Any Partner who shall acquire the Interest of any other Partner shall, with respect to the Interest so acquired, be deemed to be a Partner of the same class as his transferor.

**6.8 No Obligation to Return Capital.** Neither the Partnership nor the General Partners shall be liable for the return of any portion of the Capital Contributions of any Limited Partner.

**6.9 No Interest Paid.** No interest shall be paid on any Capital Contribution.

**6.10 Requirement to Restore Deficit Balance in Capital Account.** Any Partner having a deficit balance in his Capital Account following the liquidation of his Interest in the Partnership, as determined after taking into account all Capital Account adjustments for the Partnership's taxable year during which such liquidation occurs (other than those required by this Section 6.10) shall be required to restore the amount of such deficit balance to the Partnership by the end of such taxable year (or, if later, within 90 days after the date of such liquidation), which amount shall, upon the liquidation of the Partnership, be paid to creditors of the Partnership or distributed to other Partners in accordance with their positive Capital Account balances pursuant to Article 11 hereof.

## **ARTICLE VII**

### **LIABILITIES OF THE PARTNERS**

**7.1 Liability of Limited Partners.** The liability of the Limited Partners for any debt or other obligation of the Partnership shall be limited to

the total amount of the Limited Partners' Capital Contributions. The Limited Partners shall have no further liability for the debts or other obligations of the Partnership, nor shall they be required to contribute any additional capital or loan any monies to the Partnership except as may be required by Section 6.10 hereof.

**7.2 Liability of the General Partners.** The General Partners and any successor to any interest of the General Partners, shall be liable for the debts and other obligations of the Partnership to the extent such liabilities are not paid or discharged by the Partnership in the ordinary course of the Partnership's business or are not limited to recourse against specific assets of the Partnership. The General Partners shall not be personally liable with respect to the Loan Agreement, Mortgage or Mortgage Note executed pursuant to the Loan Agreement by the Partnership.

## **ARTICLE VIII**

### **MANAGEMENT OF THE PARTNERSHIP**

**8.1 Authority and Powers of the General Partners.** Except as specifically limited herein, the General Partners shall have full, exclusive and complete discretion in the management and control of the Partnership. The General Partners shall manage and control the affairs of the Partnership and conduct the operations contemplated under this Agreement in a careful and prudent manner and in accordance with good industry practice. Accordingly, the General Partners shall have full power and authority to execute all documents and take all other actions on behalf of the Partnership, thereby binding the Partnership.

Subject to any limitations expressly set forth in this Agreement, the General Partners shall perform or cause to be performed, at the Partnership's expense and in its name, the development of the Project, the negotiation and coordination of contracts and subcontracts for construction of the Project and the coordination of all management and operational functions relating to the Project after completion of the Project. Without limiting the generality of the foregoing, the Partnership expressly authorizes the General Partners to do the following things on behalf of the Partnership:

(A) operate any business appropriate for the owner of a project similar to the Project;

(B) perform any and all acts appropriate to the development, construction and operation of the Project, including making applications for re-zoning or making objections to re-zoning of other property, and commencing, defending and/or settling litigation regarding the Partnership, the Project, or any aspect thereof;

(C) procure and maintain with responsible companies such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partners, but in no event shall the amount of, or risks covered by, such insurance be less than those required by the Loan Agreement;

(D) take and hold all Partnership property, real, personal and mixed, in the Partnership's name, or in the name of a nominee of the Partnership, solely for the purpose of (i) placing a mortgage, including the Mortgage, on the Project or (ii) closing a loan, including the Permanent Loan;

(E) enter into, on behalf of the Partnership or its nominee, any agreement with any person, firm or corporation, including the General Partners or any Affiliate of the General Partners, requiring such person to perform services for the Partnership or to assist the General Partners in the management of the Partnership or its business, provided that, in the case of agreements entered into with Affiliates of the General Partners,

(i) the compensation to be paid the Affiliate shall be reasonable,

(ii) the services to be performed shall be appropriate for the management of the Partnership or its business,

(iii) the agreement shall be no less favorable to the Partnership than it would be if negotiated on an arm's length basis with an independent third party, and

(iv) the existence and terms of any such agreement in effect as of the Offering Date shall be fully disclosed to the Limited Partners in the Offering Memorandum;

(F) lend monies to or borrow monies from the Partnership, or permit any Affiliate of the General Partners to loan or borrow such monies, but only on terms which are no less favorable to the Partnership than the Partnership could have obtained in an arm's length transaction with an independent third party;

(G) open and maintain one or more Partnership bank accounts in which all monies received by the Partnership shall be deposited. Withdrawals from the Partnership's bank accounts shall be upon the signature(s) of persons appointed by the General Partners;

(H) delegate any or all of the duties of the General Partners hereunder to employees of the Partnership (including Affiliates of the General Partners) and other third parties, being specifically empow-

ered to enter into agreements appointing a placement agent, a construction manager, a partnership manager, a managing agent and an investor service agent;

(I) effect borrowings in the name of the Partnership and assign the receipt of funds due the Partnership to third parties;

(J) represent the Partnership before any Governmental Agency with full powers to perform such acts and execute such documents as the General Partners may deem appropriate for the business of the Partnership;

(K) obtain reimbursement from Partnership assets for all out-of-pocket costs and expenses reasonably incurred by the General Partners on behalf of the Partnership;

(L) lease, sell, exchange, refinance or grant an option for the sale of all or any portion of the real or personal property of the Partnership, including the Project, at such rental, price or amount, for cash, securities or other property, and upon such terms as the General Partners may deem appropriate;

(M) execute and deliver on behalf of and in the name of the Partnership, or in the name of a nominee of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale, financing statements, security agreements, easements and any and all other instruments appropriate to the conduct of the Partnership's business and the financing thereof;

(N) admit additional or substitute Limited Partners;

(O) coordinate accounting and clerical functions of the Partnership and employ such accountants, lawyers, managers, agents and other management or service personnel as may, in the judgment of the General Partners, be required to carry on the business of the Partnership, and

(P) devote only such time to the business of the Partnership as the General Partners may deem appropriate.

**8.2 Limitations on Powers of the General Partners.** Notwithstanding the generality of the foregoing, the General Partners shall not be empowered to do any of the following:

(A) any act in contravention of this Agreement;

(B) any act (other than the sale or other disposition of the Project as provided herein) which would make it impossible to carry on the ordinary business of the Partnership;

(C) confess a judgment against the Partnership;

(D) possess Partnership property or assign any rights in specific Partnership property for other than a Partnership purpose;

(E) admit a person or entity into the Partnership as a general partner, other than persons having substantial net worth, which admission shall be subject to the consent of a majority in interest of the Limited Partners, who shall not unreasonably withhold such consent;

(F) continue the business of the Partnership with Partnership property on the death, incompetency, insolvency, bankruptcy or retirement of a last remaining general partner, except as herein specifically permitted;

(G) change or reorganize the Partnership into any other legal form;

(H) require the Limited Partners to make any contribution to the capital of the Partnership not provided for herein, and

(I) place any liens or restrictions or other title exceptions on the Project, except permitted exceptions and except for easements that are granted and restrictions that are imposed in connection with the development of the Project.

**8.3 No Management by Limited Partners.** The Limited Partners shall take no part in the conduct or control of the Partnership's business and shall have no right or authority to act for or to bind the Partnership. The exercise of any of the rights and powers of the Limited Partners pursuant to the terms of this Agreement shall not be deemed taking part in the day-to-day affairs of the Partnership or the exercise of control over the affairs of the Partnership.

**8.4 Other Permissible Activities.** Any Partner or any Affiliate of any Partner may engage in or possess an interest in other business ventures of any nature or description independently or with others, including, without limitation, the real estate business in all its phases, which may include the ownership, operation, management, syndication and development of real property, and neither the Partnership nor any Partner shall have any rights in or to such independent ventures or the income or profits derived therefrom solely by reason of this Agreement. It is specifically agreed that such other independent ventures may compete directly or indirectly with the Partnership and that such competition shall not be a breach of any duty owed to the Partnership or its Partners by the Partner or Affiliate engaged in such independent business venture.

## **ARTICLE IX**

### **INDEMNIFICATION OF THE GENERAL PARTNERS**

**9.1 Indemnification of the General Partners.** The General Partners shall not be liable, responsible or accountable to the Partnership or to any Partner, in damages or otherwise, for any act or omission performed or omitted on behalf of the Partnership in good faith so long as such act or omission is not attributable to negligence or misconduct. The Partnership shall indemnify and hold harmless the General Partners for any loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any such act or omission performed or omitted in good faith but not for any act or omission attributable to negligence or misconduct.

**9.2 Indemnification for Violations Arising Under Federal or State Securities Laws.** Notwithstanding the above, the General Partners shall not be indemnified for liabilities arising under federal and state securities laws unless (i) there has been a successful adjudication on the merits of each count involving securities law violations or (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction.

**9.3 Indemnity Premiums Not Reimbursable.** The Partnership shall not be required to pay any portion of the cost of any insurance which insures the General Partners against any liability as to which the General Partners may be prohibited from being indemnified pursuant to this Article IX.

## **ARTICLE X**

### **ALLOCATIONS**

#### **10.1 Allocation of Tax Items Resulting From Operations.**

(A) Subject to the provisions of paragraph 10.1(B) below, all items of Partnership income, gain, loss, deduction and credit ("Tax Items") resulting from Partnership operations shall be allocated 85% to the Limited Partners and 15% to the General Partners in accordance with their respective Interests in the Profits and Losses of the Partnership.

(B) If the Capital Accounts of the Limited Partners do not bear the same relation to one another as their Original Capital Accounts bore to one another, then Tax Items allocable to the Limited Partners shall be allocated first until their Capital Accounts bear the same relation to one another as their Original Capital Accounts bore to one another and thereafter shall be allocated in accordance with their respective Interests in the Profits and Losses of the Partnership.

## **10.2 Allocation of Tax Items Resulting From a Major Capital Event.**

(A) All Items of Partnership Income or gain, including any income or gain attributable to the excess of the aggregate principal balance of the Partnership's non-recourse indebtedness secured by Partnership property over the Partnership's adjusted basis in such property ("Taxable Income") resulting from any casualty loss, condemnation award, transfer of easements, rights-of-way or similar interests, sale, foreclosure or involuntary conversion of all or a substantial portion of the Project, whether or not such event results in a termination or dissolution of the Partnership ("Major Capital Event") shall be allocated in the following manner:

(i) first, to all Partners having deficits in their Capital Accounts until all such Partners' Capital Accounts equal zero. If the Taxable Income to be so allocated is less than the total of such deficits, then such Taxable Income shall be allocated among such Partners pro-rata based upon the ratio which each such Partner's deficit bears to the total of all such deficits.

(ii) second, to the Limited Partners in accordance with their Interests in the Profits and Losses of the Partnership until the Capital Accounts of the Limited Partners bear the same relation to the Capital Account> of the General Partners as the Original Capital Accounts of the Limited Partners' bore to the Original Capital Account> of the General Partners.

(iii) third, to all the Partners until the balances in their respective Capital Accounts equal their respective Original Capital Accounts less any cash distributions made to them (their "Unrecovered Capital"). If the Taxable Income to be so allocated is insufficient to do so, then such Taxable Income shall be allocated among the Partners so that their Capital Accounts bear the same relation to one another as their Original Capital Accounts bore to one another.

(iv) fourth, all remaining Taxable Income shall be allocated 45% to the Limited Partners and 55% to the General Partners in accordance with their respective Interests in the Capital of the Partnership.

(B) All Items of Partnership loss, deduction and credit resulting from a Major Capital Event shall be allocated to the Partners in proportion to their respective Original Capital Accounts.

**10.3 Cost Recovery and Depreciation Recapture.** Notwithstanding the provisions of Section 10.2 above, if Taxable Income to be allocated pursuant to such Section includes gain to be treated by the Partnership as ordinary income for federal income tax purposes because it is attributable to the recapture of depreciation or cost recovery deductions, such ordinary income

shall be allocated to the Partners in the same proportion as the deductions for such depreciation or cost recovery were allocated.

**10.4 Minimum Allocation of Tax Items.** In no event shall the General Partners be allocated less than 1% of any Tax Item.

**10.5 Allocations to Partners with Varying Interests.** If, during any taxable year there is a change in any Partner's Interest in the Profits and Losses of the Partnership, each Partner's distributive share of Partnership Tax Items shall be determined by (i) allocating such Tax Items to the appropriate semi-monthly period and (ii) allocating the Tax Items attributable to each such period to the Partners in accordance with their respective Interests in the Profits and Losses of the Partnership as of the end of each such period. Notwithstanding the foregoing, no Partner shall be entitled to any allocation of Tax Items for any year unless he is a Partner as of the close of such year.

**10.6 Allocation of Losses Attributable to Non-Recourse Obligations.** In no event shall any loss attributable to any non-recourse obligation of the Partnership be allocated in a manner inconsistent with the allocation of all other Tax Items attributable to such non-recourse obligation.

## **ARTICLE XI**

### **DISTRIBUTIONS**

**11.1 Distribution of Cash Flow Resulting From Operations.** Cash Flow from Partnership operations shall be distributed 85% to the Limited Partners and 15% to the General Partners in accordance with their respective Interests in the Profits and Losses of the Partnership. Such distributions shall be made not less frequently than annually within 120 days after the close of the Partnership's fiscal year.

**11.2 Definition of Cash Flow.** For purposes of this Article, Cash Flow shall be defined as gross receipts from operations, less:

(A) operating expenses;

(B) principal payments on loans, including the Permanent Loan but not including loans or advances from the General Partners or any Affiliate of the General Partners for working capital purposes or to enable the Partnership to meet its operating expenses;

(C) principal payments on installment sales, conditional sales contracts and other secured obligations;

(D) any amounts required to be set aside by any Governmental Agency as a reserve for working capital, replacements, capital im-



provements or other purposes, provided that any amounts released from such reserve during any year shall be added to the Partnership's gross receipts from operations for such year for purposes of this Section 11.2; and

(E) at the discretion of the General Partners, a reasonable reserve for other anticipated expenses or contingencies, provided that any amounts released from such reserve during any year shall be added to the Partnership's gross receipts from operations for such year for purposes of this Section 11.2.

**11.3 Items Not Included in Cash Flow.** The following items of income and deduction shall not be included in determining the Cash Flow of the Partnership for purposes of Section 11.2 hereof:

- (A) depreciation and amortization of Partnership assets;
- (B) Capital Contributions of the Partners;
- (C) the proceeds of any loan to the Partnership, and
- (D) the proceeds of any Major Capital Event.

**11.4 Distribution of Proceeds Resulting From a Refinancing.** The proceeds resulting from the refinancing or recasting of the Permanent Loan or from any borrowing secured by the Project (a "Refinancing") shall be distributed as follows:

(A) first, to the payment of all debts and liabilities of the Partnership, including expenses arising from the Refinancing and the repayment of loans or advances from the General Partners, Affiliates of the General Partners and others pursuant to any financial guaranty given to the Partnership by such party;

(B) second, to the establishment of a reserve to meet any contingencies arising from the occurrence of the Refinancing;

(C) third, to all the Partners until all the Partners have received an amount equal to their respective Unrecovered Capital. If the proceeds to be so distributed are insufficient to do so, then such proceeds shall be distributed among the Partners in proportion to their respective Unrecovered Capital, and

(D) fourth, the remainder shall be distributed 45% to the Limited Partners and 55% to the General Partners in accordance with their respective Interests in the Capital of the Partnership.

**11.5 Distribution of Proceeds Resulting From a Major Capital Event.** The proceeds arising from the occurrence of a Major Capital Event shall be distributed as follows:

(A) first, to the payment of all debts and liabilities of the Partnership, including expenses arising from the Major Capital Event and the repayment of loans or advances from the General Partners, Affiliates of the General Partners and others pursuant to any financial guaranty given to the Partnership by such party;

(B) second, to the establishment of a reserve to meet any contingencies arising from the occurrence of the Major Capital Event;

(C) third, to all the Partners in amounts equal to the positive balances, if any, in their respective Capital Accounts or, if the proceeds to be so distributed are less than the total of such positive balances, to all the Partners having positive balances in their Capital Accounts pro-rata based upon the ratio of the amount of each such Partner's positive balance to all such positive balances; and

(D) fourth, the remainder shall be distributed 45% to the Limited Partners and 55% to the General Partners in accordance with their respective Interests in the Capital of the Partnership.

**11.6 Distributions In Kind.** If any assets of the Partnership are distributed in kind, such assets shall be distributed to the Partners as tenants-in-common, with each such Partner receiving a proportionate interest of the Partnership in such asset which bears the same relationship to all interests in such asset as the amount of cash that would have been distributed to such Partner if cash had been distributed bears to the aggregate amount of all cash distributions that would have been made to the Partners receiving such asset.

**11.7 No Right to Partnership Property.** No Partner shall be entitled to demand or receive property other than cash in return for his Capital Contribution and, to the maximum extent permissible under applicable law, each Partner hereby waives all right to partition of the Project.

**11.8 Priority.** The allocation of Taxable Income from a Major Capital Event or Liquidation shall be made prior to the distribution of proceeds from such Major Capital Event or Liquidation.

## **ARTICLE XII**

### **TRANSFER OF A LIMITED PARTNER'S INTEREST**

**12.1 Transfer of a Limited Partner's Interest.** No Limited Partner's Interest shall be assigned, sold, transferred, pledged, hypothecated or otherwise disposed of or encumbered, in whole or in part, whether by operation of law or otherwise, except as expressly provided in this Article.

**12.2 Application In Event of Unforeseeable Circumstances.** Each Limited Partner has represented that he has subscribed to his Partnership Interest with the intent of holding such Interest for his own account for investment purposes only and not with a view toward the resale or distribution thereof. Notwithstanding the foregoing, in the event of the occurrence of circumstances unforeseen at the time of such subscription, a Limited Partner may apply to the General Partners for consent to the transfer of his Interest, provided that the following conditions are met:

(A) the transferring Limited Partner shall propose, in writing, to assign all or part of his Interest and present a proposed transferee who, in the sole discretion of the General Partners, is able to meet the Investor Suitability Standards set forth in the Memorandum;

(B) the transferring Limited Partner shall, at his sole expense, furnish to the General Partners an opinion of counsel that the proposed transfer will not result in a termination of the Partnership, its taxable year or its status as a partnership for federal income tax purposes and that the proposed transfer is in conformity with all applicable state and federal securities laws, which opinion must be concurred in by counsel to the Partnership;

(C) the proposed transferee shall deliver to the General Partners a statement that he is acquiring such Partnership Interest for his own account, for investment and not with a view toward the distribution or resale thereof, together with copies of the instrument of transfer or assignment and any related documents, which must be satisfactory in form and substance to the General Partners;

(D) the proposed transferee shall execute and deliver to the General Partners a power of attorney and a written agreement to be bound by the terms and conditions hereof, and any other documents required, all in such form and substance as may be required by the General Partners;

(E) counsel to the Partnership shall issue its written opinion that the proposed transfer will comply with all applicable rules and regulations of Governmental Agencies; and

(F) the proposed transferor shall pay all necessary and reasonable filing fees, counsel fees and expenses incurred by the Partnership, as determined by the General Partners, by reason of the proposed transfer.

**12.3 Effective Date of Transfer.** Notwithstanding the foregoing, transfers of Partnership Interests pursuant to Section 12.2 above shall be made and shall become effective **ONLY** on the first day of January and the first day of July of each year during the term of this Agreement. All such

transfers which are accepted by the General Partners on or before June 30th of any calendar year shall be effective for all purposes as of the first day of January of the same year and all such transfers which are accepted by the General Partners after June 30th of any calendar year but before December 31st of such year shall be effective for all purposes as of the first day of July of the same year.

**12.4 Pledge of Partnership Interest.** Any Limited Partner wishing to pledge, hypothecate or otherwise encumber his Partnership Interest shall be required to comply with such provisions of Section 12.2 hereof as, in the opinion of the General Partners, are appropriate.

**12.5 Right of the General Partners to Refuse.** Notwithstanding anything to the contrary contained in this Article, the General Partners shall have the absolute right, for any cause or for no cause whatsoever, to refuse to allow the transfer, assignment, sale, pledge, hypothecation or other disposition or encumbrance of all or any part of any Partnership Interest. In no case shall any transfer be effective unless and until all the requirements of this Article are fulfilled in their entirety.

**12.6 Death of a Limited Partner.** The death or dissolution of a Limited Partner shall neither dissolve nor terminate the Partnership. Notwithstanding any other provisions of this Article, upon the death of a Limited Partner, his heirs, estate or legal representative shall be substituted as a Limited Partner in his stead upon the proper execution by such person or persons of the documents prescribed by paragraph 12.2(D) hereof. All costs incurred by the Partnership in connection with such substitution shall be paid by the substituted Limited Partner.

**12.7 Assignment to Minor or Incompetent.** In no event may all or any part of a Limited Partnership Interest be assigned or transferred, except by operation of law, to any infant or incompetent person, and any such attempted or purported assignment shall be null and void and shall not bind the Partnership.

**12.8 Survival of Obligations.** Notwithstanding the transfer of any Partnership Interest hereunder, the transferring Limited Partner, or his heirs, estate or legal representative, shall remain liable to the Partnership for any obligations to the Partnership which he may have incurred up to and including the date of transfer.

**12.9 Section 708 Termination.** No transfer of a Partnership Interest which will or may result in a termination of the Partnership for federal income tax purposes under Section 708 of the Code will be permitted unless such transfer is the unavoidable result of a repossession of one or more partnership interests precipitated by a default on the part of the owner(s) of such interest(s) with respect to an amount due the Partnership hereunder.

## ARTICLE XIII

### WITHDRAWAL OR REMOVAL OF A GENERAL PARTNER

**13.1 Consent Required.** Neither the General Partners nor any additional or substitute general partner may withdraw from the Partnership without the prior written consent of a majority in interest of the Limited Partners and the consent of all Governmental Agencies whose jurisdiction over the Project requires consent for such withdrawal.

**13.2 Nomination of Successor.** Upon the withdrawal of a last remaining general partner, such general partner shall, at the request of the Limited Partners, nominate a successor general partner who, in the opinion of the withdrawing general partner, has sufficient skill, expertise and financial net worth to properly act as a successor general partner.

**13.3 Consequences of Withdrawal.** Upon the withdrawal of the General Partners or any additional or substitute general partner pursuant to this Article, the withdrawing general partner shall be entitled to receive any positive balance in his Capital Account, adjusted to the date of his retirement, and all amounts owed him by the Partnership by reason of this Agreement or otherwise. The Partnership may withhold by way of offset any amounts due it from such withdrawing General Partner and any claim for damages which, in the opinion of counsel to the Partnership have been caused to the Partnership by such withdrawing General Partner.

**13.4 Removal of a General Partner.** If any General Partner, including any additional or substitute general partner, defaults in the performance of any of his obligations to the Partnership, whether in his capacity as a general partner of the Partnership or otherwise, and fails to remedy such default within 90 days after written notice of such default is sent to him by a person representing a majority in interest of the Limited Partners, then the Limited Partners may, at their option, in addition to any other remedy at law or in equity, including, without limitation, a suit for damages, require such defaulting general partner to forfeit his interest in the Partnership as a general partner by causing the defaulting general partner to transfer his interest in the Partnership to a designee of the Limited Partners for a sum equal to 50% of any positive balance in his Capital Account, which amount the defaulting general partner hereby agrees is fair, just and equitable, and thereupon such defaulting general partner shall cease to have any interest in the Partnership.

**13.5 Diligent Pursuit of Corrective Action.** Notwithstanding anything to the contrary contained in Section 13.4 above, if a default by a general partner hereunder be such that it cannot be corrected within the said 90 day period, it shall not constitute a default hereunder if corrective action is instituted by such defaulting general partner within such period and diligently pursued until such default is corrected.

## **ARTICLE XIV**

### **DEATH, DISABILITY OR DISSOLUTION OF A LAST REMAINING GENERAL PARTNER**

**14.1 Election of Successor General Partner.** Upon the death, disability or dissolution of a last remaining general partner the Investor Service Agent shall act temporarily as a general partner and, within 60 days of such death or disability, nominate one or more persons to replace the deceased or disabled general partner, which nominee(s) must be approved by a majority in interest of the Limited Partners. If the Limited Partners do not, within 30 days of such nomination, either accept the nominee or make their own nomination of a successor general partner, the Partnership shall be dissolved as provided elsewhere in this Agreement.

## **ARTICLE XV**

### **DISSOLUTION AND TERMINATION**

**15.1 Causes of Termination.** Except as provided elsewhere in this Agreement, the Partnership shall be dissolved and its business wound up upon the earliest to occur of the following:

(A) December 31st, 2046;

(B) the decision by the General Partners to dissolve the Partnership, provided such decision is agreed to by a majority in interest of the Limited Partners;

(C) the Insolvency or bankruptcy of the Partnership;

(D) the death, incompetency, insolvency, bankruptcy or withdrawal of a last remaining general partner, or

(E) the sale or other disposition of all or substantially all of the Partnership's assets.

**15.2 "Insolvency or Bankruptcy" Defined.** For the purposes of this Agreement, "insolvency or bankruptcy" shall be defined as follows:

(A) the failure of a party to make when due any payment on indebtedness and such failure shall continue for more than the applicable period of grace with respect thereto and shall not have been waived by the holder thereof, or any other event shall occur or condition shall exist and shall continue for more than the period of grace, if any, applicable thereto and shall have the effect of causing,

or permitting the holder of any such indebtedness or any trustee or other person acting on behalf of such holder to cause, such indebtedness to become due prior to its stated maturity or to realize upon any collateral given as security therefor;

(B) a court having jurisdiction thereof shall enter a decree or order for relief in respect of a party in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoint a receiver, assignee, trustee or other similar official of such party or for any substantial part of such party's property, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(C) the commencement of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent to the entry of an order for relief in an involuntary case under any such law, or the consent to the appointment of or the taking possession by a receiver, assignee or trustee of a party, or for a substantial part of such party's property, or the making of any general assignment for the benefit of creditors, or the failure of a party generally to pay its debts as they become due, or the taking of any action in furtherance of any of the foregoing.

**15.3 No Release.** The dissolution of the Partnership shall not release or relieve the parties hereto of their obligations under this Agreement.

**15.4 Distribution on Dissolution.** Upon the dissolution of the Partnership hereunder, all or part of its assets, as determined by the General Partners or other appropriate authority, shall be sold and the proceeds therefrom distributed to the Partners in accordance with the provisions of Article XI hereof. Any remaining assets shall be distributed in kind to the Partners in accordance with the provisions of Article XI hereof.

## **ARTICLE XVI**

### **ACCOUNTING**

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

**16.2 Recordkeeping.** The General Partners shall keep, or cause to be kept, full and accurate records of all transactions of the Partnership in accordance with the accrual method of accounting.

**16.3 Availability of Books and Records.** The Partnership's books of account shall, at all times, be maintained in the principal office of the Partnership, and shall be open during normal business hours for the reason-

able inspection and examination by the Limited Partners and their authorized representatives who shall have the right to make copies thereof.

**16.4 Preparation of Tax Returns.** The General Partners shall prepare, or cause to be prepared, a partnership information return and any required state and local income tax returns for the Partnership for each tax year of the Partnership, and, in connection therewith, shall make any appropriate elections, including elections with respect to the useful lives of the properties of the Partnership and the rates of cost recovery of such properties.

**16.5 Designation of Tax Matters Partner.** The General Partners shall appoint a "tax matters partner" who shall be vested with the authority and the responsibility necessary to comply with the provisions of Sections 6221 through 6232 of the Code and regulations thereunder.

**16.6 Authority of General Partners to Deal With Tax Matters.** The General Partners shall have the exclusive right to litigate, settle or compromise any claim for taxes asserted against the Partnership upon audit of the Partnership's books or otherwise.

## **ARTICLE XVII**

### **REPORTS AND STATEMENTS**

**17.1 Preparation of Reports.** The General Partners, at the expense of the Partnership, shall cause to be delivered to the Limited Partners the following:

(A) within 90 days after the close of each fiscal year, such information as shall be necessary (including a statement for that year of the Limited Partners' share of net income, net gains, net losses and other Partnership items) for the preparation by the Limited Partners of their federal, state and local income and other tax reports and returns; and

(B) within 150 days after the close of each fiscal year, a financial statement of the Partnership for the preceding year, prepared at the expense of the Partnership by an independent firm of Certified Public Accountants selected by the General Partners, including:

- (i) a balance sheet and net income statement;
- (ii) a statement of the Partners' Capital Accounts;



(iii) a cash flow statement of the Partnership reflecting the Partnership's revenues and expenses;

(iv) a summary of the rental activities of the Partnership and a description of the Project; and

(v) such other information, including without limitation estimates of tax losses, as the General Partners shall deem appropriate for the Partners to be advised of pertaining to the financial status and results of operations of the Partnership.

**17.2 Notification.** The General Partners shall, within ten (10) days after receipt thereof, forward to the Limited Partners a copy of any notice received by the General Partners or the Partnership of any default with respect to any material instrument to which the Partnership is a party or which affects the assets of the Partnership, and shall report to the Limited Partners any other significant developments affecting the Partnership, its business or assets, as soon as practicable following the occurrence of each such development.

## **ARTICLE XVIII**

### **AMENDMENTS**

**18.1 Authority to Amend This Agreement.** The Limited Partners hereby grant the General Partners the absolute right to amend this Agreement to accomplish any of the following acts:

(A) change the name of the Partnership;

(B) change the Partnership's principal place of business;

(C) admit additional or substitute Limited Partners in accordance with this Agreement;

(D) qualify the Partnership to do business under the laws of any state;

(E) ensure that the Partnership will not be treated as an association taxable as a corporation;

(F) ensure compliance with the regulations of all Governmental Agencies having jurisdiction over the Partnership or the Project; and

(G) effect any change which does not substantially affect the rights, obligations and remedies of the Limited Partners hereunder.

**18.2 Amendments Requiring Approval.** Permissible amendments other than the foregoing must be approved in writing by a majority in interest of the Limited Partners.

**18.3 Certain Amendments Prohibited.** The Partnership shall adopt no amendment which, in the opinion of counsel to the Partnership, shall:

(A) convert a Limited Partner into a general partner or otherwise affect the limited liability of any Limited Partner;

(B) give the Limited Partners power to conduct or control the Partnership's business or any aspect thereof;

(C) add to the duties and liabilities of the General Partners without the consent of the General Partners;

(D) make the Interest of any Partner in the assets, profits or losses of the Partnership different from the Interest of such Partner as herein provided;

(E) adversely affect the status of the Partnership as a partnership for federal income tax purposes; or

(F) render the Partnership in non-compliance with the rules and regulations of a Governmental Agency or in any way jeopardize the Loan Agreement or the Interest Credit and Rental Assistance Agreement.

## **ARTICLE XIX**

### **DEFINITIONS**

**19.1 Definitions.** As used in this Agreement, the following terms have the meanings assigned to them in this Section unless the context clearly otherwise requires:

**"Admission Date":** November 1st, 1986;

**"Affiliate":** A person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person or entity;

**"Agreement":** This Amended and Restated Agreement and Certificate of Limited Partnership of the Partnership;

**"Amended Partnership Agreement":** The Amended and Restated Agreement and Certificate of Limited Partnership executed by the Gen-

eral Partners and the Interim Limited Partner on September 1st, 1986;

**"Capital Account":** The Capital Account of a Partner as described in Article VI hereof;

**"Capital Contribution":** The total amount of capital contributed to the Partnership by each Partner in cash, checks and Investor Promissory Notes;

**"Capital, Interest In":** A General or Limited Partner's percentage interest in the Capital of the Partnership, calculated by dividing such Partner's Capital Contribution by the aggregate Capital Contributions of all the Partners;

**"Cash Flow":** The total gross receipts of the Partnership less certain expenditures as enumerated in Sections 11.2 and 11.3 hereof;

**"Code":** The Internal Revenue Code of 1986, as amended, or any successor statute thereof;

**"Final Loan Closing":** Final approval of the Project by the FmHA and disbursement of the proceeds of the Permanent Loan pursuant to the Loan Agreement;

**"FmHA":** The Farmers Home Administration of the United States Department of Agriculture;

**"Governmental Agency":** Any federal, state or municipal agency having jurisdiction over the Partnership or any aspect of the conduct of the Partnership's return;

**"Interim Limited Partner":** Mr. Duane Wheeler;

**"Interest Credit and Rental Assistance Agreement":** The agreement to be entered into between the Partnership and FmHA providing for certain financial support from FmHA to the Project;

**"Interest" or "Partnership Interest":** An investment in the Partnership representing all or a pro rata share of the total Limited Partner Interest in Capital and the total Limited Partner Interest in Profits and Losses;

**"Investor Promissory Note":** The instrument evidencing the obligation to make certain specified payments to the Partnership of a Partner who elects to pay for his Partnership Interest in installments;

**"Investor Service Agent":** The Fidelity Management Corporation of Wilmington, Delaware;

**"Initial Partnership Agreement":** The original Certificate and Agreement of Limited Partnership of the Partnership filed in the Office of the Secretary of State of Idaho on May 22nd, 1986;

**"Limited Partner Security Agreement":** The Security Agreement pursuant to which a Partner who executes an Investor Promissory Note pledges his Units in the Partnership as security for his obligations under such Note.

**"Loan Agreement":** The loan agreement to be executed between the Partnership and FmHA providing for the Permanent Loan;

**"Major Capital Event":** Any (i) casualty loss, (ii) condemnation award, (iii) transfer of easements, rights-of-way or similar interests, (iv) sale, (v) foreclosure or (vi) involuntary conversion of all or a substantial portion of the Project, whether or not such event results in a termination or dissolution of the Partnership;

**"Memorandum" or "Offering Memorandum":** The Confidential Private Offering Memorandum dated November 1st, 1986 offering for sale Interests in the Partnership;

**"Mortgage":** The security interest in the Project granted to the FmHA pursuant to the Loan Agreement;

**"Mortgage Note":** The Partnership's promissory note secured by the Mortgage and evidencing the Partnership's obligation to repay the Permanent Loan;

**"Offering Date":** The effective date of the Memorandum;

**"Original Capital Account":** The total amount of capital contributed to the Partnership by a Partner, in cash, checks and Investor Promissory Notes, at the time of his subscription to the Partnership;

**"Permanent Loan":** The loan to the Partnership from FmHA secured by the Mortgage;

**"Profits and Losses, Interest In":** A General or Limited Partner's percentage interest in the profits and losses of the Partnership, calculated according to the formula  $(C/A) \times (PCT)$ , where "C" is the Capital Contribution of the Partner, "A" is the aggregate Capital Contribution of all Partners of the same class and "PCT" is 15% in the case of a General Partners or 85% in the case of Limited Partners;

**"Project":** The 16-unit apartment project for low to moderate income families and the elderly in Sitka, Alaska to be built, owned and operated by the Partnership;

**"Refinancing":** The proceeds resulting from the refinancing or recasting of the Permanent Loan or from any borrowing secured by the Project;

**"Regulatory Agreements":** A collective reference to the Interest Credit and Rental Assistance Agreement, the Loan Agreement, the Mortgage, the Mortgage Note and any other documents which FmHA may require the Partnership to execute in connection with the granting of the Permanent Loan;

**"Taxable Income":** All items of Partnership income or gain, including any income or gain attributable to the excess of the aggregate principal balance of the Partnership's non-recourse indebtedness secured by Partnership property over the Partnership's adjusted basis in such property;

**"Tax Items":** All items of Partnership income, gain, loss, deduction and credit;

**"Unrecovered Capital":** A Partner's Original Capital Account less (a) the unpaid balance on his respective Investor Promissory Note, if any, and (b) any cash distributions made to him.

## ARTICLE XX

### FARMER'S HOME ADMINISTRATION

**20.1 Regulatory Agreements.** The Partnership hereby grants the General Partners full authority to execute the Interest Credit and Rental Assistance Agreement, the Loan Agreement, the Mortgage, the Mortgage Note and any other documents which FmHA may require the Partnership to execute in connection with the granting of the Permanent Loan (the "Regulatory Agreements") and the General Partners, and any additional, substitute or successor general partner, agree to be bound by said Regulatory Agreements. The Limited Partners, and any additional, substitute or successor Limited Partners agree not to perform any act or fail to perform any act which would violate any provision of any Regulatory Agreement.

**20.2 Control.** This Agreement is specifically made subordinate to the terms of the Regulatory Agreements and in the event of an inconsistency between this Agreement and any Regulatory Agreement, the latter agreement will control and this Agreement will be amended accordingly.

**20.3 Restrictions.** For so long as (i) any Regulatory Agreement shall remain in force or (ii) any funds owed to FmHA with respect to the Project

shall remain unpaid, the Partners agree that, without the written consent of FmHA, the Partnership shall not do any of the following:

(A) Change the membership of the Partnership by (i) the admission of an additional, substitute or successor general partner or (ii) the withdrawal of an original, additional, substitute or successor general partner;

(B) Permit the General Partners to maintain less than a five (5%) percent interest in the capital of the Partnership;

(C) Effect a voluntary dissolution of the Partnership;

(D) Amend this Agreement in any way which would affect the rights of FmHA;

(E) Convey or transfer title or any right of possession, control or rent collection to all or any portion of the Project, whether by sale, assignment, mortgage, lease or otherwise;

(F) Use the Project for any purpose other than as rental housing and related facilities for tenants acceptable to FmHA;

(G) Enter into any contract or agreement for improvements or extensions to (i) the Project or (ii) any other property secured by the Mortgage or the Mortgage Note, or

(H) Borrow any money or incur any liability aside from "current expenses" as defined in Section 7 of the Loan Agreement which would have a detrimental effect upon the Project.

## ARTICLE XXI

### MISCELLANEOUS

21.1 **Notices.** Whenever any notice is required or permitted to be given under any provision of this Agreement, such notice shall be in writing, signed by or on behalf of the person giving the notice, and shall be deemed to have been given on the earlier to occur of actual delivery or when mailed by certified mail, postage prepaid, return receipt requested, addressed to the person or persons to whom such notice is to be given at the following address (or at such other address as shall be stated in a notice similarly given):

(A) to the General Partners at N. 12425 Gem Shore Road, Hayden Lake, Idaho 83835; and

(B) to the Limited Partner at its address as set forth in Exhibit "A" hereto.

**21.2 Creditors Not Beneficiaries.** None of the provisions of this Agreement or any agreement between the Partnership and the General Partners or any Affiliate of the General Partners shall be construed as existing for the benefit of a creditor of the Partnership or of any of the Partners, nor shall it be enforceable by any party not a signatory to this Agreement.

**21.3 Binding Effect.** Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, estates, personal representatives, successors and permitted assigns.

**21.4 Consent to Jurisdiction.** Each Limited Partner agrees, jointly and severally, that any action, suit or proceeding in respect of or arising from or out of this Agreement or any Investor Promissory Note or Limited Partner Security Agreement referred to in Section 6.3 above shall, at the sole option of the General Partners, be initiated and prosecuted as to all parties thereto and their successors or assigns in the states of either New York or Idaho. Each Limited Partner hereby does the following:

(A) consents and submits to the exercise of jurisdiction over his person by any non-federal court situated in either New York or Idaho having jurisdiction over the subject matter;

(B) irrevocably appoints and designates The Fidelity Management Corporation, a New York corporation, with offices at 27 The Plaza, Locust Valley, New York 11560 and Marty D. Frantz whose address is N. 12425 Gem Shore Road, Hayden Lake, Idaho 83835 as his agents for service of process in such jurisdictions;

(C) agrees that service of process upon any such agent shall constitute personal service of such process upon such Limited Partner, and

(D) directs both such agents to forward such process, together with all papers affixed thereto, to such Limited Partner within five days after their receipt pursuant to Article 21.1 hereof.

**21.5 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

**21.6 Arbitration.** In the event of any dispute arising from this Agreement, including any dispute as to whether an act or omission of an original, additional or substitute general partner (i) was in good faith or attributable to negligence or misconduct (ii) was in breach of such general partner's fiduciary duty to the Limited Partners or (iii) constituted a default on the

Part of such general partner within the meaning of Section 13.4 hereof, such general partner and a majority in interest of the Limited Partners shall jointly select an independent legal counsel who shall render his opinion as to such dispute. If, within a period of 30 days after either of the parties gives written notice to the other invoking the provisions of this Section 20.6, the parties are not able to agree upon such independent legal counsel or if the opinion of such independent legal counsel is not acceptable to either a majority in interest of the Limited Partners or the General Partners, the dispute shall be settled by arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction as provided in Section 21.4 above.

**21.7 Costs and Expenses.** Any Limited Partner who institutes an unsuccessful legal action against the Partnership, the General Partners, any Affiliate of the General Partners or any professional engaged by the Partnership hereby agrees to reimburse the defending party for all costs and expenses related to the successful defense of such action.

**21.8 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

**21.9 Prior Agreements Superseded.** This Agreement replaces and supersedes in their entirety the Initial Partnership Agreement, the Amended Partnership Agreement and any other prior or contemporaneous written or oral agreements between the parties.

**21.10 Necessary Documents.** The Partners agree to execute and deliver to the General Partners within 5 days of receipt of a written request therefor, such documents, designations, powers of attorney and other instruments as may be necessary to give full force and effect to the provisions and intent of this Agreement.

**21.11 No Waiver.** Waiver of compliance at any time by any party with any provision of this Agreement shall not be deemed a waiver of future compliance with such provision or any other provision thereof.

**21.12 Rights And Remedies.** The rights and remedies provided for herein are cumulative and the use of any one right or remedy by any party shall not preclude such party's right to use any and all remedies available hereunder or otherwise, by common law, statute, rule or regulation.

**21.13 Severability.** If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, whether by court, Governmental Agency or stipulation of the parties, the remainder of this Agreement shall not be affected thereby; and



this Agreement shall be construed as if such provision, to the extent invalidated, had not been contained herein.

**21.14 References and Headings.** Unless specifically indicated to the contrary, references herein to Articles, Sections, subsections and paragraphs are references to Articles, Sections, subsections and paragraphs of this Agreement. The headings and captions of this Agreement are inserted for convenience and identification only and in no way define, limit or extend the scope of the text contained herein.

**21.15 Form and Gender.** Where the context and circumstances so require, the use of the singular form of a word shall be deemed to include the plural form thereof (and vice versa) and the masculine gender shall be deemed to include the feminine and neuter genders thereof and (vice versa).


**IN WITNESS WHEREOF,** the parties hereto have subscribed and sworn to this Agreement as of the day and year first above written.

  
Marty D. Frantz  
General Partner


  
James B. Frantz  
Co-General Partner

  
Marty D. Frantz, Attorney-in-Fact for  
Duane Wheeler  
Interim Limited Partner

Rutherford Estates Limited Partnership

  
Fred Bennett, Vice President  
First American Holdings, Inc.  
General Partner

Prepared By:

  
James H. Moffett  
General Counsel  
First American Holdings, Inc.  
27 The Plaza  
Locust Valley, NY 11560

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STATE OF	IDAHO	)	
		)	SS.
COUNTY OF	KOOTENAI	)	

ON THIS DAY PERSONALLY APPEARED BEFORE ME MARTY D. FRANTZ TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED THAT HE SIGNED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES THEREIN MENTIONED.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS 21st DAY OF

October, 1986.

  
\_\_\_\_\_  
NOTARY IN AND FOR THE STATE OF Idaho

\_\_\_\_\_  
RESIDING AT Hayden Lake

MY COMMISSION EXPIRES August, 1987

=====

STATE OF MINNESOTA )

) 33.

COUNTY OF CABER

ON THIS DAY PERSONALLY APPEARED BEFORE ME JAMES B. FRANTZ TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED THAT HE SIGNED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES THEREIN MENTIONED.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS 6 DAY OF

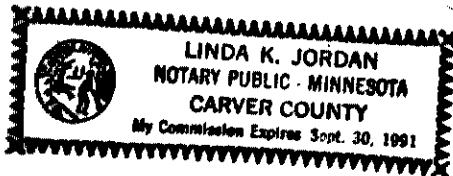
NOVEMBER, 1986.

~~NOTARY IN AND FOR THE STATE OF~~

Minnesota

RESIDING AT Carver County

MY COMMISSION EXPIRES \_\_\_\_\_



STATE OF New York )  
COUNTY OF Suffolk ) ss.:

On this 13<sup>th</sup> day of December, 19 86, before me, the Undersigned, a Notary Public of said state, duly commissioned and sworn, personally appeared Fred Bennett to me known who, being by me duly sworn, did depose and say that he resides at 2101 Executive Park Drive, Suite 105, Opelika, AL 36801; that he is Vice President of First American Holdings, Inc., the Corporation described in and which executed and delivered the foregoing Instrument; that he knows the seal of said Corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed to said Instrument by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Amy J. Liffers  
Signature of Notary Public  
Registration # 4876947  
Expiration Date 10/20/88

**EXHIBIT A**

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NAME AND ADDRESS -----	CASH FLOW INTEREST	% INTEREST IN CAPITAL	% INTEREST IN PROFITS AND LOSSES	CAPITAL CONTRIBUTION
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<b>GENERAL PARTNERS:</b>				
MARTY D. FRANTZ N. 12425 GEM SHORE RD. HAYDEN LAKE, IDAHO 83835	15%	19.4%	5%	\$58,000
JAMES B. FRANTZ 950 IRIS CIRCLE EXCELSIOR, MN 55331	0%	10.0%	10%	\$30,000
<b>INTERIM LIMITED PARTNER:</b>				
DUANE WHEELER 1016 RHINEHARDT DRIVE EAST GRAND FORKS, MN 56721	5%	4.5 %	5%	\$13,500
<b>INVESTOR LIMITED PARTNER:</b>				
RUTHERFORD ESTATES LIMITED PARTNERSHIP 725 MARKET STREET WILMINGTON, DE 19801	80%	66.1	80%	\$197,258