

343 1919

LIMITED PARTNERSHIP AGREEMENT AND  
CERTIFICATE OF LIMITED PARTNERSHIP OF  
JAMES COURT ASSOCIATES

Come now the undersigned, and being first duly sworn, do hereby certify that it is their desire and intent to organize and establish a limited partnership under the laws of the State of Idaho, and accordingly do certify that the following is their limited partnership agreement and also is their certificate of limited partnership:

I. The name of the limited partnership is James Court Associates.

II. The business of the partnership shall consist of acquiring and owning unimproved real property, or improved real property, hereinafter referred to as the "land" located in the State of Idaho, and developing and constructing upon the land, improvements consisting of housing and related facilities which shall collectively be known as James Court or Day Meadow; the said improvements shall hereinafter be referred to as the "improvements." Also, operating the improvements on the land for the production of profit, the said land and improvements hereinafter being referred to as the "project." In order to carry out its purpose, the partnership is empowered and authorized to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of its purpose, and for the protection and benefit of the partnership, including, but not limited to, the following:

A. Construct, operate, maintain, improve, buy, own, sell, convey, assign, mortgage, rent or lease any real estate and any personal property necessary to the operation of the Project;

B. Provide housing for low and/or moderate income families;

C. Enter into any kind of activity, and perform and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Partnership;

D. Borrow money and issue evidences of indebtedness in furtherance of the Partnership business and secure any such indebtedness by mortgage, pledge, or other lien, any or all of which debt instruments may contain confessions of judgment against the partnership if all General Partners consent thereto in writing (it being understood and agreed that such consent is hereby given with respect to the mortgage loan) and any or all of which loans may be insured and/or subsidized by Idaho Housing Agency, a regularly organized body politic in the State of Idaho; provided that the mortgage loan shall provide that neither the Partnership nor any Partner shall have any personal liability for the payment of the mortgage loan, but the sole recourse of any lender on the mortgage loan shall be to the property securing the mortgage loan, and no Limited Partner shall have any personal liability on any other indebtedness without the express written consent of such Limited Partner;

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E. Enter into such agreements as are required, convenient, or necessary, to obtain funds from the Idaho Housing Agency, a regularly organized body politic in the State of Idaho, including but not limited to Deeds of Trust, Trust Notes, Assignments of Rents and Leases, financing statements, building loan agreements, contracts, and such other documents as may be required for the accomplishment of the purposes of this limited partnership. In order to enable the Idaho Housing Agency to carry out the provisions which are or may be binding upon them, by virtue of Idaho Code Title 67, Chapter 62, as amended and its GENERAL BOND RESOLUTION, or any governmental agency which does or may have jurisdiction and control of Idaho Housing Agency, it is understood and agreed that all such clauses, provisions, or regulations of the Idaho Housing Agency as well as any BUILDING LOAN AGREEMENT and REGULATORY AGREEMENT entered into between the partnership and the Idaho Housing Agency, shall be abided and conformed to by the limited partnership, and not withstanding any other provisions of this agreement to the contrary, so long as the project or any part thereof is incumbered by a mortgage, deed of trust, or other incumbrance in favor of or insured by the Idaho Housing Agency, this said limited partnership shall continue to abide and conform to such requirements. Any incoming general partner or limited partner shall, as a condition of receiving an interest in the partnership or its property, agree to be bound by these provisions. This limited partnership shall not be voluntarily dissolved without prior written consent of Idaho Housing Agency, if such prior written consent is required. No distribution (as defined in the REGULATORY AGREEMENT between the partnership and the Idaho Housing Agency) shall be made except in accordance with the requirements of the REGULATORY AGREEMENT. In the event that any provision of this certificate or agreement in any way contradicts or modifies the terms of the REGULATORY AGREEMENT, the terms of the REGULATORY AGREEMENT shall prevail. Upon any dissolution of the partnership, 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 not approved by the Idaho Housing Agency, particularly rent subsidy payments under Section 8 of the Housing Act of 1937, as amended.

F. Enter into any kind of activity, and perform and carry out contracts of any kind necessary to or in connection with, or incidental to the accomplishment of the purpose of the Partnership, including (without limitation) such as are necessary to obtain interest subsidy or rent supplement payments.

G. Maintain and operate the Project, including hiring a managing agent and entering into any agreement for management of the Project during its rent-up and after the rent-up period; and

H. Subject to the limitations expressly set forth in the Limited Partnership Agreement of the Partnership as heretofore or hereafter amended (the "Agreement"), 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.

III. The principal place of business of this Partnership shall be at 1510 East Fairview Avenue, Meridian, Idaho 83642, or at such other place or places as may from time to time be designated by notifying all other partners. The partnership may maintain such other offices as the general partners may from time to time deem advisable.

IV. The name, residence and designation of each General Partner and each Limited Partner is set forth on Schedule I attached hereto and made a part hereof.

V. The term of the Partnership will commence on the filing of this Certificate and shall continue until December 31, 2028, unless the Partnership is sooner dissolved upon the occurrence of any of the following events:

A. The withdrawal, bankruptcy, death, dissolution or adjudication of incompetency of a General Partner who is at that time the sole General Partner;

B. The sale or other disposition of the Project and collection of all proceeds therefrom;

C. The election by Limited Partners whose combines interests represent eighty percent (80%) of the total partnership interests subject to Idaho Housing Agency approval, if required; or

D. Any other event causing the dissolution of the Partnership under the laws of the State, except for those events the Agreement provides for the continuation of the Partnership.

VI. The Capital Contribution of each General Partner is set forth on Schedule I attached hereto and made a part hereof. The Capital Contribution of the General Partners shall be due upon execution of the Certificate.

VII. The capital contribution of each Limited Partner is set forth on Schedule I attached hereto and made a part hereof. The capital contribution of the initial Limited Partner shall be due upon execution of the Certificate.

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VIII. The Limited Partners' contributions will be returned to the extent that distributions made in accordance with the Agreement constitute a return of contributions.

IX. Subject to the limitations, adjustments and definitions of each category of interest expressly set forth in the Agreement, the share of profits and losses, distributable cash flow and net proceeds from the sale or refinancing of the Project for each General Partner and each Limited Partner is set forth on Schedule I attached hereto and made a part hereof.

X. Except for transfers by bequest, or under the laws of intestacy, no Limited Partner shall sell, assign or otherwise transfer his interest, or any fraction thereof, unless the Administrative General Partner shall have consented thereto and until the other requirements for such assignment or other transfer expressly set forth in the Agreement have satisfactorily been completed. An assignee of the Interest of a Limited Partner (which shall be understood to include any purchaser, transferee, donee, or other recipient on any disposition of such interest in compliance with the provisions of the Agreement) shall be deemed admitted as a Limited Partner of the Partnership only upon the satisfactory completion of all requirements for such admission, as expressly set forth in the Agreement.

XI. The Partners shall have the right to admit additional and substitute Limited Partners.

XII. There is no right of any Limited Partner to a priority over any other Limited Partner as to contributions or as to compensation by way of income.

XIII. In the event of the bankruptcy, adjudication of incompetency, withdrawal, death or dissolution of a General Partner, the business of the Partnership shall be continued with Partnership property by the other General Partners; provided, however, that if such General Partner is then the sole General Partner the Partnership shall be dissolved.

XIV. There is no right given to any Limited Partner to demand and receive property other than cash in return for his contribution.

XV. Each Limited Partner hereby irrevocably makes, constitutes and appoints the Administrative General Partner his true and lawful attorney for him and in his name, place and stead, to make, consent to, execute, sign, acknowledge, file for recording at the appropriate public offices and publish:

A. The Certificate which may be in the form of this Certificate or otherwise;

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B. Any certificates, applications, fictitious name registrations and amendments and cancellations thereof, instruments and documents which may be required under law or by any state or governmental agency, or as may be appropriate for the conduct of Partnership business, its continuation or dissolution and termination of the Partnership pursuant to the terms of this Agreement or required for the admission of Additional Limited Partners;

C. Any amendments to the Agreement and/or this Certificate which have been approved in accordance with the laws of any state in which such documents are required to be filed;

D. Any amendments to this Certificate, or any other documents necessary to implement and give effect to its provisions or any provision to which the Consent of the Limited Partners has been obtained;

E. The correction of a false or erroneous statement in the Agreement and/or this Certificate; and

F. Nonmaterial changes in the Agreement and/or this Certificate required by Idaho Housing Agency.

Each Limited Partner shall execute and deliver to the Administrative General Partner within five (5) days after receipt of the Administrative General Partner's written request therefor such other and further powers of attorney and instruments as the Administrative General Partner deems necessary to carry out the purposes of this Article XIV.

In recognition of the fact that each of the Additional Limited Partners under the Agreement will be relying upon the power of the Administrative General Partner to act as contemplated by the Agreement in any filing and other action by it on behalf of the Partnership, the foregoing appointments and grants of authority are Special Powers of Attorney, coupled with an interest, and shall survive the death, bankruptcy, dissolution or incompetence of any Partner and the assignment by any Partner of his interest; provided that in the event of such assignment, the foregoing appointments and grants of authority shall survive only until such time as the assignee is admitted to the Partnership and all required documents and instruments have been duly executed, filed and recorded to effect such substitution.

XVI. This Certificate may be executed and acknowledged in counterparts, and each such counterpart shall rank as an original.

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IN WITNESS WHEREOF, the parties hereunto set their hands on the day shown on the acknowledgment of their signatures.

ADMINISTRATIVE GENERAL PARTNER

Diana Corp.

By: \_\_\_\_\_

Andy Anderson, President

INITIAL LIMITED PARTNER

Andy Anderson

STATE OF IDAHO )

) ss

County of Ada )

On this day personally appeared Andy Anderson, known to me to be the individual authorized to execute the within and foregoing instrument, and acknowledged under oath that he executed 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<sup>th</sup> day of OCTOBER, 1977.

R. W. Carter  
Notary Public for State of Idaho  
Residing at:

343 1925

SCHEDULE I

The names and residence addresses of the Limited Partners, their scheduled amounts of Capital Contributions and their Partnership Interests are as follows:

<u>Name and Residence Address</u>	<u>Capital Contribution</u>	<u>Interest in Distributable Cash Flow/ Profit &amp; Loss</u>	<u>Interest in Net Proceeds From Sale or Refinancing</u>
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ADMINISTRATIVE GENERAL PARTNER

Diana Corp. 1510 W. Fairview Ave. Meridian, Idaho	\$100		
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INITIAL LIMITED PARTNER

Andy Anderson 1510 W. Fairview Ave. Meridian, Idaho	\$100		
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STATE OF IDAHO COUNTY OF ADA, ss.

Filed for record at the request of

FIRST AMERICAN TITLE CO.

30 Min. part 3 of book P. 124 of vol. Oct. 10 77

By *Shelton E. Marshall* Deputy

*Fee \$17.00*

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ADDENDUM TO  
AMENDED AND RESTATED AGREEMENT AND CERTIFICATE OF  
LIMITED PARTNERSHIP  
OF  
JAMES COURT ASSOCIATES

This Addendum to Amended and Restated Agreement and Certificate of Limited Partnership of James Court Associates, dated this 5th day of July, 1978, is entered into by and among:

Diana Corp., an Idaho corporation, and  
Earl T. Grossaint, an individual, (hereinafter  
collectively referred to as the "General Partner")

and

James Court Enterprises, Inc., an Idaho  
corporation (hereinafter sometimes referred  
to as the "Withdrawing Partner")

and

Real Estate Partners Limited, a California  
limited partnership (hereinafter referred to as  
the "Limited Partner"), having as its general  
partners Sonnenblick-Goldman Corp. of California,  
a California corporation and Charles H. Boxenbaum.

with reference to the following facts:

WHEREAS, Diana Corp., James Court Enterprises, Inc.  
and Real Estate Partners Limited did enter into that certain  
Amended and Restated Agreement and Certificate of Limited  
Partnership of James Court Associates, dated December 30,  
1977 (hereinafter referred to as the "Referenced Document"),  
and the parties now find it needful and desirable to enter into  
this Addendum by the terms of which certain clauses will be  
added to the said document, and

WHEREAS, the parties further desire to add an  
individual General Partner, to-wit, Earl T. Grossaint, and  
to withdraw James Court Enterprises, Inc., an Idaho Corporation,  
from any participation in the said Limited Partnership, as a  
General Partner or in any other capacity, and

WHEREAS, the parties hereto have heretofore agreed  
that the consideration recited in the Referenced Document is  
sufficient to support this Addendum.



NOW, THEREFORE, in consideration of the promises, covenants, and agreements of the Referenced Document and this Addendum thereto, the parties hereto do hereby agree to the terms, conditions, covenants, and agreements as hereinafter set forth:

1. Earl T. Grossaint is hereby admitted into James Court Associates, an Idaho Limited Partnership (hereinafter the "Partnership") as an additional "Operating General Partner" and as such agrees to be bound by all of the terms and covenants contained in the Referenced Document, as amended.

2. James Court Enterprises, Inc., does hereby withdraw from the Partnership as a "General Partner" and/or Operating General Partner and does hereby agree to terminate its interest, if any, in the said Partnership.

3. Section 1.9 of the Referenced Document shall be amended to, and shall hereafter read as follows:

1.9 Final Acceptance. "Final Acceptance" means the final act of acceptance (which shall include a cost certification, if applicable) of the Project by HUD and by the Idaho Housing Agency as having been completed in accordance with the plans and specifications for the Project and the terms of the HUD's commitment letter and any commitment letter of such other agency.

4. Section 1.10 of the referenced document shall be amended, and hereafter shall be as follows:

1.10 HUD. "HUD" means the United States Department of Housing and Urban Development. In this document, any reference to HUD shall be construed also to be a reference to "The Authority" as hereinabove defined in Section 1.3.

5. A Section 2.7 shall be added to the Referenced Document, and the said additional clause shall be as follows:

2.7 Amendments and Conditions of Termination. In any event, the Partnership Agreement will not be amended without the prior written approval of the Idaho Housing Agency. Further, the General Partner will not be substituted without the prior written consent of the said Idaho Housing Agency. Further, the said Partnership will not terminate, nor will the Partnership be dissolved, unless the remaining balances due to the Idaho Housing Agency under the terms of their loan have been repaid in full, or unless the said Idaho Housing Agency approves the

termination or dissolution in writing prior to the occurrence of the event.

6. Section 4.2 of the Referenced Document shall be amended, and shall hereafter be as follows:

4.2 Distribution of Cash from Operations. Cash from Operations shall be distributed to the Partners from time to time, but not less often than annually and with all distributions in respect of any one calendar year to be distributed not later than 90 days after the end of such year, in the following order of priority:

(a) \$2,000 to the Limited Partner; and thereafter

(b) 50% to the Limited Partner and 50% to the General Partner.

(c) Any cash distributions as described in this clause, shall be subject to the limitations contained in the Idaho Housing Agency Regulatory Agreement, and shall be approved by the Idaho Housing Agency prior to such distribution.

7. There shall be added to the Referenced Document, a clause 2.8, which shall be as follows:

2.8 Incoming Partner. 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 the deed of trust, and the Regulatory Agreement and such other documents as have been executed in connection with the Idaho Housing Agency mortgage loan to the same extent and on the same terms as the parties to this agreement originally. Upon dissolution of the Partnership, should such dissolution occur, 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 Idaho Housing Agency, and who is approved in writing by the Idaho Housing Agency. This Partnership Agreement is entered into between the respective parties with full knowledge that the same are expressly subject to the requirements and conditions now and hereafter imposed by the Idaho Housing Agency, in connection with the provisions of Title 67, Chapter 62, Idaho Code, as amended, and Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations of the Idaho Housing Agency and the U.S. Department of Housing and Urban Development ("HUD" nor 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 this Agreement, the aforesaid Act, or regulations, then such conflict or inconsistency shall be deemed modified by the provision 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.

8. A section 4.6 shall be added to the Referenced Document, and the said additional clause shall be as follows:

4.6 Disposition of Fees and Partnership Income.  
No payment of any fees or distribution of income to the General Partner or Operating General Partner shall be made without the express written consent of the Idaho Housing Agency.

9. Save and except as herein amended, the Referenced Document shall stand and continue as previously executed.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Amended and Restated Agreement and Certificate of Limited Partnership of James Court Associates this day and year first above written.

GENERAL PARTNERS:

DIANA CORP.,  
AN Idaho corporation

By Earl T. Grossaint

Earl T. Grossaint  
Earl T. Grossaint

WITHDRAWING PARTNER:

JAMES COURT ENTERPRISES, INC.,  
an Idaho corporation

By

*[Signature]*

Vice-President

LIMITED PARTNER:

REAL ESTATE PARTNERS LIMITED,  
a California limited partnership  
by its corporate general partner  
Sonnenblick-Goldman Corp. of  
California, a California corporation

By

*[Signature]*  
1978 Vice President

*Not Notarized  
S.E.*

STATE OF IDAHO, COUNTY OF ADA, ss.

Filed for record at the request of

*James Court Assoc.*  
28 Min. past 3 o'clock on this 6th day of July 1978

CLARENCE A. PLANTING, Recorder

*[Signature]* Deputy

# 5.

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AMENDED AND RESTATED AGREEMENT AND CERTIFICATE OF  
LIMITED PARTNERSHIP  
OF  
JAMES COURT ASSOCIATES

This Amended and Restated Limited Partnership Agreement, dated this 30th day of December, 1977, is entered into by and among:

Diana Corp., an Idaho corporation (hereinafter referred to as the "Operating General Partner"), and James Court Enterprises, Inc., an Idaho corporation (hereinafter referred to as "James Court Enterprises") (the Operating General Partner and James Court Enterprises are hereinafter collectively referred to as the "General Partner") and Andy Anderson (hereinafter also referred to as the "Withdrawing Limited Partner");

and

Real Estate Partners Limited, a California limited partnership (hereinafter referred to as the "Limited Partner") having as its general partners Sonnenblick-Goldman Corp. of California, a California corporation and Charles H. Boxenbaum.

with reference to the following facts:

A. James Court Associates (the "Partnership") was formed pursuant to an Agreement and Certificate of Limited Partnership recorded with the County Recorder of Ada County on OCT. 12, 1977.

B. The Partnership is the owner and holder of the Property (as hereinafter defined), upon which it proposes to own, develop and operate the Project (as hereinafter defined).

C. The Partnership proposes to develop the Project in part with the proceeds of the Mortgage Loan (as hereinafter defined).

D. The General Partner and the Limited Partner (hereinafter collectively referred to as the "Partners") desire to effect the admission of the Limited Partner to, and the withdrawal of the Withdrawing Limited Partner as a

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limited partner of the Partnership, to continue the limited partnership previously organized for the purposes as hereinabove described, to restate in its entirety the Limited Partnership Agreement, and to enter into this Amended Limited Partnership Agreement on the terms, covenants and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

# 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1.1 Affiliated Person. "Affiliated Person" means any person, firm or entity (a) which owns or is owned by the General Partner in whole or in part; (b) which controls or is controlled by the General Partner in whole or in part; (c) which is the parent, subsidiary or affiliate of the General Partner; (d) in which the General Partner has any interest whatsoever, except as a creditor; (e) from which the General Partner shall receive any remuneration directly or indirectly; or (f) which then constitutes the General Partner.

1.2 Agreement Concerning Completion. The "Agreement Concerning Completion" means the Agreement Concerning Completion and Negative Cash Flow Guaranties of even date, by and between the General Partner (individually and not in his capacity as the general partner of the Partnership), the Partnership and the Limited Partner.

1.3 Authority. "Authority" means Idaho Housing Agency.

1.4 Breakeven. "Breakeven" means that for the relevant period the Partnership shall have received and maintained Cash from Operations (as hereinafter defined).

1.5 Cash from Operations. "Cash from Operations" means, with respect to any accounting period, the sum of all cash receipts of the Partnership from rents, lease payments, subsidy payments, releases from reserves for repairs and replacement of Partnership property and any

and all other sources relating to the Project other than cash receipts from all tenant and trade deposits, sales exchanges or other dispositions or refinancings of the Project or other Partnership property (including but not limited to proceeds resulting from insured losses or condemnation or eminent domain proceedings), capital contributions to the Partnership or borrowed funds from any source relating to the Project, less the sum of all Operating Disbursements (as hereinafter defined); and the Partnership shall not be deemed to have received and maintained Cash from Operations for such period unless such receipts exceed such disbursements.

1.6 Completion of the Project. "Completion of the Project" means the later of (i) delivery of a certificate from the Project's architect to the effect that the Project has been completed pursuant to the plans and specifications approved by the Authority, as may be amended from time to time with the consent of the Authority, with all of the units and the Project ready for occupancy by tenants; and (ii) obtaining of certificates of occupancy for all of the units of the Project from the local governmental body or agency having jurisdiction, provided such agency customarily furnishes such certificates.

1.7 Disposition of Partnership Property. "Disposition of Partnership Property" means any sale or exchange either in one transaction or a series of transactions to one or more buyers pursuant to a plan of disposition formulated by the Operating General Partner, or other disposition, except an involuntary disposition giving rise to insurance or other proceeds, of all or substantially all of the Partnership's property.

1.8 FHA. The "FHA" means the Federal Housing Administration.

1.9 Final Acceptance. "Final Acceptance" means the final act of acceptance (which shall include a cost certification, if applicable) of the Project by HUD as having been completed in accordance with the plans and specifications for the Project and the terms of the HUD's commitment letter and any commitment letter of such other agency.

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

1.11 Initial Closing. The "Initial Closing" means any and all documents, approvals and agreements (including any

subsidy agreements) required by HUD and the Authority in connection with the Project have been fully executed by all the parties thereto. The Initial Closing occurred on

1.12 Investment Agreement. The "Investment Agreement" means the Agreement for Investment in James Court Associates of even date, by and among the Partnership, the Partners and certain persons withdrawing from the Partnership.

1.13 Mortgage. The "Mortgage" means the Mortgage granted by the Partnership to the Authority as from time to time amended, which secures the Mortgage Loan, in the amount then outstanding.

1.14 Mortgage Loan. The "Mortgage Loan" means the Mortgage Loan obtained from the Authority in the face amount of \$2,495,414.

1.15 Mortgage Note. The "Mortgage Note" means collectively the non-recourse notes in the principal amounts of \$1,145,144 and \$1,350,270 by the Partnership to the Authority to evidence the indebtedness of the Partnership to the Authority, as from time to time amended, which is secured by Mortgage.

1.16 Operating Disbursements. "Operating Disbursements" means all costs and expenses incurred incident to operation of the Partnership or the ownership, development, operations, repair and maintenance of the Project, including without limitation, taxes, capital improvements and acquisitions, payments of principal, interest and annual fee on the Mortgage, repayment of loans from Partners, and the funding of reserves, if any, required by the General Partner, the Authority or any other governmental agency having jurisdiction with respect to the Project; provided, however, any unexpected and extraordinary repairs or capital improvements not caused by the negligence of the Operating General Partner, its agents, servants or employees and not proper insurable casualties (collectively "Unexpected Casualties") are expressly excluded from this definition. All costs and expenses representing fuel or other utility costs shall be annualized so as to reflect on a monthly basis the average of the expenses so incurred. Operating Disbursements shall be determined on the accrual basis of accounting regardless of the basis upon which the books of the Partnership are kept for other purposes.



1.17 Operating Expense Notes. "Operating Expense Notes" means those non-negotiable promissory notes as defined in the Agreement Concerning Completion.

1.18 Partial Disposition of Partnership Property. "Partial Disposition of Partnership Property" means any sale, exchange, or other disposition of property of the Partnership which does not constitute a Disposition of Partnership Property.

1.19 Percentage of Completion "Percentage of Completion" means that percentage of the Project which has been certified by the Project's architect as complete.

1.20 Profits and Losses. "Profits and Losses" means the Partnership's annual net profits or losses as determined for the applicable accounting period by the Partnership's accountant for purposes of filing with the Internal Revenue Service for federal income tax purposes.

1.21 Project. The "Project" means collectively the four housing apartment projects consisting of 94 units (designated as Project Nos. 8N-104 and 8N-105) and attendant facilities which the Partnership proposes to own, develop and operate upon the Property.

1.22 Property. The "Property" means the parcels of real property together with certain existing improvements thereon as described in Exhibit 2 hereto, situated in Ada and Elmore Counties, Idaho, upon which the Partnership proposes to own, develop and operate the Project.

1.23 Regulatory Agreement. The "Regulatory Agreement" means collectively the agreements entered into by and between the Partnership and HUD and by and between the Partnership and the Authority concerning the financing, ownership and/or operation of the Project.

1.24 Substitute Operating General Partner. The "Substitute Operating General Partner" means any person or other entity designated by the Limited Partner, and admitted into the Partnership as a general partner having the rights set forth in this Agreement upon the happening of any of the events specified in Section 7.3 hereof and designated by the Limited Partner as the Substitute Operating General Partner pursuant to Section 5.2.6 hereof.

## 2. CONTINUATION AND PURPOSE OF PARTNERSHIP

2.1 Continuation. The parties hereto do hereby continue the limited partnership formed pursuant to the provisions of a Limited Partnership Agreement, recorded with the County Recorder of Ada County on OCT. 12, 1977.

2.2 Name of Partnership. The name of the Partnership shall continue to be James Court Associates.

2.3 Recordation and Filing of Partnership Documents. The parties shall sign, execute, acknowledge, and verify this Agreement as required by law, and shall cause it to be recorded with the County Recorder of Ada County.

2.4 Purpose of Business. The purpose and business of the Partnership shall be to hold title to the Property; to develop thereon the Project; to operate the Project; and to undertake such other activities related to the foregoing as may be necessary, advisable, or convenient to the promotion or conduct of the business of the Partnership.

2.5 Term. The Partnership commenced on OCT. 12, 1977, and shall remain in existence until dissolved:

- (a) by mutual consent of all of the Partners;
- (b) as otherwise provided in this Agreement;
- (c) on December 31, 2027; or
- (d) by operation of law.

2.6 Place of Business. The principal place of business of the Partnership shall be at 1510 East Fairview Meridian, Idaho 83642, or such other location in the State of Idaho as may hereafter be determined by the General Partner. The General Partner shall notify the Limited Partner of any change in the principal place of business of the Partnership.

## 3. CAPITAL CONTRIBUTIONS AND LOANS

3.1 General Partner's Contribution. The General Partner will contribute to the Partnership all of his interest in and to the Project, including without limitation, all commitments and contractual rights pertaining thereto, for which the General Partner received no credit to his capital account. The General Partner shall have no right or obligation to make any additional capital contributions to the Partnership.

3.2 Limited Partner's Capital Contribution. Provided that the General Partner has not failed to fulfill any of its obligations contained in this Agreement or under any other agreements delivered by the General Partner, individually in the Agreement Concerning Completion or in its capacity as the Operating General Partner of the Partnership, to the Limited Partner prior to or concurrently with the delivery of this Agreement, the Limited Partner shall, subject to Sections 3.3, 3.4 and 7.4 hereof, contribute to the capital of the Partnership the total sum of \$400,000 (subject to adjustment pursuant to Section 1.3 of the Agreement for Investment), in cash, payable as follows:

3.2.1 \$24,000 cash contribution upon the last to occur of:

(a) the admission of the Limited Partner to the Partnership;

(b) execution by HUD of an Agreement to Enter Into Housing Assistance Payments Contract acceptable to the Limited Partner.

3.2.2 \$76,000 cash contribution upon the last to occur of:

(a) receipt, if required, of clearance or approval from the Lender and HUD of the Limited Partner's investment in the Partnership;

(b) sale by the Limited Partner of all of the limited partnership units in the Limited Partners pursuant to its offering as set forth in its private placement memorandum on or before March 31, 1978.

(c) 25% completion of the Project; and

(d) March 31, 1978.

3.2.3 \$140,000 cash contribution upon the last to occur of:

(a) the contribution under Section 3.2.2 hereof;

(b) the Completion of the Project and Final Acceptance;

(c) commencement of Section 8 housing assistance payments;

(d) Breakeven for 90 days immediately preceding the payment date; and

(e) March 31, 1979.

3.2.4 \$160,000 cash contribution upon the last to occur of:

(a) the contribution under Section 3.2.3 hereof;

(b) Breakeven for 90 days immediately preceding the payment date; and

(c) March 31, 1980.

3.3 Conditions to Limited Partner's Capital Obligation. The Limited Partner shall be under no obligation to contribute to the Partnership any of the sums provided for in Section 3.2 hereof (as adjusted, if at all, pursuant to Section 1.3 of the Investment Agreement) except in accordance with the terms and conditions of the Investment Agreement. Further, the Limited Partner shall be under no obligation to make any contribution not due and payable within one (1) year after the date certain set forth in Section 3.2 hereof.

3.4 No Interest on Capital. No interest shall be paid on capital contributions or on balances of capital accounts.

3.5 Withdrawals and Returns of Capital. No Partner shall have the right to withdraw or reduce its contributions to the capital of the Partnership except in accordance with this Agreement. Except as otherwise provided herein, no Partner shall have the right to demand or receive property, other than cash, in return for its capital contribution or have priority over any other Partner, either as to the return of contributions of capital or as to profits, losses, or distributions.

3.6 Default. In the event that the Limited Partner defaults in its obligation to pay any capital contribution on or prior to the due date therefor set forth in Section 3.2 hereof and shall fail to correct such default within ten days from such due date, it shall be deemed to be in default hereunder. Upon such default, the General Partner shall have the option, exercisable as hereinafter provided, to purchase the Limited Partner's limited partnership interest (including any interest assigned to an Operating General Partner pursuant to Section 7.3 hereof, which for the purposes of this Section 3.6 shall be considered as the

interest of the Limited Partner), including all cash flow of the Partnership, and net cash proceeds attributable to such losses otherwise allocable to the Limited Partner from and after the date of purchase of such limited partnership interest by (a) paying the Limited Partner an amount, in cash, equal to (i) 100% of the outstanding principal and any accrued interest upon all loans made to the Partnership by the Limited Partner, plus (ii) 20% of the difference between (A) the amount contributed by the Limited Partner to the capital of the Partnership and (B) any cash distributions actually made by the Partnership to the Limited Partner, less (iii) any expenses incurred by the General Partner in connection with the purchase of such interest (the "Purchase Price"), and (b) undertaking to make the additional contributions required to be made by the Limited Partner to the extent that such additional contributions were not made by the Limited Partner. The purchase may be made by the General Partner, or its designee or designees, other than the Partnership, in such proportion as it may determine, by giving notice to the Limited Partner of its intent to exercise such right within 60 days after the default. Upon the giving of the notice to purchase the interest of the Limited Partner pursuant to the provisions of this Section, the Limited Partner shall have no obligation to make the contribution which it failed to make and shall have no obligation to make any future contributions pursuant to Section 3.2 hereof. If the General Partner or its designee or designees purchase the defaulting Limited Partner's interest, the purchaser or purchasers shall consummate such purchase within the foregoing 60-day period and shall, within ten days after such purchase is consummated, pay the capital contribution to the Partnership which the Limited Partner fails to make. In the event the General Partner elects to exercise its option hereunder and the General Partner or its designee or designees fails to consummate the purchase and make the capital contribution within the required period, the Limited Partner shall have the right to withdraw from the Partnership without any obligation or liability for its unpaid capital contribution as well as the balance of its capital contributions as and when due and to collect an amount equal to the Purchase Price from the General Partner and/or its designee or designees. If the General Partner fails to exercise this option to purchase the Limited Partner's limited partnership interest, in addition to any other remedies available to the Partnership under law or statute, the Partnership may proceed to collect the unpaid capital contribution of the Limited Partner as well as the balance of the Limited Partner's capital contributions as and when due, together with interest thereon at the rate of eight percent per annum and all costs and expenses of collection incurred by the

Partnership (including reasonable fees and disbursements of counsel) from the Limited Partner.

3.7 Waiver of Partition. The Partners hereby waive and forfeit all rights arising out of statute or operation of law, to seek, bring or maintain in any court an action for partition pertaining to any asset of the Partnership.

#### 4. PROFITS, LOSSES AND DISTRIBUTIONS

##### 4.1 Allocation.

Profits and losses shall be allocated as follows:

4.1.1 All profits and losses from operations shall be allocated 99% to the Limited Partner and 1% to the Operating General Partner.

4.1.2 With respect to profits resulting from the Disposition or Partial Disposition of Partnership Property, including upon dissolution and termination of the Partnership, as follows:

(a) First to the Limited Partner and then to the General Partner until their respective capital accounts have been credited with that amount for each class of Partner equal to the excess of (i) cumulative net losses previously charged to its capital account over (ii) cumulative profits theretofore credited to its capital account;

(b) to the Limited Partner in an amount equal to 35% of the aggregate cash capital contributions made by the Limited Partner; and

(c) the balance, if any, 50% to the Limited Partner and 50% to the Operating General Partner.

4.2 Distribution of Cash from Operations. Cash from Operations shall be distributed to the Partners from time to time, but not less often than annually and with all distributions in respect of any one calendar year to be distributed not later than 90 days after the end of such year, in the following order or priority:

(a) Payment of the Operating Expense Notes;

(b) \$2,000 to the Limited Partner; and thereafter

(c) 50% to the Limited Partner and 50% to the Operating General Partner.

4.3 Distributions of Cash from Refinancing. Surplus cash resulting from a refinancing of the Mortgage Loan or the obtaining of additional financing (after the funding of reserves for the Project) shall be distributed as follows:

(a) Payment of the Operating Expense Notes, and thereafter

(b) 50% to the Limited Partner and 50% to the Operating General Partner.

4.4 Distributions of Cash from Distribution or Partial Disposition of Partnership Property. Surplus cash resulting from a Disposition or Partial Disposition of Partnership Property, including but not limited to a dissolution and termination of the Partnership, shall be distributed to the Partners in the following order of priority:

(a) Payment of Operating Expense Notes;

(b) In proportion to the balance in capital accounts until such capital accounts have been brought to zero; and then

(c) 50% to the Limited Partner, 49% to the Operating General Partner and 1% to James Court Enterprises.

4.5 Capital Accounts. All profits and losses allocated to, capital contributions from, and distributions to the Partners, other than repayment of the principal amount of, and any accrued interest on, any loans, shall be credited or debited, as the case may be, to their capital accounts.

## 5. RIGHTS, POWERS AND OBLIGATIONS OF THE PARTNERSHIP AND THE PARTNERS

5.1 The Partnership. Subject to the specific limitations as set forth in this Agreement, the Operating General Partner is hereby authorized on behalf of the Partnership:

5.1.1 To acquire any property, real or personal, in fee or under lease, and any interest therein or appurtenant thereto, which may be necessary or appropriate for accomplishment of the purposes and objectives of the Partnership.

5.1.2 To develop land acquired by the Partnership with off-site and on-site improvements, and to con-

struct, maintain, operate, and manage the housing units and other facilities relating thereto which together constitute the Project.

5.1.3 To assist and further the provision of housing and to provide dwelling accommodations for persons displaced from urban renewal areas or as a result of governmental action.

5.1.4 To borrow funds, execute and issue mortgage notes and other evidences of indebtedness and secure the same by mortgage, deed of trust, pledge, or other lien; provided, however, that the Operating General Partner shall have no power or authority to modify or amend the Mortgage Loan with the result that (a) it shall be other than a non-recourse mortgage which contains exculpatory clauses to the effect that neither the Partnership nor any Partner shall have any personal liability for the debt or for any deficiency judgment which may be entered upon foreclosure of the said mortgage, and that the mortgagee shall look only to the mortgaged property for collection of any sum due under or in connection with the mortgage note or (b) it shall adversely affect the business or financial condition of the Partnership, the Project or the Property.

5.1.5 To apply for and obtain from the Authority and HUD and/or other Federal or State agencies contracts for leasing, interest subsidies, tax abatement and tax limitation, as well as other supplemental payments and subsidies; provided, however, that the Operating General Partner shall have no power or authority to amend or modify any such contracts if it shall adversely affect the business or financial condition of the Partnership, the Project or the Property.

5.1.6 To sell, lease, or otherwise dispose of the Project.

5.1.7 To apply for and obtain a contract or contracts of mortgage insurance.

5.1.8 To enter into and perform the Regulatory Agreement and to enter into or execute such other agreements and documents as are required by HUD and the Authority and any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project in connection with the Project; and to require any incoming partner, as a condition to receiving an interest in the Partnership, to agree to be bound by the Mortgage Note, Mortgage, and Regulatory Agreement and any other documents



required in connection with the Mortgage Loan to the same extent and on the same terms as the Partners.

5.1.9 To execute a deed and other documents required in order to convey title to the Limited Partner, without consideration, in the event foreclosure of the Project is imminent, with such conveyance to occur only at such time as it is reasonably apparent to the General Partner or Operating General Partner that such foreclosure cannot be reasonably avoided by the Partnership.

5.1.10 To do any and all things necessary and proper for the accomplishment of the objects herein enumerated, or necessary or incidental to the protection and benefit of the Partnership.

The Regulatory Agreement shall be binding upon the Partnership, its successors and assigns so long as a mortgage on the property of the Partnership which is insured or held by the Authority and/or HUD is outstanding or the Authority and/or HUD is otherwise subsidizing the Project. The Partnership shall comply in every respect with the Regulatory Agreement and all applicable federal, state, and local statutes and regulations. Any requirements imposed on the Partnership under the Regulatory Agreement or any other agreement with the Authority and/or HUD or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, if inconsistent with any of the provisions of this Agreement, shall be controlling and shall govern the rights and obligations of the parties hereto.

## 5.2 The General Partner.

5.2.1 Management of the Partnership's Business.  
The Operating General Partner shall manage and conduct the business of the Partnership. It may take any and all actions with respect to the Project and the Partnership without limitation, except to the extent specifically limited by this Agreement or by law. The Operating General Partner shall determine:

5.2.1.1 All matters relating to the management, operating conduct, assets and property of the Partnership; and

5.2.1.2 All matters not expressly provided for by this Agreement.

5.2.2 Compliance by Partnership with Laws and Regulations. The Operating General Partner shall promptly take any and all action which may be necessary or appropriate to perfect and maintain the Partnership as a limited partnership under state law, and to develop, maintain, and operate the Project in accordance with the provisions of this Agreement and the Regulatory Agreement, and applicable Federal, state, and local laws and regulations.

5.2.3 Fiduciary Duties. The Operating General Partner shall at all times exercise its responsibilities in a fiduciary capacity, and in a manner consistent with the objectives of the Partnership.

5.2.4 Tax Actions. The Operating General Partner shall, with the approval of the Limited Partner, do all acts, make all elections, and take whatever steps are required to maximize the Federal, state and local income tax advantages available to the Partnership; provided, however, if with respect to any such acts, elections or steps the accountants for the Partnership disagree with the accountants for the Limited Partner as to the availability to the Partnership of same, then such accountants shall appoint a third accountant whose decision shall be final.

5.2.5 Affiliated Persons. Attached hereto as Exhibit 3 are copies of all existing contracts between the Partnership and Affiliated Persons. The Operating General Partner may, subject to the provisions of this Section and Section 5.2.12 hereof, contract with Affiliated Persons on terms reasonably competitive with those which may be obtained in the open market for property or services required by the Partnership. Any such contract or contracts hereafter entered into with Affiliated Persons shall be fully disclosed to the Limited Partner within 30 days after the end of each calendar year.

5.2.6 Management by Substitute Operating General Partner. Upon the admission of an additional General Partner pursuant to Section 7.3 hereof, such additional General Partner shall, at the option of the Limited Partner, (i) be the Substitute Operating General Partner and (ii) have the full, exclusive, and complete right to manage and conduct the business of the Partnership.

5.2.7 Action by General Partner. With respect to each contract or agreement entered into by the Partnership with any third party, each such contract or agreement entered into by the Operating General Partner or the Substi-

tute Operating General Partner on behalf of the Partnership shall provide that such third party acknowledges that he is dealing with a limited partnership whose only general partner is the General Partner and that in any subsequent action against the Partnership by such party he will proceed only against the Partnership and/or the General Partner and their successors and assigns.

5.2.8 Outside Activities. The Operating General Partner shall devote such time and attention to the Partnership business as may be necessary for the proper performance of its duties. It may, however, engage or hold interests in other business ventures of every kind and description, in which the Partnership and the Limited Partner shall have no interest.

5.2.9 Indemnification of General Partner. The General Partner (and the Substitute Operating General Partner, if any) shall be entitled to indemnity from the Partnership for any act performed by it within the scope of the authority conferred on it by this Agreement, except for acts of malfeasance, negligence, or misrepresentation, provided that any indemnity under this Section shall be paid out of and to the extent of Partnership assets only.

5.2.10 Liability of General Partner. The General Partner (and the Substitute Operating General Partner, if any) shall not be liable, repsonsible or accountable in damages or otherwise to the Partnership, the Special Limited Partner or the Limited Partner for any act performed by the General Partner within the scope of the authority conferred on it by this Agreement, except for acts of malfeasance, negligence, or misrepresentation.

5.2.11 Insurance. The Operating General Partner shall cause the Partnership, to obtain and maintain at all times, such insurance, in such amounts, on such terms and with such carriers, as is customary for a project similar to the Project, but which at a minimum shall include the following insurance policies to be issued by a qualified insurance company or companies rated at least A+AAAA by Best's Insurance Guide:

(a) All-risk property insurance with a 100% replacement cost endorsement.

(b) Comprehensive general liability insurance with minimum coverage of \$1,000,000 single limit, including extensions of coverage for contractual liability,

incidental malpractice liability and host liquor liability.

(c) Worker's compensation insurance as required by law.

The Operating General Partner shall deliver to the Limited Partner copies of such policies and a certificate or certificates of the insurance carrier or carriers from which such policies have been obtained, in form and substance satisfactory to the Limited Partner, to the effect that the foregoing insurance has been obtained and is in force and shall provide that each such policy requires the insurance carrier to notify the Limited Partner at least 60 days prior to any proposed cancellation of such policy. The cost of obtaining and maintaining such policies of insurance shall be a Partnership expense; provided, however, any portion of such cost not recognized by the Authority as an allowable Project expense shall only be paid out of such funds the Authority has authorized for distribution to the Partnership, but any portion of such excess cost over \$500 shall be paid for by the Limited Partner.

5.2.12 Management Agent. The Operating General Partner shall have the responsibility for managing the Project and obtaining a management agent (the "Management Agent"), which shall initially be A&C Corporation, an Affiliated Person. The Operating General Partner shall cause the Partnership to enter into an agreement with the Management Agent which agreement shall be subject to the approval, if required, of the Authority and/or any other governmental agency or financing entity involved in the Project. A copy of such agreement shall be promptly provided to the Limited Partner. The management agreement may be with an Affiliated Person as Management Agent. If the management agreement is not with an Affiliated Person such Management Agent shall provide a fidelity bond, naming the Partnership as insured, in an amount equal to two months' gross income. If at any time after Completion of the Project (a) the Project shall be subject to a substantial building code violation or violations which shall not have been cured within a reasonable time after notice from the Limited Partner, (b) the Partnership over any one-year period after Completion does not achieve Breakeven, or (c) the Operating General Partner is in default under the Agreement Concerning Completion, the Operating General Partner shall forthwith give to the Limited Partner notice of such event, and thereafter the Partnership shall forthwith terminate its management agreement with the Management Agent, unless the consent of the Limited Partner is obtained to the retention of the Management Agent as the manager of the Project. If such consent

is not obtained, the Operating General Partner shall immediately proceed to select a substitute Management Agent for the Project, which Management Agent shall be a firm regularly engaged in the business of providing services as a management agent of the type contemplated by this Section in Idaho and which firm shall not be an Affiliated Person. The Operating General Partner shall have the duty to manage the Project during any period in which there is no Management Agent. In all cases, no management fee shall be payable to any person unless the management contract with such person shall provide for termination of the same upon the occurrence of any of the events described in this Section 5.2.12 and in any event upon 30 days' notice.

5.2.13 Section 167(k) Compliance. In the event rehabilitation expenditures are contemplated, the Operating General Partner shall take all steps necessary to cause the Partnership to be in full compliance with the continuing requirements of Section 167(k) of the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder.

### 5.3 The Limited Partner.

5.3.1 The Limited Partner shall not take part in the management of the Partnership's business, transact any business for the Partnership, nor have any power to sign for or to bind the Partnership or to subject the Partnership to any liability or obligation.

5.3.2 The Limited Partner shall be personally liable in excess of its capital contributions which have become payable pursuant to the terms of this Agreement.

## 6. PAYMENTS TO OPERATING GENERAL PARTNER

6.1 Management Fees. The Operating General Partner shall be paid management fees as hereinafter set forth for the day-to-day management of the Partnership activities and the Project, including but not limited to, the rendition of accounting and bookkeeping services, preparation and submission of reports for relevant governmental agencies and others, communications with federal, state and city agencies, supervision of community relations, supervision of the Partnership's compliance with all contractual obligations, supervision of the Partnership's payment of all financial obligations, and securing a qualified general contractor and a qualified operations manager, for which a salary shall be paid by the Partnership to the Operating General Partner

without regard to partnership income, as a guaranteed payment, payable as follows:

6.1.1 \$11,000 shall be paid in, and for services rendered during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2 hereof.

6.1.2 \$13,000 shall be paid in, and for services rendered during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3 hereof.

6.1.3 \$12,000 shall be paid in, and for services rendered during, the calendar year 1980, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.4 hereof.

6.2 Additional Fees to the Operating General Partner.  
The Partnership shall pay to the Operating General Partner the following additional fees for services rendered by the Operating General Partner to the Partnership as described and payable at the time or times specified below:

6.2.1 For the initial rent up of the Project, \$28,000 shall be paid to the Operating General Partner in, and for services rendered during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2 hereof.

6.2.2 For the Operating General Partner's independent undertaking to fund certain operating cash deficits of the Project.

6.2.2.1 \$26,500 shall be paid in, and for services rendered during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2 hereof.

6.2.2.2 \$24,000 shall be paid in, and for services rendered during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3 hereof.

6.2.3 The Partnership shall pay to the Operating General Partner a fee for the development and sponsorship of the Project, payable as follows:

6.2.3.1 \$2,000 shall be paid in, and for services rendered during, the calendar year 1977, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.1.

6.2.3.2 \$7,500 shall be paid in, and for services rendered during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3.

6.2.3.3 \$7,500 shall be paid in, and for services rendered during, the calendar year 1980, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.4.

6.2.4 An aggregate builder's fee of \$145,000 shall be paid to the Operating General Partner for its services as follows:

6.2.4.1 \$11,000 shall be paid in, and for services rendered during, the calendar year 1977, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.1.

6.2.4.2 \$3,000 shall be paid in, and for services rendered during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2.

6.2.4.3 \$40,500 shall be paid in, and for services rendered during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3.

6.2.4.4 \$90,500 shall be paid in, and for services rendered during, the calendar year 1980, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.4.

6.2.5 An aggregate fee of \$113,500 shall be paid for the Operating General Partner's undertaking to guarantee Completion of the Project as follows:

6.2.5.1 \$11,000 shall be paid in, and for services rendered during, the calendar year 1977, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.1.

6.2.5.2 \$2,500 shall be paid in, and for services rendered during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2.

6.2.5.3 \$50,000 shall be paid in, and for services rendered during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3.

6.2.5.4 \$50,000 shall be paid in, and for services rendered during, the calendar year 1980, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.4.

6.3 Reimbursement for General Partner's Expenses. In addition to the foregoing fees, the Operating General Partner shall be entitled to reimbursement for certain expenses incurred by it on behalf of the Partnership as follows:

6.3.1 Up to \$2,000 shall be paid to the Operating General Partner as a reimbursement for out-of-pocket expenses for office rent and other miscellaneous expenses relating to the Partnership payable as follows:

6.3.1.1 Up to \$1,000 shall be paid in, and for such expenses incurred during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2.

6.3.1.2 Up to \$1,000 shall be paid in, and for such expenses incurred during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3.

6.3.2 The Operating General Partner shall be paid the sum of up to \$8,000 as a reimbursement for out-of-pocket expenses relating to professional fees paid on behalf of the Partnership, payable as follows:

6.3.2.1 Up to \$4,000 shall be paid in, and for such expenses incurred during, the calendar year 1978, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.2.

6.3.2.1 Up to \$4,000 shall be paid in, and for such expenses incurred during, the calendar year 1979, but in no event prior to the receipt by the Partnership of the contribution described in Section 3.2.3.



6.4 No Reimbursement of General Partner. The General Partner shall be entitled to receive payments from the Partnership only as specifically provided for by Sections 4.1, 4.2, 4.3, 4.4, 5.2.9, 5.2.12, 6.1, 6.2, 6.3, 7.4 and 10.2 hereof and shall receive no other compensation for services rendered to the Partnership and no reimbursement for expenses (including overhead) of the General Partner.

7. RELATIONSHIP OF GENERAL AND LIMITED PARTNERS.

7.1 Limitations on Sale of Partnership Assets by General Partner. The General Partner may not, without the written consent of the Limited Partner, sell or lease (except to individual tenants in the ordinary course of business) or otherwise transfer or dispose of (a) the Project, or (b) all or substantially all of the Partnership's assets.

7.2 Reports to Limited Partner.

7.2.1 The Operating General Partner shall promptly notify the Limited Partner upon the receipt of any notice of default under the Mortgage Loan, breach of the Regulatory Agreement, non-payment of taxes, filing of liens against the Project or the Property, or non-compliance with any federal, state, or local law, ordinance, or regulation, commencement of any lawsuit against the Partnership, cancellation or non-renewal of any insurance, cancellation or non-renewal of any subsidy agreements, or any other circumstances which, either in amount or time or otherwise materially affect the business of the Partnership or the interests of the Partners.

7.2.2 During the period of initial occupancy of the Project until the Project is 95% occupied, the Operating General Partner shall deliver to the Limited Partner, within seven days after the end of each week a report showing occupancy of the Project.

7.2.3 During the period of occupancy and operation of the Project following the period set forth in subsection 7.2.2 hereof, the Operating General Partner shall deliver to the Limited Partner within 30 days after the end of each calendar month an operating report showing rental occupancy of the Project, cash receipts and accrued expenses.

7.2.4 Throughout the term of this Agreement, the Operating General Partner shall furnish the Limited Partner with notice of any fact causing a breach of any of the representations and warranties contained in Article III of the Investment Agreement or any provision of this Agreement.

7.2.5 Upon request of the Limited Partner, the Operating General Partner shall deliver to the Limited Partner a copy of its balance sheet in the form as required by the Authority as of the end of the most recent calendar year.

7.2.6 Throughout the term of this Agreement the Operating General Partner shall deliver to the Limited Partner at reasonable intervals reports updating the reports to be delivered pursuant to Section 2.2.1.3 of the Investment Agreement, and to the extent then applicable shall deliver to the Limited Partner copies of the following:

7.2.6.1 Monthly construction requisitions.

7.2.6.2 Occupancy approvals.

7.2.6.3 Photographs of completed Project buildings.

7.2.6.4 Cost certification of owner and builder.

7.2.6.5 All change orders.

7.2.6.6 Monthly statements of cash receipts and disbursements within 15 days after the end of each month comparing the actual operations to the budget for the current month and the year-to-date, including: (a) bank reconciliation; (b) listing of accounts payable; (c) computation of surplus cash; and (d) aging of accounts receivable.

7.2.6.7 Copies of all reports provided to HUD and/or the Authority, subject to Section 11.5 hereof.

7.2.6.8 Copy of HUD approved rental schedule as presently in force.

7.2.6.9 Copy of annual physical inspection provided by HUD.

7.2.7 An annual operating budget when required by the Authority but no later than sixty (60) days after the beginning of the calendar year.

7.3 Net Worth of General Partner; Additional General Partner. The General Partner agrees to maintain at all times during the term of the Partnership sufficient net

worth so as to satisfy then applicable Federal tax laws and Internal Revenue Service regulations and rulings prescribing minimum net worth requirements for general partners in order to maintain the Partnership as a partnership for federal tax purposes. If (a) the General Partner or the Partnership shall be in material default in the performance of any of their respective obligations so as to seriously impair the operations or prospects of the Partnership and/or the Project, or (b) the net worth of the General Partner has become impaired so as to endanger the status of the Partnership as a partnership for Federal tax purposes, the Limited Partner may designate an additional General Partner, who shall be admitted with whatever partnership interest he or it shall have or acquire from the Limited Partner and that of the General Partner (in the event of mandatory retirement pursuant to Section 8.4 hereof) and who shall, at the option of the Limited Partner, be the Substitute Operating General Partner, but the General Partner shall continue with its interest in profits, losses and distributions as General Partner (except in the event of mandatory retirement pursuant to Section 8.4 hereof.)

7.4 Loans from the Partners. In the event of a material default under this Agreement, under any requirements imposed upon the Partnership by the Mortgage Loan or Regulatory Agreement or otherwise that would materially adversely affect the Partnership or the Project, the General Partner (to the extent not otherwise obligated to provide the funds therefor) and the Limited Partner have the right, but not the obligation, to advance funds by way of loan to the Partnership for the purpose of curing any such default, for which each Partner who advances funds shall receive a promissory note of the Partnership bearing interest at a rate of the lesser of the maximum rate permitted under the laws of the State of Idaho, or ten percent per annum and payable prior to any distributions pursuant to Sections 4.2, 4.3, or 4.4 hereof. Any such loans made by the Limited Partner shall, at the Limited Partner's sole option, be repaid as to principal and interest by reduction, in whole or in part as the case may be, of the amount of any forthcoming capital contribution or contributions payable by the Limited Partner pursuant to Section 3.3 hereof.

#### 8. TRANSFERABILITY AND ASSIGNABILITY OF PARTNERS' INTERESTS

8.1 General Partner. The General Partner shall not sell, assign, transfer, mortgage, pledge, or otherwise encumber or dispose of his or its interest in the Partner-

ship or any part or portion thereof. Any such attempted sale, assignment, transfer, mortgage or charge in violation hereof shall be void.

## 8.2 Limited Partner.

8.2.1 Unless the Limited Partner has first obtained the written consent of the General Partner, the Limited Partner may not assign the whole or any part of its interest in the Partnership as a Limited Partner to any person, firm, or entity who or which is lawfully empowered to become and becomes a limited partner in the Partnership in respect of that interest or that part thereof; provided, however, that the foregoing shall not limit in any way the Limited Partner's right to designate an Operating General Partner or to transfer a portion of its interest in the Partnership to the Substitute Operating General Partner pursuant to Section 7.3 hereof.

8.2.2 The admission of an assignee of such Limited Partner as a substituted limited partner shall be further conditioned on:

8.2.2.1 The written consent thereto of the Authority and HUD and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, if required.

8.2.2.2 The assignment instrument being in form and substance satisfactory to the General Partner.

8.2.2.3 The assignor and assignee named therein executing and acknowledging such other instrument or instruments as the General Partner reasonably may deem necessary or desirable to effectuate such admission.

8.2.2.4 The assignee's written acceptance and adoption of all of the terms and conditions of this Agreement, as the same may have been amended, and written acceptance of all of the conditions of the Regulatory Agreement.

8.2.2.5 Such assignee paying or obligating itself to pay, as the Operating General Partner may determine, all reasonable expenses incurred in connection with such admission, including but not limited to, the cost of preparing, filing, and publishing any amendment to the Certificate of Limited Partnership, as from time to time amended, to effectuate such admission; and

8.2.2.6 Such assignee paying or obligating itself to pay when due all capital contributions owed or to be owed to the Partnership relating to the Partnership interest acquired by such assignee.

8.3 Mandatory Retirement of General Partner. Upon the occurrence of any of the events hereinafter described, the Operating General Partner shall tender its resignation in writing to the Limited Partner, which resignation shall become effective only if accepted in writing by the Limited Partner within 30 days of the date of such resignation:

(a) Any material breach of the General Partner's duty or obligations under this Agreement, the Investment Agreement, or any other agreement delivered concurrently with this Agreement which has continued for a period of ten days.

(b) Any material breach of the Mortgage or Mortgage Note, the Regulatory Agreement or any other agreement given with respect to the financing.

(c) Termination, withdrawal or reduction of any governmental subsidy relating to the Project, unless a comparable subsidy has been obtained where such termination, withdrawal or reduction was the result of an act or omission to act by the Operating General Partner.

(d) Failure to comply with Rev. Proc. 72-13.

If the Operating General Partner resigns pursuant to this Section 8.3, or suffers and event of default, (i) the interest of the General Partner and (ii) all of the voting stock of James Court Enterprises shall be transferred to a successor General Partner or, if none is selected by 100% in interest of the limited partners of the Partnership, to the Partnership. The net profits or net losses for the fiscal year during which the transfer occurs shall be allowed to the person or other entity which is the general partner on December 31 of the year in which the transfer occurs. In the event the Operating General Partner resigns pursuant to this Section, it shall deliver to the Limited Partner prior to the effectiveness of such resignation an operating manual for the Project containing the information described in Section 2.4.1.6 of the Investment Agreement.

8.4 Acquisition of General Partner Interest Following Dissolution. In the event of a dissolution of the Partnership pursuant to Section 10.1.1 hereof, the Limited Partner shall have the right to purchase the entire Partnership

interest as tenants-in-common as provided therein of each and all of the persons constituting the General Partner for an aggregate amount of \$1,000.

9. ALLOCATION OF INCOME AND EXPENSE.

9.1 Manner of Allocation. Each item of income, gain, expense or loss of the Partnership and any tax credits shall, for purposes of the Internal Revenue Code of 1954, as amended, for each taxable year be deemed to be allocated among the Partners in the same manner as profits and losses are divided among the Partners during that taxable year pursuant to Section 4.1 hereof. The Limited Partner shall participate in profits and losses, and distributions as provided in Sections 4.1, 4.2, 4.3 and 4.4 hereof from and after the date of admission into the Partnership.

9.2 Transferee Limited Partner. If the Limited Partner transfers its interest in the Partnership pursuant to the terms and conditions of this Agreement, the net profits or net losses for the fiscal year during which the transfer occurs shall be allocated between the Limited Partner and the transferee as they shall agree; provided that if the Partnership does not receive notice of the manner in which such parties have agreed such profits or losses are to be allocated between them on or before January 31 of the year following the year in which the transfer occurs, then all of such profits or losses shall be allocated as between the Limited Partner and its transferee as of the date of admission to the Partnership of the transferee.

9.3 An Election to Adjust Tax Basis. In the event of the transfer of a Partnership interest or upon the death of an individual limited partner, or in the event of the distribution of Partnership property to any limited partner, the Partnership may file an election, in accordance with applicable Treasury Regulations, to cause the basis of the Partnership property to be adjusted for Federal income tax purposes as provided by Sections 734, 743 and 754 of the Internal Revenue Code of 1954, as amended.

10. DISSOLUTION - DISTRIBUTIONS

10.1 Dissolution. The Partnership shall terminate and dissolve upon the happening of any of the following events:

10.1.1 The retirement, death, informal composition of its creditors, the making of an assignment for the

benefit of its creditors, the filing of a petition by or against it under any provision of the Bankruptcy Act of the United States, unless such petition shall have been dismissed within 30 days of filing, insolvency, dissolution, or other cessation to exist as a legal entity of any general partner of the Partnership, unless each of the remaining persons or entities, if any, then constituting the General Partner (or if none, then the Limited Partner alone) elects to continue the business of the Partnership. In the event such remaining persons or entities do not elect to continue the business of the Partnership within 30 days of receipt of notice by the Partnership of such event otherwise causing a termination and dissolution, the Partnership shall dissolve, and notwithstanding Section 10.2 hereof, the surplus assets thereof shall be distributed as tenants-in-common.

10.1.2 The determination by the General Partner and 100% in interest of the limited partners that the Partnership should be dissolved, in accordance with state law.

10.2 Sale of Project - Distributions Upon Dissolution and Termination. Upon the occurrence of any of the events set forth in Section 10.1 hereof, the Partnership shall dissolve and terminate and the Operating General Partner shall take full account of the Partnership assets and liabilities and the assets shall be liquidated as promptly as is consistent with the obtaining of the fair market value thereof. In the event there is a surplus available for distribution, such proceeds, together with assets distributed in kind, shall be applied and distributed to the Partners in accordance with Section 4.4 hereof.

# 11. BOOKS OF ACCOUNT AND REPORTS

## 11.1 Books of Account.

11.1.1 The Operating General Partner, at the expense of the Partnership, shall at all times keep and maintain complete and accurate books, records, and accounts of the Partnership, in accordance with practices generally used in the real estate industry applied in a consistent manner and as reported in the Partnership return of income for Federal income tax purposes, and in a manner and form acceptable to the C.P.A. firm appointed to prepare the Partnership audited financial statements, tax returns and cost certification for the Project, which firm shall be Ernst & Ernst. The Operating General Partner shall cause to be provided, at the expense of the Partnership, to

the Limited Partner (a) by November 15th of each year an estimate of the profits and losses of the Partnership for the year ending December 31st and (b) by the twentieth day following each calendar quarter an unaudited balance sheet and statement of profit and loss of the Partnership.

11.1.2 The books, records, and accounts of the Partnership shall be kept at the principal office of the Partnership. All of the Partners and their duly authorized representatives shall have the right to audit, examine, and make copies of the same during business hours.

11.1.3 The Partnership's books shall be kept on an accrual basis. 60 days after the end of the fiscal year, the Limited Partner shall be furnished with a statement of profits and losses of the Partnership, a detailed balance sheet of the Partnership, and a statement showing the accounts credited to or charged against the capital accounts of all of the Partners pursuant to this Agreement. The Operating General Partner, at the expense of the Partnership, will cause to be provided to the Limited Partner audited financial statements within 60 days after the end of the fiscal year.

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

11.3 Bank Accounts. The funds of the Partnership shall be deposited in the name of the Partnership in bank accounts insured by the Federal Deposit Insurance Corporation (the "FDIC"). Each Partner may at any time fully examine the Partnership's bank balances, statements, and accounts. All deposits, including security deposits and funds required by the Authority, HUD and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project to be escrowed, and other funds not currently needed in the operation of the Partnership business shall, to the extent permitted by applicable requirements of the Authority, HUD and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, be deposited in the name of the Partnership in such interest-bearing bank-accounts insured by the FDIC or invested in such short-term obligations (maturing within one year) issued or guaranteed by the United States Government as shall be selected by the Operating General Partner.

11.4 Tax Returns. The Operating General Partner will cause to be prepared by Ernst & Ernst, the required federal, state, and local tax returns. Based on the fiscal year of



the Partnership, said returns shall be prepared in such a way as to maximize tax benefits to the Partners and in accordance with methods set forth by the Limited Partner, and shall be submitted to the Partners not more than 45 days after the close of each fiscal year. The cost of preparing said tax returns shall be a Partnership expense but shall be paid for only out of such funds the Authority has authorized for distribution to the Partnership.

11.5 Reports to HUD. The Operating General Partner will cause to be provided to the Limited Partner at least 20 days prior to its submission to HUD, a copy of the General Partner's annual report or audit to HUD.

12. DEATH/INCOMPETENCY OF SPECIAL LIMITED PARTNER OR LIMITED PARTNER.

This Partnership shall not be terminated or dissolved upon the death or legal incompetency of a special limited partner or limited partner, or, in the case of a special limited partner or a limited partner that is a partnership, joint venture, association, corporation, or trust, the dissolution of such a special limited partner or a limited partner. The personal representative, guardian, or other successor in interest of the special limited partner or the limited partner, as the case may be, shall be substituted as a special limited partner or a limited partner in the Partnership, with all of the rights, powers, duties and obligations of such deceased, legally incompetent, or dissolved special limited partner or limited partner when approved by the Partnership and, if required, HUD, and/or the Authority.

13. GENERAL PROVISIONS.

13.1 Amendments. This Agreement may be amended upon the written consent or vote of a majority in interest of the General Partner the majority in interest of the Limited Partner.

13.2 Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to a party hereto by any other party hereto shall be in writing, and shall be deemed duly served and given when personally delivered to any member of the party to whom it is directed, or in lieu of such personal service, five business days after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

13.2.1 If to the Partnership, the Operating General Partner, or James Court Enterprises, to:

Diana Corp.  
1510 East Fairview  
Meridian, Idaho 83642  
Attn: Andy Anderson

13.2.2 If to the Limited Partner, to:

Real Estate Partners Limited  
1901 Avenue of the Stars  
Suite 1200  
Los Angeles, California 90067

The Partnership, the Operating General Partner, James Court Enterprises or the Limited Partner may change its address for the purpose of this Section by giving written notice of such change to the other parties in the manner provided in this Section.

13.3 Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

13.4 Headings. The table of contents and headings of the articles and sections of this Agreement are inserted for convenience only and are not to be deemed to constitute a part of this Agreement.

13.5 Further and Additional Documents. Each of the parties hereto agrees to execute, acknowledge, and verify, if required to do so, any and all further or additional documents as may be reasonably necessary to fully effectuate the terms of this Agreement.

13.6 Counterparts. This Agreement may be executed in counterparts, which taken together shall constitute a single document.

13.7 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, successors, and assigns of the respective Partners.

13.8 Waiver. The waiver of any breach of any term, covenant, or condition of this Agreement by any of the parties hereto shall not constitute a continuing waiver or waiver of any subsequent breach, either of the same or of

any other additional or different term, covenant, or condition of this Agreement.

13.9 Severability. The parties hereto agree that in the event any court of competent jurisdiction determines that any provision of this Agreement is unlawful or unenforceable, then, and in that event each and all remaining provisions of this Agreement shall remain in full force and effect.

13.10 Attorneys' Fees. The parties hereto agree that in the event any party to this Agreement shall be required to initiate legal proceedings to enforce performance of any term or condition of this Agreement, including but not limited to, the payment of monies or the enjoining of any action prohibited hereunder, the prevailing party shall be entitled to recover such sums, in addition to any other damages or compensation received, as will reimburse such prevailing party for attorneys' fees and court costs incurred on account thereof.

13.11 Conflict With Agreements. In the event that any provision of this Agreement in any way tends to contradict, modify, or in any way change the terms of the Regulatory Agreement or any other agreement entered into between the Partnership and HUD, the Authority and/or any other governmental agency making or insuring the Mortgage Loan or otherwise subsidizing the Project, the terms of the Regulatory Agreement or such other agreement entered into between the Partnership and HUD, the Authority and/or such other agency shall prevail and govern so long as the Regulatory Agreement or some other agreement is in effect and by its terms requires such result; or if any provision hereof in any way tends to limit HUD and/or such other agency in the subsidizing of the Project, or the regulations and instructions thereunder, this Agreement shall be deemed amended so as to comply with the requirements of HUD and/or such other agency. This Section 13.11 will automatically become void as to HUD and such other agency, respectively, at such time as the Mortgage Loan upon the Project is no longer held or insured by HUD or HUD is no longer subsidizing the Project and at the time some other agency is no longer subsidizing the Project.

13.12 Project Inspections. Each of the Partners and their duly authorized representatives shall have the right to visit the site of the Project and to make inspections of the progress and quality of construction and management of the Project and inquiries of the General Partner, the

Partnership and their representatives as to the foregoing.

13.13 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the Partnership or the General Partner.

13.14 Consent. If at any time there is more than one limited partner in the Partnership, the term "consent of the Limited Partner" when used herein shall be interpreted to mean the consent of the majority in interest of the limited partners except where a specified vote is required, in which event such specified vote shall be required.

13.15 Remedies. Except as provided in Section 3.6 hereof, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this Section to make clear the agreement of the parties hereunder that this Agreement shall be enforceable in equity as well as at law or otherwise.

13.16 Exculpation. The Partnership and the General Partner, or creditors of either of them, shall look only to the assets of the Limited Partner for the performance of any and all obligations of the Limited Partner hereunder, it being understood and agreed that no general partner or limited partner of the Limited Partner shall have any personal liability under the terms of this Agreement or any agreement given in connection herewith.

13.17 Operating General Partner, General Partner and Limited Partner. The term "Operating General Partner" or "General Partner" includes, where the context requires or permits, all or any of the general partners, or any person or entity who becomes a successor or additional general partner pursuant to this Agreement. The term "Limited Partner" shall include any person becoming an assignee or substitute Limited Partner pursuant to this Agreement.

357 1740

IN WITNESS WHEREOF, the parties hereto have executed this Amended Limited Partnership Agreement the day and year first above written:

GENERAL PARTNER:

DIANA CORP.,  
an Idaho corporation

  
Andy Anderson, President

JAMES COURT ENTERPRISES,  
an Idaho corporation

By 

WITHDRAWING LIMITED PARTNER:

  
Andy Anderson

LIMITED PARTNER:

REAL ESTATE PARTNERS LIMITED  
A California limited Partnership by its corporate general partner Sonnenblick-Goldman Corp. of California a California corporation

By: 

(Vice) President

Ada County, Idaho, ss.

Request of 

TIME 9:30 A.M.

DATE 1-5-78

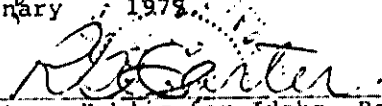
CLARENCE A. PLANTING

RECORDER

By   
Deputy

7-22-833 00

Subscribed and sworn to  
before me this 5th day of  
January 1978.

  
Notary Public for Idaho, Boise, Idaho

DRAFT(2)12/29/77PHA/hs227B3 -33-