

**FIRST AMENDED AND RESTATED**  
**CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP**  
**OF**  
**MAGNOLIA APARTMENT ASSOCIATES LIMITED PARTNERSHIP**

MAY 29 9 02 AM '91  
SECRETARY OF STATE

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FIRST AMENDED AND RESTATED  
CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP  
OF  
MAGNOLIA APARTMENT ASSOCIATES LIMITED PARTNERSHIP

This FIRST AMENDED AND RESTATED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP, is made as of the 21st day of May, 1991 among Rental Housing, Inc., an Idaho corporation, as Managing General Partner, PAM Housing, Inc., a California corporation, as Special General Partner, Linda C. Thiel, as Initial Limited Partner, and those parties who shall hereafter be admitted as Additional Limited Partners.

The parties agree as follows:

SECTION 1: DEFINITIONS

The capitalized terms used in this Agreement shall have the meanings ascribed to them in this Section 1. Except to the extent expressly included in this Section, the definitions contained in Section 53-201 of the Act shall not apply to this Agreement.

Act. The Uniform Limited Partnership Act of the State of Idaho, as amended from time to time. Reference to any section of

the Act shall be deemed to refer to a similar provision in any amendment to the Act.

Additional Limited Partners. Those persons admitted to the Partnership as Limited Partners pursuant to Section 5.5 and shown as Limited Partners on the books and records of the Partnership.

Affiliate. An individual, corporation or any other legal entity that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the designated party, or any officer, director or partner of the designated party or any company of which the designated party is an officer, director or partner. "Control" shall mean (i) ownership or control of 10% or more of the shares entitled to vote for the election of directors in the case of a corporation or the power to appoint 50% or more of the directors of a corporation and 10% or more of the beneficial interests in the case of a legal entity other than a corporation, or (ii) boards of directors that overlap by more than 50% of their directors.

Agreement. This amended and restated certificate and agreement of limited partnership, including any amendments.

Assignee. A Person who has acquired from a Partner, in accordance with the terms of this Agreement, a beneficial interest in the Partnership's Profits, Losses, Low Income Housing Credits, and Distributions, but who is not a substituted Partner.

Capital Account. An individual account maintained for each Partner in accordance with the provisions of Section 5.

Capital Contribution. Any payments as they are paid which a Partner contributes to the Partnership capital in its capacity as a Partner. All Capital Contributions shall be made in cash.

Cash From Sales or Refinancing. The net cash the Partnership realizes from the sale or refinancing of all or a portion of the Partnership Property, or from insurance proceeds paid for damage to or destruction of the Partnership Property, or due to any award paid on account of eminent domain, after (a) retirement of debt secured by the Partnership Property or the portion thereof sold, refinanced, damaged or taken, (b) payment of all Partnership Expenses related to the transaction or event, and (c) repayment of any loans from Partners.

Code. The Internal Revenue Code of 1986, as amended.

Distribution. Any cash the Partnership distributes to a Partner without consideration.

Excess Cash. Cash revenues generated by Partnership operations (other than Cash From Sales or Refinancing), less (a) the aggregate amount of all disbursements the Partnership makes for Partnership Expenses, and (b) amounts set aside for Reserves.

General Partners. Rental Housing, Inc., PAM Housing, Inc., or any Person who has been admitted to the Partnership as a substituted General Partner in accordance with Section 10.

Gross Asset Value. With respect to any asset of the Partnership, the asset's adjusted tax basis for federal income tax purposes; provided, however, that the Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing General Partner, as of the following times: (i) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for an additional capital contribution; (ii) the distribution by the Partnership to a Partner of Partnership Property other than money, unless all Partners receive simultaneous distributions of undivided interests in the distributed property in proportion to their interests in the Partnership; and (iii) the termination of the Partnership for federal income tax purposes pursuant to Code Section 708(b)(1)(B).

Initial Limited Partner. Linda C. Thiel.

Investor Note. A recourse non-interest bearing note contributed by each Additional Limited Partner to the Partnership.

Limited Partner. Any Person who is a Limited Partner of the Partnership as shown on the books and records of the Partnership, whether the Initial Limited Partner, an Additional Limited Partner, or a substituted Limited Partner at the time of reference thereto. Any General Partner who is separately designated as a Limited Partner shall have the rights and powers



and be subject to the restrictions and liabilities of both a General Partner and a Limited Partner to the extent of its participation in the Partnership as each.

Losses. The meaning set forth in Section 6.

Low Income Housing Credits. The tax credits allowable under Section 42 of the Code for qualified low income housing projects.

Magnolia Project. The Magnolia Apartments located at 3410 to 3549 Magnolia Lane, and 3403 to 3516 Gerrard Street, Boise, Idaho.

Majority Vote. The affirmative vote or written consent of Limited Partners collectively holding more than fifty percent of the Percentage Interests held by all of the Limited Partners.

Managing General Partner. Rental Housing, Inc.

Mortgages. All of the Partnership liabilities secured by deeds of trust, mortgages, contracts of sale, or security agreements on the Project.

Operating Deficit Guarantee Agreement. That certain operating deficit guaranty agreement between the Partnership and Kenneth G. Howell of even date herewith.

Option Agreements. Those certain option agreements between the Partnership and the General Partner of even date herewith.

Parklane. Parklane Company, Inc., the management agent for the Projects and an Affiliate of the General Partner.

Partnership Expenses. All costs and expenses of every kind and character the Partnership incurs in connection with the

Partnership's management, business affairs and operations, including without limitation capital expenditures, debt service, or the payment of any fees pursuant to Sections 7.5 and 7.6. Partnership Expenses shall not include (a) salaries, compensation and fringe benefits of directors, officers and employees of the Managing General Partner, and (b) overhead of the Managing General Partner, including rent and general office expense.

Partnership Property. The Partnership's fee interest in the Projects, together with any personal property now or hereafter located therein.

Percentage Interest. The proportion (expressed as a percentage) that each Partner's Capital Contributions bear to the aggregate Capital Contributions of all of the Partners, as that proportion may be adjusted from time to time in accordance with this Agreement.

Person. Any individual, general partnership, limited partnership, trust, estate, association, corporation or other entity.

Profits. The meaning set forth in Section 6.

Projects. The State Street Project and the Magnolia Project.

Special General Partner. PAM Housing, Inc., or an Affiliate, or any person hereafter admitted to the Partnership as a Special General Partner.

Terminating Event. The happening of any of the events described in Section 53-223 of the Act with respect to the Managing General Partner.

Transfer. Any sale, exchange, assignment, encumbrance, hypothecation, pledge, foreclosure, conveyance in trust, gift or other transfer of any kind, whether direct or indirect, other than as a direct consequence of a Terminating Event.

State Street Project. The State Street Apartments located at 1312-1326½ State Street, Boise, Idaho.

Unit. A limited partner interest in the Partnership which represents an obligation to make a Capital Contribution of \$16,743.

## SECTION 2: CONTINUATION

### 2.1. Continuation.

The Partnership was formed pursuant to a Certificate and Agreement of Limited Partnership dated July 20, 1989 and filed with the Idaho Secretary of State on July 24, 1989, and is hereby continued under the Act in accordance with the provisions of this Agreement.

### 2.2. Name.

The name of the Partnership shall be Magnolia Apartment Associates Limited Partnership, an Idaho limited partnership.

### 2.3. Purpose.

The Partnership's purpose shall be to acquire, hold for investment, dispose of, and operate the Partnership Property so as to qualify for the Low Income Housing Credits, and to engage in any other activities related and incidental thereto. The Partnership's principal investment objectives are (i) to provide current and future tax benefits and (ii) to protect investor capital.

2.4. Principal Office; Agent For Service of Process.

The address of the Partnership's principal executive office shall be 280 North 8th Street, Suite 116, Boise, Idaho, 83702, or such other address as the Managing General Partner may designate from time to time by a certificate of amendment filed in the office of the Idaho Secretary of State. The Partnership's registered agent shall be Rental Housing, Inc., an Idaho corporation, 280 North 8th Street, Suite 116, Boise, Idaho, 83702.

2.5. Taxable Year; Accounting Method.

The Partnership's taxable year shall be the calendar year, unless changed by the Managing General Partner. The Partnership's books shall be maintained on an accrual basis unless changed by the Managing General Partner or otherwise required by law.

2.6. Nature of Interests in Partnership.

Each Partner's interest in the Partnership shall be personal property; no Partner shall have any interest in any Partnership Property.

### SECTION 3: CERTIFICATES

#### 3.1. Certificate of Amendment.

The Managing General Partner shall timely prepare, sign, acknowledge and file in the office of the Idaho Secretary of State any certificate of amendment the Act requires.

#### 3.2. Certificate of Cancellation.

The Managing General Partner shall timely prepare, sign, acknowledge and file in the office of the Idaho Secretary of State any certificates of cancellation Section 53-210 of the Act requires. If the Managing General Partner is no longer a General Partner at the time the Partnership terminates, the certificate of cancellation shall be filed by the Special General Partner.

#### 3.3. Other Certificates.

The Managing General Partner shall timely prepare, sign, acknowledge, verify, publish, file and/or record, as may be necessary or appropriate, any notices, certificates, statements or instruments required: (a) to comply with all laws that apply to the Partnership or the conduct of its business; (b) to maintain its existence; or (c) to enable the Partnership to hold Partnership property in the Partnership's name.

3.4. Execution by Attorney-In-Fact.

Any certificate or other instrument which a Partner may sign, acknowledge and/or verify under this Section 3 may be signed, acknowledged and/or verified by that Partner's attorney-in-fact.

SECTION 4: TERM

4.1. Effective Date.

This Agreement shall be effective as of the date set forth above. The Partnership commenced on July 20, 1989 and shall terminate on December 31, 2021, unless sooner terminated in accordance with this Agreement.

4.2. Dissolution.

The Partnership shall dissolve upon the first to occur of the following dates and events:

- (a) December 31, 2021.
- (b) A Majority Vote of the Limited Partners and the written consent of the Managing General Partner.
- (c) Subject to the provisions of Section 4.3, the occurrence of a Terminating Event with respect to the Managing General Partner.
- (d) The entry of a decree of judicial dissolution under the Act by a court of competent jurisdiction.
- (e) The sale of all or substantially all of the assets of the Partnership.

(f) Written notice given by all of the Limited Partners to the Managing General Partner.

4.3. Continuation.

Within ninety (90) days after the occurrence of a Terminating Event with respect to the Managing General Partner, the Partners by a unanimous vote may elect to continue the Partnership's business and admit a new Managing General Partner. If the Managing General Partner ceases to be a General Partner for any reason and there is no remaining or surviving General Partner, admission of a new General Partner and a decision to continue the Partnership's business must be approved by a unanimous vote of the Limited Partners within ninety (90) days of such event. Expenses relating to the Partnership's continuation shall constitute an expense of the Partnership.

SECTION 5: PARTNERS AND CAPITAL

5.1 Withdrawal of Original Limited Partner and General Partner.

(a) Kenneth G. Howell hereby withdraws as a General Partner of the Partnership and acknowledges that he has no further interest in the Partnership.

(b) Kenneth G. Howell hereby withdraws as Original Limited Partner of the Partnership and hereby acknowledges (i) the return of his initial Capital Contribution and (ii) that he has no further interest in the Partnership.

**5.2 Managing General Partner.**

The Managing General Partner shall contribute .50% of total Capital Contributions as its Capital Contribution. The Managing General Partner shall have a Percentage Interest of .50%.

**5.3 Special General Partner.**

The Special General Partner shall contribute .50% of total Capital Contributions to the Partnership. The Special General Partner shall have a Percentage Interest of .50%.

**5.4 Initial Limited Partner.**

The Initial Limited Partner shall contribute \$100 as her Capital Contribution to the Partnership. Upon the admission of the Additional Limited Partners pursuant to Section 5.5, the Initial Limited Partner shall withdraw from the Partnership and shall be entitled to receive her contribution without interest.

**5.5 Additional Limited Partners.**

(a) The General Partner is authorized to sell 35 Units of limited partnership interests for \$16,743 per Unit and to admit the purchasers of those Units as Additional Limited Partners to the Partnership. An Additional Limited Partner shall contribute cash in the amount of \$3,429 and shall execute at the time of admission an Investor Note in the principal amount of \$13,314 per Unit, in the form attached to this Agreement as Exhibit B. An Additional Limited Partner's Investor Note shall be secured by that Partner's Partnership interest pursuant to a security agreement to be executed in favor of the Partnership in the form



attached to this Agreement as Exhibit C. The manner of offering Additional Limited Partnership interests and the terms and conditions thereof shall be as determined by the Managing General Partner and shall be consistent with applicable laws and regulations. Subscribers shall be admitted into the Partnership no later than September 1, 1991, or such later date as determined by the Managing General Partner in its sole discretion.

(b) If the Partnership does not receive subscriptions for all 35 Units by September 1, 1991, which may be extended to November 1, 1991 by the Managing General Partner in its sole discretion, the Investor Notes shall be returned to the subscribers within ten (10) business days.

(c) The names, addresses, Capital Contributions and Percentage Interests of the Additional Limited Partners shall be set forth in Exhibit A to this Agreement.

(d) At least fifteen (15) days but not more than thirty (30) days before a payment is due under the Investor Note, the Managing General Partner shall notify the Limited Partners of the payment amount due and where the payment should be sent and shall provide a written statement in the form of a certificate covenanting that (i) the Managing General Partner has satisfied and continues to satisfy all of its material obligations under this Agreement, (ii) the Managing General Partner is continuing to comply with the representations and warranties that it provided to the Limited Partners at the time of their admission

to the Partnership, and (iii) the Partnership is not in default under the Mortgages or the Partnership is in default under at least one of the Mortgages and that receipt of the payment due under the Investor Notes will cure any default and will be used to do so.

#### 5.6 Capital Contribution Adjustment.

In the event that the aggregate amount of Low Income Housing Credits reported on the Partnership's tax return or as determined by the Internal Revenue Service (the "Actual Benefits") is less than \$966,766 (the "Anticipated Benefits"), for any reason other than an amendment to the Code, the Capital Contribution of each Additional Limited Partner shall be reduced by an amount equal to 70% of the difference between the Actual Benefits and the Anticipated Benefits (the "Contribution Adjustment"). In such event, each succeeding Capital Contribution pursuant to the Investor Note shall be reduced, to zero if necessary, until the sum of the reductions is equal to the Contribution Adjustment. If the amount remaining to be paid under the Investor Note is less than the Contribution Adjustment, the amount to be distributed to the Limited Partners under Section 6.9(b)(i) of this Agreement shall be increased by the amount of the balance of the Contribution Adjustment.

#### 5.7 Additional Capital Contributions.

Except as set forth in this Section 5, a Partner shall not be required to make any Capital Contribution or otherwise advance

funds to the Partnership. A Limited Partner shall not be personally liable for payment or performance of any Partnership obligation, except to the extent that a Partner may be required to return a Distribution to the Partnership under Section 53-238 of the Act.

**5.8 No Interest on Capital.**

The Partnership shall not pay to any Partner interest upon any Capital Contribution or upon undistributed or reinvested Profits.

**5.9 Withdrawals and Return of Capital.**

Except as specifically provided in Section 6, a Partner shall not have the right to demand return of any Capital Contribution or to withdraw any other portion of Partnership capital. If Partnership assets remaining after the payment or discharge of partnership expenses are insufficient to return any Partner's total Capital Contributions, the Partner shall have no recourse against any of the Partners or against the Partnership.

**5.10 No Third Party Rights.**

The obligations or rights of the Partnership or of Partners to make or require any Capital Contribution under this Agreement shall not grant any rights to, or confer any benefits upon, any Person who is not a Partner. The making of nonrecourse loans to the Partnership shall not make the lender a Partner.

**5.11 Loans from Partners.**

With the Managing General Partner's approval, one or more Partners may lend money to the Partnership if required to pay Partnership expenses. Any loan shall be evidenced by an unsecured promissory note payable by the Partnership, the principal amount of which shall bear interest at a rate the Managing General Partner determines, which shall not be less than the minimum rate required for federal income tax purposes to avoid imputed interest nor greater than the maximum rate permitted by applicable federal and state usury laws. No loans or series of loans from Partners pursuant to this Section 5.11 aggregating more than \$10,000, excluding the loan from the Managing General Partner in the maximum amount of \$410,000, shall be outstanding at any one time unless disclosed to, and approved by, a Majority Vote of the Limited Partners. A loan a Partner makes to the Partnership shall not constitute a Capital Contribution.

5.12 Voluntary Capital Contributions.

No Partner shall have the right to make voluntary Capital Contributions to the capital of the Partnership.

5.13 Capital Accounts.

A Capital Account shall be maintained for each Partner in accordance with Treasury Regulations Section 1.704-1(b) including the following requirements:

(a) Each Partner's Capital Account shall be credited with (i) the amount of the Partner's Capital Contribution, and (ii) the Partner's distributive share of Profits.

(b) Each Partner's Capital Account shall be charged with (i) the amount of money distributed to the Partner, (ii) the fair market value of any Partnership property distributed to the Partner (net of liabilities securing the property that the Partner is considered to assume or take subject to), (iii) the Partner's distributive share of Losses, and (iv) the Partner's proportionate share of syndication expenses paid by the Partnership with respect to the issuance and sale of the Partner's Units.

(c) In the event the Gross Asset Values of Partnership assets are adjusted pursuant to the terms of this Agreement, the Capital Accounts of the Partners shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Partnership recognized gain or loss equal to the amount of such aggregate net adjustment and such gain or loss was allocated to the Partners pursuant to the appropriate provisions of this Agreement.

(d) If any interest in the Partnership is transferred in accordance with this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(e) In the event that the Partnership makes an election under Section 754 of the Code, the amounts of any adjustments to

the bases (or Gross Asset Value) of the assets of the Partnership made pursuant to Section 743 of the Code shall not be reflected in the Capital Accounts of the Partners, but the amounts of any adjustments to the bases (or Gross Asset Value) of the assets of the Partnership made pursuant to Section 734 of the Code as a result of the distribution of property by the Partnership to a Partner (to the extent that such adjustments have not previously been reflected in the Partners' Capital Accounts) shall (i) be reflected in the Capital Account of the Partner receiving such distribution in the case of a distribution in liquidation of such Partner's interest in the Partnership and (ii) otherwise be reflected in the Capital Accounts of all Partners in the manner in which the unrealized income and gain that is displaced by such adjustments would have been shared had the property been sold at its adjusted Gross Asset Value immediately prior to such adjustments.

(f) If the Managing General Partner determines, with advice of counsel, that, under Treasury Regulations Section 1.704-1(b), it is necessary or desirable to modify the manner in which the Capital Accounts are determined or maintained, it shall make the appropriate modification. Any such modification to this Agreement made by the Managing General Partner in reliance upon the advice of counsel shall be deemed to be made pursuant to the Managing General Partner's fiduciary obligation to the Limited

Partners and no such modification shall give rise to any claim or cause of action by any Limited Partner.

## SECTION 6: PROFITS AND LOSSES; CREDITS; DISTRIBUTIONS

### 6.1. Definition of Profits and Losses.

The terms "Profits" and "Losses" shall mean for each fiscal year or other period an amount equal to the Partnership's income or loss, determined in accordance with the method of accounting used for federal income tax purposes by the Partnership in maintaining its books and records with the following adjustments:

- (a) any tax-exempt income shall be included as an item of gross income;
- (b) any expenditure of the Partnership described in Section 705(a)(2)(B) of the Code or treated as such by Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be subtracted from income or loss; and
- (c) any interest income imputed to the Partnership with respect to the Investor Notes shall be specially allocated to the Partners that contributed the Investor Notes.

The determination shall also include any adjustments or other items the Managing General Partner considers, with the advice of counsel, necessary or appropriate to assure compliance with the rules set forth in Treasury Regulations Sections 1.704-1(b) and 1.704-1T(b).

### 6.2. Allocations of Profits and Losses.

(a) Except as provided in Sections 6.3, 6.4, 6.5 and 6.6 below, (i) Profits for any year shall be allocated 99% to the Limited Partners in proportion to their Percentage Interests and 1% to the General Partners in proportion to the Percentage Interests, and (ii) Losses attributable to nonrecourse deductions shall be allocated 99% to the Limited Partners in proportion to their Percentage Interests and 1% to the General Partners in proportion to their Percentage Interests; all other Losses shall be allocated to the extent allowable under Section 704(b) of the Code, 99% to the Limited Partners in proportion to their Percentage Interests, with the balance of the Losses allocated to the General Partners in proportion to their Percentage Interests. To the extent that the General Partners have negative Capital Account balances and the Limited Partners have positive Capital Account balances (or vice versa), any income or gain shall first be allocated to reduce such negative balance (or balances) to zero. Notwithstanding any other provision of this Agreement to the contrary, the General Partners shall have at all times at least a 1% interest in each material item of income, gain, loss, deduction or credit.

(b) Allocation of specific items shall in any event be in the manner necessary to assure compliance with Treasury Regulations Sections 1.704-1(b) and 1.704-1T(b).

(c) When Partnership interests are assigned or acquired from the Partnership, Profits and Losses will be allocated to the



new holder of a Partnership interest from and after the date it is deemed to hold the interest, taking into account the convention used by the Partnership and Sections 10.3 and 10.4 of this Agreement. Such convention initially shall be the semi-monthly convention, using the interim closing of the books method, in which event Partnership interests held on the fifteenth day of the month are deemed held as of the first day of the month and Partnership interests held on the last day of the month are deemed held as of the sixteenth day of the month in which they are acquired from the Partnership. The transfer of a Partnership interest becomes effective as of the time specified under Sections 10.3 or 10.4. This convention and method of allocating Profits and Losses may be changed by the Managing General Partner, with the advice of counsel, to the extent necessary to comply with Code Section 706 and the Treasury Regulations thereunder to any other permitted method of taking into account the varying interests of the Partners in the Partnership during the course of a year.

(d) If, upon dissolution, after giving effect to the other adjustments provided in this Section, any Partners have a negative Capital Account balance, any income or gain shall first be allocated to such Partners in an amount necessary to restore such balances (if there is insufficient income or gain).

6.3 Allocation of Gain from Sale of Partnership Property.

Upon the sale or disposition of Partnership Property, any gain shall be allocated as follows:

(a) First, to the Limited Partners and the General Partners in an amount equal to their Capital Account deficits;

(b) Second, to the Limited Partners in proportion to their Percentage Interests in an amount necessary to provide a balance in each Limited Partner's Capital Account equal to the amount distributed as Cash from Sales or Refinancing, up to a cumulative amount to all Limited Partners equal to the amount described under Section 6.9(b)(i);

(c) Third, to the Managing General Partner and the Special General Partner in an amount necessary to provide a balance in their Capital Accounts equal to the amount described as Cash from Sales or Refinancing under Sections 6.9(b)(ii);

(d) The balance, if any, 50% to the Limited Partners, in accordance with their Percentage Interests, 45.5% to the Managing General Partner and 4.5% to the Special General Partner.

#### 6.4. Qualified Income Offset.

Notwithstanding Section 6.2 above, in the event a Partner receives any adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), that Partner shall be allocated items of income and gain in an amount and manner sufficient to eliminate any deficit balance in that Partner's Capital Account caused by any adjustment, allocation, or distribution as quickly as possible. This special

allocation shall be taken into account in computing subsequent allocations of Profits so that the net amount of allocations of Profits, Losses and all other items, to the extent possible, shall be equal to the net amount that would have been allocated if the unexpected adjustment, allocation or distribution had not occurred.

**6.5. Minimum Gain Chargeback.**

If during any tax year of the Partnership there is a net decrease in the Partnership's minimum gain (as defined in Temporary Treasury Regulations Section 1.704-1T(b)(4)(iv)(c)), Partners with a deficit Capital Account balance at the end of that year (increased by a Partner's share of the Partnership's minimum gain as determined pursuant to Temporary Treasury Regulations Section 1.704-1T(b)(4)(iv)(f)) shall be allocated, before any other allocation, items of profits and gain for such year in the amount and in the proportions needed to eliminate those deficits as quickly as possible. It is intended that this allocation of Partnership minimum gain be applied in a manner that satisfies the requirements of Temporary Treasury Regulations Section 1.704-1T(b)(4)(iv)(e).

**6.6. Deficit Balance.**

To the extent an allocation of Profits or Losses would cause or increase a deficit balance in a Partner's Capital Account (beyond the amount of any deficit balance the Limited Partner, by reason of its share of minimum gain, is deemed obligated to

restore pursuant to Temporary Treasury Regulations Section 1.704-1T(b)(4)(iv)(f)) as of the end of the Partnership's taxable year to which such allocation relates, the allocation of Profit and Losses to all Partners shall be appropriately modified to make the minimum adjustment necessary to the allocation to such Partner so as not to cause or increase a deficit, as the case may be, in that Partner's Capital Account. In determining the extent to which the previous sentence is satisfied, such Partner's Capital Account shall also be adjusted for each of the following:

(a) Such Partner's Capital Account shall be reduced for allocations of Losses which, as of the end of such year, are reasonably expected to be made to such Partner pursuant to Code Sections 704(e)(2) and 706(d), and Paragraph (b)(2)(ii) of Treasury Regulations Section 1.751-1.

(b) Such Partner's Capital Account shall be reduced for Distributions which, as of the end of such year, are reasonably expected to be made to such Partner, to the extent they exceed offsetting increases to such Partner's Capital Account which are reasonably expected to occur during (or prior to) the Partnership's taxable years in which such Distributions are reasonably expected to be made (other than increases pursuant to a minimum gain chargeback under Temporary Treasury Regulations Section 1.704-1T(b)(4)(iv)(e)).

6.7. Tax Credits.

(a) Low Income Housing Credits shall be allocated to the Partners in accordance with the Code. Except to the extent otherwise required under the Code, Low Income Housing Credits shall be allocated 99% to the Limited Partners in proportion to their Percentage Interests and 1% to the General Partners in proportion to their Percentage Interests.

(b) Any recapture of any Low Income Housing Credits shall be allocated among the Partners in the same manner in which the Partners share the expenditures giving rise to that credit.

6.8. Appreciated Property.

(a) Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value.

(b) In the event the Gross Asset Value of any Partnership property is adjusted, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

6.9. Distributions.

(a) Excess Cash. The Partnership shall distribute Excess Cash to the Partners, at least once annually, within 120 days after the end of each Partnership fiscal year, 50% to the Limited Partners in proportion to their Percentage Interests and 50% to the Managing General Partner.

(b) Cash From Sales or Refinancing. Within 60 days of receipt, the Partnership shall distribute Cash From Sales or Refinancing (other than proceeds available when the Partnership is to be liquidated) as follows:

(i) First, to the Limited Partners in proportion to their Percentage Interests in an amount up to \$740,000, less any amounts previously distributed to the Limited Partners under Section 6.9(a), plus any amounts provided for under Section 5.6;

(ii) Second, 91% to the Managing General Partner and 9% to the Special General Partner in an amount up to \$1,600,000 in the aggregate, plus any amounts previously distributed to the Limited Partners under Section 6.9(a);

(iii) The balance, if any, 45.5% to the Managing General Partner, 4.5% to the Special General Partner and 50% to the Limited Partners in proportion to their Percentage Interests.

6.10. Effect of Distribution.

Notwithstanding anything to the contrary contained in this Section 6, the Partnership shall not make a Distribution if, immediately after the Distribution, Partnership liabilities

(other than liabilities to Partners on account of their Partnership interests and liabilities as to which the creditors' recourse is limited to the Partnership property) would exceed the fair market value of Partnership property. Any Partner who receives a Distribution made in violation of this Section 6 shall promptly return the Distribution to the Partnership.

6.11. Form of Distribution.

No Partner shall have any right to receive any Partnership property other than cash upon a Distribution, except as specifically provided in this Agreement. A Partner shall not be compelled to accept a Distribution of Partnership property other than cash in lieu of a proportionate Distribution of cash being made to other Partners.

SECTION 7: MANAGEMENT

7.1. Control in Managing General Partner.

The Managing General Partner shall have exclusive control over the Partnership's business and shall have all of the rights, powers and authority generally conferred by law or necessary, advisable or consistent with accomplishing the Partnership's purpose.

7.2. Limitations on Managing General Partner's Authority.

The Managing General Partner shall not have authority to and shall not:

- (a) Do any act in contravention of this Agreement;

(b) Possess Partnership property or assign rights in Partnership property, in either case, other than for the Partnership's purpose;

(c) File any voluntary petition for the Partnership under the federal Bankruptcy Act, or seek the protection of any other federal or state bankruptcy or insolvency law or debtor relief statute, without a Majority Vote;

(d) Borrow from the Partnership or lend Partnership funds to the Managing General Partner or an Affiliate of the Managing General Partner;

(e) Confess a judgment against the Partnership; or

(f) Incur Partnership indebtedness, other than in the ordinary course of business, aggregating in excess of \$20,000, exclusive of the Mortgages and the obligations listed in Sections 7.5, 7.6 and 7.8 of this Agreement.

(g) In addition to the foregoing, the Limited Partners shall have the right to remove the Managing General Partner, in accordance with the requirements of Section 8.2, by a vote of at least two-thirds (2/3) of the Percentage Interests held by the Limited Partners.

**7.3. No Liability; Indemnification of Managing General Partner.**

For the purposes of this Section 7.3, Affiliates shall mean only those Affiliates performing services for or on behalf of the Partnership.



(a) The Managing General Partner and its Affiliates will not be liable to the Partnership or any Limited Partner for any action or inaction of the Managing General Partner in connection with the business or affairs of the Partnership, so long as the person against whom liability is asserted acted in good faith on behalf of the Partnership and in a manner reasonably believed by such person to be in the best interests of the Partnership, but only if the course of conduct does not constitute gross negligence or willful misconduct. The Partnership shall indemnify and hold harmless the Managing General Partner and each of its Affiliates against any claim, liability, damage, loss or expense (including, without limitation, investigating and defending any claims and lawsuits and settlement thereof, and legal and accounting costs in connection therewith) incurred by them solely by virtue of the performance by any of them of the duties of the Managing General Partner acting as general partner in connection with the Partnership's business, so long as the indemnified person acted in good faith on behalf of the Partnership and in the manner reasonably believed by the person to be in the best interest of the Partnership, but only if the course of conduct does not constitute gross negligence or willful misconduct; provided that such indemnification or agreement to hold harmless shall be recoverable only out of assets of the Partnership and not from the Limited Partners.

(b) The Partnership shall not incur the cost of the portion of any insurance, other than public liability insurance, which insures any party against any liability the indemnification of which is herein prohibited.

(c) No advances from Partnership funds shall be made to the Managing General Partner or its Affiliates for legal expenses and other costs incurred as a result of any legal action initiated against the Managing General Partner by a Limited Partner. Advances from Partnership funds to the Managing General Partner or its Affiliates for legal expenses and other costs incurred as a result of a legal action may be made if the following three conditions are satisfied: (1) the legal action relates to the performance of duties or services by the Managing General Partner or its Affiliates on behalf of the Partnership; (2) the legal action is initiated by a third party who is not a Limited Partner; and (3) the Managing General Partner or its Affiliates agree to repay the advanced funds to the Partnership in cases in which they would not be entitled to indemnification.

7.4. Devotion of Skill and Time.

The Managing General Partner shall cause its officers and employees diligently to pursue and apply their general skills to the Partnership's business and devote as much time as is reasonably necessary to manage and operate the Partnership and its business in the best interests of all of the Partners. Nevertheless, the officers and employees of the Managing General

Partner shall not be required to devote a major part of their time to Partnership affairs and may engage in other businesses, including businesses identical or similar to the Partnership's business.

7.5. Fees and Reimbursement of Managing General Partner and Affiliates.

(a) Reimbursement. The Partnership shall reimburse the Managing General Partner or Affiliates thereof or pay for all expenses incurred in connection with forming the Partnership, soliciting Limited Partners, managing the Partnership, preparing and maintaining the Partnership books and records, and making the reports to the Limited Partners.

(b) Development Fee. As compensation for the services of the Managing General Partner in connection with the development of the Projects, the Partnership shall pay the Managing General Partner a Development Fee of \$123,000, payable out of cash from Partnership operations and Capital Contributions to the extent available. Any unpaid Development Fee shall accrue interest at 10% compounded annually.

(c) Management Fee. As compensation for partnership management services, the Managing General Partner shall receive an annual fee (the "Partnership Management Fee") in the amount of \$15,000 through 2001, and thereafter shall receive an annual fee of \$20,000, provided, however, that if in any fiscal year there are not sufficient Partnership funds to pay the full amount of

the Partnership Management Fee after payment of the other Partnership Expenses, the remainder shall accrue with interest at 10% compounded annually, and shall be payable in subsequent years.

(d) Acquisition Fee. As compensation for the services of the Managing General Partner in connection with the acquisition of the Projects, the Partnership shall pay the Managing General Partner an Acquisition Fee of \$103,000, payable out of cash from Partnership operations and Capital Contributions to the extent available. Any unpaid Acquisition Fee shall accrue with interest at 10% compounded annually.

(e) Operating Deficit Guarantee Fee. As compensation for Kenneth G. Howell's guaranty to fund operating deficits of the Partnership pursuant to the Operating Deficit Guarantee Agreement, the Partnership shall pay to Kenneth G. Howell an Operating Deficit Guarantee Fee of \$25,000, payable \$2,500 annually for ten years.

(f) Contractor Fee. As compensation for the services of the Managing General Partner in acting as the contractor for the rehabilitation of the Projects, the Partnership shall pay to the Managing General Partner a Contractor Fee of \$60,000, payable out Partnership operations or Capital Contributions to the extent available. Any unpaid Contractor Fee shall accrue with interest at 10% compounded annually.

7.6 Special General Partner Fee.

For its services in monitoring the operations of the Partnership and assisting in the preparation of the reports required by Section 9.3, the Special General Partner shall receive an annual fee in the amount of \$250 per Additional Limited Partner, payable on May 1 of each year beginning in 1992.

7.7. Fiduciary Duty of General Partners.

The General Partners shall have a fiduciary responsibility to the Limited Partners for the safekeeping and use of all Partnership property, whether or not in its immediate possession or control, and shall not employ Partnership property in any manner except for the Partnership's exclusive benefit. The General Partners shall not contract away their fiduciary duties under the common law of agency.

7.8. Investment Opportunities.

The General Partners shall not be obligated to present any investment opportunity to the Partnership, even if the opportunity is of a character that could be taken by the Partnership if presented to it. The General Partners shall have the right to take for their own account, or to recommend to others, any investment opportunity presented to either of them.

**7.9. Managing General Partner or Affiliates Dealing With the Partnership.**

(a) Except as provided in Sections 7.5 and 7.9(b), the Managing General Partner or any of its Affiliates shall have the right to contract or otherwise deal with the Partnership for the sale of goods or services to the Partnership if (i) compensation paid or promised for the goods and services is reasonable (i.e., at fair market value), is paid only for goods and services actually furnished to the Partnership, and does not exceed a total of Twenty Thousand Dollars (\$20,000) in any one calendar year, (ii) the goods or services to be furnished are reasonable for and necessary to the Partnership, and (iii) the fees, terms and conditions of the transactions are at least as favorable to the Partnership as would be obtainable in an arm's-length transaction.

Any contract covering that type of transaction shall be in writing and shall contain a clause allowing termination without penalty on sixty (60) days notice. Any payment made to the Managing General Partner or any Affiliate for the goods and services shall be fully disclosed to the Limited Partners in the reports required under Section 9 and any contract for an amount greater than Twenty Thousand Dollars (\$20,000) shall require the approval of the Limited Partners by a Majority Vote. Neither the Managing General Partner nor its Affiliates shall circumvent the

provisions of this Section 7.9 by making lump-sum payments to any other Person for disbursement by that other Person.

(b) Notwithstanding Section 7.9(a), the Partnership may contract with Parklane to (1) manage the Projects for a property management fee in an annual amount equal to \$100 per Project, plus seven percent (7%) of the gross rental income of the Projects, or (2) perform maintenance and repair work on the Projects from time to time as necessary.

7.10. Managing General Partner as Tax Matters Partner.

The Managing General Partner shall be the tax matters partner ("TMP") as provided in Section 6231(a)(7)(A) of the Code, subject to the following terms and conditions:

(a) The TMP shall file all necessary federal, state and local partnership returns for the Partnership in a timely manner and furnish the Limited Partners with schedules consistent with the treatment of all items on those returns.

(b) The TMP shall keep all Limited Partners informed of all administrative and judicial proceedings for the adjustment of Partnership items at the Partnership level.

(c) If notice of an administrative proceeding under Section 6223 of the Code is received by a Limited Partner, the Limited Partner promptly shall notify the TMP of the treatment of any Partnership item on the Limited Partner's federal income tax return which is or may be inconsistent with the treatment of that item on the Partnership return.

(d) Any Partner who enters into a settlement agreement with the Internal Revenue Service with respect to any Partnership item shall notify the TMP of the terms of the agreement within 60 days from its date, and the TMP shall notify the other Partners of that settlement within 30 days of receipt of notification by the Partner entering into the settlement.

(e) The TMP, or any Partner initiating any judicial proceeding if the TMP elects not to do so, shall notify all Limited Partners of any intention to initiate a judicial proceeding challenging the tax treatment of any Partnership item within 30 days from the date of a statutory notice of deficiency or denial of an administrative adjustment.

(f) The TMP, on its own or at the request of a Limited Partner, may file a request for administrative adjustment on behalf of the Partnership if a majority in interest of Limited Partners having an interest in the outcome agree to the requested adjustment.

(g) The TMP shall not extend the period of limitations for making assessments of any tax with respect to any Partnership item without a Majority Vote.

**7.11 Representations and Warranties of the Managing General Partner.**

The Managing General Partner represents, warrants and covenants to the Partnership and the Limited Partners that:



(a) the Projects are in compliance with the Mortgages and all applicable requirements of governmental entities;

(b) all appropriate roadways and public utilities are available to the Project and the Managing General Partner will cause the Partnership to keep all public utilities necessary to the operation of the Projects operating in working condition;

(c) the land which is part of the Projects is properly zoned for the Projects and the Projects and their contemplated use conform to all applicable federal, state and local zoning, use and environmental laws and regulations affecting the Projects;

(d) good and marketable title to the Projects is held by the Partnership subject to the security interests of all Mortgagees, and title insurance policies of a financially responsible institution have been issued in an amount no less than the purchase price of the Projects, subject only to standard exceptions;

(e) there is no material default under any agreement, contract, lease, or other commitment, nor is any claim, demand, litigation, proceeding or governmental investigation pending or to the best knowledge of the Managing General Partner threatened against or related to the business or assets of the Partnership, the Managing General Partner, or the Projects;

(f) the execution of this Agreement and the other documents executed in connection herewith, the incurrence of the

obligations set forth in this Agreement and the other documents executed in connection herewith, and the consummation of the transactions contemplated by this Agreement and other documents executed in connection herewith do not violate any order or ruling of any court binding on the Managing General Partner, any of its Affiliates, or the Partnership or any provision of any indenture, agreement, or other instrument to which the Partnership, the Managing General Partner, or any of its Affiliates is a party or by which the Partnership or the Projects is affected;

(g) all insurance policies which will be for the benefit of the Partnership are in full force and effect, and all insurance policies in favor of the Partnership are in at least the amounts required by and the Mortgages;

(h) all rental charges and security deposits with respect to dwelling units in the Projects are and will be in compliance with any applicable governmental regulations, with any regulatory agreement, and with Section 42 of the Code;

(i) the Partnership is a limited partnership, duly organized and validly existing under the laws of the State of Idaho, in accordance with all requirements of the Act with full power and authority to operate and maintain the Projects in accordance with the terms of this Agreement;

(j) all real estate and personal property taxes, special assessments and any other taxes applicable to the Project or the

property or operations of the Partnership which are or will be due and payable have been or will have been paid in full, and all escrow accounts for future such taxes and assessments are fully funded to the extent required by the provisions of the Mortgages;

(k) the Managing General Partner of the Partnership is Rental Housing, Inc., an Idaho corporation, duly organized, validly existing and in good standing under the laws of the State of Idaho. Rental Housing, Inc. has all requisite power and authority to conduct its present business and perform all of its obligations under this Agreement and the other documents executed in connection herewith;

(l) all of (i) the fixtures, maintenance supplies, tools, equipment and the like now owned by the Partnership or to be appurtenant to, or to be used in the operation of the Projects, as well as (ii) the rents, revenues and profits earned from the operation of the Projects, are free and clear of all security interests and encumbrances except for the Mortgages and any security agreements under them;

(m) all materials furnished to the Limited Partners are true and complete in all material respects;

(n) the Partnership has been registered as a tax shelter under federal tax laws;

(o) it has disclosed to the Limited Partners all material facts related to the Projects and the use and operation thereof and all material transactions in connection with the Projects;

(p) the Managing General Partners have set-aside all of the residential units for low income households with incomes of 60% or less of area median income (as determined pursuant to Section 42 of the Code) at rents that do not exceed 30% of 60% of median income adjusted for family size and will operate and maintain all such units as "low income units" within the meaning of Section 42(1)(3) of the Code which qualify for the federal Low Income Housing Credits, for new buildings which are not federally subsidized;

(q) it will operate and maintain or cause to be operated and maintained, the Projects in accordance with the requirements of Section 42 of the Code, and it will take no action with respect to the business and property of the Partnership which is not reasonably related to the achievement of the purpose of the Partnership;

(r) the Projects have received the requested award of federal Low Income Housing Credits from the Idaho Housing Agency in the total amounts set forth in Exhibit D;

(s) there are no mechanic's liens recorded against the Projects;

(t) other than obligations incurred in the ordinary course of business, the Partnership has no material outstanding obligations except for (i) the loan from the Benjamin Franklin Savings and Loan Association in the original principal amount of \$500,000; (ii) the loans from the City of Boise in the original

principal amounts of \$50,000, \$67,500, \$200,000 and \$200,000; (iii) the loans from Albert E. and Kathleen Y. Blaser in the original principal amounts of \$270,000 and \$150,000; (iv) the contract for sale in the amount of \$169,800 in favor of Brown's Tie and Lumber Company, (v) the loan from the Managing General Partner in the maximum amount of \$410,000, (vi) the fees due pursuant to Sections 7.5 and 7.6; and (vii) the property management agreement with Parklane.

(u) neither the entry into nor the performance of, nor compliance with, this Agreement, or other documents executed in connection herewith has resulted or will result in any violation of, or be in conflict with, or invalidate, cancel or make inoperative, or interfere with, or result in the creation of any lien, encumbrance or any other charge upon the Projects pursuant to, or constitute a default under, any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, credit agreement, franchise, permit, judgment, decree, order, easement, restriction or other charge, right or interest applicable to the Partnership, to any partner in the Partnership, or to the Projects;

(v) it will use its best efforts to realize the results anticipated by the financial projections for the Projects to the extent it is within the Managing General Partner's control to do so and shall not make or fail to make any elections for tax purposes without the written consent of the Limited Partners

which effect would be to reduce the tax benefits to the Limited Partners below those projected in the economic projections;

(w) upon admission of the Additional Limited Partners, the Initial Limited Partner shall withdraw from the Partnership and have no further interest in, or claim against, the Partnership except for the return of her Capital Contribution;

(x) the Partnership has no employees and shall have none;

(y) there is no action, proceeding or investigation, pending or, to the Partnership's best knowledge, threatened (or any basis therefor), which questions, directly or indirectly, the validity or enforceability of this Agreement or any of the other documents executed in connection herewith or any permit, approval, or environmental impact statement, and/or negative declaration, or any action taken pursuant hereto or thereto that individually, or in the aggregate, might adversely affect the Projects or use or operation thereof or the Partnership or that might result in any material adverse change in the condition or business of the Partnership, and, to the best of the Managing General Partner's knowledge, there is no default by any party under the above documents;

(z) the Partnership has received no notice of any pending condemnation proceedings, and to the best knowledge of the Managing General Partner no condemnation is contemplated, with regard to all or any part of the Projects;

(aa) the Projects are structurally sound and comply with, and conform to, all applicable subdivision, zoning, building, use, environmental, access and parking for handicapped, and other laws, ordinances, codes, rules, regulations and requirements for all federal, state, municipal and other governmental entities and any applicable private requirements, and in conformance with all permits, approvals and other requirements of all such entities applicable to the Projects; and there is no violation of any restriction, condition, covenant or agreement concerning the Projects or the use thereof contained in any instrument of record or any municipal or other governmental permit, rule, or regulation applicable to the Projects;

(bb) there are not currently pending any special assessments of any nature with respect to the Projects or any part thereof, nor has the Partnership received any notice of any special assessments or public improvements which might result in such being contemplated. There are no federal, state or local tax liens encumbering the Partnership's interest in the Projects other than the liens for taxes and assessments not yet due and payable;

(cc) to the best of the Managing General Partner's knowledge, the Partnership has obtained all permits required for the use or occupancy of the Projects; each such permit is in full force and effect and there are no conditions or facts which could cause the termination of the right to use such permit;

(dd) the Managing General Partner has no actual knowledge of any title defect, lien, encumbrance, adverse claim, or other matter relating to title or title insurance coverage that has not been disclosed in writing to the title company or is not shown by the public records;

(ee) there has been no material casualty or other damage to the Projects or any portions thereof. The Managing General Partner does not know of the existence of any threatened or contemplated actions, claims or proceedings or of the existence of any facts which might give rise to any such actions, claims or proceeding that will not be fully covered except for regular deductibles by the Partnership's insurance coverage;

(ff) it will complete IRS Form 8609 and submit a copy of it with its federal income tax return to the Internal Revenue Service for each year for the first 15 years that the Partnership operates the Projects. The Managing General Partner on behalf of the Partnership will claim the Low Income Housing Credits, and provide the information required as set forth in Section 42(1) of the Code and Temporary Treas. Reg. 1.42-1T(h);

(gg) it will use its best efforts to ensure that each and every covenant, representation and warranty in this Agreement shall continue to be true and correct throughout the term of the Partnership;

(hh) all of the tenant amenities are comparable for all of the residential units;



(ii) none of the Projects' costs have been paid for from a grant of federal funds pursuant to Section 42(d)(5)(B) of the Code, with proceeds of bonds the interest on which is exempt from tax under Section 103 of the Code, or with the loan of federal funds at a below market interest rate as defined in Section 42(i)(2)(C) of the Code.

## SECTION 8: APPROVAL RIGHTS OF THE LIMITED PARTNERS

### 8.1. Approval.

The Limited Partners shall not participate in the control of the Partnership's business. The Limited Partners shall not have the right to vote on any matters except as specifically provided in this Agreement. Except as provided in Section 8.2, the Limited Partners shall have the right, by Majority Vote, to approve or disapprove the following matters:

(a) The dissolution and winding up of the Partnership as provided in Section 4.

(b) The sale (other than pursuant to the Option Agreements), pledge, or other transfer of all or a substantial part of the Partnership's assets other than in the ordinary course of the Partnership's business.

(c) A material change in the nature of the Partnership's business or any act that would make it impossible to carry on the Partnership's ordinary business.

(d) After the removal of the Managing General Partner, an election to continue the Partnership's business and to admit a new General Partner, which shall require a unanimous vote.

(e) The admission of a General Partner or an election to continue the Partnership's business after a General Partner ceases to be a General Partner (other than by removal) where there is no remaining or surviving General Partner.

(f) Any amendment to this Agreement.

(g) Removal of the Managing General Partner subject to Section 8.2.

(h) The incurrence of Partnership indebtedness, other than in the ordinary course of business, in excess of \$20,000. The Limited Partners may vote either in person or by proxy.

#### 8.2. Removal of the Managing General Partner.

Upon the removal of the Managing General Partner, such Managing General Partner shall immediately cease to be a General Partner and the Partnership shall pay to it all amounts then accrued and owing to it. Such Managing General Partner's interest in the Partnership shall be liquidated or redeemed at its fair market value, which shall be determined as described below. The method of payment to such Managing General Partner shall be in the form of a promissory note bearing simple interest at the rate per annum which is at all times equal to the reference rate announced from time to time by Wells Fargo Bank, payable on the last day of each calendar quarter while such note

is outstanding, and coming due in no less than five (5) years with equal installments each year. Upon any default in the payment of principal and interest thereon, the entire unpaid balance shall, at the option of the holder, become immediately due and payable, and the Partnership shall pay all the costs of collection thereof (including attorney's fees and disbursements).

The fair market value of the Managing General Partner's interest shall be determined by agreement of the Managing General Partner and the Partnership, or, if they cannot agree, by arbitration in accordance with the then current rules of the American Arbitration Association, as the arbitrators determine to be appropriate. Any determination rendered by the arbitrator or arbitrators shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the federal or state forum with jurisdiction. The expense of arbitration shall be borne equally by the Managing General Partner and the Partnership. The Managing General Partner will not be liable for any obligations of the Partnership incurred after the date on which it ceases to be the Managing General Partner.

### 8.3. Meetings.

The Managing General Partner or Limited Partners holding more than 10% of the then outstanding Limited Partner Interests may call meetings of the Partnership for any matters for which the Limited Partners may vote as set forth in this Agreement. A list of the names and addresses of all Limited Partners shall be maintained as part of the books and records of the Partnership and shall be made available upon request to any Limited Partner or its representative. Upon receipt of a written request either in person or by certified mail stating the purpose(s) of the meeting, the Managing General Partner shall provide all Limited Partners within ten (10) days after receipt of said request, written notice (either in person or by certified mail) of a meeting and the purpose of such meeting to be held on a date not less than fifteen (15) nor more than sixty (60) days after receipt of said request, at a reasonably convenient time. All meetings shall be held at the principal office of the Partnership, or a reasonable alternative location specified by the Managing General Partner in the foregoing notice.

## SECTION 9: RECORDS, REPORTS AND ACCOUNTS

### 9.1. Books and Records.

The Managing General Partner shall keep at the Partnership's principal executive office all of the following Partnership documents:

(a) A current list of the full name and last known business or residence address of each Partner, together with the Capital Contributions and Percentage Interest of each Partner.

(b) A filed copy of the Partnership's certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed.

(c) Copies of the Partnership's federal, state and local income tax or information returns and reports, if any, for the six most recent taxable years.

(d) An original copy of this Agreement and all amendments hereto.

(e) Financial statements of the Partnership for the six most recent taxable years.

(f) The Partnership's books and records for at least the current and past five taxable years.

(g) Monthly operating statements for the six most recent taxable years.

**9.2. Inspection by Limited Partner.**

Each Limited Partner shall have the right, upon reasonable request, (a) to inspect and copy during normal business hours any of the Partnership records required to be maintained pursuant to Section 9.1, and (b) to obtain from the Managing General Partner, promptly after becoming available, a copy of the Partnership's

federal, state and local income tax or information returns for each year.

**9.3. Reports.**

The Managing General Partner shall send or cause to be sent to each Partner not later than 75 days after the close of each Partnership taxable year, an annual report containing a balance sheet as of the end of the taxable year, an income and expense statement for the taxable year, a statement of cash flow for the taxable year, and a report describing the Partnership's activities and any material events concerning the business of the Partnership for the calendar year. The Managing General Partner will furnish an equivalent report to each Partner as soon as practicable after the dissolution of the Partnership for the calendar year in which the dissolution occurs. The Special General Partner shall have the right to audit the Partnership's reports as it deems necessary.

**9.4. Tax Returns.**

The Managing General Partner shall send to each Partner, within 75 days after the end of each taxable year, the information necessary for the Partner to complete its federal, state and local income tax returns. The information shall include a copy of the Partnership's federal, state and local income tax or information returns for the taxable year.

**9.5. Section 754 Election.**

If, during the taxable year, any Partner transfers its Partnership interest by sale or exchange or a Terminating Event occurs, upon the timely written request of the transferee or successor, the Managing General Partner, after seeking advice of the Partnership's accountant, may elect, pursuant to Section 754 of the Code, to adjust the basis of the Partnership Property as permitted by Sections 734 and 743 of the Code. The election shall be filed with the Partnership's income tax return for the first taxable year to which the election applies.

9.6. Bank Accounts.

The Partnership shall keep its cash funds in bank or money market accounts in its name at one or more banks or funds that the Managing General Partner may select. The funds in any account may be withdrawn on the sole signature of the individual designated by the Managing General Partner. Partnership funds shall not be commingled with funds of any other Person and shall be used only for Partnership purposes.

SECTION 10: DISPOSITION OF PARTNERSHIP INTERESTS

10.1. Generally.

No Partner shall withdraw from the Partnership or Transfer any interest therein, and no Person shall become an Assignee or be admitted to the Partnership as a substituted Limited Partner, except as provided in this Section 10. Any Transfer made in violation of this Section 10 shall be void.

10.2 General Partners.

10.2.1 Transfers.

(a) The General Partners may transfer their Partnership Interests only if:

(i) the General Partner transfers its entire interest in the Partnership;

(ii) the transferee or assignee of the General Partner's interest agrees in writing to become a substitute General Partner of the Partnership;

(iii) the Limited Partners have agreed by Majority Vote to the transfer of the General Partner's Partnership interest;

(iv) the substitute General Partner represents and provides the Partnership with the evidence satisfactory to counsel for the Partnership that the substitute General Partner has adequate net worth to serve as the general partner;

(v) counsel for the Partnership shall have rendered an opinion that the withdrawal and the substitution of the General Partner will not violate the Act, will not cause the termination or dissolution of the Partnership, and will not cause it to be classified other than as a partnership for federal income tax purposes;

(vi) the Person to be substituted as a General Partner shall have accepted and agreed to be bound by all the terms of this Agreement, by executing an amendment to this Agreement and any other documents or instruments that may be required to effect



the admission of the Person as the General Partner, and all other actions required in connection with the admission shall have been performed, including filing a certificate of amendment of limited partnership; and

(vii) if the Person to be substituted as General Partner is a corporation, it shall have provided the Partnership with evidence satisfactory to counsel for the Partnership of its authority to become a General Partner and to be bound by the terms of this Agreement.

(b) In the event a General Partner transfers its interest pursuant to Section 10.2.1, it shall be and shall remain liable for all obligations and liabilities incurred by it as General Partner before the effective date of the Transfer, but shall be relieved of any obligation or liability incurred on account of the Partnership thereafter.

#### 10.2.2 Terminating Events.

Upon the occurrence of a Terminating Event with respect to the Managing General Partner, if the Partners elect to continue the Partnership pursuant to Section 8.1(d) or (e), or if the Managing General Partner is removed, the Partner shall elect a substitute Managing General Partner that satisfies the requirements of Section 10.2.1(a)(ii), (iv), (vi) and (vii).

#### 10.3 Limited Partners.

##### 10.3.1 Transfers.

A Limited Partner may Transfer its Partnership interest to any Partner or to any Person of its choice, in whole or in part, but only in accordance with this Section 10.3.1. If the Managing General Partner receives a notice of assignment signed by both the transferring Limited Partner and its Assignee, the Assignee shall become entitled to receive the transferring Limited Partner's share of Profits, Losses, Low Income Housing Credits, and Distributions, and shall have the transferring Limited Partner's Capital Account as of the day following the day the Managing General Partner consents to the assignment. Profits and Losses shall be allocated in accordance with Section 6.2(c). The Managing General Partner shall consent to the assignment only after (i) the Assignee has agreed to be bound by the terms of this Agreement, (ii) the Assignee executes an Investor Note and a security agreement if any amounts are unpaid by the transferring Limited Partner under the Investor Note, and (iii) the Managing General Partner has determined to its satisfaction that the assignment would not terminate the Partnership for federal income tax purposes. An Assignee shall become a substitute Limited Partner only with the Managing General Partner's approval and upon satisfaction of the conditions for substitutions set forth in Section 10.4.

**10.3.2 Effect of Bankruptcy of a Limited Partner.**

If a Limited Partner becomes bankrupt, the trustee or receiver of its estate, if any, shall become a substitute Limited

Partner in the place of the terminated Limited Partner as of the end of the day in which the Managing General Partner receives certified evidence of the successor's authority and a copy of this Agreement executed by the successor.

10.3.3 Withdrawal by Limited Partner.

A Limited Partner may not withdraw capital from the Partnership.

10.4 Conditions to Substitutions.

An Assignee shall not be entitled to vote on Partnership matters and shall not have any other rights of a Partner other than its right to Profits, Losses, Low Income Housing Credits, and Distributions, unless and until the Managing General Partner admits the Assignee as a substituted Partner pursuant to this Section 10.4. An Assignee shall not become a substituted Partner until the Assignee (a) pays all legal expenses of the Partnership incurred in connection with its substitution; (b) submits a duly executed instrument of assignment, in a form satisfactory to the Managing General Partner, (i) specifying the Partnership interest assigned to it, and (ii) setting forth the assigning Partner's intention that the Assignee succeed to the assigning Partner's Partnership interest; and (c) executes a copy of this Agreement. The Managing General Partner also may require, as a condition to the admission of a substituted Limited Partner, that the Assignee submit an opinion of counsel, satisfactory in form and substance to the Managing General Partner, stating that the assignment

shall not violate any state and federal securities laws or cause the termination of the Partnership for federal income tax purposes. The admission of a substituted Partner shall be effective as of the close of the day on which the Managing General Partner has given its consent to the substitution. Except as provided in Section 10.3.2, the Managing General Partner may withhold its consent to the substitution of a Limited Partner in its sole discretion.

10.5 No Release or Waiver.

Neither the provisions of, nor consummation of the transactions contemplated by, this Section 10 shall constitute a release or waiver of any claims or rights which the Partnership or any Partner may have against the Partnership or any of the Partners as a consequence of a breach of this Agreement.

SECTION 11: DISTRIBUTIONS ON DISSOLUTION

Upon the Partnership's dissolution, the Partnership's business shall be immediately wound up. Any gain or loss on the disposition of Partnership property during the Partnership's liquidation shall be credited or charged to the Partners in accordance with Section 6.2. Liquidating distributions except for liquidating distributions under Section 708(b)(1)(B) of the Code shall be only in the form of cash. Partnership assets in the course of the liquidation shall be applied and distributed in the following order:

(a) Payment to creditors of the Partnership, including Partners, in the order of priority provided by law. In the discretion of the Managing General Partner, reserves may be established to meet any contingent obligations or liabilities and, if and when those contingencies shall cease to exist, any remaining assets in the reserves shall be distributed as provided in this Section 11.

(b) Distributions to the Partners shall be in accordance with positive Capital Account balances. Upon dissolution of the Partnership, after any allocations under Section 6 and the distributions pursuant to this subparagraph (b), the General Partners shall contribute to the capital of the Partnership the lesser of (i) their negative Capital Account balances, if any, or (ii) the amount which when added to their prior Capital Contributions equals 1.01% of the aggregate Capital Contributions of the Limited Partners. Amounts so contributed shall be distributed to the Partners as additional liquidation proceeds pursuant to this subparagraph (b).

For purposes of distributions to Partners, Capital Account balances shall be determined after taking into account all Capital Account adjustments for the fiscal year in which the liquidation occurs, and payment by the Partnership with respect to these balances shall be made by the end of that fiscal year or, if later, within ninety (90) days after the date of the liquidation. For this purpose, a liquidation of the Partnership

shall be deemed to occur on the earlier of the date on which (i) the Partnership is terminated under Code Section 708(b)(1) or (ii) the Partnership ceases to be a going concern.

## SECTION 12: MISCELLANEOUS

### 12.1 Headings.

The headings used in this Agreement are intended principally for convenience and shall not, by themselves, determine the Partners' rights and obligations.

### 12.2 Time of Essence.

All times and dates in this Agreement shall be of the essence.

### 12.3 Entire Agreement.

The Agreement (including its Exhibits) comprises the entire understanding and agreement among the Partners and supersedes all prior and contemporaneous discussions, negotiations, agreements and communications among any of the Partners, whether oral or written, with respect to the subject matter of this Agreement.

### 12.4 Amendment.

This Agreement may be amended or rescinded only upon the affirmative vote or written consent of the Partners as provided in Section 8.

### 12.5 Governing Law; Choice of Forum.

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho as applied to

contracts among residents of Idaho wholly to be performed within the State. The parties agree that any dispute arising in connection with this Agreement shall be resolved in the state or federal courts located in Boise, Idaho.

12.6 Attorneys' Fees.

If any Partner seeks to enforce its rights under this Agreement by legal proceedings or otherwise, the non-prevailing party shall pay the prevailing party's costs and expenses, including without limitation reasonable attorneys' fees.

12.7 Severability.

If any provision of this Agreement is determined to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties. In any event, all of the other provisions shall be deemed valid and enforceable to the greatest possible extent.

12.8 Terminology.

In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each include the others whenever the context so indicates.

12.9 Notices.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or deposited in the U.S. mail, first class and postage prepaid, addressed to the Partnership at its principal executive office or to the Partners at their respective

addresses appearing on the Partnership's books from time to time. Notice shall be deemed duly given upon personal delivery or, if mailed, five days after mailing. The foregoing addresses may be changed by notice given as provided in this Agreement. Each Limited Partner promptly shall notify the Managing General Partner of any change in the Limited Partner's address as it last appears on the Partnership records.

12.10 Counterparts.

This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

12.11 Further Assurances.

Each Partner shall execute, with acknowledgment or affidavit if required, all documents and writings reasonably necessary or desirable for the formation of this Partnership and the achievement of its purpose. Each individual signing this Agreement hereby personally represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the party for whom or which he or she is signing.

12.12 No Partition.

No Partner nor any legal representative, successor, heir or assignee of any Partner shall have the right to partition the Partnership Property or any part thereof or interest therein, or to file a complaint or institute any proceeding at law or in equity to partition the Partnership Property or any part thereof



or interest therein. Each Partner, for itself and its successors and assigns, hereby waives any such rights. The Partners intend that, during the term of this Agreement, the rights of the Partners and their successors in interest, as among themselves, shall be governed solely by the terms of this Agreement and by the Act.

12.13 Waiver.

No waiver of any provision of this Agreement shall be deemed effective unless contained in a writing signed by the party against whom the waiver is sought to be enforced. No failure or delay by any party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy, and no waiver of any breach or failure to perform shall be deemed a waiver of any subsequent breach or failure to perform or of any other right arising under this Agreement.

12.14 Power of Attorney.

Each Limited Partner irrevocably makes, constitutes and appoints the Managing General Partner with full power of substitution as that Partner's true and lawful attorney, in the Limited Partner's name, place and stead to make, execute, sign, acknowledge and file any and all papers that may be required to effect the Partnership's amendment, dissolution, liquidation or termination as provided herein, or which may be required or permitted to be filed by the Partnership under applicable law, or to carry out the purposes of this Agreement. The power of

attorney granted hereby is and shall be deemed to be coupled with an interest, shall be irrevocable and shall survive the death, incapacity, insolvency, dissolution or termination of the Limited Partner or any Transfer or assignment of all or any portion of the Limited Partner's interest in the Partnership until the transferee is admitted to the Partnership as a substitute Limited Partner and all required documents and instruments are duly executed, filed and recorded to effect the substitution.

12.15 Not for Benefit of Creditors.

The provisions of this Agreement are intended only for the regulation of relations among Partners, putative Partners and the Partnership. This Agreement is not intended for the benefit of non-Partner creditors and does not grant any rights to non-Partner creditors.

12.16 Binding on Successors.

Subject to the provisions of this Agreement concerning Transfer, the rights and obligations of the Partners under this Agreement shall inure to the benefit of, and bind, their respective successors and assigns.

12.17 Liability of Partners

No Limited Partner shall be liable for the debts, liabilities, contracts or any other obligations of the Partnership.

IN WITNESS WHEREOF, each of the Partners has executed this Agreement as of the date first written above.

MANAGING GENERAL PARTNER:

Rental Housing, Inc., an Idaho corporation

By: *Paul C. Howell*  
Its: *President*

SPECIAL GENERAL PARTNER:

PAM Housing, Inc., a California corporation

By: *William Meany*  
Its: *President*

INITIAL LIMITED PARTNER:

*Linda C. Thiel*  
Linda C. Thiel

LIMITED PARTNERS:

All Limited Partners now and hereafter admitted as limited partners of the Partnership, pursuant to powers of attorney and authorizations now and hereafter executed in favor of, and granted and delivered to, the Managing General Partner.

Rental Housing, Inc.

By: *Paul C. Howell*  
Its: *President*

WITHDRAWING GENERAL PARTNER:

  
Kenneth G. Howell

WITHDRAWING ORIGINAL LIMITED PARTNER:

  
Kenneth G. Howell