

AMENDED AND RESTATED CERTIFICATE  
AND AGREEMENT OF LIMITED PARTNERSHIP OF  
COLVILLE PARK ASSOCIATES LIMITED PARTNERSHIP

85 JUL 10 AM 9 40

This AMENDED AND RESTATED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP is made and entered into as of the 17th day of ~~July~~ 1985 by and among BLAIR REILEY, LOUIS BUCHSIEB, DAVID CORDES and BAYVIEW PARK ASSOCIATES LIMITED PARTNERSHIP, an Oregon limited partnership.

W I T N E S S E T H :

WHEREAS, the parties hereto, except those withdrawing, desire to continue a limited partnership originally formed to construct, own and operate a 24-unit FmHA § 515 Rural Rental Housing Project in Colville, Washington, to adjust their relative rights and obligations with respect to the Partnership (as defined in Section 2.25) and provide for the contribution of their capital;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein set forth and for other good and valuable consideration, the parties hereby agree to the continuation of the Partnership as a limited partnership pursuant to the Uniform Limited Partnership Act of the State of Idaho, upon the following terms and conditions and to an amendment and restatement of the "Certificate of Limited Partnership" (the "Original Certificate") and of the "Limited Partnership Agreement" of the Partnership; the Original Certificate having been filed with the Department of State, State of Idaho, on April 26, 1984.

ARTICLE I.

NAME AND BUSINESS

1.1 Name. The name of the Partnership continues to be COLVILLE PARK ASSOCIATES LIMITED PARTNERSHIP.

1.2 Place of Business. The principal place of business of the Partnership is located at 191 River Street, Ketcham, Idaho 83340, or at such other place as the General Partners may hereafter designate upon notice to the Limited Partners. The registered agent shall be Blair Reiley at that address.

1.3 General and Limited Partners.

(a) The names and places of residence of the General Partners are as follows:

Blair Reiley  
191 River Street  
Ketcham, Idaho 83340

Louis Buchsieb  
HCR 440  
Chelan, Washington 98816

David Cordes  
P. O. Box 666  
Sunset Beach, California 90742

(b) The name and principal place of business of the Limited Partner is as follows:

Bayview Park Associates Limited Partnership  
18323 Lothlorien Way  
Lake Oswego, Oregon 97034

(c) The names and addresses of the Withdrawing Initial Limited Partners are:

Blair Reiley  
P. O. Box 360  
Sun Valley, Idaho 83353

Louis Buchsieb  
HCR 440  
Chelan, Washington 98816

David Cordes  
P. O. Box 666  
Sunset Beach, California 90742

1.4 Purpose. The purposes of the Partnership are to construct, acquire, own, operate, maintain, manage, lease, sell, mortgage or otherwise dispose of a 24-unit FMHA \$ 515 Rural Rental Housing Project in Colville, Washington.

1.5 Term. The term of the Partnership will continue with the filing of this Amended and Restated Certificate and Agreement of Limited Partnership in accordance with applicable Washington law and shall terminate on December 31, 2036 unless the Partnership is otherwise earlier dissolved and terminated in accordance with the provisions of this Agreement.

1.6 Time of Admission. Each Limited Partner, Substitute Limited Partner or assignee of a limited partnership interest shall be deemed to have been admitted as of the first day of the calendar month during which the Partner is admitted or the conditions for transfer of a Limited Partner's interest in the Partnership pursuant to Article VII, as the case may be, are satisfied if such admission occurs on or before the fifteenth day of such month and on the sixteenth day of the

calendar month during which the Partner is admitted if such admission occurs after the fifteenth day of such month. Upon any such admission of a Limited Partner, the list of Partners described in Section 9.1 shall be updated appropriately. Notwithstanding anything contained herein, the Additional Limited Partner shall not be deemed to have been admitted and the Initial Limited Partner withdrawn until the Additional Limited Partner has raised \$625,400 in the private placement sale of the Additional Limited Partner's limited partnership interests. Provided further, if the Additional Limited Partner has not raised the \$625,400 within 130 days of the date first above written, then this Agreement shall be null and void and of no further effect. Until such admission, all allocations and distributions by the Partnership shall be made as if this Agreement did not exist. The General Partners and the Initial Limited Partner each hereby appoints Robert M. Arcand, a general partner of the Additional Limited Partner, with full power of substitution his true and lawful attorney-in-fact, in his name, place and stead, with full power to act to make, execute, sign, acknowledge, swear to, verify, deliver, file, record, and publish an amendment to this Agreement and the Certificate indicating the Additional Limited Partner raised the aforementioned \$625,400, or waived the requirement, and stating the effective date of its admission as the Additional Limited Partner in the form of Exhibit 1.6 hereto. The Additional Limited Partner may waive the \$625,400 requirement and effect its admission anytime within 130 days of the date first above written. The Capital Contribution set forth in Section 3.2(a) shall be made within ten (10) days of the effective date of such an amendment.

1.7 FmHA Disapproval. If FmHA (as defined in Section 2.15) shall disapprove the admission of Bayview Park Associates Limited Partnership or the material terms and modifications contained herein within 120 days of Bayview Park Associates Limited Partnership's admission to the Partnership, then, unless waived by Bayview Park Associates Limited Partnership, the Partnership shall return the Capital Contributions (as defined in Section 2.6) of Bayview Park Associates Limited Partnership made prior to or on such date less the amount of any prior Distribution to it which obligation shall be guaranteed by the General Partners, and return the note given the Partnership pursuant to Section 3.2 of this Agreement and the Partnership agrees to release, indemnify and hold Bayview Park Associates Limited Partnership harmless from any obligation to the Partnership or arising out of its association with the Partnership and to admit the General Partners in the Additional Limited Partner's place as Substitute Limited Partners. To the extent the Partnership is unable or fails to perform any of the foregoing, the General Partners agree, jointly and severally, each to indemnify and hold Bayview Park Associates Limited Partnership harmless for any and all loss, injury, damage or expense (including attorneys' fees) incurred by it as (1) a result of a failure by the General Partners to fulfill their obligations hereunder upon such FmHA disapproval, (2) a result of a failure by the Partnership to act in conformity with the

foregoing, or (3) a result of its association with the Partnership.

## ARTICLE II.

### DEFINITIONS

2.1 Accountants shall mean Touche Ross & Co., CPAs, Boise, Idaho or such other firm of independent certified public accountants as may be engaged by the General Partners with the consent of Bayview Park Associates Limited Partnership to prepare the Partnership income tax returns.

2.2 Additional Limited Partner shall mean Bayview Park Associates Limited Partnership, an Oregon limited partnership, and those Persons who replace it as a Substitute Limited Partner.

2.3 Affiliate shall mean (a) any Person directly or indirectly controlling, controlled by or under common control with another Person, (b) a Person controlling 10% or more of the outstanding voting securities of such other Person, (c) any officer, director, trustee or partner of such other Person, and (d) if such Person is an officer, director, trustee, or partner of such other Person, any company for which such Person acts in any such capacity.

2.4 Agreement shall mean this Amended and Restated Certificate and Agreement of Limited Partnership as it may be amended from time to time.

2.5 Auditors shall mean Touche Ross & Co., CPAs, Boise, Idaho, or such other firm of independent certified public accountants as may be engaged by the General Partners with the consent of Bayview Park Associates Limited Partnership for the purpose of auditing the books and records of the Partnership and certifying financial reports of the Partnership.

2.6 Capital Contribution or Cash Contribution shall mean the amount of money or the fair market value of other property contributed to the capital of the Partnership by a Partner as provided in Article III.

2.7 Certificate shall mean this Amended and Restated Certificate and Agreement of Limited Partnership of the Partnership as filed under applicable Idaho law, as it may be amended from time to time.

2.8 Code shall mean the Internal Revenue Code of 1954, as amended from time to time.

2.9 Completion of Construction shall mean that time when all certificates of occupancy or similar approvals

necessary for rental and occupancy of the Project have been received from all regulatory agencies having jurisdiction over the Project and which issue such certificates or approvals.

2.10 Consent shall mean written approval.

2.11 Developer shall mean the General Partners.

2.12 Distributions shall mean any money or other property distributed to Partners with respect to their interests in the Partnership, but shall not include any payments to the General Partners or their Affiliates as permitted by Section 5.8.

2.13 Event of Bankruptcy shall mean bankruptcy or an act of bankruptcy (except if the act of bankruptcy is susceptible to cure and is cured within ninety (90) days), reorganization or arrangement under the provisions of Chapters 7, 11, or 13 of the Bankruptcy Reform Act of 1978, as amended (or any successor provisions of such Bankruptcy Act or a like provision of law), assignment for the benefit of creditors, insolvency as determined by court proceedings or the filing of a petition to accomplish any of the foregoing, or a like event.

2.14 Event of Dissolution shall mean the adjudication of bankruptcy; proceeding in bankruptcy or receivership, including a Chapter 11 proceeding, not dismissed within ninety (90) days after the filing of same; death; insanity; incapacity; adjudication of incompetency; or dissolution of a General Partner.

2.15 FmHA shall mean the Farmer's Home Administration, a rural credit agency of the United States Department of Agriculture.

2.16 General Partners shall mean Blair Reiley, Louis Buchsieb and David Cordes and any other Person or Persons who succeed in that capacity, as provided herein.

2.17 Limited Partner shall mean any Additional Limited Partner, Original Limited Partner or Initial Limited Partner.

2.18 Mortgage shall mean the loan obligation incurred by the Partnership from FmHA, in the amount of approximately \$900,220 secured by an encumbrance against the Project in favor of the FmHA.

2.19 Net Cash Flow shall mean cash revenues from the operation of Partnership properties (excluding Net Cash Proceeds of a Sale or Refinancing, Capital Contributions and Partnership borrowings) decreased by (a) cash expenses, (b) amortization of Partnership obligations, (c) capital expenditures to the extent not paid from borrowings or reserves, and (d) establishment and maintenance of any and all

reserves the General Partners, in the exercise of their reasonable discretion, may deem necessary or appropriate for anticipated obligations, contingencies, capital improvements and working capital.

2.20 Net Cash Proceeds shall mean the net cash (including both principal and interest) realized by the Partnership from a Sale or Refinancing, after retirement of applicable mortgage debt, payment of all expenses related to the transaction, payment of or provision for Partnership debts and obligations and establishment and maintenance of such reserves as the General Partners, in the exercise of their sole discretion, may deem necessary or appropriate for anticipated obligations, contingencies, capital improvements, replacements and working capital of the Partnership.

2.21 Net Profits or Net Losses shall mean the net profit or net loss of the Partnership from its activities, other than a Sale, as determined in accordance with the method of accounting used by the Partnership for federal income tax purposes.

2.22 Net Profit or Net Loss From Sale shall mean the net profit or net loss of the Partnership recognized from a Sale, as determined in accordance with the method of accounting used by the Partnership for federal income tax purposes.

2.23 Operating Deficit for any fiscal year shall mean the total amount by which the sum of the Partnership's operating expenses (defined solely as the expenses incurred in connection with the operation and maintenance of the Property), debt service on the Mortgage and other Partnership debt and net additions to reserves required by FMHA and, in addition, as the General Partners, in the exercise of their sole discretion, deem appropriate for anticipated obligations, contingencies, capital improvements, replacements and working capital of the Partnership for such fiscal year exceeds the cash revenues received in respect of the operation of Partnership properties.

2.24 Partner shall mean any General Partner, Limited Partner, Original Limited Partner, Initial Limited Partner, Special Limited Partner or Substitute Limited Partner.

2.25 Partnership shall mean the limited partnership continued under this Agreement.

2.26 Partnership Manager shall mean the General Partners.

2.27 Person shall mean and include an individual, proprietorship, trust, estate, partnership, joint venture, association, company, corporation or other entity.

2.28 Project shall mean the Property, together with a 24-unit FMHA § 515 Rural Rental Housing Project in Colville,

Washington, and all other improvements existing or to be constructed thereon by the Partnership.

2.29 Property shall mean that certain real property located in Colville, Washington as more particularly described on Exhibit 2.29 attached hereto.

2.30 Refinancing shall mean the refinancing or obtaining of any loan secured by Partnership property.

2.31 Rental Supervisor shall mean the General Partners.

2.32 Sale shall mean and include the sale, exchange, condemnation or similar eminent domain taking, casualty or other disposition of all or any portion of the Property which is not in the ordinary course of business, and the sale of easements, rights of way or similar interests in the Property or any other similar items which in accordance with the accounting methods used by the Partnership are attributable to capital; provided, however, that "Sale" shall not refer to any transaction to the extent gain or loss is not recognized, or is elected not to be recognized, under any applicable section of the Code.

2.33 Special Limited Partner shall mean a Partner whose interest as a General Partner has terminated pursuant to the terms of Section 8.1.

2.34 Substitute Limited Partner shall mean a Person admitted to the Partnership as a Substitute Limited Partner pursuant to Section 7.3.

2.35 Units shall mean the interests of the Limited Partners in this Partnership of which there are one hundred (100) Units.

2.36 Initial Limited Partners shall mean Blair Reiley, Louis Buchsieb and David Cordes in their capacity as original limited partners, withdrawing as such pursuant to this Agreement, and who, by signing this Agreement, acknowledge the return of their cash contribution of \$100.00 each.

2.37 Mortgage Note shall mean any and all promissory notes secured by the Mortgage.

### ARTICLE III.

#### CAPITAL

3.1 Capital Contributions of the General Partners. The General Partners shall make a capital contribution of \$47,380 to the Partnership. The General Partners shall also make such further contributions of capital to the Partnership from time

to time as are necessary to fund the total amount of any Operating Deficit for sixty (60) months following Completion of Construction or as may be required by FmHA. If the General Partners do not fund Operating Deficits, the Limited Partners, in addition to pursuing any remedies available at law or in equity, may elect to fund such Operating Deficits.

3.2 Contribution and Units of Additional Limited Partner. The Additional Limited Partner will make a total Capital Contribution of \$207,693 in cash to the Partnership. Subject to adjustment of the amount or payment date of any Capital Contribution or installment as provided herein, the Capital Contribution is due and payable in installments as follows on the latter of March 15 of each year or receipt of the Partnership tax return and Form K-1 or similar forms (after Additional Limited Partner review and corrections if necessary); provided, however, the 1985 installment will not be payable until Bayview Park Associates Limited Partnership's raising of \$625,400 by the private placement sale of its limited partnership interest, if not waived by the Additional Limited Partner, and within ten (10) days of the effective date of the amendment as set forth in Section 1.6:

- (a) \$33,000 in 1985;
- (b) \$32,000 in 1986;
- (c) \$44,834 in 1987;
- (d) \$38,500 in 1988;
- (e) \$35,000 in 1989;
- (f) \$14,666 in 1990;
- (g) \$9,693 shall be paid in the following amounts and in the following years:

<u>Amount</u>	<u>Year</u>
\$ 2,189	1985
\$ 3,752	1986
\$ 3,752	1987
\$ 9,693	

The installments of the portion of the Capital Contribution to be paid in accordance with this paragraph 3.2(g) shall be paid out of the Net Cash Flow, if any, distributable to Bayview Park Associates Limited Partnership in the designated year. If there is insufficient Net Cash Flow in any of the above-noted years for the specified Distribution, such unpaid Capital Contribution of Bayview Park Associates Limited Partnership shall be paid from 99% of the Net Cash Flow in subsequent years through 1990, from 50% of the Net Cash Flow in years 1991 and 1992, and any remaining balance shall be paid



from Net Cash Proceeds of the Sale or Refinancing distributable to Bayview Park Associates Limited Partnership.

Provided, however, the General Partners shall give the Additional Limited Partner not less than 21 days' written notice of the due date of each installment subsequent to the first installment.

At the time of the execution of this Agreement, the Limited Partner shall execute a non-interest bearing, nonnegotiable promissory note in the form of Exhibit 3.2.1 hereto, payable to the Partnership, evidencing the obligation to pay the unpaid installments described in Sections 3.2(b) through (f) above. The note is an asset of the Partnership.

Notwithstanding anything contained herein, the obligation of the Additional Limited Partner to pay the installments is conditioned upon delivery by the General Partners to it of a written certificate (the "Payment Certificate") in the form of Exhibit 3.2.2 hereto stating that (i) all conditions to such installment have been satisfied, and (ii) all representations and warranties of the General Partners contained in this Agreement are true and correct. The Payment Certificate for the first installment shall be delivered at admission of the Additional Limited Partner and for each subsequent installment not less than 10 nor more than 30 days prior to the due date for such installment. No installment subsequent to the first installment shall become due and payable less than, and the due date for payment shall automatically be extended until, 3 months after the prior installment has become due and payable. If, as of the date when an installment which is subject to delivery of a Payment Certificate would otherwise be due, any statement required to be made in the Payment Certificate cannot be truthfully made, the General Partners shall notify the Additional Limited Partner of the reason why such statement would be untrue if made and the Additional Limited Partner shall not be required to pay such installment; provided, however, that if (i) any such statement can subsequently be truthfully made and (ii) the Additional Limited Partner has not irrevocably lost, in the good faith judgment of its general partners, any material tax or other benefits hereunder, then the Additional Limited Partner shall pay such installment to the Partnership within 30 days after delivery by the General Partners of the Payment Certificate together with an explanation of the manner in which each such statement had become true.

Notwithstanding anything to the contrary herein, the obligation of the Limited Partner to pay the installments required by Sections 3.2(a) through (g) above is contingent upon: (a) approval of all matters relating to the Partnership and Project within a due diligence review for securities law purposes by Bayview Park Associates Limited Partnership, such approval to be within the sole discretion of Bayview Park Associates Limited Partnership, such review to be completed

within 10 days after receipt by Bayview Park Associates Limited Partnership of all documents required for due diligence purposes; and (b) the General Partners' performance of their obligation to fund Operating Deficits, provided, however, that in the event the General Partners fail to fund Operating Deficits, the Limited Partner, as a payment against its obligation to make any installment of its Capital Contribution, may elect to directly make a Capital Contribution, in which event any unfunded Operating Deficit shall be deemed to have been funded by the Limited Partner (and not the General Partners).

Notwithstanding anything contained herein, Bayview Park Associates Limited Partnership shall not be deemed to have raised the \$625,400 addressed in Section 1.6 unless and until it actually receives from escrow its limited partners' capital contributions in cash and subscription agreements. Bayview Park Associates Limited Partnership shall not be required to make any Capital Contributions to the Partnership as set forth in this Section 3.2 if, for any reason, said escrow is not closed but such escrowed funds are returned to subscribers of interests in Bayview Park Associates Limited Partnership.

Notwithstanding anything to the contrary herein, the obligation of the Limited Partner to make the Capital Contribution required by Section 3.2 is subject to Section 1.7 and those required by Sections 3.2(b) through (f) are contingent upon and shall be deferred until final permanent loan closing of the Mortgage as defined in this Agreement by December 31, 1985. If such events do not occur as required, unless waived by the Additional Limited Partner, then the obligations to pay the installments required by this Section 3.2 shall terminate.

Notwithstanding anything contained herein, if the U.S. Congress passes Federal tax legislation during 1985 or 1986 which becomes law in 1985 or 1986 and which effects a reduction in the maximum Federal individual tax rates, presently 50%, the parties hereto agree to adjust the Additional Limited Partner's remaining Capital Contribution and the Development Fee for each such calendar year affected by such change by a dollar amount equal to the product of (1) the total Additional Limited Partner's Capital Contribution under Section 3.2, excluding the portion under Section 3.2(g), divided by six, multiplied by (2) the percentage change in the maximum Federal tax rate (i.e., a change from 50% to 40% would be a 20% change) for that taxable year, prorated to the extent the change does not affect taxable income for the full calendar year. This formula shall be applied to each successive such change adopted in 1985 in the federal tax rate that affects taxable income for the years 1985 through 1990.

The Capital Contribution installments described in Section 3.2 shall remain obligations of the Limited Partner if the Partnership is dissolved or the Project is sold prior to the date on which any Capital Contribution installment is due.

In such event, any installment yet to be paid by the Limited Partner will be paid to the Partnership as a priority item before the Limited Partner receives any distribution from proceeds of a Sale or proceeds in dissolution of the Partnership. Notwithstanding anything to the contrary contained in this Agreement, no Limited Partner shall have any obligation to make Capital Contributions to the Partnership other than those set forth in this Section 3.2 nor shall any Limited Partner be obligated to restore to the Partnership any deficit in its Capital Account (as defined in Section 3.5).

Bayview Park Associates Limited Partnership shall own one hundred (100) Units.

**3.3 Return of Capital Contribution.** Notwithstanding the provisions of Section 3.2, if any of the conditions under Sections 1.7 are met, or 3.2 regarding the final permanent loan closing of the Mortgage by December 31, 1985, are not met, the General Partners and/or their affiliates shall so notify the Additional Limited Partner within ten (10) days and, unless waived by the Additional Limited Partner, the Partnership shall return the Capital Contributions of the Additional Limited Partner less the amount of any prior Distribution to the Additional Limited Partner which obligation shall be guaranteed by the General Partners, and return any promissory note constituting the balance of the Additional Limited Partner's Capital Contribution and release, indemnify and hold the Additional Limited Partner harmless from any obligation to the Partnership or arising out of its association with the Partnership and to admit the General Partners in the Additional Limited Partner's place as Substitute Limited Partners. Should the Partnership fail to return the note as herein set forth, the General Partners, jointly and severally, each agrees to assume the obligation of the Limited Partner to pay the balance of the note, and in any event to become a Substitute Limited Partner hereunder. To the extent the Partnership is unable or fails to perform any of the foregoing, the General Partners agree, jointly and severally, each to indemnify and hold the Additional Limited Partner harmless for any and all loss, injury, damage or expense (including attorneys' fees) incurred by the Additional Limited Partner as a result of (1) a failure of the General Partners to fulfill their obligations hereunder, (2) a failure of the Partnership to act in conformity with the foregoing, or (3) the Additional Limited Partner's association with the Partnership.

If the Limited Partner's Capital Contribution is returned pursuant to this Section 3.3, the General Partners

shall amend this Agreement as soon thereafter as practicable to reflect the withdrawal of the Limited Partner and return of its Capital Contribution, and the Limited Partner shall have no further liabilities to the Partnership. Except as stated in this Section 3.3 or in Section 3.2, an Additional Limited Partner shall not be entitled to withdraw any portion of its Capital Contribution prior to the dissolution of the Partnership.

3.4 Default. Upon the occurrence of a failure of a Limited Partner to make a Capital Contribution as set forth in Section 3.2 (unless otherwise excused pursuant to the terms of this Agreement), the Partnership may, in addition to any other remedies to which it may be entitled under the terms of this Agreement and/or by law, collect interest, from the date of default, at 12% per annum on the unpaid principal amount of the promissory note referred to in Section 3.2 hereof, and invoke any or all of the following provisions:

(a) Suspension of Benefits. To the extent permitted by the Code, a defaulting Limited Partner shall have no right, with respect to that portion of its Capital Contribution represented by the unpaid principal balance of its promissory note, to receive any allocation of Net Profit or Net Loss or any Distribution while it remains in default. If any allocation of Net Profit or Net Loss is made during a period of default, the share of such allocation to which the defaulting Limited Partner is otherwise entitled shall, to the extent permitted by the Code, be reallocated among the remaining Partners.

(b) Collection. The General Partners may take any action which they deem necessary or appropriate for the collection from the defaulting Limited Partner of any installment due (including the right of specific performance), in which case the Partnership shall be entitled to collect attorneys' fees and all costs of collection whether or not suit or action is filed in connection therewith.

(c) Sale of Interest in the Partnership. The General Partners may, upon ten (10) days' written notice to the defaulting Limited Partner, sell any part or all of the defaulting Limited Partner's interest in the Partnership at a public or private sale (subject to applicable federal and state securities laws), at such price, for cash or on credit, as the General Partners may determine. The Partnership or any Partner (except the defaulting Limited Partner) has the right to purchase all or any part of such Partnership

interest. The net proceeds from such sale shall be applied to the payment of all obligations to the Partnership of the defaulting Limited Partner and to the reasonable costs of the sale, including attorneys' fees and collection costs; and the defaulting Limited Partner shall be liable for any deficiency, or entitled to any surplus remaining after such application of the proceeds. Each Limited Partner hereby irrevocably constitutes and appoints each General Partner, as its true and lawful attorney-in-fact, with full power of substitution, to act for it and in its name, place and stead to sell and transfer any part of its interest in the Partnership pursuant to this Section 3.4(c) and to execute such documents as may be necessary or desirable to effectuate such transfer.

3.5 Capital Accounts. A capital account shall be maintained for each Partner ("Capital Account"). It shall be credited with the Partner's Capital Contribution and its share of Net Profits; it shall be charged with the Partner's share of Net Losses and Distributions. Loans by any Partner to the Partnership shall not be considered contributions to the capital of the Partnership.

3.6 Interest. No Partner shall be entitled to interest on a Capital Contribution or Capital Account.

3.7 Reduction in Mortgage. In the event that the Mortgage is reduced below the estimated amount specified in Section 2.18 or prepaid upon construction completion and permanent loan closing, the Capital Contribution of the Additional Limited Partner and the remaining obligation to pay the same, and the fees payable to the General Partners or Affiliates of the General Partners in accordance with Section 5.8 shall, at the option of the Additional Limited Partners, be reduced proportionately in the same ratio which the reduced Mortgage amount bears to the estimated Mortgage amount specified in Section 2.18. In the case of prior payment by any Limited Partner, such amount shall be credited against the next-remaining Capital Contribution obligation of such Limited Partner.

3.8 Increase in Mortgage. In the event any portion of the Mortgage is increased over the estimated amount specified in Section 2.18, the Developer shall be entitled to receive as an additional "Development Fee" under paragraph 5.8(c) an amount equal to the increase in the Mortgage principal balance multiplied by the ratio which the Limited Partner's Capital Contribution obligation bears to the Mortgage amount specified in Section 2.18.

## ARTICLE IV

### ALLOCATION OF PROFIT AND LOSS; DISTRIBUTIONS

4.1 Allocation of Net Profits and Net Losses. Except as otherwise provided herein, all Net Profits and Net Losses, other than from a Sale, and each item of income, gain, loss, deduction and/or credit shall be allocated to the respective Partners of the Partnership as follows:

<u>PARTNER</u>	<u>PERCENTAGE</u>
General	1%
Limited	99%
TOTAL	100%

Subject to Section 7.2, Net Profits and Net Losses and specific items of income, gain, loss, reduction and/or credit shall be allocated to a Partner only for that portion of the Partnership's fiscal year for which it is a Partner. In no event shall the General Partners have allocated to them less than 1% of any item of Net Profit and Net Loss.

4.2 Distribution of Net Cash Flow. Net Cash Flow shall be distributed annually within 75 days after the end of each fiscal year to the Partners as follows:

<u>PARTNER</u>	<u>PERCENTAGE</u>
General	1%
Limited	99%
TOTAL	100%

Net Cash Flow shall not be distributed in amounts greater than permitted by the Mortgage or applicable FMHA rules or regulations.

4.3 Allocation of Net Profit on Sale. Any Net Profit realized by the Partnership as a result of any of the transactions described in Section 4.5 shall be allocated to the Partners (after having given effect to charges and credits to Capital Accounts resulting from allocations pursuant to Section 4.1 for the fiscal year of the Partnership in which the gain is recognized for federal income tax purposes and to all distributions for such year under Section 4.2 but before giving effect to any distributions under Section 4.5) as follows and in the following order:

(a) First, if the Capital Account of any Partner or Partners is a negative figure, an amount of such gain shall be allocated to Partners whose Capital Accounts are negative in the proportion of such negative balances to one another, until the balance of each such Partner's Capital Account is equal to zero.

(b) Second, an amount of gain equal to the aggregate amount of proceeds distributable (subject to deferral for any election to report such gain on an installment basis) under Section 4.5(c) shall be allocated to the Partners to whom such proceeds are distributable in proportion to their right to such distributions.

(c) If the total gain to be allocated under this Section 4.3 includes any item of ordinary income arising under Section 1245 or 1250 of the Internal Revenue Code of 1954 (the "Code"), as amended, or any similar "recapture" gain, such item shall be allocated among the Partners in the same proportion as the aggregate gain allocated under the preceding subparagraph 4.3(a) is allocated. If such total gain includes interest income on any deferred sales proceeds, such interest income shall be allocated among the Partners in the same proportion as the total gain is allocated under this Section 4.3.

(d) Then, any gain remaining shall be allocated 80% to the Additional Limited Partners (in proportion to the number of Units held by each of them) and 20% to the General Partners.

Notwithstanding any other provision of this Agreement, the General Partners in the aggregate shall at no time have less than 1% of any such gain realized by the Partnership allocated to them.

4.4. Allocation of Net Loss on Sale. Any loss incurred by the Partnership in connection with any of the transactions described in Section 4.5 shall be allocated as follows and in the following order of priority:

(a) First, if the Capital Account of any Partner or Partners is a positive number, an amount of such loss shall be allocated to Partners whose Capital Accounts are positive in the proportion of such positive balances to one another, until the balance of each such Partner's Capital Account is equal to zero.

(b) Second, any remaining loss shall be allocated to the Partners as Net Losses are allocated under Section 4.1.

Notwithstanding any other provision of this Agreement, the General Partners in the aggregate shall at no time have less than 1% of any such loss realized by the Partnership allocated to them.

4.5 Distribution of Net Cash Proceeds from a Sale or Refinancing. The net proceeds resulting from the refinancing of any deed of trust, mortgage or similar loan on the Project or from a Sale in excess of the amount expended in restoration of property affected by a condemnation or applied to

Partnership obligations, shall be distributed and applied in the following order of priority:

(a) If the Partnership is to be wound up, to the payment of the expenses of liquidation and the debts and liabilities of the Partnership then due, including obligations to any Partners.

(b) If the Partnership is to be wound up, to the setting up of any reserves that the General Partners may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership; provided, however, that said reserves shall be deposited with a bank or trust company designated by the General Partners in escrow at interest for the purpose of disbursing such reserves for the payment of any of the aforementioned contingencies and, at the expiration of such period as the General Partners may deem advisable, for the purpose of distributing the balance thereafter remaining as hereinafter provided for.

(c) Pro rata among the Partners in the amount of their aggregate Capital Contributions less all prior distributions to the Partners.

(d) After the foregoing payments in this Section 4.5 have been provided for, any balance remaining shall be distributed 80% to the Limited Partner and 20% to the General Partners.

The Partners acknowledge that the General Partners must maintain a 5% ownership interest in the net proceeds of sale of Partnership assets pursuant to applicable FmHA regulations. Except as otherwise provided herein or by law, the General Partners shall have no personal liability with respect to a return of the capital contribution of the Limited Partners.

4.6 Consent to Allocations and Distributions. Each Partner expressly consents to the methods set forth in this Article IV for determining the allocations and distributions of Net Profits, Net Losses and Distributions. The Partners acknowledge that the General Partners must maintain a 5% ownership interest in the net proceeds of sale of Partnership assets pursuant to applicable FmHA regulations.

4.7 Allocations and Distributions Within a Class.

(a) Allocations Among Partners. Whenever Net Profit or Net Loss, or any item of income, gain, loss, deduction or credit, is allocated to Limited Partners as a class, such Net Profit, Net Loss or item shall be allocated to all Limited Partners in proportion to the respective number of Units owned by them, unless all Limited Partners have agreed in writing to a different allocation, in which case such agreement shall control to the extent permitted by the Code. A copy of



any such agreement shall be delivered to the principal place of business of the Partnership. In the event that the effect of such agreement is to grant priority to one or more of the Limited Partners over any other Limited Partner, this Agreement shall be amended to reflect such agreement. Whenever an allocation is made to the General Partner as a class, such allocation shall be made as provided in Section 4.7(c).

(b) Distribution Among Partners. Whenever a Distribution is made to Limited Partners as a class, such Distribution shall be made to all Limited Partners in proportion to their respective number of Units, unless all Limited Partners have agreed in writing to a different method of Distribution, in which case such agreement shall control. A copy of any such agreement shall be delivered to the principal place of business of the Partnership. In the event that the effect of such agreement is to grant priority to one or more of the Limited Partners over any other Limited Partner, the Original Certificate shall be amended to reflect such agreement. Whenever a distribution is made to General Partners as a class, such distribution shall be made as provided in Section 4.7(c).

(c) Allocations and Distributions between General Partners. Whenever any Net Profit or Net Loss, or any item of income, gain, loss, deduction or credit is allocated or an item of cash is distributed to General Partners as a class and there is more than one General Partner, such Net Profit, Net Loss or items shall be allocated or distributed to the General Partners in the manner set forth in a written instrument signed by all General Partners and delivered to the Partnership; provided such allocation and distribution may be modified by a subsequent written instrument signed and delivered to the Partnership in the same manner.

## ARTICLE V.

### RIGHTS, POWERS AND DUTIES OF GENERAL PARTNERS

5.1 Management. The General Partners shall be responsible for the management of the Partnership business.

5.2 Powers. Subject to Section 5.3, the General Partners shall have all authority, rights and powers generally conferred by law, including the authority, rights, and powers of general partners in a partnership without limited partners, and shall have all authority, rights and powers which they deem necessary or appropriate to effect the purposes of the Partnership, including, by way of illustration but not by way of limitation, the following:

(a) To acquire (including by fee or real estate contract), hold, sell, transfer, assign, lease, or otherwise

deal with any real, personal, or mixed property, interest therein or appurtenance thereto, including, specifically, the authority, right, and power to acquire property not owned by the Partnership, with cash or other property.

(b) To borrow money or incur any purchase money mortgage or similar obligation and, if security is required therefor, to mortgage or subject to any other security device any portion of the assets of the Partnership, including any assets acquired with the proceeds of such borrowing, to obtain replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any mortgage or other security device, and including, specifically, the authority, right, and power to borrow money for working capital purposes to acquire, rehabilitate and operate the Property and to engage in related activities.

(c) To purchase, at Partnership expense, liability and other insurance to protect the Partnership business and property.

(d) Subject to Section 5.8, to employ, contract, and deal with, from time to time, persons, firms or corporations, including any Partner or Affiliate of any Partner, in connection with the management and operation of the Partnership business, including, without limitation, contractors, agents, brokers, accountants, and attorneys, on such terms as the General Partners shall determine.

(e) To establish reserve funds from revenues of the Partnership to provide for future requirements of the Property for operations, maintenance, repair, capital improvement, replacement, contingencies, or any other purpose deemed necessary or appropriate by the General Partners.

(f) To bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Partnership.

(g) To pay as a Partnership expense any and all costs or expenses associated with the formation, development, organization, and operation of the Partnership.

(h) To deposit, withdraw, invest, pay, retain and distribute the Partnership's funds in a manner consistent with the provisions of this Agreement.

(i) To require in any or all Partnership contracts that the General Partners shall not have any personal liability thereon but that the Person contracting with the Partnership shall look solely to the Partnership and its assets for satisfaction.

(j) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing.

**5.3 Restrictions on Authority of General Partners.** The General Partners shall be subject to all the restrictions and limitations of partners in a partnership without limited partners, each General Partner shall be bound by all Project Documents (as defined in Section 5.9) and no additional General Partner shall be admitted if it has not first agreed to be bound by this Agreement (and assume the obligations of a General Partner hereunder) and by all Project Documents to the same extent and under the same terms as the other General Partners and, in addition, without the prior consent of holders of a majority of the outstanding Units, and except as otherwise provided in this Agreement, no General Partner shall:

(a) sell all, or substantially all, of the assets of the Partnership or otherwise sell or assign Partnership property other than in the ordinary course of Partnership business;

(b) voluntarily terminate the status of the Project as a "FmHA Section 515 Rural Rental Housing" Project;

(c) borrow money, whether on a secured or unsecured basis, or refinance, recast, modify or extend any loan to the Partnership or which affects or is secured by the assets of the Partnership, except that the General Partners shall have the right and power without such consent to borrow additional funds on behalf of the Partnership to meet current cash needs of the Partnership, provided such amounts of additional funds so borrowed and outstanding under this clause (c) shall not, at any time, exceed \$25,000;

(d) do any act in contravention of this Agreement;

(e) do any act which would make it impossible to carry on the ordinary business of the Partnership;

(f) confess a judgment against the Partnership;

(g) possess Partnership property, or assign its rights in specific Partnership property, for other than a Partnership purpose; or

(h) admit a Person as a General Partner or Limited Partner, except as provided in Sections 7.2 or 8.3, respectively, hereof.

**5.4 Other Activities.** The General Partners shall not be required to devote their full time to the management of the Partnership business, but only so much of such time as the General Partners deem necessary or appropriate for the proper management of such business. The General Partners, and any of

its respective Affiliates, may engage or possess an interest, independently or with others, in other businesses or ventures of every nature and description including without limitation the ownership, operation, financing, leasing, management, brokerage, syndication, and development of residential and commercial rental of real property in competition with the Partnership or otherwise, and neither the Partnership nor any Partner shall have any rights in or to such ventures or the income or profits derived therefrom.

5.5 Distributions. Except as otherwise provided herein, each Partner shall look solely to the assets of the Partnership for all Distributions and its share of Net Profit or Net Loss, and shall have no recourse therefor (upon dissolution or otherwise) against the General Partners or the Limited Partners, except, however, that this limitation shall not impair the right of the Partnership to enforce its rights against a General or Limited Partner. No Partner shall have any right to demand or receive property other than money upon dissolution and termination of the Partnership.

5.6 Limitation on Liability; Indemnification.

(a) Indemnification of Limited Partners. The General Partners will indemnify and hold the Partnership and the Limited Partners harmless from and against any and all losses, damages and liabilities which the Partnership or any Limited Partner may incur by reason of the (a) past, present or future actions or omissions of the General Partners or any of their Affiliates, or (b) any liabilities to which either the Partnership or the Project is subject; provided, however, that the foregoing indemnification shall not apply to (i) the Mortgage or (ii) necessary contractual obligations normally incurred pursuant to the Project Documents or in connection with the operation of the Project.

If and to the extent that the Partnership is not made whole by the General Partners under the preceding paragraph and a Limited Partner incurs losses, damages and liabilities, then the General Partners will indemnify promptly and hold such Limited Partner harmless from and against the same.

Notwithstanding the foregoing, no General Partner shall be liable to a Limited Partner or the Partnership for any act or omission for which the Partnership is required to indemnify such General Partner under Section 5.6(b).

(b) Indemnification of General Partners. Each General Partner shall be entitled to indemnity from the Partnership for any act or omission performed within the scope of the authority conferred by this Agreement, providing such General Partner acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Partnership and its other Partners. However,

no indemnification shall be made in respect to any matter as to which such General Partner shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Partnership unless (and only to the extent that) the court in which such action was brought determines that despite the adjudication of liability, but in view of all circumstances, such General Partner is fairly and reasonably entitled to indemnity. Any indemnity under this Section shall be provided out of and to the extent of Partnership assets only, and no Limited Partner shall have any personal liability on account thereof.

5.7 Excess Construction/Development Costs. The General Partners shall be obligated to pay any costs or expenses incurred by the Partnership to fund Project construction and development costs beyond those contemplated by the Project Documents (as defined in Section 5.9) as such documents exist at the time such costs or expenses are incurred, whether or not the General Partners have otherwise guaranteed such payment. All such costs and expenses shall constitute additional Capital Contributions by the General Partners.

5.8 Certain Fees. Except as otherwise provided herein, the General Partners are specifically authorized to employ, contract, and deal with, from time to time, any Partner or any Affiliate of any Partner, and in connection therewith to pay such person's or entity's fees, prices, or other compensation, provided that such employment, contracts, and dealings are necessary or appropriate for partnership purposes, and the fee, price, or other compensation paid by the Partnership therefor is, in the judgment of the General Partners, reasonable and typical or competitive with the fees, prices, or other compensation customarily paid for similar property or services in the same general area. In addition to any other fees, prices, or other compensation, reimbursement of expenses, or other right to which the General Partners and their Affiliates may be entitled, the General Partners and their Affiliates shall be entitled to receive for services rendered to the Partnership, the following amounts, with the Capital Contributions of the Limited Partners to be applied to the payment of such fees, except as otherwise provided herein:

(a) Partnership Management Fee. The Partnership shall accrue and pay a fee of \$72,693 to the Partnership Manager for providing the following services to the Partnership: monitoring of operations, performing periodic physical inspections, reviewing financial and tax accounting systems, reviewing operating budgets and statements, reviewing management procedures, supervising the preparation of financial statements and tax returns and monitoring all other matters relating to the legal and tax status of the Partnership.

The Partnership Management Fee shall be earned in the following amounts on the following dates for services rendered

on and after such dates for the balance of the respective calendar year in which earned:

<u>AMOUNT</u>	<u>DATE</u>
\$ 27,389	August 1, 1985
16,352	January 1, 1986
13,202	January 1, 1987
7,560	January 1, 1988
5,040	January 1, 1989
3,150	January 1, 1990
<u>\$ 72,693</u>	

and paid on or before the following dates in the following amounts:

<u>AMOUNT</u>	<u>DATE</u>
\$ 27,389	December 1, 1985
16,352	March 1, 1986
13,202	March 1, 1987
7,560	March 1, 1988
5,040	March 1, 1989
3,150	March 1, 1990
<u>\$ 72,693</u>	

except that of the sums payable in 1985 through 1987, the following amounts will be paid during the indicated years only to the extent of 99% of Net Cash Flow, if any:

<u>AMOUNT</u>	<u>YEAR</u>
\$ 2,189	1985
3,752	1986
3,752	1987
<u>\$ 9,693</u>	

as an Incentive Management Fee. If 99% of Net Cash Flow in any year is insufficient to pay these amounts during the indicated calendar year, the amounts not paid shall be accrued and the balance, if any, paid from 99% of the Net Cash Flow in subsequent years through 1990 and any remaining balance shall be paid upon a Sale or Refinancing of the Project.

(b) Rent-up and Rental Supervision. The Partnership shall accrue and pay a fee of \$8,400 to the Rental Supervisor for services for obtaining tenants to occupy the Project. The fee shall be earned in the following amounts upon the following dates and paid on or before the following dates for services rendered on and after such dates for the balance of the respective calendar year in which paid:

<u>AMOUNT</u>	<u>DATE PAYABLE</u>	<u>DATE EARNED</u>
\$ 4,900	August 1, 1985	June 1, 1985
3,500	March 15, 1986	January 1, 1986
<u>\$ 8,400</u>		

This Rent-up and Rental Supervision Fee shall be amortized in equal monthly amounts over the twelve (12) months following Completion of Construction.

(c) Development Fee.

(i) The Partnership shall accrue and pay a fee of \$89,000 to the Developer for services provided in negotiating for, coordinating, and supervising the planning, architectural, engineering and construction services necessary for the construction of the Project. The fee shall be earned on August 1, 1985 and shall be paid on or before the following dates:

<u>AMOUNT</u>	<u>DATE</u>
\$ 5,000	March 15, 1986
24,450	March 15, 1987
22,840	March 15, 1988
22,360	March 15, 1989
14,350	March 15, 1990
<u>\$ 89,000</u>	

(ii) Any additional Development Fee, pursuant to Section 3.8, shall be earned on the closing of the Mortgage and paid on liquidation of the Partnership and shall be paid only from the proceeds of a Sale or Refinancing of the Project.

(d) Operating Deficit Guarantee Fee. For guaranteeing that any Operating Deficits will be covered in Section 3.1, the General Partners are entitled to receive a fee to be earned in the following amounts on the following dates for services performed on and after such dates for the balance of the respective calendar year; such fee to be payable on or before August 1, 1985 for the \$2,100 earned in 1985 and on or before March 15 of the year in which earned for the balance of such fee:

<u>AMOUNT</u>	<u>DATE</u>
\$ 2,100	June 1, 1985
3,600	January 1, 1986
3,600	January 1, 1987
3,600	January 1, 1988
3,600	January 1, 1989
1,500	January 1, 1990
<u>\$ 18,000</u>	

This Operating Deficit Guarantee Fee shall be amortized in equal monthly amounts over the 60-month period commencing June 1, 1985.

(e) Organizational Fee. An Organizational Fee of \$5,000 in total shall be accrued and paid the General Partners for their work in organizing the Partnership. This fee shall be earned on August 1, 1985 and shall be paid on or before March 15, 1989; it shall be amortized in equal monthly amounts over the 60-month period following Completion of Construction.

(f) Start-Up Fee. A Start-Up Fee of \$5,000 in total shall be accrued and paid the General Partners for their efforts in starting the Partnership. This fee shall be earned on August 1, 1985 and shall be paid on or before March 15, 1988; it shall be amortized in equal monthly amounts over the 60-month period following Completion of Construction.

(g) Limited Partnership Interest Repurchase Fee. The Partnership shall accrue and pay a fee of \$9,600 in total to the General Partners for their agreement to repurchase the Units from the Additional Limited Partner as provided herein. The fee shall be earned on August 1, 1985 and paid on or before the dates indicated in amounts as follows for services rendered on and after admission of the Additional Limited Partner:

<u>AMOUNT</u>	<u>DATE</u>
\$ 800	August 1, 1985
8,300	March 15, 1986
500	March 15, 1987
<u>\$ 9,600</u>	

The Repurchase Fee of \$9,600 shall be amortized in equal monthly payments over the period commencing with the admission of the Additional Limited Partner and ending December 31, 1985.

It is intended by the Partners that the fees specified in Section 5.8 will be treated as guaranteed payments made for services by a person who is not a Partner pursuant to Code § 707. All fees are payable for services to be performed in the future and are payable without regard to the income of the Partnership. If for any reason any such commission or fee is treated as a distribution to a Partner, an amount of Partnership gross income equal to such commission or fee shall be allocated to an Affiliate of the payee of such fee who was a Partner of the Partnership at the time of payment of such fee prior to allocations otherwise specified in Section 4.1 (and notwithstanding any provision of this Agreement to the contrary).

Any fee payable to more than one person shall be allocated equally among all who are entitled to it unless those so entitled agree in writing to a different allocation.



5.9 Representations and Warranties.

(a) The General Partners represent and warrant that the following are presently true and will be true on the due dates for each installment payment of the Capital Contribution of each Limited Partner:

(1) The Partnership is a duly organized limited partnership validly existing under the laws of the State of Idaho and has complied with all filing requirements necessary for the protection of the limited liability of its Limited Partners.

(2) The documents issued or required by the FmHA and/or any other lender in connection with construction, mortgage funding, rental and operation of the Project (the "Project Documents"), are in full force and effect and the Partnership is not in breach or violation of any provisions thereof.

(3) The General Partners shall provide to the Additional Limited Partner a copy of any amendment they propose to any Project Document at least ten (10) days prior to its effective date.

(4) Existing construction, if any, on the Property has been completed in conformity with the Project Documents.

(5) New construction on the Property shall be completed in conformance with the Project Documents.

(6) The General Partners or the Partnership are not in material default under any of the Project Documents or in violation of any FmHA regulations.

(7) No Partner has any personal liability with respect to or has personally guaranteed the payment of the permanent loan evidenced by any note secured by the Mortgage.

(8) All building and other applicable permits necessary to permit the construction and intended use of the Project have been obtained.

(9) The Partnership is in compliance with all construction and use codes applicable to the Project.

(10) The Partnership is not in violation of any zoning, environmental, or similar regulations applicable to the Project.

(11) The Partnership owns the fee simple interest in the Project, subject to liens (except those with respect to which an adequate bond or other financial security

has been issued) which, in the aggregate, do not exceed \$2,000 and the Mortgage.

(12) No charges or encumbrances exist other than those which are created or permitted by the Project Documents or are noted or excepted in the title policy for the Property.

(13) The buildings on the Property shall constitute "residential rental property" as defined by § 167(j) of the Code, and as amplified by the Regulations thereunder.

(14) No event or proceeding has occurred, the continuing effect of which has: (A) materially or adversely affected the operation of the Partnership or the Project (except to the extent that funds are available to the Partnership to correct or cure such event or proceeding); (B) materially or adversely affected the ability of the General Partners to perform their obligations hereunder or under any other agreement with respect to the Project; or (C) prevented the completion of construction of the improvements in substantial conformity with the Project Documents, other than legal proceedings which have been bonded against (or as to which other adequate financial security has been issued) in a manner as to indemnify the Partnership against loss. This subparagraph includes, but is not limited to, the following: (i) legal actions or proceedings before any court, commission, administrative body or other governmental authority and (ii) acts of any governmental authority having jurisdiction over the zoning or land use laws applicable to the Project. As of the date of execution of this Agreement, the General Partners are not aware of any pending or threatened litigation or unasserted claims against the Partnership or any of its affiliates which have not been disclosed in writing to the Limited Partners. This subparagraph does not apply to matters of general applicability which would adversely affect the Partnership, the General Partner, Affiliates or the Project only insofar as they or any of them are part of the general public.

(15) All documents pertaining to the Partnership or the Project shall be made available to the Limited Partners upon request.

(16) The General Partners shall maintain an aggregate net worth equal to at least 15% of the aggregate of the Limited Partners' Capital Contributions.

(17) The interest of the General Partners in each material item of Partnership income, gain, loss, deduction or credit will be equal to at least 1% of each such item at all times during the existence of the Partnership.

(18) The General Partners have funded and posted, or will fund and post from their own funds, prior to Completion of Construction or rental operations of the Partnership all funds as required by FmHA regulation, including, but not limited to, the initial "Operation and Maintenance Reserve" commonly known as the "2% Reserve."

(19) The General Partners will have any Mortgage Payment applied at the "true" note rate of principal under FmHA regulations ("PASS").

(20) As of the date of execution of this Agreement, the Partnership has no liabilities, contingent or otherwise, that have not been disclosed to the Limited Partners.

(21) The General Partners will fund any Operating Deficit of the Partnership as provided in Section 3.1 of this Agreement.

(22) For federal and state income tax purposes, the General Partners will elect to capitalize and add to the depreciable basis for the Project, rather than deduct currently, construction period interest, loan fees, and sales tax.

(23) All insurance required by the FmHA or otherwise necessary to adequately protect the Partnership including, without limitation, fire and extended coverage insurance for the full replacement value of the Project, is in full force and effect in favor of the Partnership or will be obtained as promptly as is appropriate.

(b) The General Partners agree that they shall not at any time become personally liable for the payment of any part of any note evidenced by the Mortgage or the Mortgage and shall not permit any other Partner or an Affiliate of any Partner to become personally liable for the payment of any part of any note evidenced by the Mortgage or the Mortgage.

(c) Other than as specifically provided in this Agreement, a creditor who makes a nonrecourse loan to the Partnership shall not have or acquire at any time, as a result of making the loan, any interest in the profits, capital or property of the Partnership other than as a secured creditor.

(d) The General Partners agree that they will be liable to the Limited Partners for any costs, damages, loss of profits, diminution in the value of Units, or other losses, of every nature and kind whatsoever, direct or indirect, realized or incurred by the Limited Partners as a result of any material breach of the representations and warranties set forth in this Section 5.9. The General Partners and Limited Partners agree that if a suit or action is instituted in connection with an alleged breach of such representations or warranties, that the

prevailing parties shall be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorneys' fees, including fees on any appeal.

**5.10 Managing General Partner.** In the event that there are multiple General Partners, a majority in interest of the General Partners may in writing appoint one of the General Partners as the Managing General Partner. Such Managing General Partner shall exercise all the rights, powers and obligations ("rights") of the General Partners hereunder and the other General Partners shall not exercise any such rights while one General Partner is so appointed. A majority in interest of the General Partners may, however, revoke their appointment of a Managing General Partner. Any General Partner may withdraw such designation by giving written notice of such withdrawal to the other General Partners.

Blair Reiley is hereby designated as Managing General Partner subject to the provisions of this Paragraph 5.10.

In the absence of an effective designation of a Managing General Partner, no action shall be deemed approved by the General Partners in the absence of the approval of a majority in interest of the General Partners.

**5.11 Operation and Maintenance Reserve.** The Initial Operation and Maintenance Reserve (the "2% Reserve") for the Project required by FmHA and posted by the General Partners shall not bear interest and shall be repaid (i) to the extent permitted by FmHA, out of Partnership funds available prior to final permanent loan closing of the Mortgage and not required for other Partnership purposes (including payment of fees and expenses described in the Agreement, or (ii) out of any funds which FmHA designates as a return to the Partnership of such deposit to the general operating account. Amounts expended from the 2% Reserve so posted by the General Partners will be credited to the capital accounts of the General Partners as additional Capital Contributions.

**5.12 Property Manager.** The Partnership shall enter into a management agreement with the Property Manager or its affiliates to operate the Project on a day-to-day basis for the maximum term and fee approved by FmHA. The General Partners shall either (i) cause the provisions of this Section 5.12 to be included in the Property Management Agreement or (ii) cause the Property Manager to acknowledge the provisions of this Section 5.12 in writing in a form satisfactory to the Additional Limited Partner. The General Partners (or, if a General Partner or his affiliate is the Property Manager, the Additional Limited Partner) may, at any time with the approval of FmHA, if required, dismiss the Property Manager for the following reasons: (i) the Property Manager is declared bankrupt; (ii) intentional misconduct or gross negligence of its duties and obligations as Property Manager; (iii) the Property Manager

takes any action or fails to take any action which violates in any material respect any provision of the Mortgage or any FmHA or other governmental agreement or regulation applicable to the Project; (iv) the Property Manager violates in any material respect the Property Management Agreement, this Agreement or any provision of applicable law; or (v) the Project Manager is an Affiliate of a General Partner who is removed pursuant to Article VIII. Upon the removal of the Property Manager pursuant to Section 5.12 or upon the voluntary termination of the Property Manager in accordance with the Property Management Agreement, a substitute Property Manager shall be named with the approval of FmHA, if required, (i) by the General Partners, with the approval of the Additional Limited Partner, if a General Partner or his affiliate is not the Property Manager removed under Section 5.12, or (ii) by the Additional Limited Partner. The Property Manager shall submit to the General Partners and the Additional Limited Partner monthly and other reasonably necessary periodic reports with respect to the operation of the Project, including a comparison of actual versus budgeted results of operations for the period covered.

If (i) the Project shall be subject to a substantial building code violation which shall not have been cured within six months after notice from the applicable governmental agency or department, or (ii) the Partnership shall not have distributed to the Partners Cash Flow of at least \$1,000 commencing in fiscal year 1989, upon request by the Additional Limited Partner and subject to FmHA approval if required, the General Partners promptly shall terminate the management agreement with the Property Manager and appoint a new Property Manager which is not an Affiliate of a General Partner nor a General Partner. The Partnership shall not enter into any management arrangement unless such arrangement is terminable as set forth herein.

## ARTICLE VI.

### RIGHTS AND LIMITATIONS OF LIMITED PARTNERS

6.1 Limited Assessment. Except as provided in Section 6.2, no Limited Partner shall be subject to assessment nor shall any Limited Partner be personally liable for, or bound by, any expenses, liabilities or obligations of the Partnership beyond its Capital Contribution.

6.2 Return of Prior Distribution. Under applicable law, each Limited Partner shall be liable to the Partnership for any sum, not in excess of prior Distributions made to such Limited Partner, with statutory interest, necessary to discharge the Partnership's liabilities to all creditors who extended credit or whose claims arose before such reduction or before the Original Certificate is amended to reflect such reduction. This provision is intended to be informational only

as to the status of existing Idaho law and conveys no rights of whatsoever kind or nature to creditors of the Partnership or of any Partners.

6.3 No Right to Manage. No Limited Partner shall take part in, or interfere in any manner with, the management, control, conduct or operation of the Partnership, or have any right, power or authority to act for or bind the Partnership. No Limited Partner shall have the right to bring an action for partition against the Partnership.

6.4 Priority. No Limited Partner shall have priority over any other Limited Partner, respectively, either as to the return of Capital Contributions or as to Net Profit, Net Loss or Distributions, unless otherwise specifically provided herein.

6.5 Death, Disability, etc., of a Limited Partner. The Partnership shall not be dissolved by the death, insanity, adjudication of incompetency, bankruptcy, insolvency or withdrawal of any Limited Partner; by the assignment by any Limited Partner of its interest; or by the admission of a Substitute Limited Partner or a Special Limited Partner.

6.6 Meetings. Meetings of the Partnership may be called by the General Partners and shall be called by them upon written request of Limited Partners holding more than 10% of the then outstanding Units. There will be no regular meetings.

6.7 Proposal and Adoption of Amendments Generally.

(a) Amendments to this Agreement to reflect the addition or substitution of a Limited Partner, the designation of an additional or successor General Partner, or the removal or withdrawal of a General Partner shall be made at the time and in the manner referred to in Section 6.9. Any other amendments to this Agreement may be proposed in the following manner:

(i) By the General Partners, who shall give notice to the Limited Partners of:

(A) The context of such amendment;

(B) A statement of the purpose of such amendment; and

(C) An opinion of counsel obtained by the General Partners to the effect that such amendment is permitted by the Uniform Limited Partnership Act of the State of Idaho, will not impair the limited liability of the Limited Partners and will not adversely affect the classification of or cause a termination of the Partnership as a partnership for federal income tax purposes; or

(ii) By Limited Partners holding more than 10% of the outstanding Units, who shall submit to the General Partners the text of such proposed amendment, together with a statement of the purpose of such amendment and an opinion from counsel acceptable to the General Partners obtained by such Limited Partners, satisfactory in form and substance to the counsel of the Partnership, to the effect that such amendment is permitted by the Uniform Limited Partnership Act of the State of Idaho, will not impair the limited liability of the Limited Partners and will not adversely affect the classification or cause the termination of the Partnership as a partnership for federal income tax purposes. The General Partners shall, within twenty (20) days after receipt of any proposal under this clause (ii), give notice to all Limited Partners of such proposed amendment, such statement of purpose and such opinion of counsel, together with the views, if any, of the General Partners with respect to such proposed amendment.

(b) Amendments proposed pursuant to Section 6.7(a) above, subject to the provisions of Section 6.8, shall be adopted if consented to by the General Partners and by Limited Partners owning a majority of the outstanding Units.

(c) The General Partners shall, within a reasonable time after the adoption of any amendment to this Agreement, make any official filings or publications required or desirable to reflect such amendment, including any required filing for recordation of any certificate.

**6.8 Limitations on Amendments.** Notwithstanding the provisions of Section 6.7, no amendment to this Agreement may:

(a) Without the consent of such affected Partner, enlarge the obligations of any Partner under this Agreement or convert the interest of any Limited Partner into the interest of a General Partner or modify the then limited liability of any Limited Partner or issue any additional Units or create any additional class of Partnership interest;

(b) Modify the order and method provided herein for allocation of profits and losses and distribution of Net Cash Flow and Net Cash Proceeds from the Sale or Refinancing of the Property and net proceeds resulting from the liquidation of the Partnership, without the consent of each Partner adversely affected by such modification; or

(c) Amend this Section 6.8 without the consent of all Partners.

**6.9 Amendments on Admission or Withdrawal of Partners.**

(a) Amendments to admit Substitute Limited Partners shall be adopted if the conditions specified in Section 7.3 shall have been satisfactorily complied with and

the amendment shall have been signed by a General Partner and by the person to be substituted or added, and, if a Limited Partner is to be substituted, by the assigning Limited Partner or its attorney-in-fact.

(b) Amendments to reflect the designation of an additional or successor General Partner shall be adopted if the conditions specified in Article VIII shall have been satisfactorily completed and the amendment shall have been signed by such additional or successor General Partner.

(c) Amendments for the removal or withdrawal of a General Partner, if the business of the Partnership is continued, shall be adopted if the conditions specified in Article VIII shall have been satisfactorily completed and the amendment shall have been signed by the successor General Partner(s).

## ARTICLE VII.

### TRANSFER BY LIMITED PARTNERS

7.1 Compliance with Securities Laws. No Partnership interest has been registered under the Securities Act of 1933, as amended, and most state securities laws. Except as set forth in this Section 7.1, a Limited Partner may not transfer (a transfer, for purposes of this Agreement, shall be deemed to include, but not be limited to, any sale, transfer, assignment, pledge, creation of a security interest or other disposition), all or any part of its Partnership interest, except upon compliance with applicable federal and state securities laws. The General Partners shall have no obligation to register any Limited Partner's interest under the Securities Act of 1933, as amended, or to make any exemption therefrom available to any Special Limited Partner or Substitute Limited Partner. Any certificates or other documents representing the Units will bear the following legend:

"These Units have not been registered under Section 5 of the Securities Act of 1933 as amended, or most state securities laws. No sale, transfer or other disposition of the Units (if otherwise permitted under the Partnership Agreement) may be made except pursuant to a registration statement filed with the Securities Exchange Commission under the Act or applicable state securities laws or having provided the Partnership with an opinion of counsel, in form and from counsel acceptable to the Partnership that such sale, transfer or disposition is pursuant to an exemption from the registration requirements under all applicable federal and state securities laws."



Further, the Partnership will make notations on its records of the foregoing restrictions on transfer; if a transfer agent is ever appointed, the Partnership will issue appropriate stop transfer instructions to its transfer agent respecting the limitations on transfer outlined herein.

7.2 Transfer. Except for the right to receive Distributions, Units or other interests in the Partnership owned by a Limited Partner, a Limited Partner's interest in the Partnership may not be transferred, in whole or in part unless, in addition to the conditions in Section 7.1, the transferor has, if requested by the General Partner, furnished the Partnership with evidence acceptable to the General Partner that such transfer complies with applicable federal and state securities laws and this Agreement.

Transfers for which the above conditions are satisfied will be recognized by the Partnership in conformity with Section 1.6 of this Agreement. Any transfer in contravention of this Article VII shall be void and ineffectual and shall not bind the Partnership.

7.3 Admission of Substitute Limited Partner. Except as otherwise provided in Section 7.5, a transferor of a Unit may give its transferee the right to become a Substitute Limited Partner only after the transferee:

(a) adopts and approves in writing all the terms and provisions of this Agreement then in effect; and

(b) assumes the obligations, if any, of the transferor to the Partnership.

7.4 Status of Transferee. A nonadmitted transferee of a Unit or other interest in the Partnership of a Limited Partner shall only be entitled to receive that share of Distributions, and the return of Capital Contribution, to which its transferor would otherwise be entitled with respect to the Units transferred, and shall have no right to obtain any information on account of the Partnership's transactions, to inspect the Partnership books or to vote with the Limited Partners on any matter. The Partnership shall, however, if a transferee and transferor jointly advise the General Partners in writing of a transfer of the Units or other interest in the Partnership, furnish the transferee with pertinent tax information at the end of each fiscal year of the Partnership.

7.5 Election to Treat Transferee as a Partner. The General Partners may elect to treat a transferee of a Partnership interest who has not become a Substitute Limited Partner as a Substitute Limited Partner in the place of its transferor should they deem in their absolute discretion that such treatment is in the best interest of the Partnership for any of its purposes or for any of the purposes of this

Agreement. Nothing contained herein shall be interpreted to grant the General Partners any right or power to prevent or disapprove the sale by the Limited Partner of all or a part of its interest in the Partnership.

7.6 Death, Bankruptcy, Incompetency, etc. of a Partner. Upon the death, dissolution, adjudication of bankruptcy, insanity or adjudication of incompetency of a Limited Partner, such Partner's executors, administrators or legal representatives shall have all the rights of a Limited Partner, for the purpose of settling or managing such Partner's estate, including such power as such Partner possessed to constitute a successor as a transferee of its interest in the Partnership and to join with such transferee in making the application to substitute such transferee as a Partner. However, such executors, administrators or legal representatives will not have the right to become Substitute Limited Partners in the place of their predecessor in interest unless the General Partner shall so consent.

## ARTICLE VIII.

### CHANGES AMONG GENERAL PARTNERS

#### 8.1 Removal for Cause.

(a) Limited Partners holding one quarter of the then outstanding Units may, by written instrument delivered to a General Partner, expel and remove a General Partner for cause. Such removal shall be effective on the date of delivery of the Notice. Limited Partners holding 10% or more of the then outstanding Units shall have the right to propose for vote by the Limited Partners the question of such removal of any General Partner for cause. Expulsion or removal for cause shall include, but not be limited to, the following actions by a General Partner: (i) filing bankruptcy proceedings or making an assignment of its Partnership interest for the benefit of creditors, (ii) having involuntary bankruptcy proceedings initiated against it, (iii) subjecting the Partnership to an action for, or having otherwise injured the Partnership as a result of, its fraud, willful misconduct, breach of fiduciary duty or any other grossly negligent conduct in the performance of his duties as a General Partner, (iv) breaching any material representation or warranty contained in Section 5.9 hereof, (v) failing to perform such actions as may be required by the terms of this Agreement, and (vi) habitual neglect of its obligations under the terms of this Agreement or other action detrimental to the Partnership or Partners. Notwithstanding anything contained herein, the General Partners upon receipt of such notification agree to resign and withdraw as General Partners, provided such resignation and withdrawal shall not affect their rights to contest whether there was "cause" for such removal, to sue to recover any damages if such removal was

without sufficient cause, or, to challenge the amount of damages. The General Partners hereby appoint the Additional Limited Partner as agent and attorney-in-fact to execute and record all documents necessary to give effect to this Section 8.1.

(b) Any General Partner so expelled shall forfeit his interest in the Partnership to the extent of one percent (1%) of the total Partnership interest in allocations and distributions under Sections 4.1 and 4.2, respectively, and to the extent of five percent (5%) of the total Partnership interest in distributions under Section 4.5 and the allocations corresponding thereto under Sections 4.3 and 4.4 (including any share of distributions for the fiscal year in which he is expelled whether or not already accrued and owing to such General Partner). Upon such removal, the removed General Partner, or any Affiliate thereof, shall be entitled to receive payment of those fees provided for in Section 5.8 applicable to calendar years through and including 1990 less any damages (including costs of litigation) incurred by the Partnership as a result of the actions of the removed General Partner.

(c) Notwithstanding anything contained herein, the Limited Partners, pro rata, or any successor General Partner proposed by them, shall have the option, but not the obligation, to acquire all or part of the nonforfeited interest in the Partnership of any General Partner removed pursuant to this Section 8.1 upon payment of the agreed or fair market value of such interest; provided that in such event the Limited Partners or any successor General Partner proposed by them shall deduct from such fair market value the amount necessary to offset the amount of any damages suffered by the Partnership as a result of any material breach of the obligations of such General Partner hereunder. Any dispute as to the value of the interest of any removed General Partner shall be submitted to a committee composed of three (3) MAI or SRE appraisers, one chosen by the General Partner being removed, one chosen by a majority in interest of the Limited Partners or by the successor General Partner, as the case may be, and the third chosen by the two so chosen. The proceedings of such committee shall conform to the rules of the American Arbitration Association, as far as appropriate, and its decision shall be promptly rendered and shall be final and binding upon the parties hereto and any successor General Partner in a court of competent jurisdiction. The removed General Partner and its Affiliates shall also forfeit any fees payable to them under Section 5.8 to the extent the damages (including costs of litigation) to the Partnership exceed the fair market value of the interest of such removed General Partner as determined under this Section.

(d) To the extent the interest of the General Partner in the Partnership is not forfeited or sold hereunder, the General Partner so removed pursuant to this Section 8.1

shall, upon such removal, become a Special Limited Partner and as such will not have any right to participate in the management of the affairs of the Partnership. Such Special Limited Partner shall not share in any rights or interests given to the Limited Partners. Instead, such Special Limited Partner subject to Section 8.1(b) and 8.1(c) shall retain his share of the net profits or net losses, cash flow, and capital interest which are allocated to such General Partner as if he remained a General Partner. The removed General Partner, or any Affiliate thereof, subject to Section 8.1(b) and 8.1 (c) shall be entitled to receive payment of those fees provided for in Section 5.8 applicable to calendar years through and including 1990 less any damages (including costs of litigation) incurred by the Partnership as a result of the actions of the removed General Partner. No such removal under Sections 8.1 or 8.2 shall relieve the General Partner of any obligation owing by that General Partner to the Partnership or any Partner nor shall it constitute a waiver of any claim the Partnership or any Partner may have against the removed General Partner.

8.2 Withdrawal. No General Partner may resign or withdraw from the Partnership without providing a successor General Partner satisfactory to any other General Partner(s) or, if a sole General Partner, without approval of Limited Partners holding a majority of the then outstanding Units, and without an opinion of counsel of his choice that his withdrawal would not affect the status of the Limited Partners as such under the Uniform Limited Partnership Act of the State of registration of the Partnership or adversely affect the classification of or cause the termination of the Partnership for federal income tax purposes. If a sole General Partner resigns or withdraws, he must provide a successor General Partner satisfactory to holders of 75% of the then outstanding Units. The Limited Partners will not unreasonably withhold approval of a proposed successor General Partner.

8.3 Transfer of Interests. Except as otherwise provided herein, no General Partner may assign, transfer, mortgage or sell any portion of his interest in the Partnership, or enter into any agreement as the result of which any person shall become interested in the Partnership, without the consent of the other General Partner(s) and Limited Partners holding a majority of the then outstanding Units; provided, however, this Section 8.3 shall not apply to a sale, transfer or assignment pursuant to a removal of a General Partner in accordance with Sections 8.1 or 8.2. A transferee of a General Partner's interest in the Partnership shall not become a General Partner.

8.4 Continuing Liability. In the event a General Partner withdraws from the Partnership or sells, transfers or assigns his entire interest pursuant to Section 8.3, such General Partner shall be, and shall remain, liable for all obligations and liabilities incurred by the General Partner and

the Partnership prior to the effective date of such occurrence and shall be free of any obligation or liability incurred on account of the activities of the Partnership after such time.

8.5 Admission of Successor or Additional General Partner. The General Partners may, at any time, designate additional persons to be General Partners, subject to the then General Partners agreeing upon the Partnership interest of such person as a General Partner, provided that the interests of the Limited Partners shall not be affected thereby. Such additional persons shall become a successor or additional General Partner only upon meeting the following conditions:

(a) The admission of such person shall have been consented to by Limited Partners holding a majority of the then outstanding Units;

(b) If the designated person is a corporation or other entity, it shall have provided the Partnership evidence satisfactory to counsel for the Partnership of its authority to become a General Partner;

(c) Counsel for the Partnership, at the expense of a withdrawing General Partner in the case of admission of a successor General Partner, or at the expense of the Partnership in the case of admission of an additional General Partner, shall have rendered an opinion that the admission of the designated person is in conformity with the Uniform Limited Partnership Act of the State of Idaho and that none of the actions taken in connection with the admission of the designated person will cause the termination or dissolution of the Partnership or will cause it to be classified other than as a Partnership for federal income tax purposes; and

(d) Any required or appropriate amendments and filings required under the Uniform Limited Partnership Act of the State of Idaho shall have been properly performed.

8.6 Effect of Bankruptcy, Death, Withdrawal, Dissolution or Incompetency of a General Partner.

(a) If an Event of Dissolution occurs with respect to 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 or continued subject to the provisions of Section 8.7.

(b) Upon the occurrence of any such event, such General Partner shall immediately cease to be a General Partner and his or its interest as General Partner shall terminate; provided, however, that such termination shall not affect any rights, obligations or liabilities of the bankrupt, deceased, dissolved or incompetent General Partner then existing or the

value, if any, of the interest of such General Partner in this Partnership; and, provided further, that said General Partner shall retain his Partnership interest thereafter as a Special Limited Partner.

(c) The remaining General Partner(s), if any, are authorized and shall immediately:

(i) Give notice to the Limited Partners of the occurrence of such event; and

(ii) Make, execute, and file for recordation such amendments or documents or other instruments as are necessary to reflect the termination of the interest of such General Partner as a General Partner and its substitution as a Special Limited Partner, if applicable, each Limited Partner hereby consenting to such amendment.

8.7 Continuation of the Partnership. Upon the happening of an Event of Dissolution with respect to any sole General Partner, the Partnership shall terminate unless within one hundred twenty (120) days thereafter Limited Partners holding a majority of the then outstanding Units elect to continue the Partnership business. In the event of such election, the Partnership shall not terminate, but shall continue upon the selection of a successor General Partner or General Partner, which shall be done concurrently with the election to continue the Partnership business.

## ARTICLE IX

### ACCOUNTING

9.1 Books and Records. The Partnership's books and records, along with the list of Partners, this Agreement and all amendments thereto, shall be maintained at the principal office of the Partnership or such other place as the General Partners may determine, and shall be open to inspection and examination by the Limited Partners or their duly authorized representatives at all reasonable times.

9.2 Books of Account. The General Partners shall, for income tax purposes, keep and maintain, or cause to be kept and maintained, adequate books of account of the Partnership. Such books of account shall be kept on the accrual basis.

9.3 Accountants and Auditors. The Accountants shall prepare, for execution by the General Partners, all tax returns of the Partnership. The Auditors (who may also be the Accountants) shall audit and certify all annual financial reports to the Partners in accordance with generally accepted auditing standards.

Subject to the provisions of Section 9.4, all other elections required or permitted to be made by the Partnership under the Code shall be made by the General Partners in such manner as will, in the opinion of the Accountants, be most advantageous to the Additional Limited Partner and the limited partners thereof.

9.4 Special Basis Adjustments. In the event of a transfer of all or any part of the interest of the Additional Limited Partner for a consideration in excess of the adjusted basis for such interest for Federal income tax purposes, the Partnership shall elect, pursuant to Section 743 of the Code (or corresponding provisions of succeeding law), to adjust the basis of the Partnership property pursuant to Section 754 of the Code (or corresponding provisions of succeeding law); provided, however, that in the event of the death of a Partner, such adjustment shall be made only if the General Partners determine such election to be advantageous to the successor in interest to the deceased Partner. Notwithstanding anything contained in Article IV, any adjustments made pursuant to said Section 754 shall affect only the successor in interest to the transferring Partner. Each Partner will furnish the Partnership all information necessary to give effect to such election.

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

9.6 Tax Returns and Related Matters. The General Partners, at Partnership expense, shall cause income tax returns for the Partnership to be prepared and timely filed with the appropriate authorities. Blair Reiley shall be the tax matters partner for purposes of Section 6231(a)(B) of the Code. The tax matters partner shall not, without the prior written Consent of the Additional Limited Partner, enter into any settlement with the IRS with respect to any tax audit or judicial review, in which agreement the tax matters partner expressly states that such agreement shall bind the other Partners. Further, such settlement agreement shall not bind any Partner who (within the time prescribed pursuant to the Code and regulations thereunder) files a statement with the IRS providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such Partner.

9.7 Reports. The General Partners shall, at Partnership expense, cause to be prepared and delivered to each Partner:

(a) Within forty-five (45) days after the expiration of each Partnership fiscal year, a preliminary draft of the Partnership's federal and state income tax returns;

(b) Within sixty (60) days after the expiration of each Partnership fiscal year, Partnership information necessary

for the preparation of the Limited Partners' federal and state income tax or information returns and a copy of the Partnership's federal, state and local income tax or information returns;

(c) Within ninety (90) days after the expiration of each Partnership fiscal year, audited financial statements prepared by an independent certified public accountant according to the method of accounting used for federal income tax purposes and according to FmHA requirements. Financial statements shall include a balance sheet and statement of income or loss;

(d) Within thirty (30) days after the end of each calendar month or calendar quarter, monthly reports as long as those reports are required by FmHA, quarterly reports of Project operations, including a comparison of budgeted expenditures and actual expenditures with narrative explanations, and a comprehensive narrative detailing operations of the Project, including, but not limited to, the following: (1) Unit occupancy with the actual number of units occupied and actual number vacant with an explanation of each vacancy (i.e., routine turnover with tenant expected within one week, vacant for cleaning/refurbishing with expected occupancy date, extended vacancy with no prospective tenant, etc.); (2) any significant developments in the surrounding community which could affect the Project either adversely or positively (i.e., new employer in the area, plant closure or major lay-offs, major road projects, etc.); and (3) any major repairs or significant improvements to the Project (i.e., paving, roofing, carpeting, landscaping, utilities or amenities, etc.);

(e) Copies of all year end reports required by FmHA, including but not limited to FmHA End-of-Year Reports and Operations Budgets shall be sent to the Additional Limited Partners at the same time they are to be submitted to FmHA;

(f) Within ten (10) days after receipt by the Partnership, copies of all FmHA periodic inspection reports;

(g) Such other documents or reports as may be reasonably requested by any Partner;

(h) Notice of the occurrence of any event which has a material adverse effect upon the Project, within 10 days after the occurrence of such event;

(i) (1) A certification by the General Partners that (A) all Mortgage payments and taxes and insurance payments with respect to the Project are current as of the date of the year-end report, (B) there is no default under the Project documents or this Agreement, or if there be any default, a description thereof, and (C) there is no building, health or fire code violation or similar violation of a governmental law,



ordinance or regulation against the Project or, if there be any violation, a description thereof; (2) a descriptive statement of all transactions during the fiscal year between the Partnership, and the General Partners and any Affiliates of the General Partners, including the nature of the transaction and the payments involved (including accrued cash or other payments); (3) a Cash Flow statement; and (4) a table comparing the projections of taxable income previously provided with the actual results for the fiscal year. Upon the written request of the Additional Limited Partner for further information with respect to any matter covered herein, the General Partners shall furnish such information within 30 days of receipt of such request;

(j) After the Completion of Construction the Partnership shall send to the Additional Limited Partner, on or before November 1 in each year, a report which shall state (i) the then occupancy level of the Project, (ii) if there are any operating deficits or anticipated operating deficits, the manner in which such deficits will be funded and (iii) such other matters as shall be material to the operation of the Partnership, including, without limitation, any building, health or fire code violation or similar violation of a governmental law, ordinance or regulation by the Project of which the General Partners are aware;

(k) Prior to November 1 of each year, the Partnership shall send to Limited Partners an estimate of the Limited Partners' share of the Net Cash Flow, profits or losses of the Partnership for Federal income tax purposes for the current fiscal year; and

(l) The General Partners shall send the Additional Limited Partner a detailed report within 15 days after the end of any calendar quarter during which: (i) there is a material default by the Partnership under any Project documents or in payment of any mortgage, taxes, interest or other obligation on secured or unsecured debt; (ii) any reserve has been reduced or terminated by application of funds therein for purposes materially different from those for which such reserve was established; (iii) the General Partners have received any notice of a material fact which may substantially affect further distributions; or (iv) any Partner has pledged or collateralized his Interest in the Partnership.

9.8 Advance Rentals. Any funds received for rental of Project units prior to permanent loan closing shall be accounted for on the Partnership books as revenue from operation of the Project.

## ARTICLE X.

### TERMINATION AND DISSOLUTION

10.1 Dissolution. The Partnership shall be dissolved upon the earliest to occur of the following:

(a) An Event of Dissolution with respect to a sole General Partner, unless continued in accordance with Section 8.7;

(b) Limited Partners holding a majority of the then outstanding Units elect to dissolve the Partnership;

(c) The term of the Partnership expires; or

(d) The Sale of the Project.

In no event shall the Partnership terminate if such termination would result in a violation of any FmHA Regulatory Agreement to which the Partnership is bound.

10.2 Distribution of Assets. Upon a dissolution of the Partnership, unless it is continued pursuant to Sections 8.6 or 8.7, the General Partners (or, if there is no General Partner then remaining, such other Person(s) designated by Limited Partners owning a majority of all Units held by Limited Partners) shall take full account of the Partnership assets and liabilities, shall liquidate the assets as promptly as is consistent with obtaining the fair value thereof, and shall apply and distribute the proceeds therefrom in accordance with Section 4.5.

If at the time of liquidation the General Partners shall determine that an immediate sale of part or all of the Partnership assets would cause undue loss to the Partners, the General Partners may, in order to avoid loss, either defer liquidation and retain all or a portion of the assets or distribute all or a portion of the assets to the Partners in kind. In the event that the General Partners elect to distribute such assets in kind, the assets shall first be assigned a value (by appraisal of a professionally qualified appraiser) and the unrealized appreciation or depreciation in value of the assets shall be allocated to the Partners' capital accounts, as if such assets had been sold, in the manner described in Article IV, and such assets shall then be distributed to the Partners as provided herein. In applying the preceding sentence, the Property shall not be assigned a value less than the unamortized principal balance of any loan secured thereby.

## ARTICLE XI.

### FmHA REGULATIONS

FmHA Regulations. So long as any of the FmHA commitments are in effect, (a) each of the provisions of this Agreement shall be subject to and the General Partners covenant to act in accordance with, the Project documents; (b) the Project documents shall govern the rights and obligations of the Partners, their heirs, executors, administrators, successors and assigns to the extent expressly provided therein; (c) upon any dissolution of the Partnership or any transfer of the Project, no title or right to the possession and control of the Project and no right to collect the rent therefrom shall pass to any Person who is not, or does not become, bound by the Project documents and other FmHA documents in a manner satisfactory to FmHA; (d) no amendment of the Project documents shall become effective without the prior written consent of FmHA; and (e) the affairs of the Partnership shall be subject to FmHA regulation and no action shall be taken which would require the consent or approval of the FmHA unless the same is first obtained. No new Partner shall be admitted to the Partnership and no Partner may withdraw from the Partnership or be substituted for a Partner without the consent of the FmHA (if such consent is then required). The General Partners shall at all times hold and maintain a financial interest of not less than 5% in the Partnership. No amendment to this Agreement relating to matters governed by FmHA regulations shall become effective until the prior written consent of FmHA to such amendment has been obtained.

Any conveyance or transfer of title to all or any portion of the Project required or permitted under this Agreement shall in all respects be subject to all conditions, approvals and other requirements of the FmHA rules and regulations applicable thereto.

## ARTICLE XII.

### MISCELLANEOUS

12.1 Notices. Notices to the General Partners shall be sent to the address of the General Partners set forth in Section 1.3. Notice to the Limited Partners shall be sent to their addresses as set forth in Section 1.3. Any Limited Partner may require notices to be sent to a different address by giving notice to the General Partners in accordance with this Section. Any notice or other communication required or permitted hereunder shall be in writing, and shall be deemed to have been given if and when delivered personally, given by prepaid telegram or mailed first class, postage prepaid, to such Partner at such address.

12.2 Entire Agreement. This Agreement constitutes the entire agreement among the parties and supersedes any prior agreement or understanding among them respecting the subject matter of this Agreement.

12.3 Headings. All article and section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any article or Section.

12.4 Certain Provisions. If the operation of any provision of this Agreement would contravene the provisions of the Uniform Limited Partnership Act as in effect in the State of Idaho, or would result in the imposition of general liability on any Limited Partner, such provision shall be void and ineffectual.

12.5 Saving Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

12.6 Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the Person or Persons may require.

12.7 Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, and personal representatives, except as otherwise provided herein.

12.8 Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatory to the original or the same counterpart. Any counterpart of either this Agreement or the Certificate, which has attached to it separate signature pages, which altogether contain the signatures of all Partners, shall for all purposes be deemed a fully executed instrument.

12.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of original registration of the Partnership.

12.10 Litigation. In the event of any litigation between the parties hereto in connection with the enforcement of this Agreement, the losing party agrees to reimburse the prevailing party for its reasonable costs and expenses, including reasonable attorneys' fees, including costs, expenses and fees at trial and on any appeal.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written, and declare under penalty of perjury that they have examined the foregoing Amended and Restated Certificate and Agreement of Limited Partnership and to the best of their knowledge and belief it is true, correct and complete.

LIMITED PARTNER:

BAYVIEW PARK ASSOCIATES  
LIMITED PARTNERSHIP

By 

Its General Partner

GENERAL PARTNERS:

  
Blair Reiley

\_\_\_\_\_  
Louis Buchsieb

\_\_\_\_\_  
David Cordes

WITHDRAWING INITIAL  
LIMITED PARTNERS:

  
Blair Reiley

\_\_\_\_\_  
Louis Buchsieb

\_\_\_\_\_  
David Cordes

STATE OF OREGON           )  
                                  ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Oregon, this 17 day of May, 1985, by R.M. ARCAND, general partner, on behalf of Bayview Park Associates Limited Partnership, an Oregon limited partnership.

Doranne Gault  
NOTARY PUBLIC for Oregon  
My Commission Expires: 10/12/87

STATE OF IDAHO           )  
                                  ) ss.  
County of Blaine )

SE The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Idaho, this 6th day of May, 1985, by BLAIR REILEY, General Partner and Withdrawing Initial Limited Partner of Colville Park Associates Limited Partnership (the "Partnership"), an Idaho limited partnership, individually and on behalf of the Partnership.

Suzanne P. Dyer  
NOTARY PUBLIC in and for the State  
of Idaho,  
Residing at July 2nd  
My Commission Expires: 5-1-89

STATE OF WASHINGTON )  
                                  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Idaho, this \_\_\_\_\_ day of May, 1985, by LOUIS BUCHSIEB, General Partner and Withdrawing Initial Limited Partner of Colville Park Associates Limited Partnership (the "Partnership"), an Idaho limited partnership, individually and on behalf of the Partnership.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington,  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of May, 1985 before me the undersigned, a Notary Public for the State of California, personally appeared DAVID CORDES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (a) whose name is subscribed in the within instrument and acknowledged to me that he executed it, and (b) who executed the written instrument as a General Partner on behalf of the partnership therein named and acknowledged to me that the partnership executed it.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of California,  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written, and declare under penalty of perjury that they have examined the foregoing Amended and Restated Certificate and Agreement of Limited Partnership and to the best of their knowledge and belief it is true, correct and complete.

LIMITED PARTNER:

BAYVIEW PARK ASSOCIATES  
LIMITED PARTNERSHIP

By \_\_\_\_\_  
Its General Partner

GENERAL PARTNERS:

\_\_\_\_\_  
Blair Reiley

\_\_\_\_\_  
Louis Buchsieb

\_\_\_\_\_  
David Cordes

WITHDRAWING INITIAL  
LIMITED PARTNERS:

\_\_\_\_\_  
Blair Reiley

\_\_\_\_\_  
Louis Buchsieb

\_\_\_\_\_  
David Cordes



STATE OF OREGON           )  
                                  ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Oregon, this \_\_\_\_\_ day of May, 1985, by R.M. ARCAND, general partner, on behalf of Bayview Park Associates Limited Partnership, an Oregon limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO           )  
                                  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Idaho, this \_\_\_\_\_ day of May, 1985, by BLAIR REILEY, General Partner and Withdrawing Initial Limited Partner of Colville Park Associates Limited Partnership (the "Partnership"), an Idaho limited partnership, individually and on behalf of the Partnership.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Idaho,  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
County of Island ) ss.

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of ~~Idaho~~ Washington, this 12th day of ~~May~~ June, 1985, by LOUIS BUCHSIEB, General Partner and Withdrawing Initial Limited Partner of Colville Park Associates Limited Partnership (the "Partnership"), an Idaho limited partnership, individually and on behalf of the Partnership.

Louise A. Chapman  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, Deep Harbor  
Residing at \_\_\_\_\_  
My Commission Expires: OCT. 15, 1987

STATE OF CALIFORNIA )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of May, 1985 before me the undersigned, a Notary Public for the State of California, personally appeared DAVID CORDES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (a) whose name is subscribed in the within instrument and acknowledged to me that he executed it, and (b) who executed the written instrument as a General Partner on behalf of the partnership therein named and acknowledged to me that the partnership executed it.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of California,  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written, and declare under penalty of perjury that they have examined the foregoing Amended and Restated Certificate and Agreement of Limited Partnership and to the best of their knowledge and belief it is true, correct and complete.

LIMITED PARTNER:

BAYVIEW PARK ASSOCIATES  
LIMITED PARTNERSHIP

By \_\_\_\_\_  
Its General Partner

GENERAL PARTNERS:

\_\_\_\_\_  
Blair Reiley

\_\_\_\_\_  
Louis Buchsieb

\_\_\_\_\_  
  
David Cordes

WITHDRAWING INITIAL  
LIMITED PARTNERS:

\_\_\_\_\_  
Blair Reiley

\_\_\_\_\_  
Louis Buchsieb

\_\_\_\_\_  
  
David Cordes

STATE OF OREGON           )  
                                  ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Oregon, this \_\_\_\_\_ day of May, 1985, by R.M. ARCAND, general partner, on behalf of Bayview Park Associates Limited Partnership, an Oregon limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO            )  
                                  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Idaho, this \_\_\_\_\_ day of May, 1985, by BLAIR REILEY, General Partner and Withdrawing Initial Limited Partner of Colville Park Associates Limited Partnership (the "Partnership"), an Idaho limited partnership, individually and on behalf of the Partnership.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Idaho,  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

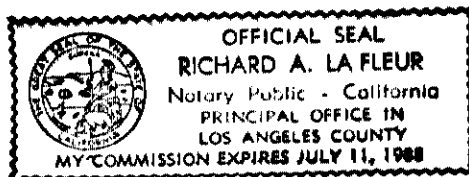
STATE OF WASHINGTON )  
                                  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, the undersigned Notary Public for the State of Idaho, this \_\_\_\_\_ day of May, 1985, by LOUIS BUCHSIEB, General Partner and Withdrawing Initial Limited Partner of Colville Park Associates Limited Partnership (the "Partnership"), an Idaho limited partnership, individually and on behalf of the Partnership.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington,  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
County of Los Angeles

On this 7<sup>th</sup> day of ~~May~~ <sup>June</sup>, 1985 before me the undersigned, a Notary Public for the State of California, personally appeared DAVID CORDES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (a) whose name is subscribed in the within instrument and acknowledged to me that he executed it, and (b) who executed the written instrument as a General Partner on behalf of the partnership therein named and acknowledged to me that the partnership executed it.



Richard A. LaFleur  
NOTARY PUBLIC in and for the State  
of California,  
Residing at Long Beach, CA  
My Commission Expires: 7-11-88

Exhibits & Attachments

Exhibit 1.6 Form of First Amendment:

FIRST AMENDMENT TO THE  
AMENDED AND RESTATED CERTIFICATE  
AND AGREEMENT OF LIMITED PARTNERSHIP OF  
COLVILLE PARK ASSOCIATES LIMITED PARTNERSHIP

This FIRST AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE AND AGREEMENT OF COLVILLE PARK ASSOCIATES LIMITED PARTNERSHIP is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 1985 by and among BLAIR REILEY, LOUIS BUCHSIEB, DAVID CORDES and BAYVIEW PARK ASSOCIATES LIMITED PARTNERSHIP, an Oregon limited partnership.

W I T N E S S E T H :

WHEREAS, the parties hereto executed and entered the Amended and Restated Certificate and Agreement of Limited Partnership of Colville Park Associates Limited Partnership (the "Partnership Agreement") on May \_\_, 1985;

WHEREAS, Article I Section 1.6 of the Partnership Agreement provides that if Bayview Park Associates Limited Partnership ("Additional Limited Partner") shall have raised \$625,400 in the private placement sale of its limited partnership interests ("Units") or waived such requirement within 130 days of executing the Partnership Agreement, the parties hereto appoint Robert M. Arcand, a general partner of the Additional Limited Partner, with full power of substitution as their true and lawful attorney-in-fact, in their name, place and stead, with full power to act to make, execute, sign, acknowledge, swear to, verify, deliver, file, record and publish an amendment to the Partnership Agreement indicating the Additional Limited Partner raised the aforementioned \$625,400, or waived the requirement, and stating the effective date of the Additional Limited Partner's admission as the "Additional Limited Partner" as defined in the Partnership Agreement;

WHEREAS, the Additional Limited Partner has [raised the aforementioned \$625,400 by the private placement sale of its Units] [waived the requirement to raise the aforementioned \$625,400 by the private placement sale of its Units];

NOW, THEREFORE, in consideration of the premises set forth and for other good and valuable consideration, the Partnership Agreement is hereby amended as follows and continued as a limited partnership pursuant to the Uniform Limited Partnership Act of the State of Idaho:

1. Admission of the Additional Limited Partner.  
Pursuant to Article I Section 1.6, effective \_\_\_\_\_, 1985,  
the Additional Limited Partner is deemed admitted and the  
Initial Limited Partners withdrawn. Henceforth, all  
allocations and distributions shall be made in accordance with  
the provisions of the Partnership Agreement.

2. Continuation. The Partnership Agreement, as amended  
hereby, shall be and continues in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto declare  
under penalty of perjury that each has examined this First  
Amendment to the Partnership Agreement and to the best of their  
knowledge and belief, this First Amendment to the Partnership  
Agreement is true, correct and complete.

GENERAL PARTNERS and WITHDRAWING  
INITIAL LIMITED PARTNERS:

Blair Reiley  
Louis Buchsieb  
David Cordes

LIMITED PARTNER AND ADDITIONAL  
LIMITED PARTNER:

BAYVIEW PARK ASSOCIATES LIMITED  
PARTNERSHIP

By \_\_\_\_\_  
Robert M. Arcand

under power of attorney-in-fact for  
the above listed General Partners,  
Withdrawing Initial Limited  
Partners, Limited Partner and  
Additional Limited Partner.

STATE OF OREGON            )  
                                  ) ss.  
County of Multnomah    )

The foregoing instrument was acknowledged before me, the  
undersigned Notary Public for the State of Oregon, this \_\_\_\_\_  
day of \_\_\_\_\_, 1985, by R.M. ARCAND, attorney-in-fact, on  
behalf of the General Partners, Withdrawing Initial Limited  
Partners and Additional Limited Partner of Bayview Gardens  
Associates A Limited Partnership.

\_\_\_\_\_  
NOTARY PUBLIC for Oregon  
My Commission Expires: \_\_\_\_\_

Exhibits & Attachments

Exhibit 2.29 Real Property Description:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 16 TOWNSHIP 35 NORTH RANGE 39 EAST W.M. STEVENS COUNTY, WASHINGTON DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 16 TOWNSHIP 35 NORTH RANGE 39 EAST W.M. STEVENS COUNTY THENCE DUE NORTH 390 THENCE DUE WEST 245 FEET THENCE DUE SOUTH 390 FEET THENCE DUE EAST 245 FEET TO THE POINT OF BEGINNING EXCEPT THE NORTH 100 FEET THEREOF.



Exhibits & Attachments

Exhibit 3.2.1 Form of Promissory Note:

NONNEGOTIABLE  
PROMISSORY NOTE

\$165,000

Portland, Oregon  
Effective \_\_\_\_\_, 1985

FOR VALUE RECEIVED, BAYVIEW PARK ASSOCIATES LIMITED PARTNERSHIP ("Partnership"), an Oregon limited partnership, hereby promises to pay to COLVILLE PARK ASSOCIATES LIMITED PARTNERSHIP, an Idaho limited partnership ("Colville"), the principal sum of One Hundred Sixty-five Thousand and No/100 Dollars (\$165,000.00), without interest thereon, payable on the latter of March 15 of the indicated year or receipt of Colville's tax return and Form K-1 for the prior calendar year acceptable to the Partnership as follows pursuant to the Amended and Restated Certificate and Agreement of Colville dated May \_\_, 1985 ("the Agreement"):

<u>YEAR</u>	<u>AMOUNT</u>
1986	\$ 32,000
1987	44,834
1988	38,500
1989	35,000
1990	<u>14,666</u>
TOTAL	\$165,000

Payment of the installments set forth above is subject to reduction as provided in and contingent upon the matters described in Article III of the Agreement and the absence of any default by the General Partners of Colville of their obligations or representations set forth in the Agreement.

Further, any installments set forth above shall be reduced by the amount of any unfunded Operating Deficit (as defined in the Agreement) and such reduction in the obligation to pay installments hereunder shall remain in effect until such Operating Deficit is funded as provided in Section 3.1 of the Agreement. Upon funding of such Operating Deficit, the reduction in the obligation to make a payment hereunder shall be removed and such amount shall be due and payable within thirty (30) days of receipt of notice by the Partnership that the Operating Deficit has been funded. The principal amount of this note is subject to reduction to reflect any reduction in the Partnership's capital contribution provided in Article III of the Agreement.

If any amount becomes due and payable hereunder and is not paid within ten (10) days after the Partnership's receipt of written notice of its failure to pay such amount, all amounts payable shall become immediately due and collectible at the option of the holder of this note.

Payment shall be made in the lawful money of the United States at such place in Idaho designated by the holder of this note.

The Partnership shall have the right to prepay, without penalty or charge therefor, the whole or any part of the foregoing amounts.

If this note is placed in the hands of an attorney for collection, the undersigned Partnership promises and agrees to pay holder's reasonable attorneys' fees and collection costs, even though no suit or action is filed thereon; however, if a suit or action is filed, the amount of such reasonable attorneys' fees shall be fixed by the court, or courts in which the suit or action including any appeal therein is tried, heard or decided.

BAYVIEW PARK ASSOCIATES LIMITED  
PARTNERSHIP

By

Robert M. Arcand  
Its General Partner

Exhibits & Attachments

Exhibit 3.2.2 Form of Payment Certificate:

PAYMENT CERTIFICATE

The undersigned, general partners of Colville Park Associates Limited Partnership do hereby certify pursuant to Article III Section 3.2 of the Amended and Restated Certificate and Agreement of Limited Partnership of Colville Park Associates Limited Partnership, as amended (the "Partnership Agreement") that as of \_\_\_\_\_, 19\_\_:

1. all conditions to the Capital Contribution installment due by the terms of the Partnership Agreement subsequent to the date of this certificate have been satisfied; and
2. all representations and warranties of the undersigned contained in the Partnership Agreement are true and correct.

GENERAL PARTNERS:

\_\_\_\_\_  
Blair Reiley

\_\_\_\_\_  
Louis Buchsieb

\_\_\_\_\_  
David Cordes