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CLERK OF STATE

CERTIFICATE AND AGREEMENT

OF

SANDPOINT WEST ATHLETIC CLUB

A LIMITED PARTNERSHIP

THIS CERTIFICATE AND AGREEMENT of Sandpoint West Athletic Club, a Limited Partnership, made this 17<sup>th</sup> day of December, 1984, a Limited Partnership by and between Sandpoint West Associates, hereinafter referred to as "General Partner(s)", and those parties indicated in Schedule A, hereinafter referred to as "Limited Partner," "Initial Limited Partner," or "Investor Limited Partner."

PRELIMINARY STATEMENT

There is hereby formed a limited partnership under the name of Sandpoint West Athletic Club (hereinafter called the "Partnership") in accordance with the provisions of the Uniform Limited Partnership Act of the State of Idaho.

The parties hereto desire to confirm the agreement relating to the formation of the Partnership and the management of its affairs and for the admission of those parties in Schedule A as Limited Partners as hereinafter provided and, in consideration of the premises and agreements herein contained, and intending to be legally bound hereby, agree that:

(a) To achieve the purpose of this Agreement, the Partners shall, upon delivery hereof, sign, swear to, and file for recordation in the appropriate offices of the State of Idaho this Certificate in accordance with the provisions of the Uniform Limited Partnership Act of the State of Idaho, and to the extent required this agreement may be filed in other jurisdictions.

NOW THEREFORE, in consideration of mutual promises, covenants and agreements hereinafter contained, it is therefore agreed that:

## ARTICLE I

### Name and Purpose

1.1 Formation. The Partners constitute a Limited Partnership formed pursuant to the Limited Partnership Act of the State of Idaho.

1.2 Name and Office. The Partnership is and shall be conducted under the name of Sandpoint West Athletic Club. The principal office of the Partnership shall be located at 303 Church, Sandpoint, ID 83864..

1.3 The initial limited partner shall withdraw from this partnership without compensation upon sale of the limited partnership interest.

### 1.4 Purposes and Powers.

(a) The purpose of the business to be carried on by the Partnership shall be to invest in the Project and to do all things reasonably incident thereto, including borrowing money for Partnership purposes, securing such borrowings by mortgage, pledge or other lien, and selling, leasing or otherwise disposing of such Project at any time. The Partnership may not re-invest the proceeds of any Project refinancing and the proceeds of any sale or other disposition of equity interests in Project without the prior written consent of all of the Limited Partners. The project is that athletic club development known as Sandpoint West Athletic Club, located in Sandpoint, Idaho.

(b) The Partnership shall not engage in any other business without the prior written consent of all the Limited Partners.

1.5 Terms. The Partnership shall commence business on the date of filing this document with the Secretary of State for the State of Idaho and continuing in full effect until the earlier of the termination and dissolution of the Partnership in accordance with the terms hereof or December 31, 2021, and thereafter by mutual consent of all Partners, unless sooner dissolved and terminated as herein provided.

1.6 Registered Agent. A. J. Skubi, Jr., located at 303 Church, Sandpoint, ID 83864, shall be agent for service of process in Idaho and is authorized to file a consent to service of process for the partnership for any other state in which investors reside.

## ARTICLE II

### Capital

#### 2.1 Capital and the Partnership.

(a) The capital of the Partnership shall be the aggregate amount of the cash contributed and of the agreed value of property contributed by the Partners as set forth in Schedule "A" as well as the assignment of the purchase agreement for the subject property by the General Partners to the Partnership.

#### 2.2 General Provisions.

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

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

(c) No Limited Partner shall be liable for any of the debts or obligations of the Partnership or be required to contribute any capital or lend any funds to the Partnership other than as expressly provided herein. No General Partner shall have any personal liability for the repayment of the capital contributions of any Limited Partner, except as expressly provided to the contrary in this Agreement.

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

2.3 Partnership Borrowing. Partnership Notes may be issued at any time by the Partnership for Partnership purposes. In addition to the Mortgage Loan and to any Partnership Notes, and to borrowings otherwise permitted, the Partnership may borrow sums for Partnership purposes from any source, including any Partner, provided that such additional borrowing is not secured by any lien or other charge upon the assets of the Partnership, except as

permitted by the terms of the Mortgage Loan. No Limited Partner shall have any personal liability with respect to any indebtedness of the Partnership unless otherwise agreed to in writing.

2.4 The General Partners shall deliver a copy of this Certificate returned from recording to a Limited Partner if so requested by any Limited Partner in writing.

### ARTICLE III

#### Rights, Powers and Duties of Partners

##### 3.1 Management of Partnership Business.

(a) The General Partner shall:

- (1) have the exclusive management and control of the business of the Partnership;
- (2) diligently and faithfully devote such of its time to the business of the Partnership as may be necessary;
- (3) file and publish all certificates, statements, or other instruments required by law for formation and operation of Partnership in all appropriate jurisdictions;
- (4) indemnify and hold the Partnership harmless from any loss, damage or liability due to, or arising out of, the General Partner's fraud or gross negligence;
- (5) To acquire and enter into any contract of insurance which the General Partner deems necessary and proper for the protection of the Partnership or for any purpose convenient or beneficial to the Partnership;
- (6) To retain or employ from time to time at the Partnership's expense, persons, firms or corporations (whether or not affiliated with the General Partner) for the operation and management of the business of the Partnerships, and accountants and attorneys, all on such terms and for such compensation as the General Partner shall determine, except as otherwise provided in this Agreement;
- (7) To execute and deliver on behalf of the Partnership, notes or other evidences of indebtedness, mortgages, deed of trust or other security interests, leases,

contracts or agreements of any nature and any or all other instruments to effectuate the foregoing powers.

3.2 Powers of General Partner. The General Partner shall have all necessary powers to carry out the purposes, business and objectives referred to in Section 1.4, and shall possess and enjoy all the rights and powers of partners of a partnership without limited partners except as otherwise provided by Idaho Law or expressly provided to the contrary in this agreement. The General Partner shall be entitled to pledge as security for borrowings, fees receivable from the Partnership, and as additional security, amounts due or to become due from the Limited Partners pursuant to Section 2.3 hereof.

3.3 Other Interests of Partners. Any of the Partners may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to, real estate business in all its phases, which shall include, without limitation, ownerships, operation, management, syndication, construction and development of real property. Neither the Partnership nor the other Partners shall have any rights in and to such independent ventures or the income or profits derived therefrom. The Partnership may employ or transact business with any person, notwithstanding the fact that any Partner or member of his Immediate Family, or associates, may be one of, or may have an interest in or connection with, such persons and neither the Partnership nor the other Partners shall have any rights in or to any income or profits derived therefrom.

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

3.5 Indemnification and Liability of General Partner. The Partnership shall indemnify the General Partner as to third parties against any claim or liability incurred by him in connection with the business of the Partnership, provided the General Partner was not guilty of misconduct, negligence or breach of fiduciary duty. Any amount paid to indemnify the General Partner, however, shall be paid out of Partnership assets only and Limited Partners shall not be liable for such amounts to be paid to the General Partner except to the extent of any amount of capital contribution of a Limited Partner that is due and owing

to the Partnership and remains unpaid. Neither the Partnership nor any Partner shall have any claim against the General Partner based upon or arising out of any act or omission of the General Partner, provided that the General Partner acted in good faith and was not guilty of misconduct, negligence or breach of fiduciary duty.

#### ARTICLE IV

##### Profits and Losses: Distribution

##### 4.1 Profits and Losses.

(a) Commencing with the date hereof, the profits and losses of the Partnership (as differentiated from the Partnership distributions -- see Section 4.2, 4.3 and 4.4), other than profits or losses of the Partnership arising from the sale or disposition of all or substantially all of the assets of the Partnership, shall be determined as of the end of such fiscal year and allocated as of that date to the Partners of record at the end of each fiscal year as follows:

(1) For each fiscal year or portion thereof, 50% of the profits and losses shall be allocated to the class comprised of the Limited Partners.

(2) For each fiscal year or portion thereof, 50% of such profits and losses shall be allocated to the General Partner, except that the 50% to the General Partner is subordinate to the limited partner's having received an amount which, when added to all prior distributions, will equal their original capital contributions. In other words, the limited partners shall receive their initial investment back before any distribution of profit to the general partners.

(b) The profits and losses of the Partnership arising from the sale or other disposition of all or substantially all of the assets of the Partnership shall be allocated in a manner consistent with both prior allocations of profit and loss and distribution of cash proceeds on liquidation. See 3(c) herein for a description of distribution at sale or refinancing.

(c) The profits and losses of the Partnership allocated to the Limited Partners, as a class, shall be shared by the Partners comprising such class in proportion to their respective appropriate adjustments shall be made with respect to the sharing of profits and losses among the Partners to reflect the application of the election provided in Section 754 of the Internal Revenue Code of 1954 (or corresponding provisions of succeeding law).

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

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

4.2 Distributions of Cash Funds. The General Partner shall distribute to the Partners at convenient periodic intervals in the manner and in the amount hereinafter provided, the Cash Funds of the Partnership available for distribution. The term "Cash Funds of the Partnership available for distribution" means all cash funds generated by the investments of the Partnership (other than the proceeds of any sale or disposition or refinancing of investments of the Partnership), less current charges and expenses (including fees paid to General Partner), reasonable reserves for working capital, contingencies, captial improvements and replacements, and expenditures for necessary captial improvements in excess of reserves. Cash funds shall be distributed as follows:

- |                             |     |
|-----------------------------|-----|
| (a) To the Limited Partners | 50% |
| (b) To the General Partner  | 50% |

4.3 Allocations Among Partners.

(a) Allocation of profit and loss and distributions to a particular class of Partners shall be shared by the Partners comprising such class in proportion to their respective capital contributions.

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

## ARTICLE V

### Provisions Applicable to Limited Partners

The following provisions shall apply to the Limited Partners, and the Limited Partners hereby agree thereto.

5.1 Liability. The Limited Partners shall be liable with respect to the Partnership only to the extent of the amount of the contribution to capital made or agreed to be made by such Limited Partner as provided in Schedule A.

5.2 No Participation in Control or Management. No Limited Partner shall take any part or participate in the conduct of, or have any control over, the business of the Partnership, and no Limited Partner shall have any right or authority to act for or to bind the Partnership.

5.3 Consent. To the fullest extent permitted by law, the Limited Partners hereby consent to the exercise by the General Partner of all of the rights and powers conferred on the General Partner by this Partnership Agreement.

5.4 Acknowledgment. Each of the Limited Partners irrevocably constitutes and appoints the General Partner his true and lawful attorney, in his name, place and stead to make, swear to, execute, acknowledge and file:

(a) Any and all certificates of Limited Partnership of the Partnership and any amendments thereto which may be required by the Uniform Limited Partnership Act, including amendments required for the substitution of a Limited Partner, for the reflection of the return of the capital contributed by any Limited Partner, and the continuation of the business of the Partnership by a substitute General Partner;

(b) Any certificate or other instrument and any amendments thereto which may be required to be filed by the Partnership in order to accomplish the business and purposes of the Partnership, including any business certificate, fictitious name certificate or assumed name certificates;



(c) Any cancellation of such certificates of Limited Partnership and any and all other documents and instruments which may be required upon the dissolution and liquidation of the Partnership;

(d) New certificates of Limited Partnership and any and all documents and instruments which may be required to effectuate a continuation of the business of the Partnership as provided in this Agreement:

(e) To the extent an amendment hereto is properly adopted then the amendment may be signed by a General Partner under this Power of Attorney for non-adopting partners;

(f) If it is expressly intended and agreed that the foregoing Power of Attorney is:

(1) coupled with an interest and

(2) does not affect in any way the Limited Partners' rights to approve or disapprove proposed amendments to this Agreement.

In the event a Limited Partner assigns his interest in the Partnership, as provided herein, the foregoing power of attorney shall survive the delivery of the instruments affecting such assignment for the purpose of enabling a General Partner to sign, swear to, execute and acknowledge and file any and all Amendments to the Certificate of Limited Partnership of the Partnership and all other instruments and documents necessary to effect the substitution of the assignee as a Limited Partner.

## ARTICLE VI

### Assignment of Limited Partner's Interest

The Partnership interest of a Limited Partner may not be assigned, pledged, mortgaged, sold or otherwise disposed of, and no Limited Partner shall have the right to substitute an assignee in his place, except as provided in this Article VI.

#### 6.1 Assignment.

(a) No Limited Partner may sell or assign all or part of his interest in the Partnership unless a General Partner has consented in writing to the proposed sale or assignment; the General Partner may not unreasonably withhold consent. Any Limited Partner desiring to sell or assign

all or a part of his interest in the Partnership shall notify the General Partner of such desire; the notice shall include:

(1) an opinion of counsel, satisfactory in form and substance to the General Partner to the effect that either (i) the sale or assignment constitutes an exempt transaction, and does not require registration, under all applicable securities laws, or (ii) the interest to be sold or assigned is duly and properly registered under all applicable securities laws,

(2) evidence satisfactory to the General Partner that the assignee is eligible to become a substitute Limited Partner pursuant to this Article VI and the assignee's agreement to comply with and be bound by the terms of this Agreement and the execution of any and all documents that the General Partner may deem necessary in connection with the assignment and substitution,

(3) evidence satisfactory in form and substance to the General Partner that the sale or assignment will not impair the ability of the partnership to be taxed as a partnership for federal income tax purposes or to take advantage of accelerated depreciation under the Internal Revenue Code,

(4) representations in form and substance satisfactory to the General Partner that the assignee is acquiring the interest for his own account and for investment and not with a view to the distribution thereof,

(5) All sales or assignments of interests in the Partnership occurring during any month shall be deemed effected on the first day of the month next following the month in which the sale or assignment occurs.

(b) The appropriate Partnership records shall be noted to prevent the sale or assignment of Units otherwise than in accordance with Article VI.

(c) No assignee of all or part of the Partnership interests of any Limited Partner shall have the right to become a substitute Limited Partner unless:

(1) his assignor has stated such intention in the instrument of assignment, and

(2) the General Partner has consented to the admission of such assignee as a substitute Limited Partner. The admission of a substitute Limited Partner may be effected without the consent of the Limited Partners.

(3) No part of the Partnership Interest of a Limited Partner may be assigned or transferred to a minor or incompetent except to a trust for the benefit of a minor or an incompetent who is a member of the assigning Limited Partner's immediate family.

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

6.2 Documents and Expenses. As a condition to admission as a substitute Limited Partner, an assignee of all or part of the Partnership Interest of any Limited Partner, or the legatee or distributee of all or any part of the Partnership interest of any Limited Partner, shall execute and acknowledge such instruments, in form and substance satisfactory to the General Partner, as the General Partner shall deem necessary or advisable to effect such admission and to confirm the agreement of the person being admitted as such Limited Partner to be bound by all the terms and provisions of this Agreement. Such assignee, legatee, or distributee shall pay all reasonable expenses in connection with such admission as a substitute Limited Partner, including but not limited to, legal fees and costs of the preparation, filing, and publishing of any amendment to the certificate of Limited Partnership of the Partnership, if necessary or desirable in connection therewith.

6.3 Acquit Partnership. In the absence of written notice to the Partnership of any sale or assignment of a Partnership interest, any payment to the selling or assigning Partner of his executors, administrators or representatives shall acquit the partnership of liability to the extent of such payment by reason of an assignment by the Partner or by reason of such Partner's death or otherwise.

6.4 Restriction of Transfer. Notwithstanding the foregoing provisions of this Article VI no sale or assignment of a Partnership interest may be made if the interest sought to be sold or assigned, when added to the total of all other Partnership interests sold or assigned within the period of twelve (12) consecutive months prior thereto, would result in the termination of the Partnership under Section 708 of the Internal Revenue Code of 1954 (or any successor section).

6.5 Termination of Membership. No Partner, General or Limited, may terminate membership in this Partnership except as otherwise provided herein.

## ARTICLE VII

### Books of Account; Reports and Fiscal Matters

7.1 Books, Place, Access. The General Partner shall maintain accurate books of account on behalf of the Partnership and each and every Partnership transaction shall be entered therein in accordance with generally accepted accounting principles consistently applied. The books of account shall be kept at the business office of the Partnership and all Partners shall at all reasonable time have access to and the right to inspect and copy the same.

7.2 Method. The books of account shall be kept on the accrual method of accounting (except that cash basis books shall also be maintained to the extent necessary to fulfill lenders reporting requirements and shall be reconcilable to the books kept on the accrual method of accounting.)

7.3 Fiscal Year. The fiscal year of the Partnership shall end on December 31 of each year.

7.4 Reports. Annual statements showing the income and expenses of the Partnership for the fiscal year and the balance sheets thereof as at the end of such year shall be prepared by independent certified accountants. Each Partner shall be furnished copies of such statements of income and expenses and of such balance sheets. These reports will be available within 90 days of year end.

7.5 Bank Accounts. The General Partner shall select a depository or depositories for the funds of the Partnership, and all funds of every kind and nature received by the Partnership shall be deposited in such account or accounts. The General Partner shall from time to time designate the persons authorized to withdraw funds from such account.

7.6 Accounting Decisions. All decisions as to accounting matters shall be made by the General Partner in accordance with generally accepted accounting principles consistently applied.

#### 7.7 Federal Income Tax Elections.

(a) The Partnership shall, to the extent permitted by applicable statutes and regulation, elect to treat as an expense for federal income tax purposes all amounts incurred for rent, real estate taxes, interests, and other charges during or relating to the construction of the Project which may, in accordance with applicable law and regulations,

be considered as expenses.

(b) The Partnership shall, to the extent permitted by applicable statutes and regulations, elect to use such methods of maximum accelerated depreciation and amortization on each depreciable unit of the assets of the Partnership except as to depreciation where recapture would involve the entire amount.

(c) In the event of a transfer of all or part of the Partnership Interest of any Partner, the Partnership may elect pursuant to Section 754 of the Internal Revenue Code of 1954 (or corresponding provisions of future law) to adjust the basis of the assets of the Partnership.

#### ARTICLE VIII

##### Withdrawal or Expulsion of General Partner: Replacement

8.1 Withdrawal. Except as otherwise provided herein, no General Partner may withdraw from the Partnership unless such withdrawing General Partner provides a substitute General Partner to the Partnership which is approved by 51% in interest of the remaining partners, limited or general, which approval will not be unreasonably withheld.

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

8.2 Replacement of a General Partner. In the event of the following:

(a) The wrongful withdrawal of a General Partner in violation of Section 8.1.

(b) The expulsion of a General Partner under Section 8.2, a General Partner or ten percent (10%) of the Limited Partners by interest may call a special meeting of the Partnership for the purpose of replacing a General Partner; at least thirty (30) days written notice of such meeting shall be given to all Partners. At such meeting, a General Partner may be replaced in the same manner and subject to the same approvals required in Section 8.1 to approve a substitute General Partner.

8.3 Payment for Replaced General Partner's Interest. A substitute General Partner, immediately upon his admission as a General Partner, shall become the owner of the Partnership Interest of the replaced General Partner, and

shall pay the Partnership the fair market value of such Partnership Interest as the purchase price therefor. Such purchase price shall be retained by the Partnership in the event the former General Partner wrongfully withdrew from the Partnership, or was expelled from the Partnership for "cause;" otherwise such purchase price shall be paid to the replaced General Partner. "Cause" shall not be deemed to exist until established under Section 8.2 hereof and the interest of a former General Partner shall be held in trust in a separate interest-bearing account.

The fair market value of such Partnership interest shall be determined by agreement between the interested parties, or if no such agreement can be reached within ninety (90) days of the admission of the substitute General Partner, shall be determined by arbitration in Sandpoint, Idaho, in accordance with the then current rules of the American Arbitration Association.

8.4 Alternative to Special Meetings. As an alternative to voting at special meetings of the Partnership pursuant to this Article, the Limited Partners may consent to and approve by written notice if given to all Partners at least fifteen (15) days before solicitation of signatures has begun.

8.5 Failure to Admit Substitute General Partner. In the event a substitute General Partner has not been appointed and admitted, within a reasonable time after the special meeting called pursuant to Section 8.3, and as a result there is no General Partner then acting, the Partnership shall be dissolved, terminated and liquidated as of that date.

8.6 Liability of a Withdrawing General Partner. If the business of the Partnership is continued after the Withdrawal of a General Partner, as permitted by this Agreement, the Withdrawing General Partner shall remain liable only for all obligations and liabilities incurred by it while a member of the Partnership. A withdrawing General Partner shall not incur or be liable for any obligation or liability on account of the business of the Partnership or the activities of the General Partner(s) after its withdrawal.

## ARTICLE IX

### Amendments

9.1 At any time the General Partner or Limited Partners holding ten (10%) percent or more of the issued and outstanding Partnership Units may propose an amendment

to this Agreement, and in such event the General Partner shall call a special meeting of all Partners for the purpose of considering such proposed amendment, provided that each Partner, at least thirty (30) days prior to such meeting, has been provided with written notice of the meeting and a written statement of the purpose(s) of the amendment and such other matters as the General Partner deems material to the consideration of the amendment. At such meeting, an amendment so proposed shall be adopted if approved by 51% in interest of the Partners Limited or General.

9.2 Notwithstanding any provision to the contrary contained in this Agreement, no amendment will be made to this Agreement or to the Certificate of Limited Partnership for this Partnership which will affect the rights of the lenders without prior written approval to lender.

9.3 Notwithstanding anything to the contrary herein an amendment as provided in section 9.1 above shall not be required to sell, refinance or exchange the principal assets of the Partnership.

## ARTICLE X

### Dissolution and Liquidation

10.1 Events Causing Dissolution. The Partnership shall be dissolved only upon the occurrence of any of the following events:

(a) the expiration of the term set;

(b) the withdrawal or expulsion of the General Partner if a substitute General Partner has not been timely admitted with the result that no General Partner is then active, unless the Limited Partner agrees to become a General Partner;

(c) the sale, exchange or other disposition of all or substantially all of the assets of the Partnership or Project;

(d) the final decree of a court that such dissolution is required under applicable law.

10.2 Liquidation and Winding Up. If dissolution of the Partnership would be caused by reason of:

(a) the expiration of the term as set;

(b) the withdrawal or expulsion of the General Partner

if a substitute General Partner has not been timely admitted with the result that no General Partner is then acting;

(c) the sale, exchange or other disposition of all or substantially all of the Partnership assets or Project;

(d) the final decree of a court that such dissolution is required under applicable law, the Partnership shall be liquidated and the General Partner (or other person or persons designated by a decree of court) shall wind up the affairs of the Partnership.

The General Partner or other persons winding up the affairs of the Partnership shall promptly proceed to the liquidation of the Partnership and, in settling the accounts of the Partnership, the assets and the property of the Partnership shall be distributed in the following order of priority:

(1) to the payment of all debts and liabilities of the Partnership, other than any loans or advances that may have been made by the Partners to the Partnership, in order of priority as provided by law;

(2) to the establishment of any reserves deemed necessary by the General Partner or the person winding up the affairs of the Partnership for any contingent liabilities or obligations of the Partnership;

(3) to the payment of any loans or advances that may have been made by any of the Investor Limited Partners to the Partnership;

(4) to the payment of any outstanding loans or advanced by any other partners;

(5) to the Partners as provided herein subject to the terms of the incentive sale fee.

## ARTICLE XI

### General Provisions

11.1 Notices. Except as otherwise provided in this Agreement, any and all notices, consents, waivers, directions, requests, votes or other instruments of communication provided for under this Agreement shall be in writing, signed by the party giving the same and shall be deemed properly given only if sent by registered or certified United States mail, postage prepaid, addressed.



(a) In the case of the Partnership or the General Partner as a group, to the Partnership or the General Partner, as the case may be, at the principal place of business of the Partnership.

(b) In the case of any General Partner individually or any Limited Partner to such partner at his address set forth in Schedule A hereto.

Any notice so given, except as otherwise provided in this Agreement, shall be deemed to have been received as to the date on which it was mailed. Each Partner may, by notice to the Partnership, specify any other address for the receipt of such instruments or communications. Any such communication sent by telegram shall be properly given when received by the person to whom it is sent.

11.2 Integration. This Agreement embodies the entire Agreement and understanding among the Partners relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter.

11.3 Applicable Law. This Agreement and the rights of the Partners shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.

11.4 Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute an Agreement binding on all the parties hereto, notwithstanding, that all the parties are not signatory to the original or the same counterpart, except that no counterpart shall be authentic unless signed by a General Partner.

11.5 Separability. In the case of one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

11.6 Binding Effect. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of, the Partners and their respective heirs, executors, administrator, successors and permitted assigns.

11.7 Headings. The descriptive headings of the several sections of the Agreement are inserted for convenience

survive any assignment by any Limited Partner of the whole or any part of the amounts distributable to his pursuant to this Agreement. If a Limited Partner transfers his Partnership Interest, such Power of Attorney shall survive the delivery of the instruments affecting such sale or transfer for the sole purpose of enabling the General Partners to execute, acknowledge and file any and all instruments necessary to effectuate the substitution of the transferee as a Limited Partner.

(c) This Power of Attorney may be used only for the purpose of executing the foregoing documents and certificates after obtaining all necessary consents or waivers required in this Agreement, and the granting of this Power of Attorney shall not operate to permit the General Partner to modify any material terms of this Agreement without consent of Partners.

## ARTICLE XII

### Defined Terms

12.1 Defined Terms. The defined terms used in this Agreement shall have the meaning specified below:

"Cash Flow" means rental receipts and other income less operating expenses, principal and interest payments made or due, capital items after the construction period and payment of any reserves required.

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

"General Partner(s)" means the person designated as the General Partner in Schedule A hereto, any person who becomes a substitute General Partner as provided herein and any person admitted to the Partnership as a General Partner in such person's capacity as a General Partner of the Partnership. In the event that the Partnership shall have more than one General Partner, the term "General Partner" shall mean all General Partners collectively or individually as the context requires. In such case, all General Partners shall have equal rights in the management of the Partnership business.

"Partnership Interest" means (1) in the case of any Limited Partner, the interest of such Limited Partner in the profits, losses and distributions of the Partnership allocable at a particular time to the class comprised of

only and do not constitute a part of this Agreement.

11.8 Power of Attorney.

(a) Each of the Limited Partners irrevocably constitutes and appoints the General Partner his true and lawful attorney, in his name, place and stead to make, execute, acknowledge and file:

(1) any and all amendments to the Certificate of Limited Partnership of the Partnership which may be required by the Act, including amendments required for the substitution of a Limited Partner, the admission of a General Partner, and the continuation of the business of the Partnership after the withdrawal of a General Partner.

(2) any cancellation of such Certificate upon the termination of the Partnership;

(3) a new Certificate of Limited Partnership or any other organization papers, documents, forms, applications, certificates or articles or incorporation necessary to form a successor Entity and transfer the assets of the Partnership;

(4) any instruments or papers required to continue the business of the Partnership;

(5) any and all amendments to Schedule A hereto necessary to substitute a Limited Partner or a General Partner, or an amendment to capital or any appropriate amendment with respect to the sale or suspension of rights of a Partner, General or Limited, in the event of a default of a capital contribution;

(6) any business certificate, fictitious name certificate, Certificate of Limited Partnership, amendment thereto, or other instrument or document of any kind necessary to accomplish the business, purposes, and objectives of the Partnership;

(7) any note, bank resolution or other evidence of borrowing.

(8) To the extent any amendment hereto is properly adopted then the amendment may be signed by a General Partner under this Power of Attorney for non-adopting partners.

It being expressly intended by each of the Limited Partners that the foregoing Power of Attorney is coupled with an interest.

(b) That Power of Attorney set forth herein shall

the Limited Partners, or (2) in the case of any General Partner, the interest of such Partner in the profits, losses and distributions of the Partnership allocable to the class comprised of the General Partners.

"Person" means any individual or Entity.

"Property" or "Project" means the building and improvements constructed or to be constructed by the Partnership.

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

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

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

GENERAL PARTNERS

LIMITED PARTNERS

*[Handwritten signatures for General and Limited Partners]*

STATE OF IDAHO  
County of Bonner

)  
) ss.  
)


THE FOREGOING INSTRUMENT was acknowledged before me this 11 day of December, 1984, by A. J. Skubi, Jr., as Limited Partner of Sandpoint West Athletic Club.

*[Handwritten signature: Dale Rued]*  
Notary Public in and for Idaho  
Residing at: Sandpoint

STATE OF IDAHO  
County of Bonner

)  
) ss.  
)

THE FOREGOING INSTRUMENT was acknowledged before me  
this 11 day of December, 1984, by A. J. Skubi,  
Jr., as General Partner of Sandpoint West Associates.

  
Notary Public in and for Idaho  
Residing at: Sandpoint

SANDPOINT WEST ATHLETIC CLUB

SCHEDULE A

	<u>Allocation of Profits &amp; Losses</u>	<u>Capital</u>
<u>General Partner</u>		
Sandpoint West Associates c/o A. J. Skubi, Jr. P. O. Box 98 Sandpoint, ID 83864	50%	\$1.00
<u>Limited Partners</u>		
Initial Limited Partner A. J/ Skubi, Jr. P. O. Box 98 Sandpoint, ID 83864	<u>50%</u> 100%	<u>\$1.00</u> \$2.00