

Aug 21 4 51 PM '89  
SECRETARY OF STATE

SECOND AMENDED AND RESTATED CERTIFICATE AND  
AGREEMENT OF LIMITED PARTNERSHIP

OF

WOODBINE II INVESTORS LIMITED PARTNERSHIP

THIS AGREEMENT OF LIMITED PARTNERSHIP is made and entered into as of the 21 day of August, 1989, by and between TOMLINSON REALTY INVESTMENT as the General Partner (hereinafter referred to as the "General Partner"), SHAN MILLER, as the Initial Limited Partner (hereinafter referred to as the "Initial Limited Partner"), and THE RUSSELL CORPORATION, a Nevada corporation (hereinafter referred to as the "Additional Limited Partner"), whose business addresses are set forth on the signature page hereof opposite their respective signatures.

WITNESSETH:

WHEREAS, the General Partner and the Initial Limited Partner created a limited partnership pursuant to the laws of the state of Idaho by documents filed with the Secretary of the State of Idaho on May 17, 1989 and May 24, 1989; and

WHEREAS, the General Partner, Initial Limited Partner and Additional Limited Partner desire to further amend and restate the previously filed documents for Woodbine II Investors Limited Partnership;

NOW, THEREFORE, the parties hereto hereby agree and state as follows:

I.

DEFINITIONS

1.1 "Act" shall mean and refer to the Idaho Limited Partnership Act.

1.2 "Agreement" shall mean and refer to this Certificate and Agreement of Limited Partnership, as amended from time to time.

1.3 "Partnership" shall mean and refer to the limited partnership created pursuant to this Agreement.

1.4 "Net income" and "net loss" shall mean and refer to the income or loss of the Partnership after all expenses incurred in connection with the Partnership's business have been paid, including, without limitation, interest on all loans, taxes and assessments, and after making any allowance for depreciation or amortization of the cost of all property and assets, tangible or intangible, of the Partnership (collectively referred to in this Agreement as "depreciation").

1.5 "Limited Partner" shall mean the Initial Limited Partner, the Additional Limited Partner and any other person named as Limited Partner who shall become a Limited Partner.

## II.

### ORGANIZATION

2.1 Formation. The parties do hereby form a limited partnership under and pursuant to the Act.

2.2 Name. The business of the Partnership shall be conducted under the name WOODBINE II INVESTORS LIMITED PARTNERSHIP, which may be changed by the General Partner by written notice to the Initial Limited Partner.

## III.

### PRINCIPAL PLACE OF BUSINESS AND REGISTERED AGENT

3.1 The principal place of business of the Partnership shall be located at Suite 501, Key Bank Tower, Boise, Idaho 83701, or at such other place as the General Partner may from time to time determine. The Partnership may also establish and maintain such additional offices or places of business within or without the state of Idaho as the General Partner may deem advisable.

3.2 The name and address of the registered agent for service of process is: James R. Tomlinson, c/o The Home Company, P.O. Box 108, Boise, Idaho 83701.

## IV.

### BUSINESS OF THE PARTNERSHIP

4.1 The business of the Partnership shall be to acquire, develop, own and operate a 100-unit residential apartment project located in Boise, Idaho (the "Project") on that certain real property described on the attached Exhibit "A".

V.

TERM

5.1 The Partnership shall be effective upon the date of execution hereof and shall continue until January 1, 2032, unless sooner terminated by operation of law or consent of the Partners, but in all events no sooner than the term of any mortgage encumbering the project.

VI.

CAPITAL CONTRIBUTION AND STATUS

6.1 Capital Contribution of General Partner. The General Partner shall contribute to the capital of the Partnership in the sum of \$100.00.

6.2 Capital Contribution of Initial Limited Partner. The Initial Limited Partner has contributed \$100.00 to the capital of the Partnership and has received a 94% interest in the Partnership for such contribution, which contribution will be returned and the interest cancelled upon admission of the Additional Limited Partners. The Partnership intends to sell and issue up to twenty (20) units, and admit as Limited Partners the persons who contribute cash and notes to the capital of the Partnership in payment for such units.

6.3 Additional Limited Partner. The Additional Limited Partner has made a capital contribution of \$10.00 to the Partnership and holds a 1% interest in the Partnership and shall hold such interest until all of the Limited Partnership Interests have been purchased by qualified investors without an intent to resell.

6.4 Interest. Contributions to the capital of the Partnership will not bear or accrue interest in favor of the contributing Partner.

VII.

LIMITED PARTNER

7.1 Limited Liability. The Limited Partners shall not be personally liable for any of the debts, expenses, liabilities or obligations of the Partnership, except as provided in the Act. Other than the capital contributions agreed to be made pursuant to this Agreement, the Limited Partners shall not be required or

obligated by the Partnership or the General Partner to make further contributions or payments of any kind to or with respect to the Partnership.

7.2 Role of Limited Partner. Except as otherwise provided in this Agreement, no Limited Partner shall take part in, or interfere in any manner with, the management, conduct or control of the business of the Partnership, transact any business for the Partnership, or have the right, power or authority to act for, sign for or bind the Partnership in any manner on account of its status as a Limited Partner.

7.3 Withdrawal of Capital Contributions. Except as provided herein, no Limited Partner shall have the right to withdraw or reduce his contribution to the capital of the Partnership except as provided in the Act.

#### VIII.

##### EXPENSES AND SALARY OF THE GENERAL PARTNER

8.1 The General Partner shall be entitled to charge the Partnership, and to be reimbursed by it, for any and all reasonable costs and expenses actually incurred by him in connection with the formation of the Partnership and the operation of its business. The General Partner shall receive a partnership management fee, which shall be reasonable in amount with respect to the time, labor and expertise expended by the General Partner on behalf of the Partnership.

#### IX.

##### ALLOCATIONS OF NET INCOME AND NET LOSS:

##### CASH DISTRIBUTIONS

9.1 Allocation of Net Income or Net Loss. The net income or net loss of the Partnership for each calendar year shall be allocated as follows: 5% to the General Partner and 95% to the Limited Partners, of which 94% shall be allocated to the Initial Limited Partner and 1% to the Additional Limited Partner.

9.2 Distribution of Available Cash. All Available Cash shall be distributed between the General Partner and the Limited Partner annually in the same percentages as profits and losses are allocated. As used in this paragraph, available cash of the Partnership shall mean and refer to all remaining cash funds of the Partnership on hand, less such adequate reserve as the General Partner deems reasonably necessary for the proper operation of the Partnership's business.

9.3 Additional Limited Partner Special Distribution. The Additional Limited Partner shall also be entitled to the special distribution set forth in the Additional Limited Partner Participation Agreement for Woodbine II Investors Limited Partnership notwithstanding anything to the contrary set forth in this Agreement.

X.

RIGHTS, POWERS AND OBLIGATIONS OF

THE GENERAL PARTNER

10.1 Management. Subject to any restriction as stated hereinafter, the management and control of the Partnership and its business and affairs shall be exercised by the General Partner, and all decisions to be made by the Partnership shall be made by the General Partner.

10.2 Powers. The General Partner shall have all the rights and powers conferred by the Act on a General Partner or otherwise conferred by law, and any rights and powers as are necessary, advisable or convenient to the discharge of the duties of a General Partner under the Agreement and to the management and control of the business and affairs of the Partnership.

10.3 Duties. The General Partner shall manage and control the Partnership, its business and affairs to the best of his ability, and shall use his best efforts to carry out the purposes of the Partnership. The General Partner shall devote such of his time to the business and affairs of the Partnership as is deemed, in his sole and absolute discretion, necessary and appropriate. The General Partner shall periodically render a formal accounting of all dealings and transactions relating to the business of the Partnership.

10.4 Limitation on Power. Without obtaining the consent of the Limited Partners, the General Partner shall not do any act in contravention of the Act.

XI.

TRANSFER OF A PARTNERSHIP INTEREST

11.1 The Limited Partners do not have the right to sell, transfer, assign or create a security interest in their Partnership interests without the consent of the General Partner. Any assignee of the Limited Partners shall become a Limited

Partner upon the signing of this Limited Partnership Agreement and agreeing to be bound by all the terms hereof. Unless an assignee agrees to be bound by all the terms of this Agreement, the Limited Partnership shall not have the right to sell or assign their Partnership interest.

## XII.

### DISSOLUTION AND WINDING-UP OF PARTNERSHIP

12.1 Dissolution of Partnership. The Partnership shall be dissolved upon the first of any of the following events to occur:

12.1.1 The resignation, withdrawal, removal, retirement, death or insanity of the General Partner; or

12.1.2 The unanimous agreement of the Limited Partner and General Partner to dissolve the Partnership; or

12.1.3 The sale, transfer or other irrevocable disposition of all of the property of the Partnership.

12.2 Winding up of Partnership. Upon the election of the Partners to wind up and dissolve the Partnership, the General Partner shall take full account of the Partnership's assets and liabilities and the assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient to pay the Partnership's obligation with respect thereto shall be applied and distributed in the following order:

12.2.1 To the payment and discharge of all of the Partnership's debts and liabilities to the persons or entities other than Partners and the expenses of liquidation;

12.2.2 To the payment and discharge of any loans and advances made by Partners to the Partnership;

12.2.3 To the Limited Partners to the extent of the contributions to the capital of the Partnership;

12.2.4 To the General Partner to the extent of his contributions to the capital of the Partnership; and

12.2.5 The balance, if any, shall be distributed to the General Partner and to the Limited Partner in accordance with the allocation made for profits and losses as hereinabove provided.

### XIII.

#### HUD PROTECTION PROVISION

13.1 Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Agreement, and the rights and duties of the parties hereto and persons that may subsequently become bound hereby are subordinate and subject to the provisions of the Regulatory Agreement, FHA Form 92466, revised October 1, 1985, Section 221(d)(4) of the National Housing Act, as amended, and applicable rules and regulations of the FHA thereunder so long as the Project remains subject to HUD insurance.

In addition to authority elsewhere conferred herein, the General Partner is authorized to execute on behalf of the partnership, a Note and Deed of Trust in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loans. Any incoming partner shall, as a condition of receiving an interest in the partnership property, agree to be bound by the Note, Deed of Trust and Regulatory Agreement and other documents required in connection with the HUD insured loan to the same extent and on the same terms as the other partners. Upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

In the event that any provision of this Certificate and Agreement of Limited Partnership in any way changes the terms of the above-mentioned Regulatory Agreement, the terms of the Regulatory Agreement shall prevail and govern; or if any provision hereof in any way tends to limit HUD in its administration of the National Housing Act, as amended, or the regulations and instructions thereunder, this Agreement shall be deemed amended so as to comply with the requirements of HUD. No amendment to this Partnership Agreement shall become effective without the written consent of the Secretary.

The foregoing paragraphs will automatically become void at such time as the mortgage loan for the Project is no longer insured or held by the Secretary.

### XIV.

#### BANK ACCOUNTS

14.1 One or more Partners' bank accounts shall be established and maintained by the General Partner.

XV.

MISCELLANEOUS PROVISIONS

15.1 Registered Agent. James R. Tomlinson is appointed as a registered agent of the Partnership for purposes of service of process. His address is Suite 501, Key Bank Tower, Boise, Idaho 83701.


15.1 Governing Law. All provisions of this Agreement shall be construed, shall be given the effect and shall be enforced according to the laws of the state of Idaho.

15.2 Binding Effect. Each of the parties hereto execute this document with the understanding and agreement that each has hereby bound and obligated himself, his estate, and any and all claims by, through and under him.

IN WITNESS WHEREOF, the Partners have signed this Agreement of Limited Partnership and set forth their business addresses:

GENERAL PARTNER:

TOMLINSON REALTY INVESTMENT,  
an Idaho general partnership

By   
James R. Tomlinson,  
General Partner  
P.O. Box 108, Boise, Idaho 83701

INITIAL LIMITED PARTNER:

  
Shan Miller,  
P.O. Box 108, Boise, Idaho 83701



ADDITIONAL LIMITED PARTNER:

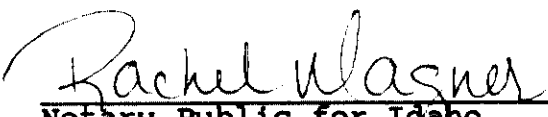
THE RUSSELL CORPORATION, a  
Nevada corporation,

By   
Neal H. Russell, President

STATE OF IDAHO       )  
                                  ss.  
County of Canyon    )

On this 21 day of August, 1989, before me, the undersigned, a notary public in and for said state, personally appeared JAMES R. TOMLINSON, known or identified to me to be a General Partner of TOMLINSON REALTY INVESTMENT, an Idaho general partnership, which is the General Partner of WOODBINE II INVESTORS LIMITED PARTNERSHIP, whose name is subscribed to the above and foregoing instrument and acknowledged to me that he executed the same on behalf of said partnership.

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

  
Notary Public for Idaho  
Residing at:  
My Commission Expires: 4-25-95

STATE OF IDAHO       )  
                                  ss.  
County of Ada       )

On this 21 day of August, 1989, before me, the undersigned, a notary public in and for said state, personally appeared SHAN MILLER, known or represented to me to be the person whose name is subscribed to the above and foregoing instrument and acknowledged to me that she executed the same.

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

Rachel Wagner  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 4-29-95

STATE OF IDAHO       )  
                                  ss.  
County of Ada       )

On this 21 day of August, 1989, before me, the undersigned, a notary public in and for said state, personally appeared NEAL H. RUSSELL, known or identified to me to be the President of The Russell Corporation, whose name is subscribed to the above and foregoing instrument and acknowledged to me that he executed the same on behalf of said corporation and acknowledged that said corporation executed the same.

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

Shan Miller  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 7/1/91



# HUBBLE ENGINEERING, INC.

8590 Fairview Ave., Suite F, Boise, Idaho 83704

(208) 322-8992

## WOODBINE II BOUNDARY

A PARCEL OF LAND LYING IN THE S1/2 OF THE NE1/4 OF SECTION 26, T.3N., R.2E., B.M., BOISE CITY, ADA COUNTY, IDAHO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE 1/4 CORNER COMMON TO SECTIONS 25 AND 26 OF T.3N., R.2E., B.M.; THENCE N89°11'53"W ALONG THE LATITUDINAL CENTERLINE OF SAID SECTION 26 FOR A DISTANCE OF 1124.60 FEET; THENCE N00°48'07"E FOR A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF BERGESON STREET, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR THE NEXT 3 COURSES N89°11'53"W FOR A DISTANCE OF 134.42 FEET; THENCE N80°36'03"W FOR A DISTANCE OF 345.64 FEET; THENCE N67°56'36"W FOR A DISTANCE OF 367.59 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE AND FOLLOWING ALONG THE EASTERLY PROPERTY LINE OF LAND DESCRIBED IN A WARRANTY DEED WITH INSTRUMENT NUMBER 8759647 RECORDS OF ADA COUNTY FOR THE NEXT TWO COURSES N18°14'09"E FOR A DISTANCE OF 182.63 FEET (FORMERLY DESCRIBED AS N18°13'18"E, 182.58 FEET); THENCE N46°50'11"W FOR A DISTANCE OF 212.43 FEET (FORMERLY DESCRIBED AS N46°51'23"W, 212.37 FEET) TO THE SOUTHERLY RIGHT-OF-WAY LINE OF S. GEKELER LANE; THENCE ALONG THE SOUTHERLY AND WESTERLY RIGHT-OF-WAY LINES OF S. GEKELER FOR THE NEXT 4 COURSES S82°45'00"E FOR A DISTANCE OF 614.60 FEET TO THE POINT OF CURVATURE OF A CURVE RIGHT HAVING A RADIUS OF 372.00 FEET, A CENTRAL ANGLE OF 83°33'07", A CHORD OF 495.67 FEET WHICH BEARS S40°58'27"E; THENCE ALONG SAID CURVE FOR A DISTANCE OF 542.47 FEET TO THE POINT OF TANGENCY; THENCE S00°43'07"W FOR A DISTANCE OF 43.63 FEET TO THE POINT OF CURVATURE OF A CURVE RIGHT HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD OF 28.28 FEET WHICH BEARS S45°48'07"W; THENCE ALONG SAID CURVE FOR A DISTANCE OF 31.42 FEET TO THE TRUE POINT OF BEGINNING. CONTAINS 6.8346 ACRES.

90 6-9-89.DES  
TRW/mlr

