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AMENDED AND RESTATED  
CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP

CALIENTE ASSOCIATES  
Amended and Restated Certificate and Agreement  
of Limited Partnership  
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AMENDED AND RESTATED  
CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP

of

CALIENTE ASSOCIATES  
(a Nevada Limited Partnership)

THIS AMENDED AND RESTATED CERTIFICATE AND AGREEMENT of Limited Partnership, dated Sept. 1, 1984, and entered into by and among ROBERT F. NIELSEN (the "General Partner"); and Palo Town Properties, Inc. (the "Special Limited Partner") and that person or those persons described in Schedule I under "Limited Partners", attached hereto and by this reference made a part hereof (collectively, the "Limited Partners"), as it may be amended from time to time as herein provided.

W I T N E S S E T H :

WHEREAS, the General Partner and the Special Limited Partner formed a Limited Partnership under the laws of the State of Nevada by filing a partnership agreement with the partnership records of Lincoln County, Nevada on February 22, 1984. The Partnership was formed for the purposes of acquiring certain real property located in Caliente, Nevada, and owning, maintaining and operating approximately 30 residential housing units subject to the rules and regulations of the United States Department of Housing and Urban Development (HUD); and

WHEREAS, the General Partner and the Special Limited Partner desire to amend and restate in its entirety the Certificate and Agreement of Limited Partnership and to cause the same to be filed with the office of the County Recorder of Lincoln County, Nevada (which may, from time to time, be amended and which shall be referred to as the "Agreement") to provide, among other things, for the admission to the Partnership of additional Limited Partners, and to reflect certain agreements among them;

NOW, THEREFORE, it is mutually agreed that:

Article One

FORMATION, NAME, OFFICE

The parties hereto hereby agree to form a Partnership and to conduct the Partnership business, under the name of CALIENTE ASSOCIATES, as a limited partnership under and pursuant to the Uniform Limited Partnership Act as adopted by the State of Nevada

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(the "Act"). The principal office of the Partnership shall be maintained at 3620 Hidden Valley Drive, Reno, Nevada, or at such other location as the General Partner may from time to time select, upon prior written notice to the Limited Partners.

Article Two

DEFINITIONS

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this Article.

Capital Account. The account established for each Partner, with respect to each Partner, under Article Five of the Partnership Agreement which will initially equal the cash contributed by such Partner to the Partnership and throughout the term of the Partnership will be (i) increased by the amount of (A) Net Income allocated to the Partner, and (B) any money subsequently contributed by the Partner to the Partnership, and (ii) decreased by the amount of (A) Net Losses allocated to the Partner, and (B) cash distributed to the Partner, and shall otherwise be kept in accordance with Proposed Treasury Regulation Section 1.704-1(b)(2)(iv)(a), as from time to time amended or revised.

Cash Available for Distribution. With respect to any fiscal period, the revenues of the Partnership from all sources, other than insurance proceeds, during such fiscal period less (i) all cash expenditures of the Partnership during such fiscal period, including debt service and any other fees paid by the Partnership for services in connection with its operation and (ii) such reserves as may be determined by the General Partner, in its sole discretion, to be necessary to provide for the foreseeable needs of the Partnership.

Code. The Internal Revenue Code of 1954, as amended, or any corresponding provisions of succeeding law.

General Partner. Robert F. Nielsen

Initial Admission. The first admission of Limited Partners, other than the Special Limited Partner, to the Partnership.

Limited Partners. The parties who are or become Limited Partners under the Partnership Agreement, including each person who becomes a substituted Limited Partner pursuant to the provisions of the Partnership Agreement and of applicable law.



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Net Profits or Net Losses. Respectively, the taxable income or losses of the Partnership as determined for Federal income tax purposes including all items required to be separately stated by Section 702 of the Code and the Treasury Regulations thereunder.

Partner. A General Partner, Limited Partner or Special Limited Partner.

Partnership Interest. The entire ownership interest (which may be expressed as a percentage) of a Partner in the Partnership at any particular time including, without limitation, the right of such Partner to participate in the Partnership's Cash Available for Distribution and profits and losses, and any and all benefits to which a Partner may be entitled as provided in this Agreement and in the Act, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement and the Act. The term "Partnership Interests" shall refer to the entire ownership interest of all of the Partners in the Partnership.

Project. A residential housing development consisting of approximately 30 residential dwelling units located in Caliente, Nevada, subject to the rules and regulations of HUD and more particularly described in Schedule II attached hereto.

Regulatory Agreement. The agreement with HUD (relating to the regulation of the Project, including, but not limited to such items as financing, rents, sales, charges, capital structure, rate of return and methods of operation) in connection with the commitment by HUD to provide rental assistance to, or on behalf of, occupants of the Project.

Special Limited Partner. Palo Town Properties, Inc., a California, Corporation.

Article Three

PARTNERSHIP PURPOSES AND POWERS

Section 3.1. Purposes. The purposes of the Partnership shall be:

- a. To own, hold, manage, maintain and operate the Project, together with all machinery, equipment, fixtures, and personalty to be located thereon or procured or to be procured for use in connection therewith ("Improvements"), all subject to the applicable rules and regulations of HUD, and to conduct such other activities as may be necessary to promote the business of the Partnership, subject to the

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rules and regulations of HUD so long as the Project is subject to certain regulatory agreements with HUD.

b. To enter into, perform and carry out the Regulatory Agreement.

c. To enter into, perform and carry out any agreements with Caliente, Lincoln County, Nevada relating to, or required in connection with, the Project.

Section 3.2. Powers. In furtherance of the purposes contained in Section 3.1 of this Article, the Partnership and the General Partner shall be empowered, subject to the provisions of Section 14.5, to perform all duties and obligations required under the Regulatory Agreements and all other relevant documents executed by or on behalf of the Partnership and the General Partner, all applicable laws and the rules and regulations of all governmental agencies having jurisdiction over the Project.

a. To improve, mortgage, operate, service, lease, pledge, sell, exchange and otherwise encumber the Project or any part thereof, renovate, alter, reconstruct and remodel any improvements now or hereafter forming a part thereof and construct additional improvements thereon; and

b. To finance all or any of its activities authorized under the provisions of this Agreement by secured or unsecured indebtedness and, in connection therewith, issue evidences of indebtedness and execute and deliver mortgages, mortgage deeds and other security instruments of every nature and kind as security therefor and prepay, refinance and recast any mortgage, mortgage debt or other lien on the Project; and

c. To enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the accomplishments of its purposes, including, without limitation, contracts and agreements with the General Partner, and persons or entities affiliated with, or related to him in any manner, which persons or entities which may be controlled by him, and agreements to arbitrate disputes with other parties, and take or omit such other or further action in connection with the Project as may be necessary or desirable to further the purposes of the Partnership; and

d. To enter into, perform and carry out construction contracts ("Construction Contract(s)"), management agreements ("Management Agreement(s)"), mortgages ("Project Mortgage(s)") and mortgage notes ("Mortgage Note(s)") with

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respect to the Project, and any other similar or dissimilar agreement or contract which may be desirable or necessary to accomplish the purposes of the Partnership; and

e. To acquire any other property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary or appropriate for the financing, construction and operation of the Project; and

f. To invest in short-term debt obligations or savings accounts (including obligations of Federal and state governments and their agencies and certificates of deposit of commercial banks, savings banks or savings and loan associations) such funds as are temporarily not required for Partnership purposes; and

g. To carry on any other activities necessary to, in connection with or incidental to any of the foregoing.

Section 3.3. Obligations of the General Partner. The General Partner shall:

a. Devote so much of his time as he deems necessary to successfully manage the affairs of the Partnership for the compensation set forth herein or in any other agreements executed between the General Partner and the Partnership; provided, however, that the General Partner shall not be required to manage the Project, but shall only be required to cause the Partnership to be managed, in accordance with Article Fourteen.

b. File all certificates, notices, statements or other instruments required by law for the formation, operation and termination of the Partnership, its business and its property in all appropriate jurisdictions.

c. Cause the Partnership to carry public liability, property damage and other insurance, all of which shall name the Partnership and the General Partner as insureds.

d. Indemnify and hold the Partnership, the Special Limited Partner and each of the Limited Partners harmless from any loss, damage or liability due to, or arising out of, the General Partner's fraud, bad faith or negligence.

e. Maintain Capital Accounts, pursuant to the provisions of this Agreement, on the books and records of the Partnership in respect of each Partnership Interest.

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Article Four

TERMS

The term of the Partnership shall commence on the date of the filing of the Amended and Restated Certificate and Agreement of Limited Partnership with the Office of the Recorder of Lincoln County, Nevada pursuant to the requirements of the Act, and (subject to Article Twenty-Seven) shall continue until the earlier of (A) December 31, 2024; (B) the death, insanity or adjudication or incompetency of an individual General Partner, the liquidation or dissolution of a corporate General Partner, the termination of a General Partner which is a trust, or the retirement, resignation, expulsion, assignment for the benefit of creditors, filing of a petition for reorganization, or adjudication of the bankruptcy of any General Partner, unless the Partnership is continued pursuant to the provisions of Sections 14.9 or 21.3; or (C) the sale or other disposition by the Partnership (other than to a nominee) of all of its interest in the Project, including any mortgage or leasehold interest which may be acquired by the Partnership in exchange therefor, unless the Partnership is continued pursuant to the Provisions of Sections 14.9 or 21.3.

Article Five

CONTRIBUTIONS TO CAPITAL

The Partners shall make the following contributions to the capital of the Partnership upon the following terms and conditions:

Section 5.1. General Partner. The General Partner will contribute to the capital of the Partnership by assignment (see Exhibit C of the Memorandum), all of his right, title and interest in and to the Project in consideration for which the General Partner shall receive a credit to his Capital Account in the amount of Three Thousand Dollars (\$3,000).

Section 5.2. Special Limited Partner. The Special Limited Partner will contribute One Hundred Dollars (\$100) to the capital of the Partnership.

Section 5.3. Limited Partners. Those persons listed on Schedule I, attached hereto, have contributed or will contribute to the capital of the Partnership the amounts as set forth therein. No further contribution of capital shall be required of the Limited Partners.

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In consideration for the issuance to the Limited Partners of their respective Partnership Interests, the Limited Partners shall each execute and deliver a Subscription Agreement (Exhibit D in the Memorandum) and upon acceptance of such Subscription Agreement by the Partnership, contribute in cash to the capital of the Partnership, in the amounts and proportions set forth on Schedule I annexed hereto, an aggregate amount of \$9,923 as follows:

- (i) \$2,152 ("First Installment:") on admission to the Partnership;
- (ii) \$2,521 ("Second Installment") on January 1, 1985;
- (iii) \$2,061 ("Third Installment") on January 1, 1986;
- (iv) \$1,743 ("Fourth Installment") on January 1, 1987; and
- (v) \$888 ("Fifth Installment") on January 1, 1988.

Section 5.4. Partnership Advances. Advances made by the General Partner or the Special Limited Partner to the Partnership shall not be reflected in the General Partner's or the Special Limited Partner's respective Capital Accounts. Such advances accrue interest at the prime rate plus two percent (2%) and shall for all purposes be treated by the Partnership as loans.

Section 5.5. Limitation on Liability of Limited Partners. The liability of the Special Limited Partner and any Limited Partner to provide funds or any other property to the Partnership shall be limited to the amount of capital contributions (plus any accrued interest thereon) which such Partner is required to make pursuant to the provisions of this Article, but only when same shall become due as set forth in Schedule I annexed hereto. Subject to the provisions of the Act, the Special Limited Partner and the Limited Partners shall have no further personal liability to contribute money to the Partnership for, or in respect of, the liabilities or obligations of the Partnership and shall not be personally liable for any obligations of the Partnership.

Section 5.6. No Interest on Capital Contributions. No interest shall be paid by the Partnership to any Partner with respect to any contribution to the capital of the Partnership.

Section 5.7. No Priority Between Limited Partners; Limitations on Withdrawal of Capital. Except as otherwise specifically set forth in this Agreement, no Limited Partner shall have priority over any other Limited Partner either as to the return of his original contribution to the capital of the Partnership or

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as to distributions of cash made by the Partnership. Except as otherwise specifically set forth in this Agreement, no Limited Partner shall have the right to (i) demand or receive property other than cash in return for his contribution to the capital of the Partnership or as distributions of income, (ii) withdraw any part of his capital contribution to the Partnership, or (iii) receive any funds or property of the Partnership.

Article Six

ALLOCATIONS AND DISTRIBUTIONS

Section 6.1. Generally. The profits and losses of the Partnership shall be determined for each fiscal year in accordance with the accounting method followed by the Partnership for Federal income tax purposes and otherwise in accordance with good accounting procedures applied in a consistent manner.

Section 6.2. Transferor--Transferee Allocations. As between a Limited Partner and his transferee, profits and losses for any month shall be apportioned to the person who is the holder of the Limited Partnership Interest transferred (subject to the provisions of Article Sixteen hereof) on the last day of such month, without regard to the results of the Partnership's operations during the period before and after such transfer.

Section 6.3. Retroactive Allocations. The Partners understand that no Partner is entitled to any benefit of allocation of Partnership items of profit, loss, credits or allowances until such time as the Partner purchases an interest in the Partnership.

Section 6.4. Allocation of Net Losses. Net Losses of the Partnership shall be allocated for Federal income tax purposes as of the end of the taxable year for which such allocation is made two percent (2%) to the General Partner, ninety-six percent (96%) to the Limited Partners and two percent (2%) to the Special Limited Partner.

Section 6.5. Allocation of Net Profits. Net Profits shall be allocated among the Partners who own units on the day on which it is recognized by the Partnership for Federal income tax purposes. Net Profits shall be allocated among the Partners (General and Limited) in the ratio that each Partner's Capital Account bears to the aggregate of all Capital Accounts of the Partners, but in no event less than one percent (1%) to the General Partner, until all Partners have been allocated the sum of (i) the amount required, if necessary, to bring the Partners' negative Capital Accounts to zero and (ii) the Partners'



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cummulative cash capital contributions. Thereafter, the Partnership's Net Profits will be allocated thirty-five percent (35%) to the General Partner, sixty percent (60%) to the Limited Partners and five percent (5%) to the Special Limited Partner.

Section 6.6. Distribution of Cash. Cash Available for Distribution for any fiscal year shall be distributed as soon as practicable after close of each fiscal year to Partners at the end of such fiscal year as follows: (i) First, to the Limited Partners in accordance with their respective Capital Accounts until such time and up to such amounts, respectively, which equal the Limited Partners' Capital Contributions (reduced by any prior distributions); (ii) Second, to all Partners (General and Limited) in accordance with their respective then-existing positive Capital Accounts until such Capital Accounts have been reduced to zero; (iii) The remaining Cash available for Distribution, if any, will be distributed pro rata thirty-five percent (35%) to the General Partner, sixty percent (60%) to the Limited Partners and five percent (5%) to the Special Limited Partner. If any units are transferred during any fiscal year in accordance with the terms of this Agreement, the Cash Available for Distribution that is allocable to such Units for such fiscal year shall be allocated among the persons owning the units during such fiscal year pro rata based on the respective number of days during such fiscal year that such persons owned the units. For purposes of this Section, a unit issued by the Partnership during a fiscal year shall be deemed to have been transferred during such fiscal year in accordance with the terms of this Agreement and shall be deemed to have been owned only on the days of such fiscal year beginning with and following the date of issuance of the unit.

Section 6.7. Apportionment of Allocations and Distributions and Time of Payment. Except as otherwise provided in this Agreement, all allocations and distributions to be made to the Limited Partners pursuant to Article Six hereof shall be apportioned among the Limited Partners pro rata in the proportion that their respective Limited Partnership Interests bear to all Limited Partnership Interests. The time of payment of all distributions shall be determined by the General Partner exclusively.

Section 6.8. Return of Capital. Other than aforesaid, there shall be no obligation to return to any of the Partners any part of their Capital Account for so long as the Partnership continues in existence. No Partner shall be entitled to any priority or preference as to distributions of contributed capital except as expressly provided herein.

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Section 6.9. Partition Rights. Each Partner hereby expressly waives the right to require partition of any Partnership property or any part thereof.

Article Seven

TRANSFERS OF PROPERTY AND RIGHTS BY GENERAL PARTNER

The General Partner will cause to be transferred to the Partnership all right, title and interest owned by him in and to the Project and will receive reimbursement by the Partnership for certain expenses previously incurred by him in connection therewith.

Article Eight

REPRESENTATIONS, WARRANTIES AND COVENANTS BY THE GENERAL PARTNER

The General Partner hereby represents, warrants and covenants as follows:

Section 8.1. Litigation. He does not know, and has no reasonable basis to know, as of the date hereof, of any actions, suits or proceedings pending or threatened before any court, government instrumentality, agency or body or any arbitration tribunal which would materially affect the Project in an adverse fashion.

Section 8.2. Partnership Qualified. He does not know, and has no reasonable basis to know, that the Partnership does not have, and will not continue to have, the legal capacity to own, construct and operate the Project.

Section 8.3. Availability of Books and Records. All business records and other documents of the Partnership kept in the ordinary course of business and relating to the Project will be made available for inspection upon reasonable prior notice and during regular business hours at the Limited Partners' sole expense, by the Limited Partners or their duly authorized representatives.

Section 8.4. Liens. He does not know, and has no reasonable basis to know, as of the date hereof, of any declaration of default by the holder of any mortgage affecting the Project or the filing of any mechanics' lien against the Project or the filing of a lis pendens against the Project or the commencement of an action to foreclose any mortgage or mechanics' lien which is a lien on the Project, except those which have been provided for by bond or otherwise, which within thirty (30) days of each



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such occurrence has not been satisfied or provided for by bond or otherwise.

Section 8.5. Material Defaults. He does not know, and has no reasonable basis to know, that a default has occurred and is continuing under the rules and regulations of HUD affecting the Project.

Article Nine

DEFAULT BY LIMITED PARTNER IN MAKING CAPITAL CONTRIBUTIONS

Section 9.1. Definition of Default; Right of First Refusal. In the event any Limited Partner fails to timely make any capital contribution as set forth in Schedule I hereto, he shall be deemed to be in default hereunder ("Defaulting Limited Partner") and, except as provided in this Article, the Partnership Interest of such Defaulting Limited Partner shall terminate on the day immediately succeeding the final date for making the capital contribution which the Defaulting Limited Partner fails to make, and the General Partner, the Partnership, and any remaining Limited Partners shall have no further obligation to him hereunder. The General Partner shall have the option, exercisable within thirty (30) days after such default to purchase all or any portion of such Defaulting Limited Partner's entire Partnership Interest, including all Cash Available for Distribution not previously distributed to him and, to the extent permitted by the Code, all Net Profits and Net Losses allocable to such Partnership Interest but not previously allocated to the Defaulting Limited Partner in a tax return filed by the Partnership. If the General Partner does not timely exercise such option, any remaining Limited Partners shall have the option, exercisable within thirty (30) days after receipt of written notice, to purchase all or any portion of such Defaulting Limited Partner's entire Partnership Interest, including all cash available for distribution not previously distributed to him and, to the extent permitted by the Code, all Net Profits and Net Losses allocable to such Partnership Interest but not previously allocated to the Defaulting Limited Partner in a tax return filed by the Partnership. The party purchasing all or any part of the Defaulting Limited Partner's Partnership Interest shall assume a pro rata share of the transferor's obligations to the Partnership equal to the percentage of the transferor's Partnership Interest which is acquired by him or it.

Section 9.2. Purchase Price of Partnership Interest. The purchase price for a Defaulting Limited Partner's Partnership Interest pursuant to this Article shall be an amount equal to eighty-five percent (85%) of the cash previously contributed to the capital of the Partnership by the Defaulting Limited Partner.

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Payment of the purchase price to the Defaulting Limited Partner shall be made at the option of the purchaser in twelve (12) equal monthly installments without interest, commencing one (1) month after delivery to the General Partner of such documents reasonably required by the General Partner to evidence the transfer of such interest.

**Section 9.3. Purchase by Limited Partners.** The purchase of a Defaulting Limited Partner's Partnership Interest may be made by one or more of the remaining Limited partners in such proportions as they may determine by giving notice to the General Partner of their intent to exercise such right within the thirty (30) day period referred to in Section 9.1 of this Article. In the event two or more of the remaining Limited Partners shall give timely notice to the General Partner of their desire to purchase such Partnership Interest, and if such Limited Partners are unable to agree as to the apportionment thereof, each such Limited Partner shall be entitled to purchase that percentage of such Partnership Interest which his Partnership interest bears to the total of the Partnership Interests held by all Limited Partners desiring to purchase such Partnership Interest.

**Section 9.4. Purchase or Sale by General Partner.**

a. If the remaining Limited Partners shall fail to purchase all or any of a Defaulting Limited Partner's entire Partnership Interest within the thirty (30) day period referred to in Section 9.1 of this Article, the General Partner shall again have the option to purchase any such portion of such Partnership Interest on such terms and conditions as he shall determine at his sole discretion. In the event the General Partner purchases such Partnership Interest or a portion thereof, whether pursuant to Section 9.1 of this Article or this Section 9.4, he shall assume the status of a substituted Limited Partner in respect thereof, in addition to his status as General Partner hereunder.

b. As an alternative solely to the provisions of Subsection a, above, the General Partner may at his sole discretion, and without further notice, sell, in whole or in part, the Partnership Interest of the Defaulting Limited Partner on such terms and conditions as he shall determine at his sole discretion.

**Section 9.5. Pledge of Partnership Interests.** The General Partner will require the deferred installment capital contributions required of each Limited Partner under the provisions of this Agreement to be secured by the collateral assignment by each Limited Partner of his Partnership Interest to the Partnership

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and by the execution and delivery of a Security Agreement (Exhibit E in the Memorandum). The provisions of this Section shall have no effect on any rights or remedies that the Partnership, the General Partner or the remaining Limited Partners may have, under the provisions of this Agreement or under applicable law, and is in addition to any such rights and remedies, including, without limitation, those set forth in this Article.

Section 9.6. Power of Attorney to Sell. The Limited Partners, by their agreement to be bound by the provisions of this Agreement, hereby grant to the General Partner an irrevocable power of attorney, which shall be deemed coupled with an interest, to sell and assign, in whole or in part, their Partnership Interest, in the event of their default in making required capital contributions, on such terms and conditions and for such consideration as the General Partner and his successors may deem advisable, either at public auction or by private sale. At least ten (10) days' prior written notice of such sale shall be given by any Defaulting Limited Partner. In addition, the Limited Partners hereby agree to execute any and all documents necessary to effectuate any such sale, transfer or assignment.

Section 9.7. Survival of Obligation. The obligations of a Defaulting Limited Partner to the Partnership shall not be extinguished by the existence of any option to purchase his Partnership Interest, or by exercise of such option, but only by, and to the extent of, any cash installment capital contributions made with respect to the Defaulting Limited Partner's previous Partnership Interest by any Partner or Partners who have purchased his Partnership Interest, or any proceeds from the sale of his Partnership Interest.

Article Ten

WORKING CAPITAL LOANS

If the Partnership requires funds for any Partnership expenses or obligations currently due and payable, in excess of funds otherwise available for such expenses or obligations, the General Partner, or any other partner, may loan to the Partnership funds to be known as "Working Capital Loans".

Working Capital Loans made to the Partnership shall be made as follows: The managing agent of the Project shall notify the General Partner in writing if the Partnership has insufficient cash on hand from current operations to meet its current obligations and the amount of such cash deficit. Within five (5) days after receipt of such written notification, the General Partner,

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or any other Partner, may loan to the Partnership sufficient funds to make up said deficit.

Funds provided by a Partner pursuant hereto are referred to herein as "Working Capital Loans". Such loans shall be evidenced by promissory notes of the Partnership, not secured by any liens or other charges on the Project, bearing interest at current prime rate and the repayment thereof shall be subordinated to the prior payment of all obligations and expenses of the Partnership except distributions to the Limited Partners. Subject to the rules and regulations of HUD, such loans shall be repaid out of and be considered a first charge on (i) Net Cash Receipts and shall be considered a deduction in computing net cash receipts available for distributions to the Partners, and (ii) any increased Mortgage Loan proceeds permitted to be made available by it to pay for the costs and expenses provided for by Working Capital Loans.

The occurrence of the Termination Date shall not affect the obligations of the Partnership to repay any Working Capital Loans then outstanding, subject to the terms and conditions of this Agreement.

Article Eleven

BOOKS AND RECORDS

Section 11.1. Maintenance and Accounting Method. The General Partner shall keep or cause to be kept full and accurate accounts of the transactions of the Partnership in proper books of account. Such books shall be maintained at the principal place of business of the Partnership and be available for reasonable inspection and examination by the Partners or their duly authorized agents or representatives. Such books and records shall be kept on the accrual method of accounting and comply with applicable HUD regulations.

Section 11.2. Examinations and Reports. The General Partner shall have the Partnership books and records ready and available for examination and audit by the certified public accountants for the Partnership not later than thirty (30) days subsequent to the termination of the Partnership's fiscal year. The Partnership's books of account shall be examined and audited on a regular basis at least annually by such certified public accountants as the General Partner may select. The Limited Partners may, at their own expense and not at the expense of the General Partner or the Partnership, cause the books and records of the Partnership to be examined by accountants other than the Partnership's accountants.

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Section 11.3. Fiscal Year. The fiscal year of the Partnership shall be the period beginning January 1 and ending December 31.

Section 11.4. Distribution of Financial Information.

a. Within six (6) months of the commencement of the syndication of Limited Partnership Interests or upon completion of such syndication, whichever shall first occur, the General Partner shall send to each Limited Partner a detailed written statement of the application of the proceeds of such syndication.

b. The General Partner shall send to each Partner, within ninety (90) days after the close of the fiscal year, copies of the annual report and tax returns of the Partnership prepared by the Partnership's certified public accountants. Such annual reports and tax returns shall be prepared, to the fullest practicable extent, in accordance with the accounting and tax assumptions and treatments described in the Partnership's Confidential Offering Memorandum used in connection with the syndication of Limited Partnership Interest.

c. Not later than April 1st of each year, the General Partner will also furnish to each Limited Partner a detailed analysis and explanation of the operations and business of the Partnership for the preceding year.

Article Twelve

BANKING

All funds of the Partnership shall be deposited in such bank account or accounts as shall be established and designated by the General Partner. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures as the General Partner may designate. All deposits and other funds not needed in the operation of the business of the Partnership and not distributed to the Partners may be invested in such manner as the General Partner may determine, subject to the provisions hereof and applicable rules and regulations of HUD.

Article Thirteen

INSURANCE

The General Partner shall purchase and maintain such insurance as may be required by HUD and/or the terms of any mortgage

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or loan agreement relating to the Project and such other insurance as he, at his sole discretion, may determine.

Article Fourteen

DUTIES AND OBLIGATIONS OF GENERAL PARTNER; REMOVAL

Section 14.1. Conduct of Business. Except as otherwise provided in Article Twenty-Seven, the General Partner shall have the sole and full authority and power to carry on the business of the Partnership, including the execution of all contracts and other documents on behalf of and in the name of the Partnership. He shall possess all the powers and rights of a partner in a partnership without limited partners under the laws of the State of Nevada, subject to any limitation of law (including any regulation or requirement of any governmental agency or authority) applicable to the Partnership.

Section 14.2. Performance of Partnership Obligations. The General Partner shall use his best efforts to cause the Partnership to observe and perform each and every obligation to be observed and performed by the Partnership under all agreements and undertakings made by the Partnership or by which the Partnership or the Project is bound. However, the provisions of this Section shall not be construed to require the General Partner to provide funds to or on behalf of the Partnership in excess of the amounts they have agreed to provide under the provisions of this Agreement.

Section 14.3. Partnership Borrowings. The General Partner shall have the right to borrow, and no other signatures but that of the General Partner shall be required, on behalf of the Partnership and on the Partnership's credit from time to time such sums as may be reasonably necessary to provide for any liabilities of the Partnership or the Project.

Section 14.4. Supervisory Obligations. The General Partner shall (i) prepare or cause to be prepared any necessary operating statements showing cash receipts and disbursements of the Project; (ii) prepare or cause to be prepared all reports of operations which are required by lenders or HUD, or which are required to be furnished to the Limited Partners as provided in this Agreement, and (iii) do all other things which may be necessary in order to supervise and conduct the affairs and business of the Partnership. Except as otherwise expressly provided herein, the General Partner shall not be obligated to use his own funds to pay for maintenance of the Project or make necessary repairs thereto or pay for other Partnership expenses.



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Section 14.5. Limitation on Powers of General Partner. Without the written consent of the Limited Partners owning fifty percent (50%) of the interests in the profits and losses of the Partnership. The General Partner may not (i) refinance the Mortgage Loan, except as set forth in Section 14.3 of this Article, or (ii) sell and convey title to (except as a nominee) or grant options for the sale of, or otherwise dispose of all or substantially all of the Project.

Section 14.6. Employment of Third Parties and Compensation of General Partner. The General Partner, on behalf of the Partnership, may employ from time to time any persons, firms or corporations for the development, construction, operation, management and maintenance of the Project, including, without limitation, accountants and attorneys on such terms and for such compensation as the General Partner shall determine. In addition, the Partnership shall pay fees to the General Partner or Affiliates for certain management and administrative duties in connection with the operation of the Partnership (including costs so incurred prior to the formation of the Partnership) or in providing any administrative or other services required or contemplated by this Agreement, including without limitation reimbursement of organizational expenses incurred by the Partnership and fees to the General Partner or Affiliates regarding services to be rendered to the Partnership in connection with the management of the Project pursuant to Section 14.10. The General Partner may employ persons, firms, or corporations related to or affiliated with the General Partner and such employment may be undertaken on such terms and for such compensation as the General Partner, in his sole discretion, shall determine, provided that such terms and compensation are reasonable, fair, and competitive with the provisions of such service in the trade at the time such agreements are entered into.

Section 14.7. Other Business. The General Partner shall devote so much of his time to the affairs of the Partnership as he, at his sole and absolute discretion, deems necessary or appropriate and neither the General Partner nor the Limited Partners shall be limited or restricted in the conduct of any other business venture or ventures in any form whatsoever, by the claim, interest or participation of any other Partner. 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, those competitive with the operations and business of the Partnership, and the real estate business in all its phases, which shall include, without limitation, ownership, operation, management, syndication and development of real property. Neither the Partnership nor the Partners shall have any rights in and to such independent

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ventures or the income or profits derived therefrom by virtue of this Agreement.

Section 14.8. Conflicts. The Partnership may employ or transact business with any person or entity, notwithstanding the fact that any Partner or member of his immediate family or associates may be one of them or may have an interest in or connection with such person or entity. Neither the Partnership nor the other Partners shall have any rights in or to any income or profits derived therefrom. However, except as specifically set forth herein, any such transaction with interested, related or affiliated parties shall be on terms reasonably competitive with those which may be obtained from unaffiliated persons unless otherwise agreed upon in writing in advance by all of the Partners.

Section 14.9 Removal of General Partner.

a. If no Limited Partner is in default in his obligations to make capital contributions to the Partnership under the provisions of Section 5.3, and the General Partner is in material default under any of the material provisions of this Agreement, or if the Partnership is in material default not waived by HUD under any Project Mortgage or the Regulatory Agreements, and if such default is not cured or adequately provided for by bonding within sixty (60) days after the General Partner knew or should have known of the existence of such default, such General Partner shall, if requested in writing by each of the Limited Partners, resign as General Partner within thirty (30) days subsequent to the date of such written notice, and the Partnership shall dissolve and be terminated if the election referred to in Subsection b of this Section is not made.

b. The Partnership and its business may be continued, subsequent to a resignation pursuant to the terms of this Section, if the remaining General Partner, if any, and each of the Limited Partners, so elect within thirty (30) days after the date of the written notice referred to in Subsection a of this Section.

c. If the election to continue referred to in Subsection b of this Section is made, no General Partner shall resign until the earlier of (A) the final date for resignation referred to in Subsection a of this Section 14.9 or (B) the election by each of the Limited Partners, and substitution as General Partner(s) of the Partnership, of substitute General Partner(s) willing to assume the rights and obligations of the General Partner, which substitute



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General Partner(s) will, in the opinion of counsel for the Limited Partners, not prevent the Partnership from being treated as a partnership for Federal income purposes.

d. The Partnership Interest of such substitute General Partner(s) shall be created solely out of the Partnership Interests of the then Limited Partners, and the expelled General Partner's Partnership Interest shall be converted to that of a Limited Partner. In any such event, and regardless of whether the Partnership dissolves or terminates because of such event, the Partnership Interest as Limited Partner of any General Partner who or which have been expelled pursuant to the provisions of this Section shall represent the identical interests in the Partnership's taxable income or loss and allocations and distributions of every nature that he or they had as General Partner under the provisions of this Agreement, and this Agreement shall be amended accordingly. Any expulsion pursuant to the provisions of this Section shall have no effect on the payment or priority of payment of any sums owed by the Partnership to any General Partner who has been expelled and resigned as such pursuant to the provisions of this Section.

e. The assignment for the benefit of creditors, filing for a petition for reorganization, or adjudication of bankruptcy of any General Partner shall cause the removal of such General Partner, effective on the later to occur of (a) the election, if any, to continue the Partnership and its business pursuant to the provisions of this Article or Article Twenty-One, or (b) ninety (90) days after the occurrence of any such event. If the election to continue is not made, then the Partnership shall dissolve and be terminated upon the effective date of said removal.

f. Notwithstanding any other provision of this Section, no General Partner may resign or be removed or substituted except pursuant to all applicable HUD regulations.

Section 14.10. Project Management. As long as he is the General Partner of the Partnership, the General Partner shall arrange for management of the Project.

Section 14.11. HUD Documents. The General Partner is authorized to execute on behalf of the Partnership agreements with HUD and any other documents required in connection with any Mortgage Note and other regulatory agreements, the operations of the Partnership, or to effect the assignment to the Partnership of the HUD Commitments, to convey the Project, or any part thereof, to the Partnership, and to execute any amendments or

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modifications to any of the aforementioned documents and no other signatures shall be required.

Article Fifteen

LIMITED PARTNERS NOT TO TAKE PART IN BUSINESS

No Limited Partner shall take part in or interfere in any manner with conduct or control of the Partnership business, nor shall any Limited Partner have any right or authority to act for or bind the Partnership. However, upon the request of the Limited Partners owning twenty-five percent (25%) of the interests in the profits and losses of the Partnership, the General Partner shall promptly call an informational meeting of all of the Limited Partners.

Article Sixteen

TRANSFERS OF UNITS; SUBSTITUTE LIMITED PARTNERS

Section 16.1. Requirements for Substitution. No assignee of the whole or any portion of a Partnership Interest shall have the right to become a substitute Limited Partner in place of his assignor unless:

- a. The assignor has designated such intention in a written instrument of assignment delivered to the General Partner; and
- b. The written consent of the General Partner has been obtained, the granting or denial of which shall be within the sole discretion of the General Partner; and
- c. The assignee has adopted and agreed in writing to be bound by all of the provisions hereof, as the same may have been amended, including without limitation, the granting to be General Partner of the powers of attorney contained in Section 9.6 and Article Twenty-Two; and
- d. All documents reasonably required by the General Partner to effect the substitution of the assignee as a Limited Partner shall have been executed and filed at the sole cost and expense of the assignor; and
- e. The provisions of Section 16.2 of this Article have been satisfied at the sole cost and expense of the assignor; and

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f. The assignor has acknowledged all Partnership obligations to HUD and other parties in connection with the mortgage debt and operation of the Project and, if necessary, the written approval of HUD and any other governmental agency having jurisdiction over the Project has been secured.

When all of the provisions of this Section and Section 16.2 of this Article have been complied with, the assignee forthwith, upon the filing of an amendment to the Certificate substituting him as a Limited Partner, shall become a Limited Partner on the date that the amendment to the Certificate is filed with the appropriate governmental authorities pursuant to the Act.

Section 16.2. Limitations on Transfers.

a. There shall be no sale, exchange or other transfer or assignment of the whole or any portion of a Partnership Interest without the prior written consent of the General Partner, which consent will be withheld if (a) all applicable Federal, state and local securities laws and regulations with respect to transfers of securities, including, but not limited to, the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, are not complied with to the satisfaction of the General Partner, or (b) in the sole opinion of counsel to the General Partner, there will be adverse consequences to the Partnership or any of the nonassigning Partners under any applicable Federal, state or local income tax laws or (c) for any other reason at the sole discretion of the General Partner.

b. No sale, exchange or other transfer or assignment of the whole or any portion of a Partnership Interest may be made if the Partnership Interest sought to be sold, exchanged, transferred or assigned, when added to the total of all other Partnership Interests sold, exchanged, transferred or assigned within the period of twelve (12) consecutive months prior thereto, would result in the termination of the Partnership under the provisions of Section 708 (or any successor section) of the Code or any Treasury Regulation promulgated thereunder.

Section 16.3. Tax Elections. In the event of the sale, exchange or transfer of a Partnership Interest, or any interest therein, or upon the death of an individual Limited Partner, or in the event of the distribution of Partnership property to any Limited Partner, the Partnership may file an election, the filing of which election shall be at the sole discretion of the General

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Partner, in accordance with then applicable Treasury Regulations, to cause the basis of the Partnership property to be adjusted for Federal income tax purposes as provided by Sections 734, 743 and 754 of the Code. All other elections required or permitted to be made by the Partnership under the Federal tax laws shall be made by the General Partner in such a manner as will, in the opinion of the accountants or counsel employed by the Partnership, be the most advantageous to the remaining Limited Partners.

Article Seventeen

DISTRIBUTIONS AND ALLOCATIONS SUBSEQUENT  
TO ASSIGNMENT OR SUBSTITUTION

An assignee of a Limited Partner, or a substitute (but not additional), Limited Partner who purchases, or otherwise acquires, a Limited Partner's Partnership Interest, or any interest therein, shall be entitled to receive distributions of cash and allocations of income and loss from the Partnership attributable to such Partnership Interest subsequent to the effective date of such assignment, sale, exchange or other transfer with proration, except as the assignee and the assignor may, with the written consent of the General Partner, otherwise agree in writing. The "effective date" of an assignment pursuant to the provisions of Article 16 of a Partnership Interest or any interest therein, for the purposes of this Article, shall be the date on which a written instrument of assignment that conforms to the requirements of the General Partner has been received and acknowledged by the Partnership. The "effective date" of a sale, exchange or other transfer of a Partnership Interest or any interest therein shall be the date on which an amendment to the Certificate is filed with the appropriate governmental authorities pursuant to the Act reflecting the substitution of Limited Partners. Net Income and Net Loss attributable to the Partnership Interest acquired by reason of such assignment, sale, exchange or other transfer shall be allocated between the assignee and the assignor based upon the length of time during any fiscal year of the Partnership, as measured by the effective date of the assignment, sale, exchange or other transfer, that the Partnership Interest was held by each of them.

Article Eighteen

DEATH OF A LIMITED PARTNER

The death of a Limited Partner shall neither dissolve nor terminate the Partnership. Notwithstanding the provisions of Article Sixteen, if a Limited Partner shall die, the legal representatives and/or thereafter the ultimate distributees, legatees,

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devises or beneficiaries of any Partnership Interest or any portion thereof of such deceased Limited Partner shall thereupon be substituted for the decedent as a Limited Partner of the Partnership, at no cost to the General Partner or the Partnership, upon the execution of such further instruments as may be required by law and the General Partner including, without limitation, this Agreement, an addendum hereto or a counterpart hereof, and an amendment to the Certificate, and the appropriate filing of the amendment to such Certificate as required under the provisions of Article Seventeen.

Article Nineteen

ADMISSION OF PARTNERS

Section 19.1. Additional Limited Partners. Except as set forth herein, no additional Limited Partners shall be admitted to the Partnership. However, the provisions of this Article shall not prevent a Limited Partner from assigning his Partnership Interest under the provisions of Article Sixteen or the heir of a deceased Limited Partner from becoming a substitute Limited Partner under the provisions of Article Eighteen.

Section 19.2. Adjustment of Capital and Loan Accounts. Upon the admission, withdrawal or substitution of any Partner, the Capital Accounts of the appropriate Partners shall be adjusted to reflect such changes.

Section 19.3. Documents to be Executed by Partners. Prior to the issuance of a Partnership Interest to any Limited Partner, such Limited Partner shall execute and deliver to the General Partner any documents required by HUD and/or the General Partner.

Article Twenty

DISSOLUTION OF THE PARTNERSHIP

Section 20.1. Distribution Upon Dissolution. Upon the dissolution of the Partnership as a result of the occurrence of any of the events set forth in Article Four (except when the Partnership shall be continued as provided in Sections 14.9 or 21.3), the General Partner or his successors shall proceed to liquidate the Partnership, and the proceeds of liquidation shall be applied and distributed in the following order of priority:

- a. First, to the payment of debts and liabilities of the Partnership (other than any loans or advances that may have been made by any of the Partners to the Partnership) and the expenses of liquidation;

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b. Second, to the establishment of any reserve which the General Partner may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Such reserve may be paid over by the General Partner to any attorney at law, or other acceptable party, as escrow agent to be held for disbursement in payment of any of the aforementioned liabilities and, at the expiration of such period as shall be deemed advisable by the General Partner, for distribution of the balance, in the manner hereinafter provided in this Section;

c. Third, to the repayment of any outstanding Working Capital Loans;

d. Fourth, to the repayment of any other loans or advances that may have been made by any of the Partners to the Partnership;

e. Fifth, to the Limited Partners until such time and up to the amounts, respectively, which equal the Limited Partners' cumulative cash capital contributions (reduced by any prior distributions);

f. Sixth, to reduce to zero any positive balances in the then-existing Capital Accounts of the Partners, distributed pro rata in accordance with such positive Capital Account balances;

g. Seventh, any remaining amounts shall be distributed sixty percent (60%) to the Limited Partners, thirty-five percent (35%) to the General Partner and five percent (5%) to the Special Limited Partner.

Section 20.2. Distribution in Kind. In the event of the dissolution of the Partnership and the Partnership is not continued pursuant to the provisions of Sections 14.8 or 21.3, or if the Partnership term terminates, to the extent that the Partnership's assets have not been sold or otherwise disposed of, the Partnership's noncash assets, if any, may be distributed in kind in the proportions set forth in this Article, each Partner accepting a pro rata undivided interest therein subject to Partnership liabilities, including any liabilities of the nature described in Subsections a, c and d of Section 20.1 of this Article.

Section 20.3. Time for Liquidation. A reasonable amount of time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities to creditors



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so as to enable the General Partner to minimize the normal losses attendant upon such liquidation.

Section 20.4. Termination. Upon compliance with the foregoing distribution plan (including payment over to an escrow agent, if deemed appropriate by the General Partner and if there be sufficient funds therefor), the Partnership shall cease to be such, and the General Partner shall execute, acknowledge and cause to be filed a certificate of termination of the Partnership pursuant to the powers of attorney provided for in Article Twenty-Two.

Section 20.5. General Partner Not Personally Liable for Return of Capital Contributions. The General Partner shall not be personally liable for any distribution required pursuant to this Article, and such distributions shall be made solely from available Partnership assets, if any.

Section 20.6. Operations During Liquidation. Upon the determination that the Partnership is to be liquidated or dissolved, the business of the Partnership during the period of liquidation or dissolution shall be carried on by the General Partner, or if there be no General Partner, by a designee of all of the Limited Partners.

Article Twenty-One

WITHDRAWALS; RETIREMENT OF PARTNERS

Section 21.1. No Right to Withdraw Capital. No Limited Partner may at any time withdraw his capital from the Partnership without the written approval of the General Partner, which approval shall be at the General Partner's sole discretion, pursuant to the provisions of Section 5.7. Substitution of Limited Partners, however, may be made in accordance with the provisions of this Agreement.

Section 21.2. Withdrawal of General Partner. The General Partner may resign as General Partner of the Partnership at any time with the unanimous written consent of the Limited Partners, and the permission of HUD under their applicable regulations, and under no other circumstances.

Section 21.3. Election to Continue Business. In the event of the death, insanity or adjudication of incompetency of an individual General Partner, the liquidation or dissolution of a corporate General Partner, or the termination of a General Partner which is a trust, or the resignation, retirement or removal under the provisions of Section 14.8 of any General

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Partner, the Partnership Interest of such General Partner shall be converted into that of a Limited Partner on the same basis as provided in Section 14.8, whether or not the Partnership is dissolved.

a. If the affect of any such event is not to remove the General Partner, the General Partner shall forthwith send written notice of such event to the Limited Partners and shall have the sole option to elect to continue the Partnership for the balance of the term specified in Article Four.

b. Any election to continue the Partnership under the provisions of this Section shall be exercised within ninety (90) days after the occurrence of any of the events referred to in the first sentence of Section 21.3. In the event of any such election, the relationship of the Partners and of any other person who has acquired a Partnership Interest shall be governed by this Agreement.

Article Twenty-Two

POWERS OF ATTORNEY TO EXECUTE DOCUMENTS

Section 22.1. Grant of Power of Attorney. Each Limited Partner hereby irrevocably constitutes and appoints the General Partner individually, as his true and lawful attorney in his name, place and stead to make, execute, acknowledge and, if necessary file;

a. Any certificates or other instruments which the Partnership may be required to file under the laws of the State of Nevada or pursuant to the requirements of HUD or any other governmental authority having jurisdiction over the Project or which the General Partner deems advisable to file, including, without limitation, the Certificate and any amended Certificate and a certificate of termination as provided in Section 20.4.

b. Any certificates or other instruments amending or modifying the Certificate or the certificates and instruments referred to in Section 22.1a.

c. Any certificates or other instruments which may be required to admit one or more Limited Partner(s) or to reflect the withdrawal of one or more Limited Partner(s) or to reflect any changes in their respective Partnership Interests.



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d. Any amendments to the Certificate, or any amendments thereof, or to this Agreement, necessary to reflect any other changes made pursuant to the exercise of the Power of Attorney contained in this Article.

Section 22.2. Irrevocable and Coupled with an Interest; Copies to be Transmitted. The powers of attorney granted under Section 22.1 of this Article shall be deemed irrevocable and coupled with an interest. A copy of each document executed by the General Partner pursuant to the powers of attorney granted in Section 22.1 of this Article shall be transmitted to each Limited Partner promptly after the execution of any such document.

Section 22.3. Survival of Power of Attorney. The powers of attorney granted in Section 22.1 of this Article shall survive delivery of an assignment by any Limited Partner of the whole or any portion of his Partnership Interest, except that if such assignment was of all of his Partnership Interest and the substitution of the assignee as a Limited Partner has been consented to by the General Partner, the foregoing powers of attorney shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any and all certificates and other instruments necessary to effectuate the substitution of the assignee as a Limited Partner. The powers of attorney granted in Section 22.1 of this Article shall survive the death of a Limited Partner.

Section 22.4. Limitation on Power of Attorney. Except as set forth in this Article, the General Partner may not modify the terms of this Agreement without the written consent of all of the Limited Partners. The powers of attorney granted under Section 22.1 of this Article cannot be utilized by the General Partner to increase or extend any financial obligation or liability of the Limited Partners.

Article Twenty-Three

INVESTMENT REPRESENTATION

Section 23.1. Investment Representation. Each Limited Partner hereby represents that he is acquiring his Partnership Interest for investment purposes only and not with a view to the resale or distribution thereof in whole or in part and agrees that he will not transfer, sell or dispose of it in any manner that will violate the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or the rules and regulations of the Securities and Exchange Commission, or the laws and regulations of the State of Nevada, or any other State or municipality having jurisdiction thereover. The General

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Partner shall require any assignee of a Limited Partner to execute a similar investment undertaking.

Section 23.2. Representation of Investment Experience and Ability to Bear Risk. Each Limited Partner represents that he is (i) either knowledgeable with respect to the financial, tax and real estate aspects of ownership and operation of the Project or has been represented by such a knowledgeable person in connection with his acquisition of an interest in the Partnership and (ii) able to bear the economic risks of his investment in the Partnership, including the complete loss thereof.

**Article Twenty-Four**

**EXCULPATION AND INDEMNIFICATION OF GENERAL PARTNER**

Section 24.1. Exculpation. The doing of any act or the failure to do any act by the General Partner, the effect of which may cause or result in loss or damage to the Partnership, the Limited Partners or the Project shall not subject the General Partner to any personal liability to the Partnership or to the Limited Partners unless the General Partner acted in bad faith or was guilty of willful misconduct or negligence.

Section 24.2. Indemnification. The Partnership (but not the Limited Partners personally) shall indemnify and save harmless the General Partner from any loss or damage incurred by him by reason of any act or acts performed by him for and on behalf of the Partnership and, in the opinion of the General Partner, in furtherance of its best interests, if such act was done pursuant to advice of legal counsel employed by the Partnership, or by the General Partner on behalf of the Partnership, or on a basis other than lack of good faith, willful misconduct or negligence. The Partnership shall reimburse the General Partner for any such loss or damage incurred.

**Article Twenty-Five**

**PARTNERS BOUND BY REGULATORY AGREEMENTS**

All Partners, by their agreement to be bound by this Agreement, agree that they are bound by the Regulatory Agreements executed by the Partnership with HUD, any agreements the Partnership enters into with Caliente, Lincoln County, Nevada, and any other documents required by HUD. Upon any dissolution of the Partnership, no title or right to possession and control of any property subject to the Mortgage Loan and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreements. Nothing in this Article shall be

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construed as creating any personal liability of any Limited Partner in excess of his required capital contributions.

Article Twenty-Six

RELEASE OF CERTAIN FUNDS BY HUD

Any other provision of this Agreement to the contrary notwithstanding, if any funds or evidences thereof required by HUD to be placed in escrow or posted by the General Partner, or by any person or corporation wholly controlling, controlled by or under common control or affiliated with the General Partner, on behalf of the Partnership are released to the Partnership by HUD, such funds shall be distributed to the General Partner or other person or corporation who originally placed such funds in escrow or otherwise provided for such funds on behalf of the Partnership.

Article Twenty-Seven

LIABILITY OF A WITHDRAWING GENERAL PARTNER

If the business of the Partnership is continued after the withdrawal of a General Partner, the withdrawing General Partner shall remain liable, to the extent provided in this Agreement, for all obligations and liabilities incurred by him or it while a General Partner of the Partnership. A withdrawing General Partner shall not incur any obligations or liability on account of the business of the Partnership or the activities of any General Partner of the Partnership after his or its withdrawal is effected by the appropriate filing of an amendment to the Certificate. For the purpose of this Article, a General Partner converting to a Limited Partner will be considered a withdrawing General Partner.

Article Twenty-Eight

TAX MATTERS PARTNER

The General Partner shall be the "tax matters partner" of the Partnership for Federal income purposes. Pursuant to Code Section 6223(c)(3), upon receipt of notice from the Internal Revenue Service of the beginning of an administrative proceeding with respect to the Partnership, the General Partner, as the tax matters partner, agrees to furnish the Internal Revenue Service with the names, addresses and profits interests of each of the Limited Partners of the Partnership. The General Partner agrees not to enter into a settlement agreement pursuant to Code Section 6224 without providing at least 30 days' advance written notice

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to each of the Limited Partners of the Partnership of the terms of the settlement.

Article Twenty-Nine

JURISDICTION

At the request of the General Partner, any Limited Partner who is not a Nevada resident shall execute any documents necessary to designate the Secretary of State of the State of Nevada or any other person or entity chosen by the General Partner, at his sole discretion, for service of process on him in any action or proceeding brought by any party to this Agreement against him and arising out of this Agreement or in breach thereof.

Article Thirty

NON-WAIVER

No provision of this Agreement shall be deemed to have been waived except if such waiver is contained in a written notice given to the party claiming such waiver has occurred and no such waiver shall be deemed to be a waiver of any other or further similar or dissimilar obligation or liability of the party or parties in whose favor the waiver was given.

Article Thirty-One

ADDITIONAL DOCUMENTS AND INSTRUMENTS

The parties shall execute and deliver to each other such other and further documents and instruments as may be necessary to carry out the purposes of this Agreement and which are required by the General Partner, HUD or any other Federal state or local governmental agency having jurisdiction over the Project or the Partnership.

Article Thirty-Two

ILLEGALITY

If any provision or provisions of this Agreement (or any part thereof) or the application thereof to any particular facts or circumstances shall be illegal and unenforceable by reason of any statute or rule of law, the remaining provisions (or parts thereof) of this Agreement or the application of the particular provision or provisions (or parts thereof) to other facts or circumstances shall not be affected thereby and shall remain in full force and effect. It is the intention of the provisions of

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this Article to make clear that the agreement of the parties to this Agreement is that this Agreement shall be enforced insofar as it may be enforced consistent with applicable statutes and rules of law.

Article Thirty-Three

NOTICES

All notices, demand, requests, consents or approvals given, required or permitted to be given hereunder, shall be contained in writing and shall be deemed sufficiently given if sent by registered or certified mail, postage prepaid and return receipt requested, addressed to the parties at the addresses set forth above or below, or on any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received three (3) days after the date of mailing.

Article Thirty-Four

MERGER AND AMENDMENTS

Section 34.1 Merger. This Agreement and each of the Exhibits annexed hereto, each of which is made a part hereof by this reference, contain the entire understanding and agreement between the parties upon the subject matter of this Agreement and, any prior understandings and agreements between the parties are merged herein, except only as herein otherwise expressly stated.

Section 34.2 Amendments.

a. In addition to the amendments otherwise authorized herein, amendments may be made to this Agreement from time to time by the General Partner with the consent of the holders of a majority of the Units owned by Limited Partners, provided, however, that without the Consent of the Partners to be adversely affected by the amendment, this Agreement may not be amended so as to (i) convert the Units of a Limited Partner into a general partner's interest; (ii) modify the limited liability of a Limited Partner; (iii) alter the ratio in which tax allocations and cash distributions are shared, provided, however, that this provision shall not affect reductions resulting from the issuance of additional Units or the operation of the provisions of Section 34.2b; or (iv) reduce the percentage of Units which is required to Consent to any action hereunder.

b. In addition to any amendments otherwise authorized herein, amendments may be made to this Agreement from time

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to time by the General Partner, without the Consent of any of the Limited Partners, (i) to add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner herein for the benefit of the Limited Partners; (ii) to cure any ambiguity, to correct or supplement any provisions herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement; (iii) to delete, add or revise any provision of this Agreement that may be necessary or appropriate, in the General Partners judgment to insure that the Partnership will be treated as a partnership for Federal income tax purposes; provided, however, that no amendment shall be adopted pursuant to this Section 34.2b unless the adoption thereof (1) is for the benefit of or not adverse to the interests of the Limited Partners; (2) does not affect the cash distributions or the tax allocations between the Limited Partners as a class and the General Partner except as provided below; and (3) does not affect the limited liability of the Limited Partners or the status of the Partnership as a partnership for Federal income tax purposes. In addition to the amendments otherwise authorized herein, amendments may be made to this Agreement to amend the provisions of this Agreement relating to the tax allocations and cash distributions among Partners if the Partnership is advised at any time by the Partnership's accountants and legal counsel that the allocations and distributions provided in this Agreement are unlikely to be respected for Federal income tax purposes, either because of promulgation of Treasury Regulations under Section 704 of the Code or other developments. The General Partner is empowered to amend such provisions pursuant to this Section 34.2b to the minimum extent necessary in accordance with the advice of the Partnership's accountants and legal counsel to effect the plan of cash distributions and, consistent therewith, the tax allocations, provided in this Agreement. New allocations made by the General Partner in reliance upon the advice of the Partnership's accountants and legal counsel shall be deemed to be made pursuant to the fiduciary obligation of the General Partner to the Partnership and the Limited Partners and no such new allocation shall give rise to any claim or cause of action by any Limited Partner.

c. Notwithstanding any other provisions in this Agreement, so long as the Secretary of Housing and Urban Development, or his successors or assigns, is the insurer or holder of the deed of trust on the Project, no amendment to this Certificate and Agreement of Limited Partnership which results in any of the following shall be of force or effect without the prior written Consent of HUD:



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- (i) Any Amendment which modifies the duration of the Partnership Agreement;
- (ii) Any amendment which results in the requirement that a HUD prior participation certification be obtained by any additional party; and
- (iii) Any amendment which in any way impacts on or affects the HUD deed of trust or Regulatory Agreement.

d. If this Agreement shall be amended as a result of adding or substituting a Limited Partner, the amendment of this Agreement shall be signed by the 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. If this Agreement shall be amended to reflect the withdrawal of the General Partner when the business of the Partnership is being continued, such amendment shall be signed by the withdrawing General Partner (and the General Partner hereby so agrees) and by the successor General Partner.

e. In making any amendments, there shall be prepared and filed for recordation by the General Partner such documents and certificates as shall be required to be prepared and filed under the Nevada Uniform Limited Partnership Act and under the laws of the other jurisdictions, if any, under the laws of which the Partnership is then formed or qualified.

**ARTICLE THIRTY-FIVE**

**PROVISIONS BINDING**

This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns and any additional or substitute Limited Partners or General Partner (except as may otherwise be specifically provided herein).

**Article Thirty-Six**

**CAPTIONS**

The table of contents and captions set forth herein are for convenience and reference only and are not intended to modify, limit, describe or affect in any way the contents, scope or intent of this Agreement.

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Article Thirty-Seven

DEFINITIONS

All terms used herein which are defined in this Agreement shall have the meaning set forth in this Agreement, unless the context clearly indicates otherwise.

Article Thirty-Eight

COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.

Article Thirty-Nine

GENDER AND PLURAL

Whenever the sense of this Agreement so requires, the masculine or feminine gender shall be substituted for or deemed to include the neuter and the plural, the singular, and vice versa.

Article Forty

APPLICABLE LAW

This Agreement and the rights of the parties hereto shall be interpreted in accordance with the laws of the State of Nevada.

Article Forty-One

HUD REQUIREMENTS

Notwithstanding any provision contained in this Agreement to the contrary, if the purchase of the Property requires the approval of the United States Department of Housing and Urban Development ("HUD") the following additional provisions shall be a part of this Agreement for so long as the Property is subject to a deed or deeds of trust insured or held by HUD (collectively, the "HUD-insured Deed of Trust"):

(a) The Partnership is specifically authorized to execute any and all documentation required to consummate the



purchase of the Property, HUD Project No. 125-35064-PM including, but not limited to, the Application for Transfer of Physical Assets, Release and Assumption Agreement, Rental Schedule, Statement of Interested Persons, and the Real Estate Purchase Contract. Any general partner acting alone is authorized to execute said documentation on behalf of the Partnership.

(b) Upon consummation of the purchase of the Property, the Partnership shall assume and agree to be bound by the terms of that certain Regulatory Agreement ("The Regulatory Agreement"), dated August 1, 1979 and recorded August 15, 1979, in Book 31, Page 174, Number 64851, Official Records of Lincoln County, Nevada, entered into between the Partnership and HUD and any incoming partner shall, as a condition of receiving any interest in the Partnership Property, agree to be bound by the HUD-insured Note, HUD-insured Deed of Trust, and Regulatory Agreement 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 not right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to HUD.

(c) In the event that any provision of this Agreement in any way tends to contradict, modify, or in any way change the terms of the Regulatory Agreement entered into with HUD, the terms of the Regulatory Agreement shall prevail and govern; or if any provision hereof in any way tends to limit HUD or the Federal Housing Administration ("FHA") 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/FHA.

(d) No amendment to this Agreement which results in any of the following shall be of force or effect without the prior written consent of HUD:

- (i) The modification of the term of Partnership;
- (ii) The necessity of obtaining a HUD "Prior Participation Certificate" for any additional party; and
- (iii) Any impact or affect on the HUD-insured Deed or Trust or Regulatory Agreement.

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate and Agreement of Limited Partnership of CALIENTE ASSOCIATES on the date first above written.

GENERAL PARTNER:

SPECIAL LIMITED PARTNER:

PALO ALTO TOWN PROPERTIES, INC.

*Robert F. Nielsen*  
Robert F. Nielsen

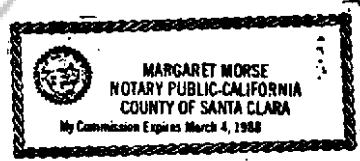
By: *[Signature]*

(Individual)

STATE OF CALIFORNIA }  
COUNTY OF Santa Clara } ss.  
On September 12, 1984 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert F. Nielsen.

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is subscribed to the within instrument and acknowledged that same executed the same.

WITNESS my hand and official seal,  
Signature *Margaret Morse*  
Name (Typed or Printed)



STC 67  
STATE OF NEVADA }  
County of Washoe }

On September 12, 1984 personally appeared before me,  
DATE

a Notary Public (or judge or other officer, as the case may be),

ROBERT F. NIELSEN

who acknowledged that he executed the above instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official stamp at my office in the County of Washoe the day and year in this certificate first above written.  
*[Signature]*  
Signature of Notary

DOLORES A. MORRIS  
Notary Public - State of Nevada  
Appointment includes Lincoln County  
My Appointment Expires 25 1982

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Schedule I

| <u>NAME</u>                    | <u>ADDRESS</u>                            | <u>INITIAL CAPITAL CONTRIBUTIONS</u> | <u>NO. OF UNITS OWNED</u> |
|--------------------------------|-------------------------------------------|--------------------------------------|---------------------------|
| <u>General Partner</u>         |                                           |                                      |                           |
| Robert F. Nielsen              | 3620 Hidden Valley Dr<br>Reno, NV         | \$3,000 <sup>(1)</sup>               | N/A                       |
| <u>Special Limited Partner</u> |                                           |                                      |                           |
| Palo Town Properties, Inc.     | 1471 Arcadia Place<br>Palo Alto, CA 94303 | \$ 100 <sup>(2)</sup>                | N/A                       |
| <u>Limited Partners</u>        |                                           |                                      |                           |

(1) The General Partner will assign to the Partnership all of his rights, title and interest in and to the Project for which he will receive a credit to his Capital Account in the amount of \$3,000.

(2) The Special Limited Partner has agreed to contribute this amount to the Partnership.

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Schedule II

LEGAL DESCRIPTION OF PROPERTY

Situate in the County of Lincoln, State of Nevada, described as follows:

Lots 2 and 3 in Block 46 of North  
Side Addition to the City of  
Caliente, Lincoln County, Nevada as  
shown by Plat thereof on file in  
the office of the County Recorder  
of Lincoln County, Nevada;

Together with any and all improve-  
ments situate thereon and any and  
all easements and rights of way  
appertenant thereto.

31229

No. 31229  
FILED AND RECORDED AT REQUEST OF  
First American Title Co.  
Sept. 28, 1984

AT 45 MINUTES PAST 3 O'CLOCK  
PM IN BOOK 62 OF OFFICIAL  
RECORDS, PAGE 167 LINCOLN  
COUNTY, NEVADA.

YURIKO SETZER

By [Signature], Deputy  
COUNTY RECORDER