

1805

TAI TUNG APARTMENTS COMPANY
CERTIFICATE OF LIMITED PARTNERSHIP

Preliminary Statement

Pursuant to an Agreement of Limited Partnership made as of December 30, 1970, (the "Agreement"), among DCA Development Corporation ("DCA") Tai-Tung, Inc. and Hudson Towers, Inc. (the "General Partners"), and the persons subscribing this Certificate as Limited Partners (the "Limited Partners"), (the General Partners and the Limited Partners being hereinafter sometimes called the "Partners"), the parties to the Agreement have formed a limited partnership named TAI TUNG APARTMENTS COMPANY (the "Partnership").

The Partnership intends to acquire a certain parcel of land bordering on Hudson Street and Harrison Avenue in Boston, Massachusetts (the "Land"), together with the improvements constructed and to be constructed thereon, and to construct, or to arrange for the construction of, improvements on the Land consisting of four apartment buildings containing a total of 214 housing units and additional commercial space (the "Improvements"; the Land and Improvements being collectively called the "Project").

The Land is presently owned by the Boston Redevelopment Authority ("BRA"), and the transfer of the Land to the Partnership is subject to the regulations of BRA.

The Partnership has applied for or received commitments (the

"Loan Commitments"); to furnish construction and permanent financing (the "Loan") for the Project in the maximum amount of Six million six hundred seventy thousand four hundred Dollars (\$6,670,400) by Beacon Mortgage Company and the Government National Mortgage Association (the "Lenders").

The Loan will be secured by a deed upon mortgage covenants (the "Mortgage") executed by the Partnership and will be evidenced by the Partnership's mortgage note (the "Mortgage Note"). The Partnership has applied to the Federal Housing Administration ("FHA") for a commitment to be issued to the Lenders under the designation FHA Project No. 023-55108 LD (the "FHA Insurance Commitment"; the Loan Commitments and the FHA Insurance Commitment being collectively called the "Commitments") to insure the Mortgage Note, including advances thereunder during construction, pursuant to Section 221(d)(3) of the National Housing Act.

NOW, THEREFORE, the undersigned, desiring to file this Certificate of Limited Partnership (the "Certificate") pursuant to the provisions of Chapter 109 of the General Laws of Massachusetts do hereby certify as follows:

I.

The name of the Partnership is TAI TUNG APARTMENTS COMPANY.

II.

The purpose of the Partnership is to acquire the Land

together with the Improvements constructed and to be constructed thereon, to complete construction thereon of the Project in conformity with the Commitments; to execute a regulatory agreement as may be prescribed by the FHA and any other documents required in connection therewith; to own, operate and lease all or a portion of the Partnership's property; to borrow money and issue evidences of indebtedness and to secure the same by mortgages, security agreements, pledges or other liens or security interests in furtherance of any and all the objects of the business of the Partnership; to train residents of the immediate Project area in real estate management as may be needed by the Project from time to time; and to do any and all other acts and things which may be necessary, incidental or convenient to carry on the Partnership's business as contemplated under this Agreement. The Partnership shall not engage in any business not related to the Project.

III.

The principal place of business of the Partnership shall be located at Sears Crescent, City Hall Square, Boston, Massachusetts 02108.

IV.

The name and place of residences of the General Partners

of the Partnership are as follows:

<u>Name</u>	<u>Residence or Principal Place of Business</u>
DCA Development Corporation	Sears Crescent City Hall Square Boston, Massachusetts 02108
Tai-Tung, Inc.	14 Oxford Street Boston, Massachusetts
Hudson Towers, Inc	14 Oxford Street Boston, Massachusetts

The names and places of residence of each Limited Partner are set forth in Exhibit A hereto, which is incorporated herein by this reference.

V.

The term of the Partnership shall commence on the date of the filing of this Certificate of Limited Partnership in the office of the Secretary of the Commonwealth of Massachusetts, and shall continue until December 31, 2045; provided, however, that the Partnership shall be dissolved prior to such date upon the happening of any one of the following events:

(a) the sale of all or substantially all real estate or all interests in real estate owned by the Partnership; or

(b) the death, dissolution, insanity, incompetence, withdrawal, retirement, removal, assignment for the benefit of creditors, filing of a petition for the reorganization, or adjudication of the bankruptcy, of any General Partner unless the Partnership is continued pursuant to the provisions set forth in Article XIII of this Certificate.

VI.

(a) The General Partner shall not be required to make any cash contribution to the capital of the Partnership.

(b) Subject to the conditions hereinafter set forth, the Limited Partners shall contribute an amount (the "Project Price") equal to 16.298872% of the principal amount of the Mortgage Note as finally endorsed for insurance by the FHA ("Final Endorsement") to the capital of the Partnership at the times and in the manner hereinafter set forth; provided, however, that in no event shall the Project price exceed 16.298872% of the principal amount of the Mortgage Note set forth on the first page of FHA Form 2013, Application - Project Mortgage Insurance, which the Boston Chinese Community Urban Renewal Committee, Inc., and Development Corporation of America submitted to the FHA in October, 1970. Exhibit A hereto, which is incorporated herein by this reference, sets forth opposite the name of each Limited Partner (i) the total amount to be contributed by him to the Partnership and (ii) the dates on which such Limited Partner shall pay the installments of his contribution and the amount of each such installment. The General Partners shall give each Limited Partner ten (10) days' advance written notice of any installment of any contribution required to be made by him.

(c) In the event any Limited Partner fails to pay any installment of his capital contribution on or prior to the due date therefor set forth in Exhibit A hereto, he shall be deemed to be in default, and the remaining Limited Partners shall have the option, exercisable within fifteen (15) days after receipt of notice of

such default (which notice shall be given to all Limited Partners by DCA), to purchase such delinquent Limited Partner's limited partnership interest in accordance with the provisions of paragraph 6 (c) of the Agreement. If the remaining Limited Partners shall fail to purchase the delinquent Limited Partner's interest within the time hereinabove specified, DCA shall have the option to purchase such interest on the same terms and conditions as the foregoing Limited Partner option, which option shall be exercised with a ten (10) day period from the date on which the option held by the Limited Partners expired. In the event DCA purchases such limited partnership interest or a portion thereof, it shall assume the status of a substituted Limited Partner in respect thereof in addition to its status as a General Partner hereunder. Notwithstanding the foregoing, however, the obligations of the delinquent Limited Partner to the Partnership hereunder shall not be extinguished by the existence of any such option, or by its exercise, but only by, and to the extent of, the contributions made in the delinquent Limited Partner's place by any Partner or Partners who have purchased his interest hereunder.

(d) The liability of each Limited Partner shall be limited to the amount of capital contributions which such Limited Partner is required to make in accordance with the provisions of Paragraph (b) above of this Article VI, but only when the same shall become due pursuant to said Paragraph (b) and Paragraph (e) below of this Article VI, and none of the Limited Partners shall have any further personal liability to contribute money to, or in respect of the

liabilities or the obligations of, the Partnership, nor shall the Limited Partners be personally liable for any obligations of the Partnership.

(e) The obligation of the Limited Partners to make capital contributions hereunder is subject to Paragraph (a) of Article VIII of this Certificate and to the condition that each of the representations and warranties set forth in Paragraphs 11 and 12 of the Agreement (which paragraphs are attached hereto as Exhibit B) shall be true and correct as of the date when the contribution shall be made, except to the extent that any such representation or warranty expressly relates to an earlier date. In the event that any such representation or warranty shall not be true and correct as of the date when any capital contribution is required to be made hereunder, the Limited Partners shall not be required to make such contribution; provided, however, that if within one year from such date DCA shall cure the breach of such representation or warranty, the Limited Partners shall pay the amount of such contribution to the Partnership 20 days after notice from DCA specifying that the breach in such representation or warranty has been cured and the manner in which such breach was cured.

VII.

The additional contributions agreed to be made by each Limited Partner and the times and events giving rise to making such obligations become due are set forth in Article VI hereof and Exhibit A hereto.

VIII.

The contributions of the Limited Partners are to be returned under the following circumstances:

(a) DCA shall purchase the limited partnership interests of all Limited Partners desiring to sell the same if Final Endorsement shall not have taken place on or before 36 months after the initial insurance endorsement by the FHA of the Mortgage Note ("Initial Endorsement") or such earlier date on which the Construction Lender commences to foreclose the Mortgage or the BRA acquires or assigns any portion of the Project as the result of a default by the Partnership in meeting its obligations under the Land Disposition Agreement referred to in the Partnership Agreement. If Final Endorsement shall not have occurred by such date, or if such earlier event shall occur, DCA shall, within fifteen (15) days thereafter, give written notice to each Limited Partner of its obligation to purchase the interest of any Limited Partner. The purchase shall be made within thirty (30) days after receipt of such notice, and the purchase price shall be an amount in cash, without interest, equal to the sum of the instalments of the capital contribution of each Limited Partner desiring to sell his interest theretofore paid by him, less the amount of cash flow of the Partnership theretofore distributed to such Limited Partner pursuant to the Agreement (whereupon such Limited Partner shall not have any further obligations under the Agreement, including the obligation to pay any further installment of his capital contribution), and DCA shall assume the status of a substituted Limited Partner in respect of such limited partnership interest in addition to its status as General Partner. The Agreement contains special provisions in the event that BRA or FHA approval is required for such purchase.

(b) The net cash proceeds resulting from the refinancing of any mortgage on, or the sale, exchange, condemnation (or similar eminent domain taking), casualty or other disposition of, all or any part of the Partnership's real estate and other property or from the liquidation of the property of the Partnership following a dissolution of the Partnership shall be distributed and applied in the following order of priority:

(i) to the payment of any debts and liabilities of the Partnership, other than items referred to below;

(ii) to the setting up of any reserve which the management agent for the Project designated pursuant to the Agreement (the "Management Agent") deems reasonably necessary to provide for any contingent or unforeseen liabilities or obligations of the Partnership other than in respect of the items referred to below; provided, however, that at the expiration of such period of time as DCA deems advisable, the balance of such reserve remaining after the payment of such contingencies shall be distributed in the manner hereinafter set forth in this Paragraph

(b);

(iii) to the payment of the Subordinated Loans (as defined in the Agreement);

(iv) to the payment of any management fee which has not been paid because it was subordinated pursuant to the Agreement to the Limited Partners' right to receive cash flow of the Partnership;

(v) to payment to the Limited Partners (to be apportioned among them in accordance with their respective limited partnership interests) of an amount equal to the excess, if any, of the amount of their capital contributions over the aggregate of all previous distributions to all Limited Partners of cash flow of the Partnership and of proceeds pursuant to this Paragraph (b);

(vi) to the payment of outstanding Residual Receipts Obligations (as defined in the Agreement); and

(vii) Any balance of such net cash proceeds sixty-six two thirds per cent ($66 \frac{2}{3}\%$) to the Limited Partners in accordance with their respective limited partnership interests and thirty-three one third per cent ($33 \frac{1}{3}\%$) to Tai-Tung, Inc. and Hudson Towers, Inc. in equal shares.

(c) Notwithstanding any provisions to the contrary in this Certificate, the net profits (or losses) arising from the sale or other disposition of any part of or all the Partnership real estate or other property shall be allocated for Federal income tax purposes among the General Partners and the Limited Partners (treated as separate classes for this purpose), as follows:

(i) first, in an amount of such profits equal to the excess, if any, of (1) the aggregate losses charged and cash distributions paid to the respective capital accounts of such classes prior to the date as of which such allocation is made, over (2) the sum of

(x) the aggregate profits credited to their respective capital accounts prior thereto and (y) the aggregate of their respective capital contributions theretofore made;

(ii) second, in an amount of any remaining profits equal to the excess, if any, of (1) the aggregate of the capital contributions theretofore made by the respective classes of Partners over (2) the sum of (x) all distributions theretofore made to the respective classes of Partners of cash flow of the Partnership pursuant to Paragraph 8 of the Agreement and (y) all net cash proceeds theretofore distributed to it pursuant to Paragraph 15 of the Agreement (but in no event shall any allocation be made hereunder which results in the net profits allocated to the General Partner being equal to less than the cash distributed to it under said Paragraph 15); and

(iii) third, any balance of such net profits (or in the event of losses arising from such sale or other disposition, the full amount of such losses) sixty-six two thirds per cent ($66 \frac{2}{3}\%$) to the Limited Partners in accordance with their respective limited partnership interests and thirty-three one third per cent ($33 \frac{1}{3}\%$) to Tai-Tung, Inc. and Hudson Towers, Inc. in equal shares.

The allocation of net profits (or losses) among the Partners within a class shall be made on the basis of their respective partnership

interests.

IX.

Except as provided in Article VIII of this Certificate, net profits and losses of the Partnership and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be allocated as follows:

(i) until the time of Participation Change (as hereinafter defined) 100% to the Limited Partners in accordance with their respective limited partnership interests, and

(ii) after the time of Participation Change (a) 66 2/3% to the Limited Partners in accordance with their respective limited partnership interests and (b) 33 1/3% to Tai-Tung, Inc. and Hudson Towers, Inc. in equal shares.

The "net profits and losses of the Partnership" shall be the net profits or losses of the Partnership for Federal income tax purposes as determined by the independent certified public accountants employed by the Partnership.

"Participation Change" means the later of (x) 20 years after Final Endorsement or (y) the first date on which the Limited Partners shall have received a distribution of cash flow of the Partnership (as defined in the Agreement) and/or net cash proceeds from a refinancing of any mortgage on, or the sale, exchange, condemnation (or similar eminent domain taking), casualty or other disposition of, all

or any part of the Partnership's real estate and other property which, together with all prior distributions to the Limited Partners of cash flow of the Partnership and of proceeds of refinancing of the mortgage, sale, eminent domain taking, etc. previously distributed pursuant to the Agreement, equals or exceeds the amount of the capital contributions made by the Limited Partners.

Notwithstanding the provisions of the first Paragraph of this Article IX, if any limited partnership interest is acquired by a person who at the time of such acquisition intends to transfer and transfers, such interest prior to the end of the fiscal year in which it was acquired to a transferee who acquires for investment, the net profits and losses of the Partnership attributable to such interest, and each item of income, gain, loss, deduction or credit entering into the computation thereof, during the period between the date of its acquisition by the transferor and the date of its transfer to a transferee who acquires for investment shall be allocated to such transferee.

The "cash flow of the Partnership" shall be the net profits and losses of the Partnership as determined in accordance with this Article IX (excluding therefrom profits or losses on the sale refinancing or other disposition of Partnership real estate), (i) plus depreciation and other noncash charges deducted in determining such net profits and losses, (ii) minus principal payments on all mortgages, conditional sales contracts and security interests, property replacement reserves, contingency reserves determined in accordance with generally accepted accounting principles, and capital

expenditures when made from other than such reserves, any other cash expenditures which have not been deducted in determining the net profits and losses of the Partnership (except payments on Subordinated Loans) and, after Final Endorsement, any amount required to maintain a reasonable working capital. The cash flow of the Partnership shall be determined separately for each fiscal year and not cumulatively.

Subject to any applicable FHA requirements, the cash flow of the Partnership after Final Endorsement shall be distributed in the following order of priority:

(i) to the payment of the Subordinated Loans; provided, however, that no portion of the management fee of Community Management, a division of DCA ("Community Management"), which is subordinated to the Limited Partners' right to receive distributions of cash flow of the Partnership pursuant to the Agreement shall be used to pay Subordinated Loans;

(ii) until the time of Participation Change 100% to the Limited Partners in accordance with their respective limited partnership interests and thereafter 66 2/3% to the Limited Partners in accordance with their respective limited partnership interests and 33 1/3% to Tai-Tung, Inc. and Hudson Towers, Inc. in equal shares.

Subject to any applicable FHA requirements, distributions to the Partners of cash flow may be made at reasonable intervals during the fiscal year, and in any event shall be made within ninety (90) days

after the close of each fiscal year.

The fiscal year of the Partnership shall be the calendar year.

The Agreement designates Community Management as the Management Agent for the maximum cumulative fee allowed by FHA for such services, provided, however, that Community Management must subordinate up to 75% of such fee to the obligation of the Partnership to make the maximum cumulative distribution of Partnership cash flow to the Limited Partners allowed by FHA regulations. The Agreement also provides that the Partnership shall be obligated to pay Community Management any cumulative deficiency from such FHA maximum fee which may exist on the 25th anniversary of Final Endorsement by reason of such subordination requirement, to be payable on or after such 25th anniversary.

The Agreement also provides for the removal and replacement of Community Management as the Management Agent upon the happening of certain specified events.

X.

Subject to the terms of the last paragraph of this Article X any Limited Partner shall have the right to assign all or any part of his interest in the Partnership. The assignee of such interest shall become a substituted Limited Partner only upon the terms and conditions set forth in this Article X. An assignment shall not be binding upon the General Partner until its written notice thereof.

The death of a Limited Partner shall not dissolve or terminate the Partnership. In the event of such death, the legal representative of the deceased Limited Partner shall be deemed to be the

assignee of the deceased Limited Partner's partnership interest and may become a substituted Limited Partner upon the terms and conditions set forth in this Article X. The estate of the deceased Limited Partner shall be liable for all of his liabilities and obligations to the Partnership as a Limited Partner.

Subject to applicable regulations of the FHA, DCA shall have the power, in its discretion, to admit, as substituted Limited Partners, persons, firms or corporations who acquire the partnership interest, or any part thereof, of a Limited Partner. The General Partner's failure or refusal to admit an assignee as a substituted Limited Partner shall not affect the right of such assignee to receive the share of net profits and losses and cash flow of the Partnership, distributions of capital, and distributions of proceeds pursuant to the Agreement, to which his predecessor in interest was entitled.

The admission of an assignee as a substituted Limited Partner shall be conditioned upon the assignee's written acceptance and adoption of all of the terms and provisions of the Agreement and, if the Project is subject to FHA regulations, the FHA regulatory agreement applicable thereto. DCA shall have the right to require the assignee to pay any filing fees and reasonable counsel fees in connection with his becoming a substituted Limited Partner hereunder. Any assigning Limited Partner shall not be relieved of his obligations to make Capital Contributions to the Partnership except to the

extent that any assignee of his limited partnership interest makes the capital contributions of the assigning Limited Partner.

Any person who acquires in any manner whatsoever any interest in the Partnership, irrespective of whether such person has accepted and adopted in writing the terms and provisions of this Agreement, shall be deemed by the acceptance of the benefit of the acquisition thereof to have agreed to be subject to and bound by all the obligations of the Agreement that any predecessor in interest of such person was subject to or bound by.

A person acquiring an interest in the Partnership, including the personal representative and heirs of a deceased Partner, shall have only such rights, and shall be subject to all the obligations, as are set forth in this Agreement; and, without limiting the generality of the foregoing, such person shall not have any right to have the value of his interest ascertained or receive the value of such interest or, in lieu thereof, profits attributable to any right in the Partnership, except set forth in the Agreement.

Except as provided in this Paragraph, no sale or exchange of an interest in the Partnership may be made if the interest sought to be sold or exchanged, when added to the total of all other interests sold or exchanged within the period of 12 consecutive months prior thereto, results in the termination of the Partnership under Section 708 (or any successor statute) of the Internal Revenue Code (the "Code"). Such sale or exchange may be made if, prior to the date thereof, a favorable ruling to the effect that the proposed sale or exchange trans-

fer will not prevent the Partnership from being entitled to use any of the accelerated methods of depreciation has been published in the Internal Revenue Bulletin or has been granted upon the application and at the expense of the Partner desiring to sell or exchange his interest in the Partnership. No sale, transfer, exchange or other disposition of an interest in the partnership may be made except in compliance with the then applicable rules and regulations of the RHA, BRA or any other applicable governmental authority.

XI.

The Partners have no right to admit additional limited partners but do have the right to substitute limited partners as set forth in Article X of this Certificate.

XII.

No right is given to any Limited Partner to any priority over any other Limited Partner as to contributions or as to compensation by way of income from the assets or business of the Partnership.

XIII.

In the event of the death, dissolution, insanity, incompetency, withdrawal, retirement, removal, assignment for the benefit of creditors, filing of a petition for the reorganization, or adjudication of bankruptcy, of any General Partner, the remaining General Partners shall elect to continue the business of the Partnership for the balance of

the term set forth in Article V of this Certificate with all of the Partnership property as before. If the effect of such death, dissolution, etc., is to remove the last remaining General Partner from the Partnership, the Limited Partners may elect to reconstitute the Partnership and continue the business of the Partnership for the balance of the said term with all of the Partnership property as before by selecting a successor General Partner as provided in the Agreement. Such election shall be exercised within ninety (90) days after such event. In the event of any such election, the relationship of the Partners and of any person who has acquired an interest of a Partner in the Partnership shall be governed by the Agreement.

XIV.

No right is given to any Limited Partner to demand or receive property other than cash in return for his contribution.

XV.

Each of the Limited Partners and each of the General Partners other than DCA has constituted and appointed DCA the true and lawful attorney for each and every Limited Partner, to make, execute, sign, acknowledge, and file a Certificate of Limited Partnership, together with a certificate of any present or future amendment thereto, and upon termination of the Partnership, to cancel such Certificate or Certificates as may be required under the laws of Massachusetts, and to include therein all information required by the laws of such state, and also to make, execute, sign, acknowledge

and record such other instrument as may be required under the laws of Massachusetts or any other state or as may be required by the FHA; provided, however, that DCA shall take no action as attorney-in-fact for any such Partner which could in any way increase the liability of such Partner beyond the liability expressly set forth in the Agreement.

A copy of the Agreement is on file at the principal place of business of the Partnership.

IN WITNESS WHEREOF, the parties hereto have executed this Certificate of Limited Partnership as of this 30th day of December 1970.

GENERAL PARTNERS.
DCA DEVELOPMENT CORPORATION

BY: 
James F. Linehan, Jr., President

TAI-TUNG, INC.
BY: DCA DEVELOPMENT CORPORATION, Attorney-in-Fact

BY: 
James F. Linehan, Jr., President

HUDSON TOWERS, INC.
BY: DCA DEVELOPMENT CORPORATION, Attorney-in-Fact

BY: 
James F. Linehan, Jr., President

ORIGINAL LIMITED PARTNER.
DCA DEVELOPMENT CORPORATION

BY: 
James F. Linehan, Jr., President

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

On this 31st day of December, 1970, personally appeared before me James F. Linehan, Jr., President of DCA Development Corporation, who, being duly sworn, acknowledged that he subscribed the foregoing Certificate of Limited Partnership as a duly authorized officer of DCA Development Corporation and that the statements therein set forth are true.


Notary Public

My commission expires: Aug 28, 1975

EXHIBIT A

Amounts and Dates of Contributions

(subject to terms of Certificate and the Agreement)

First Instalment

Upon the later of (i) the admission of certain investors as the limited partners, (ii) satisfaction of the conditions of Paragraph 11(a) of the Agreement or (iii) initial endorsement (after notice from DCA)

Second Instalment

Upon the later of (i) 12 months after the first instalment or (ii) 50% of the improvements (after notice from DCA)

Names and Addresses of Limited Partners

DCA Development Corporation
Sears Crescent
City Hall Square
Boston, Massachusetts

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Third Installment
Upon the later of
(i) 24 months after
the First Install-
ment or (ii) the
date on which DCA
certifies that the
project is receiving
at least 95% of total
projected rental in-
come (after notice
from DCA)

Fourth Installment
Upon the later of
(i) 36 months after
the First Install-
ment or (ii) Final
Endorsement (after
notice from DCA)

Fifth Installment Sixth Installment
Upon the later of Upon the later of
(i) 48 months after (i) 60 months
the First Install- after the First
ment or (ii) Final Installment or
Endorsement (after (ii) Final Endor-
notice from DCA) sement (after
notice from DCA)

Names and Addresses
of Limited Partners

DCA Development Corporation
Sears Crescent
City Hall Square
Boston, Massachusetts

- (1) The Fourth Installment shall be equal to the difference between 65.66667% of the Project Price (as described in Article VI of the Certificate) and the sum of the First, Second and Third Installment.
- (2) The Fifth Installment shall be equal to 16.66667% of the Project Price.
- (3) The Sixth Installment shall be equal to 16.66666% of the Project Price.

TAI TUNG APARTMENTS COMPANY

EXHIBIT B

11. Acquisition of the Project: (a) Prior to the payment of the Limited Partners' capital contributions, DCA will, upon obtaining all necessary approvals from the FHA, the Lenders, BRA and any other necessary governmental authorities or agencies therefor, at its own expense and not the expense of the Partnership (except that DCA may use mortgage proceeds to pay such expenses to the extent that such expenses are cost-certified by the FHA and are used in computing the principal amount of the Mortgage at Final Endorsement), (i) cause the Partnership to enter into a Land Disposition Agreement with BRA (the "Land Disposition Agreement") in form and substance satisfactory to Cravath, Swaine & Moore, counsel for the Limited Partners, covering the Land, (ii) cause the fee simple interest in the Land to be conveyed to the Partnership by deed or deeds in form and substance satisfactory to Cravath, Swaine & Moore, subject to no liens, charges or encumbrances other than ordinary easements and other minor encumbrances acceptable to the FHA but in no event subject to any second mortgages, (iii) if required by Cravath, Swaine & Moore, cause a title policy (the "Title Policy") to be issued at the time of Initial Endorsement insuring the fee simple interest of the Partnership in the Land subject to no liens, charges or encumbrances, except as aforesaid, and (iv) cause to be assigned to the Partnership the Commitments and all other agreements relating to the Project to which any of the General Partners or any of their subsidiaries or affiliates is a party (copies of which DCA represents and warrants have been furnished to said counsel for the Limited Partners prior to

the execution of this Agreement).

(b) DCA agrees, represents and warrants to the Limited Partners that:

(i) it will indemnify promptly and hold harmless the Partnership from and against any and all liabilities, present or future, of DCA, its subsidiaries and affiliates, and any liabilities to which the Land will be subject at the time of its transfer to the Partnership (other than the Mortgage, such liens, charges and encumbrances as are permitted under Paragraph 11(a)(ii) hereof and other liens, charges and encumbrances relating to the construction of the Project in accordance with the Commitments);

(ii) no material default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any of the Commitments, the general construction contract relating to the Project (the "Construction Contract"), the Mortgage Note, the Mortgage, the Land Disposition Agreement or any other agreement affecting the Project and the same are in full force and effect; and

(iii) neither the Partnership nor any Partner shall have any personal liability with respect to the Mortgage Note or the Mortgage.

(c) Each of the General Partners represents and warrants that:

(i) it has the full legal right, power and authority to

enter into this Agreement and to perform its obligations hereunder; and

(ii) the execution and delivery of this Agreement and the consummation of all transactions contemplated herein to be performed by it have been duly authorized by all necessary corporate action, and (A) on the date of this Agreement the consummation of such transactions will not result in a breach or violation of, or a default under, its charter or by-laws or any agreement by which it, any of its affiliates, or any of its properties is bound, or any law, administrative regulation or court decree, and (B) subsequent to the date of this Agreement, neither it nor any of its affiliates will amend its charter, by-laws or any such agreement or enter into any new agreement, the effect of which would result in the consummation of the transactions contemplated by this Agreement constituting a breach or a violation thereof.

12. Completion of Project. DCA represents and warrants to the Limited Partners that:

(i) construction of the Improvements will be completed in conformity with the Commitments and the Land Disposition Agreement;

(ii) all payments and expenses required to be made or incurred in order to complete construction of the Project in conformity with the Land Disposition Agreement, and the Commitments and in order to satisfy all requirements under the Land Disposition Agreement, and the Commitments and/or which form the basis for determining the principal sum of the Mortgage Note, including

TAI TUNG APARTMENTS COMPANY
EXHIBIT B
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interest during construction and any escrow payment, will be paid or provided for by, or for the account of, the Partnership utilizing only the funds available from the Loan, the capital contributions of the Limited Partners and the net proceeds, if any, from rental income earned by the Project prior to Final Endorsement.

If such funds are not sufficient therefor, DCA shall pay the deficiency from its own funds for the benefit of the Partnership. Payments made by DCA under this Paragraph 12, including any funds applied by it on behalf of the Partnership to satisfy working capital requirements of the FHA, if any, shall not change the interest of DCA in the Partnership but shall take the form of noninterest-bearing residual receipts obligations ("Residual Receipts Obligations") which shall be reimbursable by the Partnership only as provided by Paragraph 15 hereof; provided, however, that any escrow payments or prepayments made by DCA for the account of the Partnership prior to Final Endorsement, which under FHA rules may be reimbursed from operating income, shall not constitute Residual Receipts Obligations and, subject to FHA rules, may be reimbursed out of operating income of the Partnership (so long as the maximum cumulative dividend payable to the Limited Partners is not diminished) prior to or subsequent to Final Endorsement; and provided, further, however, that costs incurred by DCA in obtaining any FHA or BRA or other governmental approvals in connection with the Project shall be borne by DCA at its

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own cost without reimbursement therefor by the Partnership, except that DCA may use mortgage proceeds to pay such costs to the extent that such costs are cost-certified by the FHA and are used in computing the principal amount of the Mortgage at Final Endorsement.

X TAI TUNG APARTMENTS COMPANY

CERTIFICATE OF LIMITED PARTNERSHIP

Chapter 109 of the Gen. Laws

Filed in the Office of the Secretary of the Commonwealth
December 31, 1970

PEABODY, BROWN, ROWLEY & STOREY
70 FEDERAL STREET, BOSTON 02110

RECEIVED
DEC 31 1970
CORPORATION DIVISION
SECRETARY'S OFFICE

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