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MISC 1991 24410

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91.

LAND USE RESTRICTION AGREEMENT  
FOR LOW INCOME HOUSING TAX CREDITS

Between

NEBRASKA INVESTMENT FINANCE AUTHORITY  
as Authority

and

JOHN E. SCHMIDT  
AS OWNER

RECORDED  
NOV 27 3 46 PM '91  
GEORGE J. BROWN, JR.  
REGISTERED CLERK  
DOUGLAS COUNTY, NE

August 1, 1991

24410 B/Misc

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OF 1100 COMF 11/11 F/B 23-32320

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(This Table of Contents is not a part of this Land Use Restriction Agreement and is only for convenience of reference.)

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## SUMMARY PAGE

Dated Date: August 1, 1991

## THE OWNER -

Legal Name of Owner: JOHN E. SCHMIDT

Type of Legal Organization: NA  
(e.g., corporation, partnership)

State of Organization: NEBRASKA

Business Address of Owner: 5630 SOUTH 21ST STREET  
OMAHA, NE 68107

Contact Person: JOHN E. SCHMIDT

## THE PROJECT -

Name of Project: THE HISTORIC FLORENTINE APARTMENTS

Project Address and 907-11 SOUTH 25TH STREET, OMAHA, NE  
Legal Description: SEE EXHIBIT A

Number of Units: 24

Cost of acquisition, construction  
and rehabilitation: \$ 337,317Qualified Basis: \$ 165,248

## TAX CREDIT INFORMATION -

Allocation of Housing Tax Credit Dollars: \$ 19,227

Occupancy Date: 08/01/91

Applicable Set-Aside Percentage: 30 %  
(or percentages): 70 %Applicable Income Percentage: 50 %  
(or percentages): 60 %Required Number of Years From Occupancy Date: 15 years

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LAND USE RESTRICTION AGREEMENT  
FOR LOW INCOME HOUSING TAX CREDITS

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THIS LAND USE RESTRICTIONS AGREEMENT (the "Agreement") is entered into as of the date set forth on the Summary Page hereof between the NEBRASKA INVESTMENT FINANCE AUTHORITY (the "Authority"), a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions under the constitution and laws of the State of Nebraska, and the Owner identified on the Summary Page hereof (the "Owner").

W I T N E S S E T H :

WHEREAS, the Authority has been designated by the Governor of the State of Nebraska as the housing tax credit entity for the State of Nebraska for the allocation of low income housing tax credit dollars; and

WHEREAS, the Owner is or shall be the owner of the rental housing development located and as described on the Summary Page hereof and in Exhibit A hereto (the "Project"); and

WHEREAS, the Owner has applied to the Authority for an allocation of low income housing tax credit dollars to the Project in an amount not to exceed the amount set forth on the Summary Page hereof; and

WHEREAS, the Owner and the Project must continuously comply with Section 42 and other applicable sections of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations"); and

WHEREAS, compliance by the Owner and the Project with Section 42 of the Code is in large part within the control of the Owner; and

WHEREAS, the Authority is unwilling to allocate low income housing tax credit dollars to the Project unless the Owner shall, by entering into this Land Use Restriction Agreement (this "Agreement"), consent to be regulated by the Authority in order that the Authority may enforce any occupancy restrictions and other covenants, terms and conditions of this Agreement in accordance with the Code and the Regulations; and

WHEREAS, the Owner has represented to the Authority in the Owner's Low Income Housing Tax Credit Application (the "Application") that the Owner shall lease the Applicable Set-Aside Percentage of the units in the Project to individuals or families whose income is the Applicable Income Percentage or less of area median gross income (including adjustments for family size) as determined in accordance with the Code ("Qualified Tenants"); and

WHEREAS, the Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the land for the term stated herein and binding upon all subsequent owners of the Project for such term and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Authority agree as follows:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof and all words and phrases defined in Section 42 of the Code shall have the same meanings in this Agreement:

"Applicable Income Percentage" means the percentage stated in the Summary Page hereof as the percentage of area median gross income which may not be exceeded by individuals or families qualifying as Qualified Tenants.

"Applicable Set-Aside Percentage" means the percentage stated in the Summary Page hereof as the percentage of units in the Project to be leased to Qualified Tenants.

"Dwelling Units" means the units of multifamily residential rental housing comprising the Project.

"Functionally Related and Subordinate" means and includes facilities for use by tenants, for example, laundry facilities, parking areas and recreational facilities, provided that the same are of a character and size commensurate with the character and size of the Project.

"Occupancy Date" means the first day on which the Project is placed in service, as set forth on the Summary Page hereof.

"Project" means the Project Site and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the Project Site.

"Project Site" means the real property described in Exhibit A attached hereto.

"Qualified Project Period" means a period beginning on the Occupancy Date and ending on the date which is the Required Number of Years after the Occupancy Date.

"Qualified Tenants" means and includes individuals and families whose income is equal or less than the Applicable Income Percentage of area median gross income (including adjustments for family size) as elected and determined in accordance with the Code and Regulations. Notwithstanding the foregoing, the occupants of a unit shall not be considered to be of low income if all occupants are students (as defined in Section 151(E)(4) of the Code), no one of who is entitled to file a joint return under Section 6013 of the Code. The determination of whether an individual or family is a Qualified Tenant shall be made at least annually on the basis of the current income of such Qualified Tenant(s). Any unit occupied by an individual or family who is a Qualified Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Qualified Tenant, provided that, should such Qualified Tenant's income subsequently exceed 140% of the applicable income limit, such tenant shall no longer be a Qualified Tenant if, after such determination of income, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualified Tenant.

"Qualified Unit" means a residential unit in the Project designated for occupancy by Qualified Tenants.

"Related Persons" means two or more persons related within the meaning of Section 147(a)(2) of the Code, including, but not limited to, familiar and trust relationships, actual or attributed partnership interests, related corporations and certain corporate shareholders.

"Rent Restricted Unit" means a Dwelling Unit if the gross rent with respect to the Dwelling Unit does not exceed 30% of the income limitation elected by the Owner.

"Required Number of Years" means the number of years after the Occupancy Date on which the Qualified Project Period expires and as set forth on the Summary Page.

Section 2. Representation, Covenants and Warranties of the Owner. The Owner makes the following representations and warranties to induce the Authority to enter into this Agreement and further represents, warrants and covenants that:

(a) The Owner (i) is a legal organization as described on the Summary Page hereof organized under the laws of the State identified on the Summary Page thereof, and is qualified to transact business under the laws of the State of Nebraska, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by this Agreement), and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Owner is a party or by which it or its property is bound and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any prior lien or encumbrance.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

Section 3. Residential Rental Project. The Owner hereby agrees that the Project is to be developed, owned, managed and operated for the Qualified Project Period as "residential rental property," as such phrase is used in Section 42 (d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Owner hereby represents, covenants, warrants and agrees as follows:



(a) the estimated cost (or final cost, if applicable) of the acquisition, construction and rehabilitation of the Project will be equal to or in excess of the amount set forth on the Summary Page;

(b) that the Project constitutes and will constitute "residential rental property," as defined in Section 42 of the Code and the Regulations, the rental units of which will be rented or available for rental on a continuous basis to members of the general public;

(c) if the Owner becomes aware of any situation, event or condition which would result in noncompliance of the Project or the Owner with Section 42 of the Code or the Regulations, the Owner shall promptly give written notice thereof to the Authority;

(d) that all of the Dwelling Units will be similarly constructed and that each Dwelling Unit in the Project shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family (unless the Project qualifies a single-room occupancy project or transitional housing for the homeless);

(e) that none of the Dwelling Units in the Project shall at any time be utilized on a transient basis (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless); that none of the Dwelling Units in the project shall be leased or rented for a period of less than six months; and that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium or nursing home, rest home, trailer park, trailer court, mobile home park, or recreational vehicle park or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(f) that once available for occupancy each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public for the Qualified Project Period;

(g) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with the Code and this Agreement, except for any units rented under the housing program pursuant to Section 8 of the United States Housing Act of 1937, as amended, which will be leased to eligible tenants in accordance with the constraints and regulations of such housing program;

(h) that the Project shall consist of one or more proximate buildings or structures located on a single tract of land which have similarly constructed units financed pursuant to a common plan (unless the Project qualifies as a scattered-site project), together with functionally related and subordinate facilities which shall be owned by the Owner or a Related Person;

(i) that the Owner shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status or national origin in the lease, use or occupancy of the Project or in employment of persons for the operation and management of the Project;

(j) that the Owner will accept as tenants, on the same basis as all other prospective tenants, persons who are holders of certificates for federal housing assistance payments for existing housing pursuant to Section 8 of the United State Housing Act of 1937 or a successor federal program, and, in connection therewith, the Owner will not apply tenant selection criteria to such Section 8 certificate holders which are more burdensome than the criteria applied to any other prospective tenants;

(k) that the Owner will not discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, state or local program or on the basis that they have a minor child or children living with them.

(l) that the Owner will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of subjecting the Owner of the Project to noncompliance with Section 42 of the Code and the Regulations; and

(m) that the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement. The Owner shall promptly notify the Authority of such transfer. This provision shall not act to waive any other restriction on such sale, transfer or exchange.

Section 4. Occupancy Restrictions. For the purpose of satisfying the requirements of Section 42 of the Code, at least for the Qualified Project Period, the Owner hereby represents, covenants and agrees as follows:

(a) throughout the Qualified Project Period (excluding Dwelling Units not previously occupied), at least the Applicable Set-Aside Percentage of the completed Dwelling Units in the Project shall be both a Rent Restricted Unit and occupied solely by Qualified Tenants, prior to the satisfaction of which no additional units shall be rented or leased to any other tenants after initial rental occupancy of Dwelling Units by Qualified Tenants, as required by Section 42 of the Code. For purposes of satisfying the requirement that not less than the Applicable Set-Aside Percentage of the Dwelling Units be occupied by Qualified Tenants, no Qualified Tenant shall be denied continued occupancy because, after admission, the Qualified Tenant's family income exceeds the applicable qualifying income level set forth in the definition of "Qualified Tenant" herein. The Owner shall at all times during the Qualified Project Period maintain the percentage requirements of this Agreement by providing the next available units of comparable size to Qualified Tenants as needed to achieve compliance with the foregoing requirements. If necessary, the Owner shall refrain from renting Dwelling Units in the Project to persons other than Qualified Tenants in order to avoid violating the requirement that at all times during the Qualified Project Period at least the Applicable Set-Aside Percentage of the completed Dwelling Units in the Project shall be both a Rent Restricted Unit and occupied by Qualified Tenants;

(b) to obtain and maintain on file from each Qualified Tenant residing in the Project (which shall be obtained and updated each year during occupancy by such tenant) a copy of such tenant's executed Certification of Tenant Eligibility and Income Verification (attached hereto as Exhibit B) or in such other form and manner as may be required by the applicable rules, regulations or policies now or hereafter promulgated by the Department of the Treasury or the Internal Revenue Service, which are subject to independent investigation and verification by the Authority, and which shall be submitted to the Authority as set forth in (c) below;

(c) the Owner will immediately notify the Authority if at any time the Dwelling Units in the Project are not occupied or available for occupancy as provided above, and the Owner will prepare and submit to the Authority, not later than January 15 of each year following the first year in which 10% of the units in the Project are occupied, a Certificate of Continuing Program Compliance (the form of which is attached hereto as Exhibit C) executed by the Owner stating the number of Dwelling Units of the Project which, as of the first date of each calendar year, were occupied by Qualified Tenants (or were deemed to be occupied by Qualified Tenants as provided in subparagraph (a) above for all or part of such period), together with copies of Certifications of Tenant Eligibility and Income Verification collected by the Owner and not previously submitted;

(d) to obtain and maintain on file, with respect to each Qualified Tenant residing in the Project, written verification of the Qualified Tenant's income for the taxable year immediately preceding such tenant's initial occupancy in the project and annually thereafter;

(e) the form of lease to be used by the Owner in renting any units in the Project to Qualified Tenants shall provide for termination of the lease and consent by such person to immediate eviction proceedings in accordance with state law for failure to qualify as a Qualified Tenant, as applicable, as a result of any material misrepresentation made by such person with respect to his or her income and income verification or failure by such person to annually update the Certification of Tenant Eligibility and Income Verification; and

(f) to permit any duly authorized representative of the Authority, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner pertaining to the incomes of the Qualified Tenants residing in the Project.

Section 5. Term of Restrictions. (a) The term of the Occupancy Restriction set forth in Section 4 of this Agreement shall (i) commence on the Occupancy Date and (ii) end on the date which is the Required Number of Years after the Occupancy Date.

(b) Notwithstanding subsection (a) above, the Owner shall comply with the requirements of Section 42 relating to a 15-year extended use period; provided, however, that the extended use period for any building which is part of the Project shall terminate:

- (1) on the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or

- (2) on the last day of the compliance period if the Owner has properly requested that the Authority assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project and the Authority is unable to present a qualified contract.
- (c) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of three years following the termination of the extended use requirement pursuant to the procedures specified in subsection (b) above. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit.

Section 6. Covenants Run With the Land. The Owner hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title including any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument. The Owner shall cause this Agreement to be duly recorded (or the terms hereof to be incorporated into a deed to be duly recorded) in the office of public records in the County where the Project is located as an encumbrance upon the Project Site and the Owner shall deliver to the Authority a copy of a title insurance policy evidencing such recording and an opinion of counsel in form and substance satisfactory to the Authority to the effect that this Agreement is a legal, valid and binding agreement enforceable in accordance with its terms against the Owner and any person subsequently acquiring any right, title or interest in or to the Project or any part thereof.

Section 7. Uniformity; Common Plan. The provisions hereof shall apply uniformly to the entire Project to establish and carry out a common plan for the use, development, and improvement of the Project Site.

Section 8. Remedies; Enforceability. In the event of a violation or attempted violation of any of the provisions hereof, any one or more of the following may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to recover monetary damages caused by such violation or attempted violation: the Authority or any governmental entity succeeding to the Authority's functions or any individual who meets the income limitation applicable under Section 42 of the Code (whether prospective, present or former occupant).

The provisions hereof are imposed upon and made applicable to the Project and shall run with the land and shall be enforceable against the Owner and each purchaser, grantee, owner or lessee of the Project or any portion thereof of interest therein, at any time and from time to time, and the respective heirs, legal representatives, successors and assigns of the Owner and each such purchaser, grantee, owner or lessee. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or obtain relief against or recover for the continuation or repetition of such breach or violation of any similar breach or violation thereof at any later time or times.

Section 9. Amendment; Termination. The provisions hereof shall not be amended, revised or terminated (except as provided in Section 5 of this Agreement) prior to the stated term hereof except by an instrument in writing duly executed by the Authority and the Owner ( or its successors in title) and duly recorded. The Authority's consent to any such amendment, revision or termination, other than a termination pursuant to Section 5 of this Agreement, shall be given only if (a) there shall be attached to the document evidencing such amendment, revision or termination an opinion of Owner's Counsel that such amendment, revision or termination will not result in noncompliance of the Project or the Owner with Section 42 of the Code or (b) evidence satisfactory to the Authority has been filed with said Authority demonstrating that there has occurred an involuntary non-compliance caused by fire, seizure, requisition, change in federal law, action of a federal agency which prevents the Authority from enforcing this Agreement or condemnation or similar event.

Notwithstanding the foregoing, this Agreement shall not terminate by reason of the aforementioned foreclosure, transfer of title by deed in lieu of foreclosure or other similar event or if the Owner or any Related Person or any person with whom the Owner has had family or business ties obtains ownership interest in the Project for federal tax purposes during the period in which the restrictions of this Agreement are or would be in effect.

Section 10. No Conflict With Other Documents. The Owner warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herein.

Section 11. Fees, Release and Indemnification. The Owner agrees to pay the Authority a non-refundable application fee of the greater of \$1,000 or 1/4 of 1% of the qualified basis of the Project plus legal fees incurred by the Authority with respect to the Project. The Owner agrees to pay the Authority a credit fee of 1/4 of 1% of the qualified basis and an annual administration fee of 1/4 of 1% of the qualified basis. In addition, the Authority may impose a transfer charge upon the transfer of the Project. The Owner hereby agrees to pay, indemnify and hold the Authority harmless from any and all costs, expenses and fees, including all reasonable attorneys' fees which may be incurred by the Authority in enforcing or attempting to enforce this Agreement, including, but not limited to, (i) in the event that the various reports are not submitted as required hereunder and the Authority conducts an on-site inspection of the Owner's book and records and

(ii) following any default on the part of the Owner hereunder or their successors, whether the same shall be enforced by suit or otherwise; together with all costs, fees and expenses which may be incurred in connection with any amendment to this Agreement or otherwise by the Authority at the request of the Owner (including, but not limited to, the reasonable fees and expenses of the Authority's Counsel in connection with any opinion to be rendered hereunder). The Owner agrees to release the Authority from any claim, loss, demand or judgement as a result of the allocation of tax credit dollars to the Project or the recapture of same by the Internal Revenue Service, and to indemnify the Authority for any claim, loss, demand or judgement against the Authority as the result of an allocation of tax credit dollars to the Project or the recapture of same by the Internal Revenue Service.

Section 12. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 13. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

Owner: John E. Schmidt  
5630 South 21st Street  
Omaha, NE 68107

Authority: Nebraska Investment Finance Authority  
1033 "O" Street, Suite 218  
Lincoln, NE 68508  
Attention: Executive Director

Section 14. Governing Law. This Agreement shall be governed by the laws of the State of Nebraska.

Section 15. Termination. Notwithstanding any other provisions hereof, this Agreement and the restrictions and other provisions hereunder shall terminate on the termination of the Qualified Project Period without any further action being taken by any party hereto.

Section 16. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective duly authorized representatives as of the day and year first written above.

JOHN E. SCHMIDT, as Owner

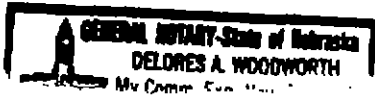
Attest:

By \_\_\_\_\_  
Secretary

By John E. Schmidt  
Title Owner

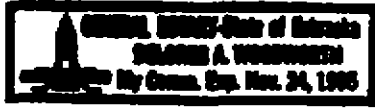
STATE OF NEBRASKA     )  
                                  )     ss.  
COUNTY OF             )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of November, 1991 by John E. Schmidt ~~and~~ of \_\_\_\_\_  
~~for and on behalf of the corporation.~~



Delores A. Woodworth  
Notary Public

My Commission expires: 11-24-95



NEBRASKA INVESTMENT FINANCE AUTHORITY

By Wm. Bone  
Authorized Officer

STATE OF NEBRASKA     )  
                                  )     ss.  
COUNTY OF             )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 1991 by an Authorized Officer of the Nebraska Investment Finance Authority.



Darlene J. Karpisek  
Notary Public

My Commission expires: \_\_\_\_\_

## EXHIBIT A

Description of Project Site  
(including exact legal description)

The West 148 feet of Lot 33, Redick's Second Addition, and Addition to the City of Omaha in Douglas County, Nebraska; the South 63 feet of the West 150 feet of Lot 28, Redick's Second Addition, an Addition to the City of Omaha, in Douglas County, Nebraska, commonly known as 907-911 S. 25th Street, Omaha, Nebraska.



EXHIBIT B

Certification of Tenant Eligibility  
and Income Verification

PART I. GENERAL INFORMATION

1. PROJECT NAME: \_\_\_\_\_
2. PROJECT ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
3. TOTAL NUMBER OF UNITS: \_\_\_\_\_
4. OWNER NAME & ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
5. MANAGER NAME, ADDRESS & PHONE NUMBER: \_\_\_\_\_  
\_\_\_\_\_

PART II. UNIT INFORMATION

1. APARTMENT ADDRESS: \_\_\_\_\_
2. UNIT TYPE: \_\_\_\_\_ SQUARE FEET: \_\_\_\_\_ MONTHLY RENT: \_\_\_\_\_

PART III. TENANT INFORMATION (See Section A of Instructions.)

1.	<u>Occupant</u>	<u>Age</u>	<u>Student (yes/no)</u>	<u>Child (under 18 years) of Tenant (yes/no)</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____
d.	_____	_____	_____	_____
e.	_____	_____	_____	_____

2. Are any of the students in number 1 above eligible to file a joint return for federal income tax purposes?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. List the Income of each occupant (if applicable). (See Section B of Instructions.)

	<u>Occupant</u>	<u>Anticipated Annual Income</u>
a.	_____	_____
b.	_____	_____
c.	_____	_____
d.	_____	_____
e.	_____	_____

4. Assets: (See Section C of Instructions.)

a. \_\_\_\_\_ b. \_\_\_\_\_ c. \_\_\_\_\_

**PART IV. TENANT VERIFICATION**

TENANT(S) STATEMENT: The information on this form is to be used to determine maximum income for eligibility. I/We certify that the statements in Part III above are true and complete to the best of my/our knowledge and belief and are given under the penalty of perjury.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

OWNER STATEMENT: The information on this form has been verified as required by the Land Use Restriction Agreement between the Nebraska Investment Finance Authority and the undersigned. The anticipated annual income for the occupants (as adjusted, if necessary, for capital investments) is \$\_\_\_\_\_. Thus, the family or individual(s) constitute(s) a Qualified Tenant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

TENANT INCOME CERTIFICATION INSTRUCTIONSSECTION A. PART III TENANT INFORMATION

List all occupants of the apartment and their ages, and indicate whether they are students (for this purpose, a student is any individual who has been or will be a full-time student at an education institution during five months of the year in which this application is submitted, other than correspondence school, with regular facilities and students).

SECTION B. PART III TENANT INFORMATION, #3 INCOME

List each occupant and the total anticipated income for each occupant. The total anticipated income for each person listed during the 12-month period commencing with the date of occupancy will include:

full amount, before any payroll deductions of wages, salaries, overtime, commissions, fees, tips and bonuses; net income from operation of a business or profession; interest and dividends and other net income from real or personal property; periodic payments from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic payments; payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay; public assistance income, where payments include amounts specifically designated for shelter and utilities; periodic and determinable allowances such as alimony and child support, and regular contributions or gifts from persons not residing in the dwelling; all regular and special pay and allowances of members of the Armed Forces (whether or not living in the dwelling) who are the head of the family or spouse; and any earned income tax credit to the extent it exceeds income tax liability;

but will exclude:

casual or sporadic or irregular gifts; amounts which are specifically for reimbursement of medical expenses, lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire, relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; payments received pursuant to participation in ACTION volunteer programs; and income from the employment of children (including foster children) of the occupant, under the age of 18 years.

SECTION C. PART III TENANT INFORMATION, #4 ASSETS

1. If any of the occupants have any savings accounts, bonds, equity in real property, or other forms of capital investment (excluding necessary items such as furniture or automobiles), enter in Part III, #4 Assets, the following amounts:
  - a. The total value of all assets owned by all occupants
  - b. The amount of income expected to be derived from such assets in the 12-month period commencing with the occupancy of the unit.
  - c. The amount of income expected to be derived from such assets that has already been included in Part III, #3 Anticipated Annual Income.

OWNER INSTRUCTIONS FOR INCOME CERTIFICATION

Part I of the Certificate asks for the Project Name, Project Address, etc. and should be filled out by a representative of the Owner. Similarly, Part II of the Certificate asks for the Apartment Address, etc. and should also be filled out by a representative of the Owner.

Part III, Section 1, of the Certificate asks the occupants to list their names, ages and whether they are students. Part III, Section 2, of the Certificate asks whether any of the students listed in Part III, Section 1, are able to file a joint return for federal income tax purposes (i.e., if they are married). Part III, Section 3, of the Certificate asks each occupant to list his/her anticipated annual income, as defined. Finally, Part III, Section 4, asks the occupants to estimate the value of all "capital investments" (excluding "necessary items"), the estimated amount of income expected to be derived from these "capital investments", and the amount of income expected to be derived from these "capital investments" that has already been included in Part III, Section 3, of the Certificate. The occupant is referred to in instructions with the Certificate to assist him/her in filling out the various sections.

The information provided in Section 1 through 4 of Part III of the Certificate should be sufficient to determine whether an individual(s) or the family constitutes a very low income resident for federal income tax purposes ("Very Low Income Tenant").

The Income Tax Regulations provide that the occupants of a unit shall not be considered "of low income" if all of the occupants are students no one of whom is entitled to file a joint return for federal income tax purposes. Thus, if Part III, Section 1, of the Certificate indicates that all of the occupants are students, and if Part III, Section 2, of the Certificate indicates that none of the students are able to file a joint return for federal income tax purposes (i.e., none of the students are married), the occupants are not Very Low Income Tenants even if the occupants have no income.

Assuming the occupants of the units are not all students none of who are entitled to file a joint return for federal income tax purposes, the next step in filling out the Certificate is to determine the "anticipated annual income" of the occupants of the unit for the "certification year". The "certification year" is the 12-month period of time that begins on the date the unit is first occupied. Thus, if the Certification is completed before the prospective occupants move in, the occupants should recertify the Certificate on the date they actually move into the unit so that you may determine whether they qualify as Very Low Income Tenants.

All payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household, the main exception being the income from employment of children (including foster children) of the occupant of the occupant, under the age of 18 years that are members of the household, should be included in "anticipated annual income". For example, if a 17-year old son or daughter has a part- or full-time job that pays \$5,000 per year and has income from bank deposits of \$100 per year, only the \$100 should be listed. Part III, Section 1, of the Certificate indicates the various relationships of the occupants in a household and their ages.

Once the anticipated annual income in Part III, Section 3, of the Certificate has been totaled, you should determine whether the occupants have "capital investments", including capital investments of any children in the family, of more than \$5,000 listed in Part III, Section 4.a of the Certificate. If the "capital investments" exceed \$5,000, "anticipated annual income" will be the sum of the amount totaled in part III, Section 3, of the Certificate plus the greater of, if any, (a) the actual amount of income in Part III, Section 4.b, minus the amount of income enumerated in Part III, Section 4.c, if any, or (b) the "imputed amount of income" minus the amount of income enumerated in Part III, Section 4.c, if any. The "imputed amount of income" is the value of the assets listed Part III, Section 4.a, of the Income Certification multiplied by the "current passbook savings rate" as determined by the United States Department of Housing and Urban Development. (The "current passbook savings rate" will vary from time to time; if the "current passbook savings rate" is unavailable, you should multiply the value of the assets by 10%.) For example, if the prospective occupants list assets of \$7,000 in Part III, Section 4.a, of the Income Certification, and the "current passbook savings rate" is 6%, the "imputed amount of income" is \$420.

The "anticipated annual income" of Part III, Section 3, of the Certificate plus, if the capital investments exceed \$5,000, the necessary adjustments of Part III, Section 4, of the Certificate, as discussed in the preceding paragraph, should be entered in the blank on the Owner Statement portion of the Certificate.

INCOME VERIFICATION

(for employed person)

The undersigned employee has applied for a rental housing unit located in a project which has been allocated a "low income tax credit" from the Nebraska Investment Finance Authority. Income statements of certain prospective Tenants must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation on a regular basis.

ANNUAL WAGES:

OVERTIME:

BONUSES:

COMMISSIONS:

TOTAL CURRENT INCOME:

I hereby certify that the statements above are true and complete to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

I hereby grant you permission to disclose my income to \_\_\_\_\_, in order that it may determine my income eligibility for rental of an apartment located in their project which has received a "low income tax credit" allocation from the Nebraska Investment Finance Authority.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please send to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## INCOME VERIFICATION

(for self-employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding three calendar years for which such income tax returns could have been filed (or, if not filed, were not required to be filed), and certify that the information shown in such income tax returns is true and complete to the best of my knowledge and that any income tax returns not filed were not required to be filed.

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Signature

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Date

## EXHIBIT C

Certificate of Continuing Program Compliance

TO: Nebraska Investment Finance Authority  
 1033 "O" Street, Suite 218  
 Lincoln, NE 68508  
 Attention: Executive Director

The undersigned, \_\_\_\_\_, on behalf of  
 \_\_\_\_\_ (the "Owner"), hereby represents and  
 warrants that:

1. It has read and is thoroughly familiar with the provisions of the Land Use Restriction Agreement between the Owner and the Nebraska Investment Finance Authority (the "Authority").

2. As of the date of this Certificate, the following percentages of completed residential units in the Project (i) are occupied by Qualified Tenants (as such term is defined in the Land Use Restriction Agreement) or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Qualified Tenant vacated such unit, as indicated:

Occupied by Qualified Tenants: \_\_\_\_\_ % Unit Nos.:

Held vacant for occupancy  
 continuously since last  
 occupied by Qualified  
 Tenants: \_\_\_\_\_ % Unit Nos.:

3. At no time since the date of filing of the last Certification of Continuing Program Compliance have less than the Applicable Set-Aside Percentage (as defined in the Land Use Restriction Agreement) of the completed units in the Project been occupied by or been last occupied by Qualified Tenants.

4. The Owner is not in default under the terms of the Land Use Restriction Agreement.

[OWNER]

By \_\_\_\_\_

Date \_\_\_\_\_



NEBRASKA INVESTMENT FINANCE AUTHORITY  
LOW INCOME HOUSING TAX CREDITS  
IRREVOCABLE CREDIT PERCENTAGE ELECTION

The Nebraska Investment Finance Authority ("NIFA"), the designated low income housing tax credit agency for the State of Nebraska has conditionally committed to allocate Low Income Housing Tax Credit ("LIHTC") dollars in the amount of \$19,227 for this Substantial Rehabilitation project, mentioned below which is owned by John E. Schmidt ("Owner") and assigned IRS BIN of NE-91-00328.

The "Owner" hereby irrevocably elects, pursuant to Sections 42(b)(z)(A)(ii)(I) of the Code, to fix the applicable Credit percentage(s) for the project as the percentage(s) prescribed by the Secretary of the Treasury for the month of July 1991, at the rate of 3.82%. The Owner agrees that for this election to be valid, this Agreement must be properly signed, notarized, and returned to NIFA's office not later than the 5th day of the following month.

NIFA has relied on the information supplied by the Owner in the application for Tax Credit Dollars. NIFA disclaims any liability for the allocation of the Tax Credit Dollars to the project, for the allocation of Tax Credit Dollars reduced by any amount that exceeds NIFA's housing credit allocation ceiling, the recapture of Tax Credit Dollars by the Internal Revenue Service, or for any information supplied by the Owner. NIFA's review of documents submitted in connection with this reservation is for its own purposes. NIFA makes no representations to the Owner or anyone else as to compliance with the Internal Revenue Code, Treasury Regulations, or any other laws or regulations governing Low Income Housing Tax Credits.

No member, officer, agent or employee of NIFA shall be held personally liable concerning matters arising out of or in relation to the undertakings or obligations set forth in this Agreement.

This Agreement is not assignable by the Owner, in whole or in part, without the prior written consent of NIFA.

Owners Name: John E. Schmidt

Taxpayer ID Number: \_\_\_\_\_

Owners Address: 5630 South 21st Street, Omaha, NE 68107

Project Name: The Historic Florentine Apartments

Project Address: 907-11 South 25th Street, Omaha, NE

**OWNER**

Acknowledged, agreed and accepted:

Owner: John E. Schmidt

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date subscribed and sworn before me: \_\_\_\_\_

Printed Name of Notary Public: \_\_\_\_\_

Signature of Notary Public: \_\_\_\_\_

Notary Public In and For  
State of: \_\_\_\_\_

Date Commission Expires:  
\_\_\_\_\_

County of: \_\_\_\_\_

**NEBRASKA INVESTMENT FINANCE AUTHORITY**

BY:

Signature: \_\_\_\_\_

Typed or Printed Name: Larry Bare

Title: Executive Director

Agency Taxpayer ID No.: 47-0613449

Date: \_\_\_\_\_

Date subscribed and sworn before me: \_\_\_\_\_

Printed Name of Notary Public: \_\_\_\_\_

Signature of Notary Public: \_\_\_\_\_

Notary Public In and For  
State of: \_\_\_\_\_

Date Commission Expires:  
\_\_\_\_\_

County of: \_\_\_\_\_