

LANCASTER COUNTY, NE.

Don Natta
REGISTER OF DEEDS

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\$ 34.00

INST. NO 99

061826

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BLOCK
Block 1
CODE
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EDITED
[Signature]

Cross Reference: Document Number 98-16463 and 98-16464

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION, dated and effective as of October 15, 1999, is made and entered into by and between **R.E.D. CAPITAL MANAGEMENT, L.L.C.**, a Kansas limited liability company, having a notice address of c/o Daniel H. Lowe, 4435 Main Street, Suite 3000, Kansas City, Missouri 64111 ("Borrower"), and **KEYBANK NATIONAL ASSOCIATION**, a national banking association having a notice address of 10 West Market Street, 9th Floor, Indianapolis, Indiana 46204 ("Bank").

RECITALS:

A. Pursuant to the terms and conditions of that certain Construction Loan Agreement between Bank and Borrower (the "Borrower"), dated April 8, 1998 (the "Loan Agreement"), Bank agreed to extend to the Borrower an acquisition and construction loan in the maximum principal amount not to exceed Twenty-Nine Million Four Hundred Thousand Dollars (\$29,400,000) (the "Loan").

B. The Loan is evidenced by a certain Deed of Trust Note executed by the Borrower payable to the order of Bank, dated April 8, 1998, in the original principal amount of Twenty-Nine Million Four Hundred Thousand Dollars (\$29,400,000) (the "Note").

C. The Loan is secured by the lien of a certain Deed of Trust and Security Agreement executed by the Borrower in favor of Bank, dated April 8, 1998 and recorded April 10, 1998, in the Office of the Recorder of Lancaster County, Nebraska as Instrument No. 98-16463 (the "Deed of Trust").

D. The Loan is further secured by that certain Assignment of Rents and Leases executed by the Borrower in favor of Bank, dated April 8, 1998 and recorded April 10, 1998 in the Office of the Recorder of Lancaster County, Nebraska as Instrument No. 98-16464 (the "Assignment of Rents").

E. In connection with the Loan, Daniel H. Lowe, Michael L. Ebert, Michael N. Helmuth and Scott P. Rehorn (collectively, the "Guarantors"), each executed in favor of Bank their respective (i) Transaction Guaranty, dated as of April 8, 1998 and (ii) Guaranty of Completion, dated as of April 8, 1998, each from the Guarantors to the Bank (collectively, the "Guaranty") (the Loan Agreement, the Note, the Mortgage, the Assignment of Rents and the Guaranty and all other documents evidencing, governing and securing the Loan being sometimes hereinafter collectively referred to as the "Loan Documents").

F. The parties hereto desire to modify the Loan Documents in accordance with the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows:

1. **Defined Terms.** All capitalized terms used herein, except as defined herein, shall have the meanings ascribed thereto in the Loan Agreement.

2. **Loan Amount.** The original principal amount of the Loan, as evidenced, governed and secured by the Loan Documents, is hereby increased by Nine Hundred Thousand Dollars (\$900,000) to Thirty Million Three Hundred Thousand Dollars (\$30,300,000). The sum of One Million Four Hundred Thirty-Three Thousand Six Hundred Sixty-Five and 24/100 Dollars (\$1,433,665.24) remains available for disbursement to Borrower.

3. **Expenses.** Borrower shall pay all costs incidental to this First Modification of Loan Documents, including but not limited to title insurance, survey charges, reasonable attorneys' fees, not to exceed Five Hundred Dollars (\$500), appraisals, insurance, inspecting engineers' and/or architect's fees, environmental fees, and all other incidental expenses of Bank.

4. **Representations and Warranties.** Borrower hereby represents and warrants to Bank to the best of Borrower's knowledge and belief that there does not presently exist any default under the Loan Documents or any event which with the notice or lapse of time or both would constitute a default under the Loan Documents and that each of the representations and warranties set forth in the Loan Documents remain true and correct as of the date hereof, except to the extent said representations and warranties specifically apply to those items explicitly modified by or otherwise disclosed in this Modification, and each of said representations and warranties is hereby incorporated herein by reference and modified as necessary to apply to and cover the undertakings of Borrower evidenced by this Modification.

5. **Continuing Effect.** All other terms, conditions, provisions, representations and warranties set forth in the Loan Documents not specifically relating to those items explicitly modified by or otherwise disclosed in this Modification shall remain unchanged and shall continue in full force and effect. This Modification shall, wherever possible, be construed in a manner

consistent with the Loan Documents; provided, however, in the event of any irreconcilable inconsistency between the terms of this Modification and the terms of the Loan Documents, the terms of this Modification shall control.


6. **Waiver.** No provision hereof shall constitute a waiver of any of the terms or conditions of the Loan Documents, other than those terms or conditions explicitly modified or otherwise affected hereby.

IN WITNESS WHEREOF, Borrower and Bank have caused this First Modification of Loan Documents to be duly executed as of the date and year first above written.

"BORROWER"

R.E.D. CAPITAL MANAGEMENT, L.L.C., a
Kansas limited liability company

By: R.E.D. CAPITAL DEVELOPMENT OF
LINCOLN, L.L.C., a Kansas limited liability
company, its Manager

By:  _____

Printed: JAN LOWE _____

Title: MANAGER _____

STATE OF Missouri)
) SS:
COUNTY OF Jackson)

Before me, a Notary Public in and for said County and State, personally appeared Dan Lowe, known to me to be the Manager of R.E.D. Capital Development of Lincoln, L.L.C., a Kansas limited liability company, Manager of **R.E.D. Capital Management, L.L.C.**, a Kansas limited liability company, and acknowledged before me the execution of the foregoing for and on behalf of said limited liability company for and on behalf of said limited liability company.

Witness my hand and Notarial Seal, this 15th day of October, 1999.

Marta J. Chasteen
Notary Public - Signature

Marta J. Chasteen
Notary Public - Printed

My Commission Expires:

MARTA J. CHASTEEN
Notary Public - Notary Seal
STATE OF MISSOURI
Commissioned in Jackson County
My Commission Expires Feb. 20, 2000

My County of Residence:

Johnson

"BANK"

KEYBANK NATIONAL ASSOCIATION, a national banking association

By: Theodore J. Lewis

Printed: THEODORE J. LEWIS

Title: VICE PRESIDENT

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Theodore J. Lewis, known to me to be a V. P. of **KeyBank National Association**, and acknowledged the execution of the foregoing for and on behalf of said bank.

Witness my hand and Notarial Seal, this 18th day of October, 1999.

Jane E. Butler
Notary Public, State of Indiana
Hamilton County
My Commission Exp. 03/04/2001

Jane E. Butler
Notary Public - Signature

Notary Public - Printed

My County of Residence:

My Commission Expires:

This instrument prepared by Richard L. Johnson, Esquire, JOHNSON, SMITH, PENCE & HEATH, LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204

Legal Description

- Outlot A, Block 1, SouthPointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska; and
- Lot 11, Block 1, SouthPointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska; and
- Outlots A, B, and C and Lots 2, 3, and 4, Block 1, SouthPointe Pavilions 3rd Addition, Lincoln, Lancaster County, Nebraska.

OLA, OLB, OLC
SOPPA 3 (ANS E block)
Lot 2-3-4 Block 1
SOPPA 3

NTC (DG) 34th NTCPL.