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By

RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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-SPACE ABOVE RESERVED FOR RECORDER'S USE-

DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS DEED OF TRUST (the "Instrument") is made this 10 day of December, 1998, by N.C.T.H.P. LIMITED PARTNERSHIP, a Nebraska limited partnership (the "Borrower"), whose address is 4460 Redman Avenue, #1, Omaha, Nebraska 68111, to and for the benefit of COMMERCIAL FEDERAL BANK, A FEDERAL SAVINGS BANK, as Beneficiary and Trustee (the "Lender"), whose address is 2120 South 72nd Street, Attention: Community Investment Officer, Omaha, Nebraska 68124.

WITNESSETH:

Borrower irrevocably grants, conveys, transfers and assigns to Lender, with power of sale, all of Borrower's right, title, and interest, in that real property in Douglas County, Nebraska, described as on Exhibit "A" attached hereto (the "Property").

TOGETHER with all interest which Borrower now has or may hereafter acquire in or to said property and in and to: (a) all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said property; and (b) all buildings, structures, fixtures, tenements, improvements, fixtures, and appurtenances now or hereafter placed thereon, including, but not limited to, all fixtures, apparatus, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with said property, including, but not limited to, those for the purposes of supplying or distributing air cooling, air conditioning, gas, electricity, water, air, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal and other services; and all related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bathtubs, water heaters, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings and furniture, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; and (c) all cabinets, shelving, furniture, displays, lights, machinery and other trade fixtures attached or otherwise installed on said property used for a trade or business, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; and (d) all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Borrower and shares of stock pertaining to such water or water rights, ownership of which affects said property; and (e) the rents, income, issues, and profits of all properties covered by this Instrument; **SUBJECT, HOWEVER,** to the terms and conditions herein set forth. Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to evidence or confirm the lien of this Instrument on any such properties, and shall be included as the personal property of the subject property.

FOR THE PURPOSE OF SECURING:

- (1) Payment of the sum of Sixty-Two Thousand Nine Hundred Eighty-Two Dollars (\$62,982.00) with interest thereon, according to the terms of a Promissory Note of even date herewith, made by Borrower payable to Lender or to order, and all modifications, extensions or renewals thereof, together with any future advances made by Lender (the "Note").
- (2) Payment of such additional sums with interest thereon (a) as may be hereafter advanced by Lender pursuant to this Instrument (herein "Future Advances"); and (b) as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Lender under any provision of this Instrument.
- (3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any other agreements or covenants executed by Borrower relating to the loan secured hereby including an Affordable Housing Program Loan Agreement (together with the Note and this Instrument are referred to as the "Loan Documents").
- (4) Performance by Borrower of each and every monetary obligation to be performed by Borrower under any recorded covenants, conditions and restrictions pertaining to the Property.
- (5) Performance of all agreements of Borrower to pay fees and charges to the Lender relating to the Loan secured hereby.

Return to: Frank J. Mihulka
1000 Commercial Federal Tower
Omaha, NE 68124

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Borrower covenants that Borrower has the right to grant, convey, transfer and assign its interests in the Property to Lender and that Borrower will warrant and defend generally its interests in the same against all claims and demands, except for all matters of record and other liens, easements and restrictions which are prior to the lien created by this Instrument.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER COVENANTS AND AGREES AS FOLLOWS:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall pay when due the principal of and interest on the indebtedness evidenced by the Note and all other sums secured by this Instrument.

2. **TAXES, INSURANCE AND OTHER CHARGES.** Borrower shall pay when due and prior to delinquency (a) the yearly taxes and assessments which may be levied on the Property, and (b) the yearly premium installments for fire and other hazard insurance, and such other insurance covering the Property as Lender may require pursuant to this Instrument. Lender may require Borrower to pay to Lender, in advance, such sums for other taxes, charges, premiums, assessments and impositions relating to Borrower or the Property, payment of which Lender reasonably shall deem necessary to protect any of the liens or security interests of Lender covered by this Instrument ("Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid to Lender by Borrower in a lump sum or in periodic installments, at Lender's option.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may apply, in any amount and in any order as Lender shall determine, in Lender's sole discretion, any Funds held by Lender at the time of application (a) to pay taxes, assessments, insurance premiums and Other Impositions which then are due, or (b) as a credit against any indebtedness secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any unapplied Funds held by Lender.

3. **APPLICATION OF PAYMENTS.** Unless applicable law requires otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the order of priority determined in its good faith discretion.

4. **CHARGES; LIENS.** Borrower shall perform the terms and conditions of any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property.

5. **INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against such hazards, casualties, liabilities and contingencies as may be required under the terms of any lien or liens which may have priority over the lien of this Instrument, or if there are no such liens, then as Lender shall reasonably require. All premiums on insurance policies shall be paid by Borrower making payment when due directly to the carrier.

All insurance policies and renewals thereof shall include a standard mortgagee loss payable clause in favor of and in form acceptable to Lender, which reflects rights of Lender therein as its interests appear. Prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal certificate in form satisfactory to Lender.

In the event of any loss covered by any insurance policies, Borrower shall give immediate written notice to the insurance carrier and to Lender. Subject to the rights of any prior lienholder, Borrower hereby authorizes and empowers Lender (but only if Borrower is in default under the terms of this Instrument) as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder.

If the Property is sold pursuant to the terms of this Instrument or if Lender acquires title to the Property, Lender thereupon shall also be deemed to have acquired exclusively all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to any insurance proceeds resulting from or which may be payable as a consequence of any damage to the Property prior to such sale or acquisition, subject to the rights of any superior lienholder in the Property.

6. **PRESERVATION AND MAINTENANCE OF PROPERTY.** Borrower (a) shall not commit waste or permit any physical deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances therein, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair; (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (f) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender; and (g) shall maintain compliance with all applicable affordable housing program regulations and the Affordable Housing Program Loan Agreement. Neither Borrower

nor any other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

7. **USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent. Borrower shall not violate nor shall Borrower permit or authorize the breach or violation of the terms of any easements, covenants, or restrictions of record upon or affecting the Property. Borrower will not conduct or authorize the generation, storage, treatment, or disposal of any friable asbestos, hazardous waste, or toxic substance on or in a location that will adversely affect the Property and shall promptly provide Lender written notice of (a) its obtaining knowledge of any release of any hazardous or toxic material or oil at or from the Property or any other site owned, occupied, or operated by Borrower or by any person for whose conduct Borrower is responsible or whose liability may result in a lien on the Property; (b) Borrower's receipt of any notice to such effect from any federal, state, or other governmental authority; and (c) loss by such governmental authority in connection with the assessment, containment, or removal of any hazardous or toxic material or oil for which expense or loss Borrower may be liable or for which expense a lien may be imposed on the Property. "Borrower," as that term is used herein, includes Borrower's successors, assigns, agents, servants, and employees.

8. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, building code enforcement, or arrangements or proceedings involving a bankruptcy or decedent, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (a) disbursement of attorneys' fees, (b) entry upon the Property to make repairs or otherwise to protect the same as security for the indebtedness secured by this Instrument, and (c) procurement of satisfactory insurance as provided in this Instrument.

Any amounts disbursed by Lender pursuant to this paragraph shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate as provided in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by any advances made by Lender hereunder. Nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder.

9. **INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property at any time at Lender's option. Lender may at its option at any time, require Borrower, or Lender may arrange to employ or for the employment of an independent and qualified environmental engineer and inspector, acceptable to Lender, to determine if there is any asbestos, petroleum, radon or hazardous material or substance above, in, on, under or from the Property. The failure of Borrower to pay the cost and expense of the same or to cooperate with and permit such inspection shall constitute a default under this Instrument and the other Loan Documents.

10. **BOOKS AND RECORDS.** Borrower shall keep and maintain at all times at Borrower's address stated herein, at the offices of Borrower or its member, or such other place as Lender may approve in writing, complete and accurate books of account and records, in accordance with accepted accounting principles, consistently applied, adequate to reflect correctly the results of the operation of the Property, and copies of all written contracts, budgets, change orders, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

11. **CONDEMNATION.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect or whether by eminent domain or otherwise, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. In the event Borrower is in default in the terms of this Instrument, and subject to the rights of any superior lienholder of the Property, Lender may commence, appear in and prosecute in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any such condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender, subject to the rights of any superior lienholder in the same.

12. **FORBEARANCE BY LENDER NOT A WAIVER.** No waiver by Lender of any right under this Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Instrument or of any provision of this Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

13. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the appropriate records or index for Uniform Commercial Code filings as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. The foregoing prohibition shall not apply to security interests granted by Borrower prior to the date of this Instrument. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided elsewhere in this Instrument.

14. **OCCUPANCY BY TENANTS OF THE PROPERTY.** Borrower shall comply with and observe Borrower's obligations as landlord under all written agreements for occupancy by tenants of the Property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of any written leases now existing or hereafter made of all or any part of the Property. Borrower shall not modify, either orally or in writing, any written lease now existing or hereafter made of all or any part of the Property, or permit an assignment or sublease of such a lease, without Lender's written consent. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Lender thereof and of the amount of said set-off, and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

15. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As part of the consideration for the loan evidenced by the Note, and subject to the rights of any superior lienholders, Borrower assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Upon an event of default by Borrower and subject to the rights of any superior lienholder, Borrower authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents.

Borrower hereby covenants that Borrower will not perform any acts and will not in the future execute any instrument which would prevent Lender from exercising its rights under this paragraph, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents or revenues of the Property for more than one month prior to the due dates of the same. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents or revenues of the Property more than one month prior to the due date of the same.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, and subject to the rights of any superior lienholders, Lender may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property or the conducting of such businesses thereon, all on such terms as are deemed best to protect the security of this Instrument.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents and revenues as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

16. **ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's

creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by this Instrument.

17. **TRANSFERS OF THE PROPERTY/ASSUMABILITY.** If Borrower sells, exchanges, conveys, alienates, assigns, disposes of, encumbers, pledges, or transfers all or any portion of the Property (except as hereinafter provided), or if Borrower executes any agreement or contract creating any right to or any equitable interest in the title to the Property or any part thereof, or executes any agreement or contract granting a possessory right in the Property or any part thereof (including, without limiting the generality of the foregoing, outright conveyance, conveyance or alienation by land installment contract or contract for deed, alienation by lease or rental agreement with an option to purchase, and the granting of deeds of trust, mortgages, liens, and security interests subordinate to this Instrument, but excluding leases made in accordance with the Loan Documents) or if any dissolution of Borrower occurs, then the unpaid balance of the Note and all of the sums secured by this Instrument shall be immediately and automatically due and payable in full, without notice, and Lender may invoke any remedies permitted by law and/or this Instrument. The conveyance or transfer of Borrower's interest in the Property as a result of foreclosure of a subordinate lien or a security interest or a transfer by operation of law (except as otherwise provided below) shall constitute a sale or transfer subject to this paragraph. The foregoing acceleration shall not apply in case of:

- (i) the grant of a leasehold interest in a part of the Property made in accordance with the Loan Documents and not containing an option to purchase; and
- (ii) sales or transfers for fair market consideration of fixtures or any routine personal property used in the operation of the Property, provided that such sales or transfers are incidental to the replacement of like fixtures and personal property of newer and better quality and condition, or such fixtures or personal property are removed in connection with the making of improvements for tenants.

18. **ACCELERATION; REMEDIES.** Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender, at Lender's option, and following the expiration of any notice and cure period as provided in the Note, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may at its option invoke the power of sale and other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports. Upon accelerations, Lender's remedies will include:

- a. **Acceleration and Power of Sale.** If Lender invokes the power of sale, Lender shall give Borrower such notices as are required by the Nebraska Trust Deeds Act ("Act"), as amended from time to time, and shall otherwise comply with the requirements of such Act in giving notices and selling the Property under the power of sale. At any sale conducted hereunder, it shall not be necessary for Lender to have physical or constructive possession of the Property. In the event of sale, Borrower, its successors and assigns shall immediately upon the making of the sale, to the extent not prohibited by applicable law, surrender and deliver possession of the Property to the purchaser at such sale. In the event of Borrower's failure to do so, it shall thereupon from and after the date of such sale be deemed by purchaser, at its option, a trespasser or tenant at will on such Property. Purchaser, at its option, shall then be entitled to institute and maintain an action for eviction or forcible detainer of such Property in any court of jurisdiction in the county in which such Property, or any part thereof, is situated.

The Trustee shall deliver to the purchaser a Trustee's Deed upon sale conveying the Property so sold without any covenant or warranty, expressed or implied, except as permitted or arise under the Act. The recitals in the Trustee's Deed shall be prima facie evidence of the truth of the statements made therein. The Trustee shall apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including, but not limited to, Trustee's and attorneys' fees and costs of title evidence; (ii) to all sums secured by this Instrument in such order as Lender, in Lender's sole discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto.

- b. **Foreclosure as Mortgage.** At Lender's option, this Instrument may be foreclosed in any manner permitted by the laws of the State of Nebraska for foreclosure of mortgages.
- c. **Receiver.** In addition to all other remedies herein provided, Lender shall, as a matter of right, be entitled to an ex parte appointment of a receiver or receivers for all or any part of the Property without regard to the value of the Property or the solvency of any person or persons liable for the payment of the Note and Borrower does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive

Lender of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee, or other appointee by virtue of any court order, statute, or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income. Any money advanced by Lender in connection with any such receivership shall be a part of the indebtedness secured hereby and shall be payable by Borrower to Lender as provided in this Instrument. The receiver or its agents shall be entitled to enter upon and take possession of any and all of the Property. The receiver, personally or through its agents or attorneys, may exclude Borrower and its agents, servants, and employees wholly from the Property, and have, hold, use, operate, manage, and control the same and each and every part thereof, and keep insured the properties, equipment, and apparatus provided or required for use in connection with the business or businesses operated on the Property, and make all such useful alterations, additions, betterments, and improvements as the receiver may deem judicious. Such receivership shall, at the option of Lender, continue until full payment of all sums hereby secured, or until title to the Property shall have passed by foreclosure sale under this Instrument and the period of redemption, if any, shall have expired.

19. **ENVIRONMENTAL MATTERS.** To the fullest extent permitted by law, Borrower agrees to defend, indemnify, protect, release and hold harmless Lender (whether as Beneficiary, Mortgagee in Possession, as a successor in interest to Borrower by virtue of foreclosure of the Note or otherwise, as owner or operator of the Property or in any other capacity), its affiliates, subsidiaries, parties to whom Lender sells loan participations (if applicable), the successors and assigns of each and its and their directors, officers, employees, attorneys, and agents (collectively, the "Lender Parties" or singularly a "Lender Party") from and against any and all claims, suits, liabilities, actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, liabilities (including strict liabilities), fines, penalties, charges, fees, attorneys' fees and costs, engineers' fees, environmental consultants' fees and investigation costs, costs of Remediation (whether or not performed voluntarily), and any other expenses (including expenses incurred in enforcing this indemnity), judgments, awards, amounts paid in settlement, punitive damages, and foreseeable and unforeseeable consequential damages (collectively, "Losses") incurred by or threatened against Lender or a Lender Party arising directly or indirectly out of, or any way related to:

- a. Violations of any environmental law in connection with the Property or operations thereon, including but not limited to any failure by Borrower or any tenants or other users of the Property to comply with any environmental law.
- b. The presence of any contaminant in, on or under the Property including, but not limited to the use, treatment, storage, disposal, transportation, transfer, generation, processing, production, refining, control, management or handling of contaminants in any way connected with the Property.
- c. The release of any contaminants in, on, under or from the Property, or migrating to the Property, including but not limited to costs of remediation of contamination on properties to which such contaminants may have migrated.
- d. Any loss of priority of Lender's title (or lien on) the Property directly or indirectly arising out of or in any way relating to any of the foregoing or any imposition of any lien or other encumbrance on title to the Property or indirectly arising out of or in any way relating to any of the foregoing.

Borrower understands, acknowledges and agrees that its liabilities to Lender pursuant to this indemnity shall be binding upon Borrower regardless of whether conditions described in this paragraph result from acts or omissions of Borrower or any other person or from circumstances (whether or not on the Property) which occur or exist prior to or subsequent to the date hereof.

20. **REMEDIES CUMULATIVE.** Each remedy herein provided shall not be exclusive of any other remedy herein or now or hereafter existing by law, and may be exercised concurrently, independently or successively in any order whatsoever. Every power or remedy hereby given to Borrower or to Lender, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Lender holds any additional security for any obligation secured hereby, Lender may enforce the sale thereof, at Lender's option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owed hereunder to it by Borrower the whole or any part of any indebtedness owing by it to Borrower, and the Lender is hereby authorized and empowered at its option, without any further obligation to do, and without affecting the obligations hereof, to apply towards the payment of any indebtedness secured hereby of the Borrower to the Lender, any and all sums of money belonging to Borrower which the Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, any unapplied Funds held by Lender. No offset by Lender hereunder shall relieve Borrower from paying installments on the obligation secured hereby as they become due.

21. **NOTICE.** Except for any notice required under applicable law to be given in another manner, all notices and other communications required or permitted under this Instrument shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or sent by overnight courier service, and, if mailed, shall be deemed received on the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third business day after deposit in the mail in the continental United States, postage prepaid, addressed to the party to receive such notice at the address set forth above, and if sent by overnight courier shall be deemed received on the day on which such notice is actually received by the party to whom it is addressed or the date delivery is refused, either as indicated in the records of such courier service. Notice of change of address shall be given by written notice in the manner set forth in this paragraph.

22. **SUCCESSORS AND ASSIGNS BOUND; AGENTS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of this Instrument. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender.

23. **GOVERNING LAW; SEVERABILITY.** The loan contract between the parties, including this Instrument, the Note and any other obligation which this Instrument secures, is made pursuant to and shall be construed and governed by the laws of the United States and the rules and regulations promulgated thereunder, and, to the extent the laws of a state are applicable (including laws regarding usury), by the laws of the State of Nebraska and the rules and regulations promulgated thereunder. If any paragraph, clause or provision of this Instrument, the Note or any other notes or obligations secured by this Instrument is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses and provisions of this Instrument or the Note or other notes or obligations secured by this Instrument.

24. **TIME OF ESSENCE.** Time is of the essence for all of Borrower's obligations hereunder and the Loan Documents.

25. **RECONVEYANCE.** Upon payment of all sums secured by this Instrument, Lender shall cause the same to be reconveyed.

26. **MISREPRESENTATION OR NONDISCLOSURE.** Borrower has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the Note which this Instrument secures and, in the event that Borrower has made any material misrepresentations or failed to disclose any material fact, Lender, at its option and without prior notice, shall have the right to declare the indebtedness secured by this Instrument, irrespective of the maturity date specified in the Note, immediately due and payable.

27. **GENERAL PROVISIONS.**

- a. This Instrument applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns.
- b. The term "Lender" shall mean the owner and holder (including a pledgee) of the Note or notes secured hereby, whether or not named as Lender herein.
- c. Wherever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural, and vice versa.
- d. Captions and paragraphs headings used herein are for convenience only, are not part of this Instrument, and shall not be used in construing it.

28. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option, so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that such notes are secured hereby.

29. **CORRECTION OF DEFECTS.** Borrower, upon request of Lender, shall promptly correct any defect, error or omission that may be discovered by Lender in the content of this Instrument or in the execution or acknowledgment hereof. In addition, Borrower shall do such further acts as may be deemed necessary by Lender or that Lender may reasonably request to carry out more effectively the purposes of this Instrument, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the first lien and security interest hereof.

30. **INVALID PROVISIONS.** Should any term, provision, covenant or condition of this Instrument be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Instrument, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. In addition, should this Instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with the borrower being the Mortgagor and Lender being the Mortgagee.

31. SUBORDINATION OF THIS INSTRUMENT. Notwithstanding any other provision contained herein or in the Promissory Note ("Note") secured hereby, it is agreed that the execution of the Note shall impose no personal liability upon the Borrower for payment of the indebtedness evidenced thereby and in the event of a default, the holder of the Note shall look solely to the Property subject to this Instrument and to the rents, issues, and profits thereof in satisfaction of the indebtedness evidenced by the Note and will not seek or obtain any deficiency or personal judgment against Borrower except such judgment or decree as may be necessary to foreclose or bar its interest in the Property subject to this Instrument and all other property mortgaged, pledged, conveyed, or assigned to secure payment of the Note; PROVIDED, that nothing in this condition and no action so taken shall operate to impair any obligation of Borrower under the Regulatory Agreement with the Secretary of Housing and Urban Development.

Lender, for itself and its successors and assigns, covenants and agrees that all of its rights and powers under this Instrument are subordinate and subject to the rights of the Beneficiary under a Deed of Trust in favor of the Secretary of Housing and Urban Development, whether executed prior to or subsequent to this Instrument, and which relates to the Regulatory Agreement ("First Deed of Trust"), and to the rights of the Secretary of Housing and Urban Development under the Regulatory Agreement. This Instrument is subordinate and subject to that certain Regulatory Agreement which has been incorporated into that certain First Deed of Trust by this reference as though set forth herein in its entirety.

Borrower, for itself, its successors and assigns, specifically acknowledges that this Instrument and Note are subject to any HUD insured First Deed of Trust or Mortgage and Regulatory Agreement recorded now or in the future for the subject Property. In the event that Borrower herein commits a default under said First Deed of Trust and the holder thereof initiates foreclosure proceedings, such default shall constitute a default under this Instrument.

Lender, for itself and its successors and assigns, further covenants and agrees that in the event of the appointment of a receiver or of the appointment of Lender as Lender-in-possession, in any action by Lender, its successors or assigns, to foreclose this Instrument, no rents, revenue, or other income of the project collected by the receiver or by the Lender-in-possession shall be utilized for the payment of interest, principal, or any other charges due and payable under this Instrument, except from surplus cash available for distribution, if any, as the term is defined in the Regulatory Agreement; and further, the receiver or Lender-in-possession shall operate the project in accordance with all the provisions of the First Deed of Trust and the Regulatory Agreement.

IN WITNESS WHEREOF, Borrower has caused this Instrument to be executed by its representative thereunto duly authorized.

N. C. T. H. P. LIMITED PARTNERSHIP, a Nebraska limited partnership

By: New Creations, Inc., a Nebraska corporation, General Partner

By: Jeremiah McGhee
Jeremiah McGhee, Executive Director

By: Siena/Francis House, General Partner,

By: Paul Koch
Paul Koch, Executive Director

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

On this 10 day of December, 1998, before me a notary public in and for said State of Nebraska, personally appeared Jeremiah McGhee, Executive Director of New Creations, Inc., a Nebraska corporation, a General Partner of N. C. T. H. P. LIMITED PARTNERSHIP, a Nebraska limited partnership, for and on behalf of the partnership.



Kathy Gaines
Notary Public

My commission expires: 8-2-2000

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 10 day of December, 1998, before me a notary public in and for said State of Nebraska, personally appeared Paul Koch, Executive Director of Siena House/Francis House, a General Partner of N.C.T.H.P. LIMITED PARTNERSHIP, a Nebraska limited partnership, for and on behalf of the partnership.



Kathy Gaines
Notary Public

My commission expires: 8-2-2000

EXHIBIT "A"

LEGAL DESCRIPTION

30-32460

Parcel I: Lots 99, 100, 101, 102, and a thirty-five foot railroad right-of-way adjoining on the North, and Lot 98 Redman's Subdivision, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

30-21900

Parcel II: Lot 19, except the West 8 1/2 feet thereof, and Lots 20 and 21, in Laurel Park, and addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

50 + 4 = 54