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RICHARD N TAKECIT
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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**THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT**

RECORDING REQUESTED BY:

TRI CAPITAL CORPORATION

WHEN RECORDED MAIL TO:

Paul Renno, Esq.
TRI CAPITAL CORPORATION
100 Pine Street, 16th Floor
San Francisco, CA 94111

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

TRI CAPITAL CORPORATION

MORTGAGE

Section 207, pursuant to Section 223(f) of the Housing Act of 1959

Project No. 103-11013-REF/EC

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MORTGAGE

THIS MORTGAGE, made and executed this 1st day of March, A.D. ~~19~~²⁰⁰⁰, by and between Westpoint II Apartments Limited Partnership, a Nebraska limited partnership ~~a corporation~~ organized and existing under the laws of Nebraska, having its principal place of business at 13057 West Center Road, Omaha, Nebraska, 68144, party of the first part, hereinafter with its successors and assigns called the Mortgagor, and TRI CAPITAL CORPORATION

a corporation organized and existing under the laws of California, 94111, having its principal place of business at 100 Pine St., 16th Floor, San Francisco, CA, party of the second part, hereinafter with its successors and assigns called the Mortgagee.

WITNESSETH: That the said Mortgagor, for and in consideration of the sum of Two Million One Hundred Twenty-nine Thousand Eight Hundred and No/100ths Dollars (\$2,129,800.00) paid by the Mortgagee, the receipt of which is hereby acknowledged, has Granted and Sold and by these presents does Grant, Bargain, Sell, Convey and Confirm unto the Mortgagee, its successors and assigns, forever, the following-described real estate, situated in the City of Omaha, County of Douglas, and State of Nebraska, to wit:

Notwithstanding any other provision contained herein or in the Note, it is agreed that the execution of the Note shall impose no personal liability upon the Mortgagor 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 Mortgage, and any security agreement 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 the Mortgagor except such judgment or decree as may be necessary to foreclose or bar Mortgagor's interest in the property subject to this Mortgage 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 the Mortgagor under the Regulatory Agreement herein referred to and made a part hereof.

Legal Description attached hereto and incorporated herein by this reference as Exhibit "A".

~~of the Sixth Principal Meridian, containing in all _____ acres according to Government survey;~~

TOGETHER with the privileges and appurtenances to the same belonging, and all of the rents, issues, and profits which may arise or be had therefrom; and

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected, or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, blinds and other furnishings; and together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein. All articles of personal property owned by the Mortgagor and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands herein described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all goods and chattels and personal property as are ever used or furnished in operating a building or the activities conducted therein. similar to the one herein described and referred to, and all renewals or replacements thereof

or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner. It is hereby agreed that to the extent permitted by law all of the foregoing property and fixtures are to be deemed and held to be a part of and affixed to the realty.

TO HAVE AND TO HOLD the premises and property above described, with all the appurtenances thereunto belonging unto the Mortgagee, and to its successors and assigns, forever. The Mortgagor represents to, and covenants with, the Mortgagee, that the Mortgagor has good right to sell and convey said premises; that they are free from encumbrance; and that the Mortgagor will warrant and defend the same against the lawful claims of all persons whomsoever; and the said Mortgagor hereby relinquishes all rights of homestead, either in law or in equity, and all other contingent interests of the Mortgagor in and to the above-described premises, the intention being to convey hereby an absolute title, in fee simple, including all rights of homestead, and other rights and interests as aforesaid.

PROVIDED NEVERTHELESS, that the Mortgagor is justly indebted to the Mortgagee in the principal sum of Two Million One Hundred Twenty-nine Thousand Eight Hundred and no/100ths Dollars (\$2,129,800.00) and that the Mortgagor shall well and truly pay or cause to be paid to the Mortgagee, or order, the principal sum as provided in and evidenced by its certain Promissory Note (or any Note in renewal or extension thereof) of even date herewith; and shall further pay all additional sums and advances according to the terms hereof as the Mortgagee may advance to the Mortgagor and also any and all sums now or hereafter due from the Mortgagor to the Mortgagee. Said Note shall bear interest from date on the outstanding balance at Eight and Thirty-three Hundredths (8.33%) per cent per annum, payable in monthly installments beginning on the first day of the month following the date hereof with a final maturity of April 1, 2035. Said Note is identified as being secured hereby by a certificate thereon. All the terms of said Note are incorporated by reference, and this conveyance shall secure any and all extensions of said Note however evidenced. This Mortgage is to remain in full force and effect until all conditions and covenants of said Mortgage are performed, at which time this Mortgage shall be null and void.

And shall perform each and every covenant, condition, and agreement herein contained, then these presents shall be void, otherwise to remain in full force and effect.

The Mortgagor in order more fully to protect the security of this Mortgage, agrees:

1. That Mortgagor will pay the Note at the times and in the manner provided therein;
 2. That Mortgagor will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Mortgage was executed;
 3. That the Regulatory Agreement, if any, executed by the Mortgagor and the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, which is being recorded simultaneously herewith, is incorporated in and made a part of this Mortgage. Upon default under the Regulatory Agreement and upon the request of the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, the holder of the Note, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;
 4. That all rents, profits and income from the property covered by this Mortgage are hereby assigned to the holder of the Note for the purpose of discharging the debt hereby secured. Permission is hereby given to Mortgagor so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Regulatory Agreement;
 5. That upon default hereunder the holder of the Note shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;
 6. That at the option of the Mortgagor the principal balance secured hereby may be reamortized on terms acceptable to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner if a partial prepayment results from an award in condemnation in accordance with provisions of Paragraph 8 herein, or from an insurance payment made in accordance with provisions of Paragraph 7 herein, where there is a resulting loss of project income;
 7. That the Mortgagor will keep the improvements now existing or hereafter erected on the deeded property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner upon the insurance of the Mortgage and other hazards as may be required from time to time by the holder of the Note, and all such insurance shall be evidenced by standard Fire and Extended Coverage Insurance Policy or Policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80% of the Insurable Values or not less than the unpaid balance of the insured Mortgage, whichever is the lesser, and in default thereof the holder of the Note shall have the right to effect insurance. Such policies shall be endorsed with standard Mortgagee clause with loss payable to the holder of the Note and the Secretary of Housing and Urban Development as interest may appear, and shall be deposited with the holder of the Note;
- That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinabove provided, the amounts paid by any insurance company in pursuance of the contract of insurance to the extent of the indebtedness then remaining unpaid, shall be paid to the holder of the Note, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises;
8. That all awards of compensation in connection with condemnation for public use of or a taking of any of that property, shall be paid to the mortgagee to be applied to the amount due under the Note secured hereby in (1) amounts equal to the next maturing installment or installments of principal and (2) with any balance to be credited to the next payment due under the Note. That all awards of damages in connection with any condemnation for public use of or injury to any residue of that property, shall be paid to the mortgagee to be applied to a fund held for and on behalf of the mortgagor which fund shall, at the option of the mortgagee, and with the prior approval of the Secretary of Housing and Urban Development, either be applied to the amount due under the Note as specified in the preceding sentence, or be disbursed for the restoration or repair of the damage to the residue. No amount applied to the reduction of the principal amount due in accordance with (1) shall be considered an optional prepayment as the term is used in this Mortgage and the Note secured hereby, nor relieve the mortgagor from making regular monthly payments commencing on the first day of the first month following the date of receipt of the award. The Mortgagee is hereby authorized in the name of the mortgagor to execute and deliver valid acquittances for such awards and to appeal from such awards.
 9. That the Mortgagor, together with and in addition to the monthly payments under the terms of the Note secured hereby, will pay to the Mortgagee monthly, beginning on the first day of the first month after the date hereof and of each month thereafter until the said Note is fully paid, the following sums:
 - (a) An amount sufficient to provide the Mortgagee with funds to pay the next mortgage insurance premium if this instrument and the Note secured hereby are insured, or a monthly service charge, if they are held by the Secretary of Housing and Urban Development, as follows:
 - (1) If and so long as said Note of even date and this instrument are insured or are reinsured under the provisions of the National Housing Act, an amount sufficient to accumulate in the hands of the Mortgagee one month prior to its due date the annual mortgage insurance premium, in order to provide such Mortgagee with funds to pay such premium to the Federal Housing Commissioner pursuant to the National Housing Act, as amended, and applicable Regulations thereunder, or

- (II) If and so long as said Note of even date and this instrument are held by the Secretary of Housing and Urban Development, a monthly service charge in an amount equal to 1/12 of 1/2% of the average outstanding principal balance due on the Note computed for each successive year beginning with the first day of the month following the date of this instrument, if the Secretary of Housing and Urban Development is the Mortgagee (Beneficiary) named herein, or the first day of the month following assignment, if the Note and this instrument are assigned to the Secretary of Housing and Urban Development, without taking into account delinquencies or prepayment;
- (b) A sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes and assessments next due on the premises covered hereby (all as estimated by the Mortgagee) less all sums already paid therefore divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by Mortgagee in trust to pay said ground rents, premiums, water rates, taxes, and special assessments.
- (c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid each month in a single payment to be applied by Mortgagee to the following items in the order set forth:
- (I) premium charges under the Contract of Insurance with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner or service charge;
 - (II) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums;
 - (III) interest on the Note secured hereby;
 - (IV) amortization of the principal of said Note;

10. In the event the Mortgagor fails to pay any sums provided for in this Mortgage, the Mortgagee, at its option, may pay the same. Any excess funds accumulated under (b) of the preceding paragraph remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefor, or if the Mortgagor shall fail to pay any other governmental or municipal charge, the Mortgagor shall forthwith make good the deficiency or pay the charge before the same becomes delinquent or subject to interest or penalties and in default thereof the Mortgagee may pay the same. All sums paid by the Mortgagee and any sums which the Mortgagee may be required to advance to pay mortgage insurance premiums shall be added to the principal of the debt secured hereby and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Mortgage Insurance by prepayment of the Mortgage in full, or otherwise (except as hereinafter provided), accumulations under (a) of the preceding paragraph hereof not required to meet payments due under the Contract of Mortgage Insurance, shall be credited to the Mortgagor. If the property is sold under foreclosure or is otherwise acquired by the Mortgagee after default, any remaining balance of the accumulations under (b) of the preceding paragraph shall be credited to the principal of the Mortgage as of the date of the commencement of foreclosure proceedings or as of the date the property is otherwise acquired; and accumulations under (a) thereof shall be likewise credited unless required to pay sums due the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner under the Contract of Mortgage insurance;

11. That the Mortgagor will pay all taxes which may be levied upon the Mortgagee's interest in said real estate and improvements, and which may be levied upon this Mortgage or the debt secured hereby (but only to the extent that such is not prohibited by law and only to the extent that such will not make this loan usurious), but excluding any income tax, State or Federal, imposed on Mortgagee, and will file the official receipt showing such payment with the Mortgagee. Upon violation of this undertaking, or if the Mortgagor is prohibited by any law now or hereafter existing from paying the whole or any portion of the aforesaid taxes, or upon the rendering of any court decree prohibiting the payment by the Mortgagor of any such taxes, or if such law or decree provides that any amount so paid by the Mortgagor shall be credited on the mortgage debt, the Mortgagee shall have the right to give ninety days' written notice to the owner of the mortgaged premises, requiring the payment of the mortgage debt. If such notice be given, the said debt shall become due, payable, and collectible at the expiration of said ninety (90) days.

12. That Mortgagor will not commit, permit, or suffer waste, impairment, or deterioration of said property or any part thereof, and in the event of the failure of the Mortgagor to keep the buildings on said premises and those to be erected on said premises, or improvements thereon, in good repair, the Mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof, and any sums paid for such repairs shall bear interest from the date of payment at the rate specified in the Note, shall be due and payable on demand and shall be fully secured by the Mortgage;

13. That if there shall be a default in any of the terms, conditions, or covenants of this Mortgage, or the Note secured hereby, then any sums owing by the Mortgagor to the Mortgagee shall, at the option of the Mortgagee, become immediately due and payable. The Mortgagee or any holder of this Mortgage and the Note secured hereby shall then have the right to enter into the possession of the mortgaged premises and collect the rents, issues, and profits thereof. In any action to foreclose, the holder of this Mortgage shall be entitled to the appointment of a receiver of the rents and profits of the mortgaged premises as a matter of right and without notice with power to collect the rents, issues, and profits of said mortgaged premises, due and becoming due during the pendency of such foreclosure suit, such rents and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by this Mortgage, without regard to the value of the mortgaged premises or the solvency of any person or persons liable for the payment of the mortgage indebtedness. This Mortgagor for itself and any subsequent owner hereby waives any and all defenses to the application for a receiver as above and hereby specifically consents to such appointment without notice, but nothing herein contained is to be construed to deprive the holder of the Mortgage of any other right, remedy, or privilege it may now have under the law to have a receiver appointed. The provision for the appointment of a receiver of the rents and profits and the assignment of such rents and profits is made an express condition upon which the loan hereby secured is made;

14. That no waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the Note secured hereby;

15. That all payments made by the Mortgagee to remedy a default by the Mortgagor as aforesaid and the total of any payment or payments due from the Mortgagor to the Mortgagee and in default shall be added to the debt secured by this Mortgage and shall be repaid to the Mortgagee upon demand. Any such sum and interest thereon at the rate specified in the Note shall be a lien on the premises, prior to any other lien attaching or accruing subsequent to the lien of this Mortgage;

16. That so long as the Mortgage is insured under the provisions of the National Housing Act or held by the Secretary of Housing and Urban Development, it will not voluntarily create or permit to be created against the property subject to this Mortgage any lien or liens inferior or superior to the lien of this Mortgage, and further it will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises;

17. That the improvements about to be made upon the premises above described and all plans and specifications comply with all municipal ordinances and regulations made or promulgated by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the fire rating or inspection organization, bureau, association or office which are now or may hereafter become applicable to the premises above described;

18. ~~That the funds to be advanced herein are to be used in the construction of certain improvements on the lands herein described, in accordance with a building loan agreement dated _____, 19____, between the Mortgagor and the Mortgagee, which building loan agreement the Mortgagor covenants to perform; if the construction of the~~

improvements to be made pursuant to said building loan agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lock-outs, the Mortgagee, after due notice to the Mortgagor or any subsequent owner, is hereby invested with full and complete authority to enter upon the said premises, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Mortgagor, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by the Mortgagee (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Mortgage and shall be due and payable on demand with interest at the rate specified in the Note, but no such advances shall be insured unless same are specifically approved by the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner prior to the making thereof. The principal sum and other charges provided for herein shall, at the option of the mortgagee or holder of this Mortgage and the Note secured hereby, become due and payable on the failure of the Mortgagor to keep and perform any of the covenants, conditions, and agreements of said building loan agreement. This covenant shall be terminated upon the completion of the improvements to the satisfaction of the Mortgagee and the making of the final advance as provided in said building loan agreement;

19. That the Mortgagor covenants and agrees that so long as this Mortgage and the said Note secured hereby are insured under the provisions of the National Housing Act, or held by the Secretary of Housing and Urban Development, it will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, creed or national origin;

20. That as additional and collateral security for the payment of the Note described and all sums to become due under this Mortgage, the Mortgagor hereby assigns to the Mortgagee all profits, revenues, royalties, rights, and benefits accruing to the Mortgagor under any and all oil and gas leases on said premises, with the right to receive and receipt for the same and apply them to said indebtedness as well before as after default in the conditions of this Mortgage, and the Mortgagee may demand, sue for, and recover any such payments when due and payable, but shall not be required so to do. This assignment is to terminate and become null and void upon release of this Mortgage;

21. That if the Mortgagor fails to make any payments of money when the same become due, or fails to conform to and comply with any of the conditions or agreements contained in this Mortgage, or the Note which it secures, then the entire principal sum and accrued interest shall at once become due and payable, at the election of the Mortgagee; and this Mortgage may thereupon be foreclosed immediately for the whole of said money, interest, monthly payments, costs, ground rents, taxes, and the cost of extending the abstract of title from the date of this loan to the time of commencing such foreclosure suit, all advances and interest, and a reasonable attorney's fee, all of which shall be included in the decree of foreclosure; and the contract embodied in this Mortgage and the Note secured hereby, shall in all respects be governed, construed, and adjudged by the laws of Nebraska, where the same is made.

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural and the plural the singular.

The foregoing conditions, all and singular, being performed according to their natural and legal import, this conveyance shall be void and said premises released at the expense of the Mortgagor; otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, the said Mortgagor has caused these presents to be signed in its name by its President, attested by its Secretary, and its corporate seal to be hereunto affixed the day and year first above written.

By Westpoint II Apartments Limited Partnership,
a Nebraska limited partnership *President*

~~In the presence of~~

ATTEST:

By: Stanley C. Silverman
Stanley C. Silverman *Secretary*
General Partner **[CORPORATE SEAL]**

STATE OF Nebraska)
COUNTY OF) ss:

On this _____ day of _____, 19____, before me,
in and for said County, personally came the above-named _____ President, and
_____, Secretary, of _____, who are
personally known to me to be the identical persons whose names are affixed to the above mortgage as
President and _____ Secretary of said corporation and each acknowledged the instrument to be his voluntary
act and deed and the voluntary act and deed of said corporation. Witness my hand and seal the date last
aforesaid.

~~My commission expires on the _____ day of _____, 19____~~

STATE OF NEBRASKA

LOAN No. 103-11013-REF/EC

Mortgage

Westpoint II Apartments Limited Partnership
a Nebraska limited partnership

TO

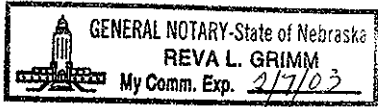
TRI Capital Corporation,
a California corporation

STATE OF NEBRASKA,) ss
Douglas County)
Filed for record this _____ day
of March, A. D. 19____
at _____ o'clock M., and
entered in Numerical Index, and recorded in
Book _____ of Mortgages, on
Page _____ of Douglas
County.

Register of Deeds

State of Nebraska)
)ss.
County of Douglas)

The foregoing instrument was acknowledged before me this 23rd day of March, 2000,
by Stanley C. Silverman, General Partner of Westpoint II Apartments Limited
Partnership, a Nebraska Limited Partnership, on behalf of the Partnership.



Reva L. Grimm
Notary

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT A

PART OF LOT 21 WESTWOOD HEIGHTS 12TH ADDITION, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY, SAID POINT BEING 110.0 FEET EAST OF THE WEST LINE OF THE SW1/4 OF SECTION 31, T15N, R12E OF THE 6TH P.M.; THENCE NORTH 0°00'44" EAST (ASSUMED BEARING) ON A LINE 110.0 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SW1/4, 595.0 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°00'44" EAST, ON SAID LINE, 846.81 FEET; THENCE NORTH 89°54'44" EAST, 250.55 FEET TO THE WEST LINE OF LOTS 1008 THRU 1024, WESTWOOD HEIGHTS 14TH ADDITION; THENCE SOUTH 0°00'44" WEST, ON SAID WEST LINE 848.0 FEET; THENCE SOUTH 89°52'12" WEST, 249.65 FEET TO THE POINT OF BEGINNING.