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RICHARD H. DAKLICH  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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**Second Deed of Trust**

THIS SECOND DEED OF TRUST is made this 21<sup>st</sup> day of December, 1999, by and among St. James Manor, L.P., a Nebraska limited partnership ("Trustor"), whose mailing address is 3300 North 60th Street, Omaha, Nebraska 68104, Michael D. Matejka, ("Trustee"), whose mailing address is 1100 Woodmen Tower, Omaha, Nebraska 68102-2002 and St. James Manor, Inc., a Nebraska non-profit corporation ("Beneficiary"), whose mailing address is 3300 North 60th Street, Omaha, Nebraska 68104.

FOR VALUABLE CONSIDERATION, Trustor irrevocably transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions of this Deed of Trust, the real property located in the County of Douglas, State of Nebraska, and described as follows (the "Property"):

as described on Exhibit "A" attached hereto

TOGETHER WITH all interest which Trustor now has or may hereafter acquire in or to said Property and in or to all rents, easements, appurtenances, hereditaments, interests in adjoining roads, streets and alleys, improvements and buildings of any kind situated thereon and all personal property that may be or hereafter become an integral part of such buildings and improvements, all crops raised thereon, and all water rights.

The Property and the entire estate and interest conveyed to the Trustee are referred to collectively as the "Trust Estate."

Trustor covenants that Trustor is lawfully seized of the Trust Estate hereby conveyed and has the right to grant, convey, transfer and assign the Trust Estate to the Trustee and that Trustor will warrant and defend generally the title to the Trust Estate against all claims and demands and that the Trust Estate is free of all liens except for the first mortgage lien to Federal National Mortgage Association.

**THIS CONVEYANCE IS GIVEN FOR THE PURPOSE OF SECURING:**

- a. Payment of the principal sum of One Million Seven Hundred Ninety-One Thousand Eight Hundred Thirteen Dollars and Thirteen Cents (\$1,791,813.13) with interest thereon evidenced by that certain Promissory Note (the "Note") executed by Trustor, which has been delivered and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof together with any future advances made by Beneficiary, and
- b. Payment of all sums advanced by Beneficiary for any reason to protect the Trust Estate, with interest thereon at the maximum rate allowed by law.

This Deed of Trust, the Note, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby are referred to collectively as the "Loan Documents."

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

- 1. **PAYMENT OF INDEBTEDNESS.** Trustor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Documents.
  - 2. **TAXES.** Trustor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Trust Estate or any part thereof, before delinquency, without notice or demand and shall provide proof of payment to Beneficiary. Trustor shall pay all taxes and assessments which may be levied upon Beneficiary's interest herein or upon this Deed of Trust or the debt secured hereby, without regard to any law that may be enacted imposing payment of the whole or any part thereof upon the Beneficiary.
  - 3. **INSURANCE.** Trustor shall maintain fire and extended coverage insurance insuring the improvements and buildings constituting part of the Trust Estate for an amount no less than the amount of the unpaid principal balance of the Note, including all extensions or modifications thereof. Such insurance policy shall contain a standard mortgage clause in favor of Beneficiary and shall not be cancelable, terminable or modifiable without ten (10) days prior written notice to Beneficiary. A certificate showing proof of such insurance shall be delivered to Beneficiary.
- In the event Trustor fails to pay the property taxes or insurance, Beneficiary, at Beneficiary's option, may pay for such items and such amounts shall be immediately due to Beneficiary from Trustor, together with interest thereon, at the rate of sixteen percent (16%) per annum.
- 4. **REPAIRS.** Trustor shall promptly repair, maintain and replace the Trust Estate or any part thereof so that, except for ordinary wear and tear, the Trust Estate shall not deteriorate. In no event shall Trustor commit waste on or to the Trust Estate. Trustor shall pay when due all claims for labor performed on or materials furnished to the Trust Estate, and shall comply with all laws affecting the property or requiring any alterations or improvements to be made thereon.
  - 5. **ACTIONS AFFECTING TRUST ESTATE.** Trustor shall appear in and contest any action or proceeding purporting to affect the security thereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Trustor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys, and attorney's fees. Any such costs and expenses not paid within ten (10) days of written demand shall draw interest at the default rate provided in the Note.
  - 6. **EMINENT DOMAIN.** Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner including deed in lieu of Condemnation ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payment or relief therefor, and shall be entitled at its option

RETURN: Mike Craighal  
14523 Grant St  
Omaha, Ne 68114

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to commence, appear in and prosecute in its own name any action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Trustor (the "Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may require.

7. **APPOINTMENT OF SUCCESSOR TRUSTEE.** Beneficiary may, from time to time, substitute, in the manner prescribed by law, a successor or successors to the Trustee named herein or acting hereunder. The successor Trustee shall succeed to all the predecessor's title, rights, powers and duties without conveyance from the predecessor trustee.

8. **SUCCESSORS AND ASSIGNS.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

9. **INSPECTIONS.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

10. **ASSIGNMENT OF LEASES AND RENTS.** Beneficiary, 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 the Beneficiary as mortgagee-in-possession, in any action by the Beneficiary, its successors or assigns, to foreclose the Deed of Trust, no rents, revenue or other income of the project collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal or any other charges due and payable under this Deed of Trust, except from surplus cash available for distribution, if any, as the term is defined in the Regulatory Agreement and further, the receiver or mortgagee-in-possession shall operate the project in accordance with all the provisions of the first mortgage and the Regulatory Agreement.

11. **EVENTS OF DEFAULT.** Any of the following events shall be deemed an event of default hereunder:

- a. Trustor shall have failed to make payment of any installment of interest, principal, or principal and interest or any other sum secured hereby when due; or
- b. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in this Deed of Trust or in any of the Loan Documents.

12. **ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES.** Should an event of default occur Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Beneficiary may:

- a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any event of default, including the rights to exercise the power of sale;
- b. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
- c. Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Trust Estate to be sold, by exercise of the power of sale herein contained, which notice Trustee shall cause to be duly filed for record in the appropriate Official Records of the County in which the Trust Estate is located.

13. **FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

- a. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash or cash equivalent payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.
- b. As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title and reasonable attorney fees, Trustee shall apply the proceeds of sale to payment of (i) all sums expended under the terms hereof, not then prepaid, with accrued interest; (ii) all other sums secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against Trustor.
- c. Trustee may in the manner provided by law, postpone sale of all or any portion of the Trust Estate.

14. **REMEDIES NOT EXCLUSIVE.** In the event of default, the remedies provided in this Deed are not exclusive of any other remedies available to the Beneficiary and Trustee as allowed by law.

15. **ADDITIONAL TRUSTEE POWERS AND LIMITS OF LIABILITY.** At any time, and without notice, upon written request of the Beneficiary and presentation of this Trust Deed and the Note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured by this Deed, and without affecting the security for the full amount secured on all property remaining subject to this Deed, and without the necessity that any sum representing the value of any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may:

- a. release and reconvey all or any part of the property;
- b. consent to the making and recording, or either, of any map or plat of the property or any part thereof;
- c. join in granting any easement thereon;
- d. join in or consent to any extension agreement or any agreement subordinating the lien or encumbrance of this Deed.

The Trustee shall not be held liable for any loss resulting from any act(s) or failure(s) to act if such act(s) or failure(s) are so performed in good faith.

16. **ACCELERATION UPON SALE OR ENCUMBRANCE.** If the Trustor sells, conveys, transfers or disposes of, or further encumbers the property, or any part thereof, without the written consent of the Beneficiary being first had and obtained, the Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable.

17. **REQUEST FOR NOTICE.** Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

18. **GOVERNING LAW.** This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

19. **RECONVEYANCE BY TRUSTEE.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

20. **NOTICES.** Any notice, demand, request or other communication with respect to this Deed of Trust shall be in writing and shall be effective only if the same is delivered by personal service or mailed first class or by certified mail, postage prepaid, return receipt requested. Any party may at any time change its address for notice of such change.

21. **TIME OF THE ESSENCE AND NON-WAIVER.** Time is of the essence of this Deed of Trust. Acceptance by Beneficiary of any sum secured hereby after its due date does not constitute a waiver by Beneficiary of its right to require prompt payment when due of all other sums so secured or to declare default for failure to so timely pay.

22. **ACCEPTANCE BY TRUSTEE.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

23. **HUD PROVISIONS.** This Deed of Trust is junior and subordinate to a first Mortgage which is insured by the Secretary of Housing and Urban Affairs ("HUD Mortgage"). The provisions of this Section 23 shall govern and supersede any provisions in any other paragraph of this Deed of Trust inconsistent with this Section 23, but only to the extent necessary to avoid such inconsistency.

- a. **SUBORDINATION.** Notwithstanding any provision herein contained to the contrary, Beneficiary, for itself and its successors and assigns, covenants and agrees that all of its rights and powers under this Deed of Trust are strictly subordinate and subject to the rights of Federal National Mortgage Association ("First Mortgagee") and the Secretary of Housing and Urban Development of Washington, D.C. ("HUD"), as their interests may appear, and their respective successors and assigns under (i) the HUD Mortgage, (ii) that Security Agreement dated April 29, 1971 executed by Debtor and the First Mortgagee, (iii) those certain UCC financing statements executed by Debtor in favor of Secured Party and (iv) that certain Regulatory Agreement dated April 29, 1971, executed by the Debtor and HUD.
- b. **DEED-IN-LIEU OF FIRST MORTGAGE.** In the event the Secretary acquires title to the Premises by a deed-in-lieu of foreclosure, the lien of this Deed of Trust will automatically terminate subject to the conditions hereinafter described. The holder of this Deed of Trust may cure a default under the HUD Mortgage prior to a conveyance by deed-in-lieu of foreclosure. The Secretary shall give written notice to the holder of this Deed of Trust of a proposed tender of title in the event (1) the Secretary decides to accept a deed-in-lieu of foreclosure or (2) the Secretary receives notice from the holder of the HUD Mortgage of its election to accept a deed-in-lieu of foreclosure. The Secretary will give such written notice if, at the time of the placing of the subordinate lien against the Premises, the Secretary receives a copy of an endorsement to the title policy of the mortgagor or holder of the HUD Mortgage which indicates that i) this Deed of Trust has been recorded; and ii) the Secretary is required to give notice of any proposed election to or tender of a deed-in-lieu of foreclosure. Such notice shall be given at the address stated herein or such other address as may subsequently, upon written notice to the Secretary, be designated by the holder of this Deed of Trust as its legal business address. The Beneficiary shall have thirty (30) days to cure the default after the notice of intent to accept a deed-in-lieu of foreclosure is mailed by Mortgagee.
- c. **ASSIGNMENT OF LEASES AND RENTS.** Beneficiary, 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 the Beneficiary as mortgagee-in-possession, in any action by the Beneficiary, its successors or assigns, to foreclose this Deed of Trust, no rents, revenue or other income of the Premises collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal or any other charges due and payable under this Deed of Trust, except from surplus cash available for distribution, if any, as the term is defined in the Regulatory Agreement; and further, the receiver or mortgagee-in-possession shall operate the Premises in accordance with all the provisions of the HUD Mortgage and the Regulatory Agreement.

The provisions of this Section 23 shall become null and void at such time as the Secretary of Housing and Urban Development no longer holds or insures all or any part of the Prior Note.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

St. James Manor, L.P., a Nebraska limited partnership,

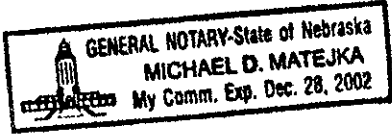
By St. James Manor, Inc., its General Partner

By: Joseph V. Rysavy  
Its: President

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me, a notary public, by Joseph V. Rysavy,  
President of St. James Manor, Inc., General Partner of St. James Manor, L.P., a  
Nebraska limited partnership on December, 1999.

Michael D. Matejka  
Notary Public



**Exhibit "A"**

Lot 1, SAINT JAMES MANOR, being an Administrative Replat of part of Block 5 and 6, ORIGINAL CITY OF BENSON, (Now a part of the City of Omaha) as surveyed, platted and recorded in Douglas County, Nebraska