

Revised  
November 27, 1990

3650

5041284  
21 MARCH 91 03:58 PM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
WESTERN STATES TITLE  
REC BY: KARMA BLANCHARD, DEPUTY

5041284

LAND USE RESTRICTION AGREEMENT  
(CONTIGUOUS SINGLE FAMILY PROPERTIES,  
INCLUDING CONDOMINIUMS,  
AGGREGATING MORE THAN FOUR UNITS  
SOLD IN CERTAIN BULK SALES TRANSACTIONS)  
BY AND BETWEEN  
RESOLUTION TRUST CORPORATION  
AND  
JDJ Properties, Inc.

NOTE: THIS DOCUMENT MUST BE RECORDED AND TIME STAMPED  
IMMEDIATELY PRIOR TO THE DEED.

BK6299Pg1104

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
<u>Definitions</u> . . . . .	1
Section 1.1. General. . . . .	1
Section 1.2. Generic Terms. . . . .	4
ARTICLE II	
<u>Use, Sale and Occupancy of the Property</u> . . . . .	5
Section 2.1. Use and Sale of the Property . . . . .	5
Section 2.2. Occupancy Requirements . . . . .	6
ARTICLE III	
<u>Rent</u> . . . . .	8
Section 3.1 Rent Limitations for Qualified Tenants . . . . .	8
ARTICLE IV	
<u>Administration.</u> . . . . .	9
Section 4.1. Lease Provisions . . . . .	9
Section 4.2. Examination and Reexamination of Incomes . . . . .	9
Section 4.3. Certification by Owner . . . . .	10
Section 4.4. Maintenance of Documents . . . . .	10
Section 4.5. Compliance Review . . . . .	10
Section 4.6. Administrative Fee . . . . .	10
Section 4.7. Certification of Designated Purchasers . . . . .	11
Section 4.8. Releases . . . . .	11
ARTICLE V	
<u>Representations and Warranties of Owner</u> . . . . .	11
Section 5.1. Representations and Warranties . . . . .	11
Section 5.2. Indemnification. . . . .	12

ARTICLE VI

<u>Enforcement and Remedies</u> . . . . .	13
Section 6.1. Remedies of RTC or the Agency. . . . .	13
Section 6.2. Remedies of Other Parties. . . . .	13
Section 6.3. Avoidance of Sale. . . . .	14
Section 6.4. Reliance Upon Information. . . . .	14

ARTICLE VII

<u>Miscellaneous</u> . . . . .	14
Section 7.1. Amendments . . . . .	14
Section 7.2. Notices. . . . .	14
Section 7.3. Entire Agreement . . . . .	15
Section 7.4. Governing Law . . . . .	15
Section 7.5. Severability . . . . .	15
Section 7.6. Binding Effect; Covenants Running with the Land. . . . .	15
Section 7.7. Counterparts . . . . .	16
Section 7.8. Section Titles . . . . .	16

## LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement") is made and entered into this 18th day of March, 1991, by and between Resolution Trust Corporation, established pursuant to Section 501(a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("RTC"), acting in its capacity as receiver for Occidental Nebraska Savings and JDJ Properties, Inc., a Utah Corporation ("Owner"). Bank, F.S.B., Omaha, Nebraska

### Recitals

Owner has purchased from RTC certain land described on Exhibit A attached hereto and incorporated herein by reference, together with the improvements located thereon, consisting of [     condominium Units] [and] [     buildings containing residential units] (said land and improvements are hereinafter collectively referred to as the "Property"), which together constitute an "eligible multifamily property" as defined in 55 Fed. Reg. 35564, 35569 (to be codified at 12 C.F.R. § 1609.2(g)).

Pursuant to Section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. §1441a(c)), as amended, Owner must agree to comply with certain occupancy, rent, and resale restrictions for the remaining useful life of the Property, and the parties hereto have entered into this Agreement to evidence Owner's agreement to comply with such restrictions.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows.

### ARTICLE I

#### Definitions

Section 1.1. General. Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) "Act" means Section 21A of the Federal Home Loan Bank Act (12 U.S.C. §1441a), as amended, or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

(b) "Agency" means the State Housing Finance Agency or any agency, corporation or authority of the United States government that normally engages in activities related to the preservation of affordable housing and which is a successor to or assignee of RTC with respect to its powers and responsibilities hereunder.

(c) "Annual Income" means "income" as defined in Section 3(b)(4) of the United States Housing Act of 1937 and as determined in accordance with the regulations thereunder promulgated by the Secretary.

(d) "Agreement" means this Land Use Restriction Agreement, as it may from time to time be amended.

(e) "Assumption Agreement" shall have the meaning given at Section 2.1(c) hereof.

(f) "Designated Purchaser" means a Lower-Income Family which acquires an individual condominium Unit pursuant to Section 2.1(c) and which executes, with respect to such Unit, an Assumption Agreement.

(g) "Lower-Income Families" means families and individuals whose Annual Incomes do not exceed the applicable income limit for lower-income families in the area in which the Property is located, as established by the Secretary under Section 3(b)(2) of the United States Housing Act of 1937.

(h) "Multifamily Property" means any building or group of buildings once part of the Property and not sold to individual purchasers pursuant to Sections 2.1(b) and (c) hereof.

(i) "Owner" means JDJ Properties, Inc., as set forth at the beginning of this Agreement, or any successor in title to the Property, or a Multifamily Property, other than a Designated Purchaser or a party acquiring individual condominium Units pursuant to Section 2.1(b) hereof.

(j) "Qualified Tenant" means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Section 2.2(a) of this Agreement with respect to such Qualifying Unit.

(k) "Qualifying Unit" means a Unit that (i) is rented to either a Lower-Income Family or Very Low Income Family and (ii) is used in complying with the lower-income occupancy requirements of Section 2.2(a) hereof. Any Unit rented to a Lower-Income Family or Very Low Income Family that is not needed to meet the lower income occupancy requirements of Section 2.2(a) will not be deemed a Qualifying Unit and will not be subject to the rent restrictions of Article III.

(l) "Regulations" means the regulations promulgated pursuant to the Act by RTC or any successor agency, as amended from time to time.

(m) "Related Entity" means, with respect to Owner: (i) any spouse, parent, child, grandchild, brother or sister of Owner; or (ii) any person or entity (A) that directly or indirectly controls or is controlled by or is under common control with Owner, (B) that is an officer of, partner in or trustee of, or serves in a similar capacity with respect to, Owner or of which Owner is an officer, partner or trustee, or with respect to which Owner serves in a similar capacity, or (C) that is the beneficial owner, directly or indirectly, of 10% or more of any class of equity securities of Owner or of which Owner is directly or indirectly the owner of 10% or more of any class of equity securities.

(n) "Secretary" means the Secretary of Housing and Urban Development.

(o) "State" means the state in which the Property is located.

(p) "State Housing Finance Agency" means the public agency, authority, corporation, or other instrumentality of the State that has the authority to provide residential mortgage loan financing throughout the State.

(q) "Term" means, with respect to the Property and to individual units or buildings, the period commencing on the date hereof and continuing until the earliest to occur of the following:

(1) the date upon which there is an involuntary loss of the Property, a Multifamily Property or an individual Unit by Owner or a Designated Purchaser caused by seizure, condemnation, foreclosure, deed in lieu of foreclosure or a change in federal law which prevents RTC or the Agency from enforcing this Agreement; provided, however, that (i) if Owner or a Designated Purchaser loses such property or Unit because of foreclosure or deed in lieu of foreclosure, and (ii) if at any time thereafter, Owner or a Designated Purchaser or a Related Entity of Owner or a Designated Purchaser acquires an ownership interest in such Property, then the covenants and restrictions set forth in this Agreement shall be revived and shall remain in force until the further occurrence of an event described in this subsection;

(2) the date upon which there is a total involuntary loss of the use of the Property, Multifamily Property or individual Unit for residential housing purposes by Owner or a Designated Purchaser caused by fire or other casualty;

(3) the date upon which there is a partial involuntary loss of the Property or any Multifamily Property, or of the use thereof for residential housing purposes, caused by seizure or condemnation or fire or other casualty, which partial loss shall not have been restored through repair or other restoration measure, in which event the covenants and restrictions hereof shall be modified to reflect the appropriate number of Units to be held available for Lower-Income Families or Very Low-Income Families, based upon the reduced number of Units in the Property or the Multifamily Property, as the case may be, and the percentages of Units for Lower-Income Families and Very Low-Income Families previously required to be maintained in the Property or the Multifamily Property, which covenants and restrictions shall remain in effect for the remainder of the Term;

(4) the date upon which RTC or the Agency determines, in accordance with the Regulations, (i) that all or a portion of the Property or any Multifamily Property is obsolete as to physical condition, location or other factors, making it unusable for housing purposes, and (ii) that no reasonable program of modifications is financially feasible to return the Property or Multifamily Property or a portion thereof to useful life;

(5) the date which is the later of (i) forty (40) years from the date of this Agreement or (ii) fifty (50) years from the date the particular building or Unit was initially occupied; or

(6) with respect to individual condominium Units, the date upon which such Unit is conveyed to an individual purchaser pursuant to Section 2.1(b). Upon the request of a purchaser who is not a Designated Purchaser of any condominium Unit, RTC or the Agency will execute a release with respect to such Unit that is no longer governed by this Agreement. The termination of the Term with respect to any condominium Unit or any Multifamily Property shall in no way affect the Term for the remainder of the Property or any other Multifamily Property.

(r) "Unit" means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(s) "Very Low-Income Families" means families and individuals whose Annual Incomes do not exceed the applicable income limit for very low-income families in the area in which the Property is located, as established by the Secretary under Section 3(b)(2) of the United States Housing Act of 1937.

Section 1.2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms

defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

## ARTICLE II

### Use, Sale and Occupancy of the Property

#### Section 2.1. Use and Sale of the Property.

(a) Except as provided herein at subsections (b) and (c), during the Term, Owner will maintain the Property and all Multifamily Property as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis.

(b) The Owner may sell any condominium Unit and any Unit in a Multifamily Property which is not a Qualifying Unit to any purchaser; provided, however, that (i) the number of Qualifying Units in the Property (and in all Multifamily Properties sold pursuant to subsection (d) hereof) shall be not less than the number of Qualifying Units required by Section 2.2(a) hereof and (ii) the Owner shall continue to observe and perform the covenants and restrictions contained in Articles II and III hereof. Any Unit so sold shall thereafter be free of the covenants and restrictions of this Agreement.

(c) Any Qualifying Unit may be sold to a Lower-Income Family and any condominium Unit which is not a Qualifying Unit may be sold to a Lower-Income Family which (in each case) intends to occupy such Unit as its principal residence, and if upon such sale, the Lower-Income Family assumes the obligations of a Designated Purchaser hereunder and executes and records an instrument by which it assumes such obligations ("Assumption Agreement"), the number of Qualifying Units required by Section 2.2(a) shall be reduced by one. By executing an Assumption Agreement, a Designated Purchaser agrees that the Unit which it acquires may not, for the Term, be sold to any party other than another Lower-Income Family which agrees to be a Designated Purchaser. The sale of any Unit which is not a Qualifying Unit to a Lower-Income Family which refuses to become a Designated Purchaser shall be governed by the provisions of Section 2.1(b) hereof. No Qualifying Unit may be sold to a party, whether or not a Lower-Income Family, which does not agree to be a Designated Purchaser, unless Owner shall simultaneously with such sale provide another Qualifying Unit to make up for the Unit sold.

(d) Any Multifamily Property may be sold to a purchaser who agrees to assume the obligations of Owner hereunder with respect to such Multifamily Property and to execute and record a Land Use Restriction Agreement with respect to such Multifamily Property in the form prescribed by RTC or the Agency, which Agreement



shall set forth the number of Qualifying Units required to be maintained in such Multifamily Property.

(e) The number of Qualifying Units required to be maintained, pursuant to Section 2.2(a), in the Property shall be reduced by the number of Units sold to Designated Purchasers pursuant to subsection (c) hereof, and the number of Qualifying Units in Multifamily Properties sold pursuant to subsection (d) hereof shall be credited toward the satisfaction of such requirement in the Property. Except as otherwise permitted under Sections 2.2(b) and (c), the number of Qualifying Units in any Multifamily Property which shall remain available to Very Low-Income Families shall be not less than 20% of the total number of Units in such Multifamily Property.

Section 2.2. Occupancy Requirements. (a) Subject to subsections (c) and (d), during the Term Owner will make continuously available for occupancy by Lower-Income Families as Qualifying Units (including compliance with Article III hereof) not less than N/A Units, of which not less than N/A Units shall be made available for occupancy by Very Low-Income Families. Owner shall use its best efforts, subject to current market conditions, (i) to distribute Units reserved for Lower-Income Families and Very Low-Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and (ii) to avoid concentration of Lower-Income Families or Very Low-Income Families in any area or areas of the Property.

(b) (i) The determination of whether the Annual Income of a family or individual occupying a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit), except that with respect to families or individuals occupying Units on the date hereof, such determination shall be made within 60 days prior to the designation of any such Unit as a Qualifying Unit. Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the current income of the family or individual.

(ii) If the Annual Income of a Qualified Tenant which is a Very Low-Income Family shall be determined upon reexamination to exceed the applicable income limit for Very Low-Income Families, but not the applicable income limit for Lower-Income Families, the Unit shall be counted as occupied by a Qualified Tenant which is a Lower-Income Family other than a Very Low-Income Family during such family's or individual's continuing occupancy of such Unit in accordance with clause (iii) below and Owner shall be required to make the next available Qualifying Unit available for occupancy in accordance with clause (iv) below.

(iii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Lower-Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant (and such family shall be considered, for purposes of subsection (a) and Article III, a Qualified Tenant which is a Lower-Income Family other than a Very Low-Income Family) so long as (A) the Annual Income of such family or individual shall not be determined to exceed 140 percent of the applicable income limit for Lower-Income Families, or (B) if the Annual Income of such family or individual shall be determined to exceed 140 percent of the applicable income limit for Lower-Income Families, so long as each Unit of comparable or smaller size in the Project which is or becomes available is occupied or held available for occupancy by a new resident whose Annual Income does not exceed the applicable income limit for Lower-Income Families (or a Unit other than a Qualifying Unit occupied by a family or individual whose Annual Income is determined to not exceed the applicable income limit for Lower-Income Families is designated a Qualified Unit) until the occupancy requirements of subsection (a) are met without counting such over-income family or individual.

(iv) If the required occupancy by Very Low-Income Families is not met at any time but the required occupancy by Lower-Income Families is met, Owner shall not be required to make the next available Unit in the Property available to a Very Low-Income Family but shall be required to make each Qualifying Unit vacated by a Lower-Income Family available for occupancy by a Very Low-Income Family until the required occupancy by Very Low-Income Families is achieved.

(v) If neither the required occupancy by Very Low-Income Families nor the required occupancy by Lower-Income Families (including families or individuals counted as Lower-Income Families in accordance with clause (iii)) is met at any time, preference (as between potential tenants on a waiting list or simultaneous applicants) must be given to Very Low-Income Families in the renting of each Unit in the Property which becomes available until the required occupancy by Lower-Income Families is met, after which the rule of clause (iv) will apply, if necessary.

(vi) A Unit that was occupied by a Qualified Tenant and becomes vacant shall be counted as occupied by a Qualified Tenant until it is reoccupied for a period in excess of thirty-one (31) days, at which time the Unit shall be considered to be occupied by a Qualified Tenant only if the family or individual then occupying the unit satisfies the definition of a Qualified Tenant.

(c) Anything to the contrary in the foregoing notwithstanding, Owner will not terminate the occupancy of any

tenants in occupancy on the date hereof that are not Lower-Income Families or Very Low-Income Families for purposes of meeting the requirements of this Section. In the event that Owner is unable to comply with the occupancy requirements of this Section because of the occupancy at the date hereof of any Units by tenants who are not Lower-Income Families or Very Low Income Families, or who have not been determined to be Qualified Tenants, Owner will be in compliance with this Section if each Unit which thereafter becomes vacant is occupied or held available for occupancy by Lower-Income Families or Very Low-Income Families, as the case may be, in accordance with the requirements of subsection (b) until the lower-income occupancy requirements of such subsection are met.

(d) Notwithstanding the foregoing, the Secretary or the State Housing Finance Agency may, upon application by Owner, temporarily reduce the lower-income occupancy requirements set forth in subsection (a) with respect to the Property or any Multifamily Property if the Secretary or the State Housing Finance Agency determines that Owner's compliance with such requirements is no longer financially feasible. Owner will make a good-faith effort to return the lower-income occupancy to the level required by subsection (a), and the Secretary or the State Housing Finance Agency, as appropriate, will review the reduction annually to determine whether financial infeasibility continues to exist.

### ARTICLE III

#### Rent

##### Section 3.1 Rent Limitations for Qualified Tenants.

(a) (i) The rent charged by Owner for Qualifying Units occupied by Very Low Income Families shall not exceed the maximum rent for Qualified Tenants who are Very Low-Income Families for units of the applicable size in the area, as established by RTC or the Agency or the Secretary and provided to the Owner, upon request, by RTC or the Agency. Such maximum rent shall be not greater than 30% of the adjusted income of a family whose income equals 50% of area median income, with adjustment for the size of family which is assumed to occupy a unit of particular type.

(ii) The rent charged by Owner for Qualifying Units occupied by Lower-Income Families other than Very Low-Income Families shall not exceed the maximum rent for Qualified Tenants who are Lower-Income Families other than Very Low-Income Families for units of the applicable size in the area, as established by RTC or the Agency or the Secretary and provided to the Owner, upon request, by RTC or the Agency. Such maximum rent shall be not greater than 30% of the adjusted income of a family whose

income equals 65% of area median income, with adjustment for the size of family which is assumed to occupy a unit of particular type.

(b) Owner may obtain from RTC the schedule of maximum rents applicable to the Property, as of the date hereof. Such rents shall be subject to annual adjustment upon publication by the U.S. Department of Housing and Urban Development of revised income limits for area low-income families, which adjustment shall be based upon the consequent determination by RTC or the Agency of the maximum permissible rents for units of the applicable size in the area, following such publication.

(c) If a Qualified Tenant ceases to be considered a Qualified Tenant in accordance with Section 2.2(b), Owner shall, subject to the terms of the lease, be free to condition such family's or individual's continued occupancy in the Property upon its payment of a rental charge not subject to the limitations of this Article III.

#### ARTICLE IV

##### Administration

Section 4.1. Lease Provisions. All tenant leases entered into with Qualified Tenants during the Term shall contain provisions wherein each individual lessee (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or RTC or the Agency, and that his or her failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.

##### Section 4.2. Examination and Reexamination of Incomes.

(a) Owner shall be responsible for determination of the Annual Income and family composition of Qualified Tenants, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, in accordance with procedures prescribed by RTC or the Agency.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and such other household members as it designates to execute an RTC or

Agency approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to RTC or the Agency such information as Owner or RTC or the Agency determines to be necessary. Owner shall also require the household to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition or a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of RTC or the Agency with respect to verification of household income and family composition.

Section 4.3. Certification by Owner. On each N/A during the Term, Owner shall submit to RTC or the Agency a certification, in a form prescribed by RTC or the Agency, as to Owner's compliance with all of the terms and provisions of this Agreement.

Section 4.4. Maintenance of Documents. All tenant lists, applications, leases, waiting lists, income examinations and reexaminations and relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained, as required by RTC or the Agency, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of RTC or the Agency.

Section 4.5. Compliance Review. RTC or the Agency periodically will monitor Owner's compliance with the requirements of this Agreement. In conducting its compliance review, RTC or the Agency will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. RTC or the Agency may also consider relevant information gained from other sources, including litigation and citizen complaints.

Section 4.6. Administrative Fee. In order to compensate RTC or the Agency for the review performed pursuant to Section 4.5, Owner shall pay to RTC (in its corporate capacity and not as receiver for the savings institution identified on the first page of this Agreement) or the Agency, as applicable, an annual administrative fee in an amount prescribed from time to time by RTC or the Agency, which amount, for the first twelve month

BK6299Pg116

period of this Agreement, shall not exceed \$150 per Qualifying Unit required to be held available under Section 2.2(a) hereof, and for each twelve month period thereafter, shall not exceed \$150 for each such Qualifying Unit multiplied by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor (or any generally recognized successor to such Index) between the date hereof and the latest publication of such Index immediately preceding the applicable anniversary date of this Agreement.

Section 4.7. Certification of Designated Purchasers. Prior to approving the sale of any Unit by Owner or a Designated Purchaser to a Lower-Income Family, RTC or the Agency shall (i) ascertain that the proposed purchaser has properly been determined to be a Lower-Income Family and (ii) determine that the proposed purchaser has executed a copy of the Assumption Agreement and assumed its obligations thereunder.

Section 4.8. Releases. RTC or the Agency shall --

(i) execute such document as may be required to evidence release of the Property from the covenants and restrictions set forth in this Agreement based upon the expiration of the Term as provided in Section 1.1(q) hereof (subject in the event of foreclosure or deed in lieu of foreclosure, to revival as set forth in Section 1.1(q)(1), upon receipt from Owner of a certification as to the occurrence of the event giving rise to such expiration and such other evidence as RTC or the Agency may reasonably require; and

(ii) execute an appropriate modification to this Agreement to the extent necessary to reflect reduced requirements for occupancy by Qualified Tenants in the event of (A) a partial loss of the Property as provided in Section 1.1(q)(3) hereof or (B) sale of any portion of the Property pursuant to Section 2.1 hereof.

#### ARTICLE V

#### Representations and Warranties of Owner

Section 5.1. Representations and Warranties. Owner represents and warrants to RTC that:

(a) Valid Execution. Owner has validly executed this Agreement and the same constitutes the binding obligation of the Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement and (iii) to assume responsibility for compliance with all applicable federal rules and regulations, including, without limitation, the Regulations.

(b) No Conflict or Contractual Violation. To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:

(i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;

(ii) will not conflict with any of the instruments that create or establish Owner's authority;

(iii) will not conflict with any applicable public or private restrictions;

(iv) do not require any consent or approval of any public or private authority which has not already been obtained; and

(v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

(d) No Bankruptcy. There is not pending or to best knowledge threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any present or future federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

Section 5.2. Indemnification. Owner agrees to indemnify and hold harmless RTC or the Agency from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by RTC or the Agency as a result of any inaccuracy in any of the representations and warranties contained in Section 5.1.

## ARTICLE VI

### Enforcement and Remedies

Section 6.1. Remedies of RTC or the Agency. (a) If Owner defaults in the performance of obligation under this Agreement or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by RTC or the Agency (or for an extended period approved in writing by RTC or the Agency if such default stated in such notice can be corrected, but not within such 60-day period, unless Owner does not commence such correction or commences such correction within such 60-day period but thereafter does not diligently pursue the same to completion within such extended period), RTC or the Agency shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. RTC or the Agency shall be entitled to reasonable attorneys' fee in any such judicial action in which RTC or the Agency shall prevail.

(b) Each right, power and remedy of RTC or the Agency provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by RTC or the Agency of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by RTC or the Agency of any or all such other rights, powers or remedies.

Section 6.2. Remedies of Other Parties. The occupancy requirements set forth in Section 2.2 of this Agreement also shall inure to, and may be judicially enforced against Owner by, affected Lower-Income Families and Very Low-Income Families. As used herein, the term "affected Lower-Income Families and Very Low-Income Families" shall include families or individuals who are renting a Qualified Unit or who are eligible to rent a Qualified Unit in the Property. Any of the persons or entities described above shall be entitled to judicially enforce Section 2.2 of this Agreement in the same manner that RTC or the Agency may seek judicial enforcement in accordance with Section 6.1, and



any such party that prevails in any such judicial action shall be entitled to reasonable attorneys' fees.

Section 6.3. Avoidance of Sale. Any purported sale of a Qualifying Unit or a Multifamily Property which sale is not carried out fully in compliance with requirements of Section 2.1 hereof shall be void and without effect, and RTC or the Agency shall be empowered to seek a judicial declaration to such effect. Upon a determination by RTC or the Agency that any such purported sale is void, if the prior Owner of such Unit or Multifamily Property shall fail to occupy or operate such Unit or Multifamily Property, RTC or the Agency may rent or dispose of such Unit or Multifamily Property, for the benefit of the Owner thereof, in accordance with the terms of this Agreement.

Section 6.4. Reliance Upon Information. In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by RTC or the Agency with respect to (i) income limits applicable to Lower-Income Families and Very Low-Income Families, (ii) the method for calculating the incomes of such families and (iii) the maximum rents which may be charged to such families pursuant to Section 3.1 hereof.

## ARTICLE VII

### Miscellaneous

Section 7.1. Amendments. This Agreement may not be amended or modified except by written instrument signed by each party hereto.

Section 7.2. Notices. All notices required or permitted to be given under this Agreement must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

If to RTC: Resolution Trust Corporation

If to the Owner:

[If to the Agency:]

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof.

Section 7.4. Governing Law. This Agreement, as it may affect the rights, remedies and obligations of RTC or the Agency, shall be governed by and construed in accordance with federal law. Insofar as federal law does not apply, the provisions of this Agreement shall be governed by and construed in accordance with the laws of the State.

Section 7.5. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.6. Binding Effect; Covenants Running with the Land. During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, reservations et al shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve

and protect the ability of RTC or the Agency to enforce this Agreement.

Section 7.7. Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

Section 7.8. Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures and seals as of the date first above written.

RESOLUTION TRUST CORPORATION,  
in its capacity as Receiver for:  
Occidental Nebraska Savings Bank, Omaha, NE

By: Ray A. Jones  
Title: Assistant Director

OWNER: JDJ PROPERTIES INC.

By: Dell Loy Hansen  
Title: President

[AGENCY:]

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

State of Utah )  
 )ss.  
County of Salt Lake )

On the 20th day of March, 1991, personally appeared before me DELL LOY HANSEN who being by me duly sworn did say that he is the said DELL LOY HANSEN is the president of JDJ PROPERTIES INC., a Utah Corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said DELL LOY HANSEN duly acknowledged to me that said corporation executed the same and that the seal affixed to the same is the seal of said corporation.



MICHELE W WALLACE  
2180 So. 1300 E. Suite 120  
Salt Lake City, Utah 84106  
Commission Expires  
October 25, 1992  
State of Utah

16

Michele W. Wallace  
NOTARY PUBLIC

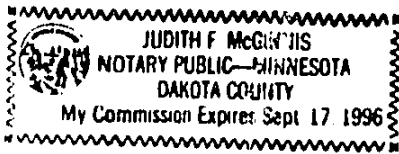
Commission Expires  
Residing in \_\_\_\_\_

BR6299FG1122

**ACKNOWLEDGEMENT**

STATE OF MINNESOTA }  
COUNTY OF DAKOTA }

On this 20<sup>th</sup> day of March, 1991, before me the undersigned, a Notary Public in and for said State, personally appeared Mary Rita Jones as Assistant Director for Resolution Trust Corporation, a corporation organized and existing under the laws of the United States of America, as Receiver of Occidental Nebraska Saving Bank, F.S.B., Omaha, Nebraska, pursuant to her Power of Attorney dated February 11, 1991.



*Judith F. McGinnis*  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Towne Park Condominiums Phase III: Units: 3101, 3102, 3104, 3105,  
3110, 3111, 3112, 3204, 3205, 3210, 3211, 3304, 3305, 3310, 3311,  
3404, 3405, 3410, 3411, Salt Lake County, Utah.

BK6299PG1124  
Pg 1124