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DELAWARE COUNTY IOWA
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M. L. PEYTON
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New bury Development Co.
100 Court Ave. Suite 212
Des Moines, IA 50309

135-342

Document prepared by: Terry Vestal, Iowa Department of Economic Development,200 E. Grand Avenue, Des Moines, IA 50309

MORTGAGE

THIS MORTGAGE ("Mortgage") is made between the Iowa Department of Economic Development ("Lender") and Countryside Associates of Manchester, L.P. ("Borrower"). This mortgage secures the payment of the loan made by Lender to Borrower evidenced by a promissory note in the principal amount of $470,008 ("Note") which provides for annual payments, with the full debt, if not paid earlier, due and payable on July 31, 2017. This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, modifications or refinancing thereof and any promissory note issued in substitution therefor; (b) the payment of all other sums, with interest, advanced under paragraph 5 to protect the security of this Mortgage; and (c) the performance of Borrower's covenants and agreements under this Mortgage and the Note. For this purpose, Borrower does hereby mortgage, grant a security interest in and convey to Lender the following described property (the "Land") located in Delaware County, Iowa:

COUNTRYSIDE VILLAGE OF MANCHESTER
LEGAL DESCRIPTION

PARCEL D, A PART OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 89 NORTH, RANGE 5 WEST OF THE FIFTH P.M. ACCORDING TO PLAT RECORDED IN BOOK 7, PLATS, PAGE 47, CITY OF MANCHESTER, DELAWARE COUNTY, IOWA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 29, T89N, R5W OF THE 5TH P.M.; THENCE N90°00'00"W ALONG THE NORTH LINE OF THE NE 1/4 OF THE NW 1/4 OF SAID SECTION 29, 628.68 FEET; THENCE SO°04'15"w, 33.00 FEET TO THE NORTHWEST CORNER OF LOT 114 OF HENRY ACERS ADDITION TO MANCHESTER, IOWA; THENCE N90°00'00"W ALONG THE SOUTH RIGHT OF WAY LINE OF LINE STREET 66.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N90°00'00"W, 400.00 FEET; THENCE SO°04'15"W, 655.00 FEET; THENCE S90°00'00"E, 400 FEET; THENCE NO°04'15"E, 655.00 FEET TO THE POINT OF BEGINNING.

which has the address of 500 Line Street, Manchester, Iowa 52057.

Subordinate Mortgage For Extension, See Book 135 Page 134 7/11/97

Subordinate Mortgage For Extension, See Book 135 Page 135 7/11/97

TOGETHER WITH:

(a) **Buildings.** All buildings, structures and improvements now standing or hereafter constructed or placed on the Land (the "Buildings"), and all easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the land.

(b) **Personal Property.** All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether attached or detached, including but not limited to, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air conditioning equipment and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

(c) **Revenues and Income.** All rents, issues, profits, leases, condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the Land, Buildings and Personal Property, or any part thereof (the "Revenues and Income").

TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the "Mortgaged Property"), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Lender, its successors and assigns.

BORROWER COVENANTS that Borrower holds clear title to the Mortgaged Property and title in fee simple in the Land and has the right, power and authority to execute this Mortgage, grant a security interest in and convey the Mortgaged Property and that the Mortgaged Property is free and clear of all encumbrances, except for encumbrances of record. Borrower will warrant and defend the title to the Mortgaged Property and the liens and priority of this Mortgage against all claims and demands whether existing or hereafter arising.

Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note and will timely perform all other obligations of Borrowers under the loan agreement and Note.

2. Taxes. Borrowers shall pay each installment of taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand, and shall deliver to Lender proof of such payment fifteen (15) days after the day in which such tax or assessment becomes delinquent.

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3. Liens. Borrower shall pay in a timely manner all taxes, assessments, charges, fines and impositions attributable to the Mortgaged Property which may attain priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall promptly furnish to Lender receipts evidencing the payment.

Borrowers shall not, without lender's approval, create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Borrowers shall pay, when due, the claims of all persons supplying labor or materials in connection with the Mortgaged Property.

Borrower shall promptly discharge any lien which has, or may attain, priority over this Mortgage unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Mortgage. If Lender determines that any part of the Mortgaged Property is subject to a lien which may attain priority over this Mortgage, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

4. Insurance.

a. **Risks to be Insured.** Borrowers, at their sole cost and expense, shall maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards as Lender may from time to time require, such insurance to have a "Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of amount owed under the Note. Borrowers will at their sole cost and expense, from time to time, and at any time at the request of Lender, provide Lender with evidence satisfactory to Lender of the replacement cost of the Mortgaged Property. Borrowers will maintain such other insurance as Lender may reasonably require.

b. **Policy Provisions.** All insurance policies and renewals thereof maintained by Borrowers pursuant to this Mortgage shall be written by an insurance carrier satisfactory to Lender, contain a mortgagee clause in favor and in form acceptable to Lender, contain an agreement of the insurer that it will not amend, modify or cancel the policy except after thirty (30) days prior written notice to Lender, and be reasonably satisfactory to Lender in all other respects.

c. **Delivery of Policy or Certificate.** If requested by Lender, Borrowers will deliver to Lender original policies satisfactory to Lender evidencing the insurance which is required under this Mortgage, and Borrowers shall promptly furnish to Lender all renewal notices and, upon request of Lender, evidence of payment thereof. At least ten (10) days prior to the expiration date of a required policy, Borrowers shall deliver to Lender a renewal policy in form satisfactory to Lender.

d. **Assignment.** If the Mortgaged Property is sold at a foreclosure sale or if Lender shall acquire title to the Mortgaged Property, Lender shall have all of the right, title and interest of Borrowers in and to any insurance policies required hereunder, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to the Mortgaged Property prior to sale or acquisition.

e. **Notice of Damage or Destruction; Loss Adjustment.** If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Borrowers will, within five (5) calendar days after the occurrence of the damage or destruction, give written notice thereof to the insurance carrier and to Lender and will not adjust any damage or loss which is estimated by Borrowers in good faith to exceed $25,000 unless Lender shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four (4) months from the date or occurrence thereof and if an Event of Default shall exist at the end of such four (4) month period or at any time thereafter, Lender may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Borrowers do hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Borrower (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Borrowers.

f. **Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Lender, which shall, at its option, apply the same first (after first deducting therefrom Lender's expenses incurred in collecting the same including but not limited to reasonable attorneys' fees) to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property that is damaged or destroyed in such manner as Lender shall determine and secondly to the reduction of amounts due under the Note. Any application of insurance proceeds to principal of the Note shall not extend or postpone the due date of the installments payable under the Note or change the amount of such installments.

g. **Expense Reimbursement.** Borrowers shall promptly reimburse Lender upon demand for all of Lender's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorneys' fees, and all such expenses shall be additional amounts secured by this Mortgage.

5. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Mortgaged Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Mortgaged Property and Lender's rights in the Mortgaged Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Mortgaged Property to make repairs. Although Lender may take actions under this paragraph, Lender does not have to do so.

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Any amounts disbursed or incurred by Lender under this paragraph shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to the other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be immediately due and payable, with interest, upon notice from Lender to Borrower requesting payment.

6. Inspection. Lender or its agents shall have the right at reasonable times to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property. Lender shall have no duty to make such inspection. Nothing contained in this paragraph shall require Lender to incur any expense or do any act hereunder, and Lender shall not be liable to Borrower for any damage or claims arising out of action taken by Lender pursuant to this paragraph.

7. Condemnation. Borrower shall give Lender prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Lender the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Lender is hereby authorized to intervene in any such action in the names of Borrowers, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Lender first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of amounts due under the Note or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of the Lender.

8. Events of Default. Each of the following occurrences shall constitute and event of default ("Event of Default"):

a. Borrowers shall default in the due observance or performance of or breach of its agreement contained in paragraph 1 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.

b. Borrowers shall make an assignment for the benefit of its creditors, or a petition shall be filed by or against Borrowers under the United States Bankruptcy Code or Borrowers shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

c. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

d. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

9. Acceleration; Foreclosure. Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Lender may, at its option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

a. Lender may declare immediately due and payable all Notes secured by this Mortgage, and the same shall thereupon be immediately be due and payable, without further notice of demand.

b. Borrower shall have and may exercise with respect to the Personal Property, all the rights and remedies accorded upon default of a secured party under the Iowa Uniform Commercial Code. If notice to Borrowers of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Borrowers at least ten (10) days prior to the date of intended disposition.

c. Lender may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Lender appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent or cultivate the same as the trustee may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Borrowers only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Note.

10. Redemption. It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Lender, in such action files an election to waive any deficiency judgment against Borrowers which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Borrower, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all three of the following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of foreclosure; and (3) Lender files an election to waive any deficiency judgment against Borrowers or their successor in interest in such action. If the redemption period is so reduced, Borrowers or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption for creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Borrowers shall be presumption that the property is not abandoned. Any such

redemption period shall be consistent with the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any redemption provisions contained in Chapter 628 of the Iowa Code.

11. Additional Instruments. At any time and from time to time until payment in full of the Note, Borrowers, at Lender's request, will promptly execute and deliver to Lender such additional instruments as may be reasonably required to further evidence the lien of this Mortgage and to further protect the security interest of Lender in connection with the Mortgaged Property. Such instruments may include, but are not limited to, additional security agreements, financing statements, and continuation statements.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower or Borrower's successors in interest. Any delay or forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

13. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to Personal Property and for this purpose the name and address of debtor is the name and address of Borrowers as set forth in paragraph 17 herein and the name and address of the secured party is the name and address of the Lender as set forth in paragraph 17 herein.

14. Care of Property. Borrowers shall take good care of the Mortgaged Property; shall keep the Buildings and the Personal Property now or later placed upon the Mortgaged Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Mortgage. Borrowers shall not make any material alteration in the Mortgaged Property without the prior written consent of Lender.

15. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Lender and Borrower. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Mortgage but does not execute the Note: (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Mortgaged Property under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; and (c) agrees that Lender and any other borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without the Borrower's consent.

16. Severability. In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

17. Notices. All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

a. If to Lender, to:
Iowa Department of Economic Development
Division of Community and Rural Development, Bureau of Community Financing
200 East Grand Avenue
Des Moines, Iowa 50309
Attention: HOME Program

b. If to Borrowers, to:
Countryside Associates of Manchester, L.P.
100 Court Avenue, Suite 212
Des Moines, IA 50309

18. Governing Law. This Mortgage shall be governed and construed in accordance with the laws of the State of Iowa.

19. Acknowledgement of Receipt of Copies of Mortgage and Note. Borrowers hereby acknowledge the receipt of a copy of this Mortgage together with a copy of each promissory note secured hereby.

20. Release. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrowers.

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21. Waivers. Each of the undersigned relinquishes all rights of dower, waives all right of homestead and distributive share in and to the Mortgaged Property and waives any right to exemption as to the Mortgaged Property.

22. Additional Provisions.

Countryside Associates of Manchester, L.P.

By _____
Borrowers James F. Levy, General Partner

~~STATE OF IOWA~~)
) SS:
COUNTY OF _____)

On this _____ day of _____, 19 __, before me, the undersigned, a Notary Public, personally appeared _____ to me known to be the identical persons named in and who executed the foregoing ~~instrument, and acknowledged that they executed the same as their voluntary act and deed.~~

wat

_____
Notary Public

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this 5th day of April, 1996, before me, the undersigned Notary Public in and for the State of Iowa, personally appeared James F. Levy, General Partner, and to me personally known, who being by me duly sworn, did say that he is a partner of the limited partnership executing the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed of said partner by him and by said partnership voluntarily executed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

_____
Notary Public in and for the State of Iowa
Debbie L. Fisher

DEBBIE L. FISHER Iowa NOTARIAL