**Recorded: 4/26/2018 at 1:25:08.0 PM**
**Fee Amount: $27.00**
**Revenue Tax:**
**Delaware County, Iowa**
**Daneen Schindler RECORDER**
**BK: 2018 PG: 1091**

SPACE ABOVE THIS LINE FOR RECORDER

Preparer Information
Todd O. Green | 1423 Grandview Ave, | Papillion NE 68046 | 402-558-2828
Preparer name | Preparer street address | Preparer city | Preparer telephone number
Return To: Edgar Property Investment, LLC , 1423 Grandview Ave, Papillion NE 68046

# MORTGAGE

THIS MORTGAGE is made between Edgar Property Investment, LLC, an Iowa limited liability company, ("Mortgagors") and Pinnacle Bank, A Nebraska State Banking Corporation ("Mortgagee").

☐ If this box is checked, this Mortgage is a Purchase Money Mortgage as defined in the Iowa Code.

1. **Grant of Mortgage and Security Interest.** Mortgagors convey and mortgage unto Mortgagee, and grant a security interest to Mortgagee in the following described property:

A. **Land and Buildings**. All of Mortgagors' right, title and interest in and to the following described real estate situated in Delaware County, Iowa (the "Land");

The West Sixty (60.0) feet of the East Two-thirds (E 2/3) of Lot Three (3), except the North Seventy Six (76.0) feet thereof, in Burrington's Addition to Manchester, Delaware County, Iowa, According to Plat Recorded in Book I, L.D., Page 245, and Excepting any Instruments of Records Which Might Affect the Title to the Above Described Part of Lot Wherein Descriptions were made on the Basis that said Lot is Two Hundred Ten (210.0) Feet in its Dimensions

Commonly known as 208 E Union St, Manchester, IA 52057 (Property) and all buildings, structures and improvements now standing or at any time hereafter constructed or placed on the Land (the "Buildings"), including, without limitation, all appurtenances, riparian rights, mineral rights, water rights, and rights in and to the lands lying in streets, alleys and roads adjoining the Land.

B. **Personal Property.** All fixtures and other personal property belonging to or hereafter becoming part of the Land or Buildings whether attached or detached and all proceeds, products, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

C. **Revenues and Income.** All rents, profits, leases, condemnation awards and insurance proceeds arising from the ownership, occupancy or use of the Land, Buildings and Personal Property (the "Revenues and Income").

TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the "Mortgaged Property") unto Mortgagee, its successors and assigns.

2. **Obligations.** This Mortgage secures the following (collectively referred to as "Obligations"):

A. The payment of the loan made by Mortgagee to Homebuyers Incorporated, A Nebraska Corporation evidenced by a Multiple Advance Note ("Note") in the sum of $8,000,000.00 from Mortgagor to Mortgagee, dated 2008-05-14 with an individual advance in the amount of $85,201.00 and any renewals, extensions, modifications or refinancing and any promissory notes issued in substitution; and

B. All other obligations of Mortgagors to Mortgagee, now existing or hereafter arising, whether direct or indirect, contingent or absolute and whether as maker or surety, including, but not limited to, future advances and amounts advanced and expenses incurred by Mortgagee pursuant to this Mortgage.

3. **Representations and Warranties of Mortgagors.** Mortgagors warrant that (i) Mortgagors hold clear title to the Mortgaged Property and title in fee simple in the Land; (ii) Mortgagors have the right and authority to execute this Mortgage and to grant a security interest in the Mortgaged Property; (iii) the Mortgaged Property is free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent; (iv) Mortgagors will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons.

4. **Payment and Performance of the Obligations.** Mortgagors will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagors under the Obligations.

5. **Taxes.** Mortgagors shall pay each installment of all taxes and special assessments of every kind levied against the Mortgaged Property before the same become delinquent.

6. **Liens.** Mortgagors shall not create, incur or allow to exist any lien, encumbrance, security interest or charge on any part of the Mortgaged Property other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable.

7. **Care of Property.** Mortgagors shall take good care of the Mortgaged Property; shall keep the Buildings and Personal 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.

8. **Insurance.**

A. **Risks to be Insured.** Mortgagors, at their sole cost and expense, shall maintain insurance on the Buildings and other improvements 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 Mortgagee may from time to time require, with such insurer and in such form as is acceptable to Mortgagee. Such insurance shall have a "Replacement Cost" endorsement, with the amount of the insurance at least equal to the balance of the Obligations.

All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagee, which shall, at its option, apply the same (after first deducting Mortgagee's

expenses incurred in collecting the same including but not limited to reasonable attorney's fees) to the reduction of the Obligations or to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property in such manner as Mortgagee shall determine and secondly to the reduction of the Obligations. Any application of insurance proceeds to principal of the Obligations shall not extend or postpone the due date of the installments payable under the Obligations or change the amount of such installments.

9. **Protection of Mortgagee's Security.** If Mortgagors fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property then Mortgagee may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses incurred by Mortgagee, with interest thereon at the rate of 8% per annum, shall become an Obligation of Mortgagors secured by this Mortgage, and shall be immediately due and payable. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act, and Mortgagee shall not be liable to Mortgagors for any damage or claims arising out of action taken by Mortgagee pursuant to this paragraph.

10. **Condemnation.** Mortgagors assign and set over to Mortgagee 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. Mortgagee is authorized to intervene in any such action in the names of Mortgagors, to compromise and settle any such action or claim, and to collect and receive and give proper receipts for such proceeds. Any expenses incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds.

11. **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 the Personal Property. For this purpose, the name and address of the debtor is the name and address of Mortgagors and the name and address of the secured party is the name and address of the Mortgagee, as shown below.

12. **Events of Default.** Each of the following occurrences shall constitute an event of default ("Event of Default"):

A. Mortgagors default in the observance or performance of or breach any covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.

B. 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 which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

C. An event of default shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property.

13. **Acceleration; Foreclosure.** On the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, after such notice as may be required by law, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

A. Mortgagee may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall be immediately due and payable, without further notice or demand.

B. Mortgagee may exercise all rights and remedies accorded on default to a secured party

under the Iowa Uniform Commercial Code. If notice to Mortgagors of intended disposition of such property is required by law, such notice shall be deemed commercially reasonable if given to Mortgagors at least ten (10) days prior to the date of intended disposition.

C. Mortgagee may 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 Mortgagee appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income, and to rent the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagors only for the net profits, after application of rents and profits to the costs and expenses of the receivership and foreclosure and to the Obligations.

14. **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, the time of one year for redemption from the sale provided by the statues of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against Mortgagors 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 Mortgagor, 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 further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The Land is less than ten (10) acres; (2) the Court finds affirmatively that the Land has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee files an election to waive any deficiency judgment against Mortgagors or their successors in interest. If the redemption period is so reduced, Mortgagors 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 by 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 Mortgagors shall be a presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

15. **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 Mortgagors, to: Edgar Property Investment, LLC
1423 Grandview Ave,
Papillion NE 68046

B. If to Mortgagee, to: Pinnacle Bank
c/o Curt Denker
7000 Adams Street,

Lincoln, NE 68507

or to such other address or person as designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

16. **Attorneys' Fees.** Mortgagors shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies under this Mortgage, including, but not limited to, reasonable attorneys' fees and legal expenses.

17. **Successors and Assigns bound.** This Mortgage shall be binding on and inure to the benefit of the respective legal representatives, successors and assigns of the parties.

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

19. **Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property.

20. **Acknowledgment of Receipt of Copies of Debt Instrument.** Mortgagors acknowledge the receipt of a copy of this Mortgage together with a copy of each promissory note secured by this Mortgage.

Dated: 12th day of March, 2018

Edgar Property Investment, LLC, an Iowa limited liability company
By: Homebuyers Incorporated, a Nebraska corporation, Sole Member

By: Jared Hollinger, President

STATE OF NEBRASKA

ss:

COUNTY OF SARPY

This record was acknowledged before me on 12th day of March, 2018, by Jared Hollinger, President of Homebuyers Incorporated, a Nebraska corporation, Sole Member of Edgar Property Investment, LLC, an Iowa Limited Liability Company.

Notary Public

(902-IOWA MORTGAGE-PINNACLE BANK)

GENERAL NOTARY - State of Nebraska
HEATHER CHRANE-DEJARNETT
My Comm. Exp. October 20, 2018