

BK: 2023 PG: 1069
Recorded: 5/16/2023 at 3:12:36.0 PM
Pages 29
County Recording Fee: \$147.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$150.00
Revenue Tax:
BRANDY L. MACUMBER, RECORDER
Madison County, Iowa

**MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT**

Preparer Information:

Robert J. Douglas, Jr., Davis Law Firm, 4201 Westown Parkway, Suite 300, West Des Moines,
IA 50266, 515-288-2500

Return Document to:

Robert J. Douglas, Jr., Davis Law Firm, 4201 Westown Parkway, Suite 300, West Des Moines,
IA 50266

Name of Mortgagor: W H S A, LLLP
Address of Mortgagor: 1620 Pleasant Street, Suite 123, Des Moines, Iowa 50314

Name of Mortgagee: Iowa Trust & Savings Bank
Address of Mortgagee: 12035 University Avenue, Suite 202, Clive, Iowa 50325

Legal Description: See page 28

NOTICE: This Mortgage secures credit in the amount of \$7,987,683.00. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages, and liens. This Mortgage also constitutes a "Construction Mortgage" within the meaning of Article 9 of the Uniform Commercial Code, Iowa Code Section 572.18 and any other applicable provisions of the Code of Iowa. This Mortgage contains an after-acquired property clause.

**MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT**

This MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (hereinafter referred to as the "Mortgage"), is entered into as of May 15, 2023, by W H S A, LLLP, an Iowa limited liability limited partnership (hereinafter referred to as "Mortgagor"), and Iowa Trust & Savings Bank, a state bank corporation, (hereinafter referred to in such capacity as "Mortgagee").

WITNESSETH:

WHEREAS, the Mortgagor is the owner of the Premises described in Exhibit A hereto and proposes to erect substantial Improvements thereon; and

WHEREAS, in order to purchase the Premises and construct the improvements thereon, Mortgagor has obtained a loan ("Loan") from the Mortgagee in the amount of Seven Million Nine Hundred Eighty Seven Six Hundred Thirty Eight and 00/100ths Dollars (\$7,987,638.00) (the "Loan Amount"), and has delivered to Mortgagee its Note, defined below, evidencing the Loan and obligating the Mortgagor to pay the Loan Amount; and

WHEREAS, in order to secure the performance by the Mortgagor of its obligations under the Note, and the other Loan Documents defined below, the Mortgagee has required the execution and delivery of the Mortgage as a condition precedent to the making of the Loan; and

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

ARTICLE I. DEFINITIONS

As used herein, the following terms shall have the following meanings:

"Assignment" - The Assignment of Rents and Leases of even date herewith, executed by the Mortgagor, securing the payment of the Note.

"Borrower" - The Mortgagor.

“Environmental Reports”- The environmental reports and correspondence relating to environmental conditions at the Premises which are listed in an exhibit to the Hazardous Substance Indemnity Agreement between the parties of even date herewith.

“Event of Default” - Any happening or occurrence described in Article 6 herein below.

“Fixtures” - All of the right, title and interest of the Mortgagor in and to all materials, supplies, equipment, apparatus and other items or personal property that may integrally belong to, or be or hereafter become an integral part of the Premises or Improvements now or hereafter attached to, installed in or used in connection with (temporarily or permanently) the Improvements or the Premises, including but not limited to any and all partitions, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, communication equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and all building materials, building equipment, fixtures and supplies of every kind and nature now or hereafter located on the Premises or intended to be incorporated in any building, structure or other Improvements or facilities of all kinds now or hereafter standing on the Premises.

“Governmental Authorities” - The United States, the state in which the Premises are located and any political subdivision, agency, department, commission, board, bureau or instrumentality of either of them, including any local authorities, which exercises jurisdiction over the Premises or the Improvements.

“Impositions” - All premiums for fire and other hazard insurance, rent loss insurance, and such other insurance as Mortgagee may require under the Loan Documents, all real estate and personal property taxes, rent taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the Rents or the ownership, use, occupancy or enjoyment thereof, or which Mortgagee deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Mortgagee’s interests.

“Improvements” - Any and all buildings and other improvements, and any and all additions, alterations or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Premises or any part thereof.

“Indebtedness” - The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note and the other Loan Documents.

“Leases” – All of the right, title and interest of the Mortgagor in and to any and all rental agreements, leases, subleases, licenses, concessions or other agreements (written or verbal), now

or hereinafter in effect which grant a possessory interest in and to, or the right to use, the Project or any portion thereof.

“Legal Requirements” - (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authorities in any way applicable to the Mortgagor or the Mortgaged rehabilitation, repair or reconstruction thereof, (ii) Mortgagor’s presently or subsequently effective organizational documents, (iii) any and all Leases, and (iv) any and all leases and other contracts (written or oral) of any nature by which the mortgagor may be bound.

“Loan” - The loan from the Mortgagee to the Mortgagor, for the purpose of financing the acquisition of the Mortgaged Property, evidenced by the Note.

“Loan Documents” - Together the Note, the Assignment, the Environmental Indemnity Agreement, this Mortgage, and any other security instruments or other documents executed or to be executed by the Mortgagor pursuant to which indebtedness is to be paid and/or secured.

“Mortgage” - This Mortgage, Security Agreement and Fixture Financing Statement, as the same may be amended or supplemented in accordance with its terms.

“Mortgaged Property” - The Premises, Improvements, Fixtures, and Personalty together with:

- (i) all current and future rights, privileges, tenements, hereditaments, rights-of-way, easements appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of the Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Premises or any part thereof; and
- (ii) all additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein; and
- (iii) all of the Mortgagor’s right, title and interest in and to any insurance proceeds pertaining to the Mortgaged Property, and to any development rights, awards, remuneration, settlements or compensation heretofore made or hereafter to be made by any Governmental Authorities to the present or any subsequent owner of the Premises, including but not limited to any TIF funds, grants, tax refunds; and
- (iv) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the obligations.

As used in this Mortgage and Security Agreement, the term “Mortgaged Property” shall be expressly defined as meaning all, or where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

“Mortgagee” – Iowa Trust & Savings Bank, 12035 University Avenue, Suite 202, Clive, Iowa 50325, and the subsequent holder or holders, from time to time, of the Note.

“Mortgagor” – W H S A, LLLP, 1620 Pleasant Street, Suite 123, Des Moines, Iowa 50314, and any and all subsequent owners of the Mortgaged Property.

“Note” - The Promissory Note dated as of even date herewith, executed by the Mortgagor and payable to the order of the Mortgagee in the total principal amount of Seven Million Nine Hundred Eighty Seven Thousand Six Hundred Thirty Eight and 00/100ths Dollars (\$7,987,638.00) and any modifications, extensions, renewals or restatements thereof and any notes given in substitution therefor and payable as provided therein.

“Obligations” - Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by the Mortgagor as set forth in the Loan Documents.

“Penalty Rate” – The amount as set forth in the Note upon the default under the Note

“Permitted Encumbrances” - The outstanding liens, easements, building lines, restrictions, security interest and other matters (if any) as reflected on Exhibit B attached hereto and the lien and security interests created by the Loan Documents.

“Personalty” - All of the right, title and interest of the Mortgagor in and to all furniture, furnishings, equipment, appliances, machinery, goods, general intangibles, money, accounts, contract rights, inventory, any TIF funds, grants, tax refunds, development rights, or awards, and all other personal property of any character as defined in and subject to the provisions of the Uniform Commercial Code of Iowa, as amended, now or hereafter located upon, within or about the Premises and the Improvements, or used in connection with the operation, use or occupancy of the Project, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof.

“Premises” - The real property described in Exhibit A attached hereto, upon all or part of which the Improvements are to be constructed.

“Principal Balance” - The outstanding principal amount due from time to time under the Note.

“Project” - The Premises, the Improvements, the Fixtures and the Personalty.

“Rents” - All of the right, title and interest of Mortgagor in and to rents, revenues, income, proceeds, profits and other benefits paid or payable by parties to the Leases other than the Mortgagor for using leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Project or any portion thereof.

“Transfer” - (a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (b) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (c) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability limited partnership or corporate stock; (d) the withdrawal, retirement, removal or involuntary

resignation of a partner in a partnership or a member or manager in a limited liability limited partnership; or (e) the merger, dissolution, liquidation, or consolidation of a legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

ARTICLE II. GRANTING CLAUSE

To secure the full and timely payment of the Indebtedness, including the payment of any sums advanced by Mortgagee to complete the Improvements to the extent the aggregate of such sums and any other sums expended pursuant hereto exceed the Loan Amount, the full and timely performance and discharge of the obligations, and the full compliance with the requirements of and performance of its obligations and covenants under the Note, this Mortgage and the other Loan Documents, the Mortgagor by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, and the Mortgagor does hereby bind itself, its successors and assigns to warrant and defend the title to the Mortgaged Property unto the Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if the Mortgagor shall pay (or cause to be paid the Indebtedness and shall perform and discharge (or cause to be performed and discharged) the obligations, then the liens, security interest, estates and rights granted by this Mortgage shall terminate; otherwise the same shall remain in force and effect.

ARTICLE III. WARRANTIES AND REPRESENTATIONS

The Mortgagor hereby unconditionally warrants and represents to the Mortgagee as follows:

Section 3.1. Title to Mortgaged Property and Lien of this Instrument.

- (a) The Mortgagor has good and marketable fee simple title in and to the Premises, and the Mortgagor has a good right to grant and convey the same; the lien of this Mortgage is a first, prior and superior lien and encumbrance on the Premises, subject only to Permitted Encumbrances, and the Mortgagor hereby warrants and will defend title thereto, against the lawful claims of all persons, subject only to such Permitted Encumbrances.
- (b) The Mortgagor will have good and marketable title to all of the Mortgaged Property upon completion of the construction and acquisition of the Property pursuant to the terms of the Loan Documents and the Mortgagor shall have a good right to grant and convey the same; upon such completion, this Mortgage shall be a first, prior and superior lien and encumbrance on the Mortgaged Property, subject only to Permitted Encumbrances, and the Mortgagor hereby warrants and will defend such title therein against the lawful claims of all persons subject only to such Permitted Encumbrances.

ARTICLE IV. AFFIRMATIVE COVENANTS

The Mortgagor hereby unconditionally covenants and agrees with the Mortgagee as follows:

Section 4.1. Payment and Performance.

The Mortgagor will pay the Indebtedness, as and when called for in the Loan Documents and on or before the due dates thereof, and will perform all of the Obligations, in full and on or before the dates such Obligations are to be performed.

Section 4.2. Compliance with Legal Requirements.

The Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements.

Section 4.3. Payment of Impositions.

The Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the non-payment thereof (if such day is used to determine the due date of the respective item); provided, however, that the Mortgagor may, if permitted by law and if such installment payment would not create or permit the filing of a lien against the Mortgaged Property, pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions; provided further, however, that the Mortgagor shall have the right to contest any such Impositions as long as it shall provide security for the payment thereof in an amount and reasonable manner acceptable to the Lender.

Section 4.4. Preservation, Management, and Maintenance of Mortgaged Property.

(a) Mortgagor (1) shall preserve the Mortgaged Property and shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (2) shall not abandon the Mortgaged Property, (3) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (4) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) after completion of the Improvements, shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Mortgagee under a contract approved by Mortgagee in writing entered into on even date herewith between Mortgagor and Perennial Properties Management Services, L.L.C., and (6) shall give notice to Mortgagee of and, unless otherwise directed in writing by Mortgagee, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Mortgagee's security or Mortgagee's rights under this Instrument. Mortgagor shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

(b) If Mortgagor engages or intends to change the management of the Mortgaged Property, Mortgagee shall have the right to approve the property manager and the written contract for the management of the Mortgaged Property and require that Mortgagor and such property manager enter into an Assignment of Management Agreement on a form approved by Mortgagee.

Section 4.5. Insurance.

The Mortgagor will obtain and maintain, during and after construction, general comprehensive liability and property and casualty insurance upon and relating to the Mortgaged Property insuring against liability from personal injury, death, and property damage, and against loss by fire and such other hazards, casualties and contingencies (including business interruption insurance covering loss of Rents) and such other risks as are covered under the broadest form of extended coverage insurance consistent from time to time available and acceptable to the Mortgagee. The Mortgagor will also maintain at all times such other insurance of the types and in the amounts required by law or customarily carried by other businesses of similar size and nature, or as Mortgagee may from time to time require, including but not limited to rent loss insurance and worker's compensation insurance, if applicable. All such policies shall be with such insurers of recognized responsibility as are acceptable to Mortgagee. Property and casualty insurance coverage shall be in an amount equal to 100% of the replacement cost of the Improvements without a co-insurance clause and in no event shall be less than the Loan Amount. Each liability policy shall be in an amount not less than \$2,000,000 and shall name the Mortgagee as an additional insured. Business interruption insurance covering loss of Rents shall be in an amount sufficient to pay debt services on the Indebtedness for a period of not less than six (6) months. Each insurance policy issued shall provide by way of a standard mortgagee clause or additional loss payee clause or otherwise that proceeds will be payable to the Mortgagee as its interest may appear. All insurance policies issued shall further provide by way of endorsements, riders or otherwise that (a) the coverage of the Mortgagee shall not be terminated, reduced or affected in any manner regardless of any breach or violation by the Mortgagor of any warranties, declarations or conditions in such policy; (b) no such insurance policy shall be canceled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given the Mortgagee thirty (30) days' prior written notice thereof; and (c) the Mortgagee may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same; (d) providing in the case of any damage or casualty all insurance proceeds will be paid to the Lender so long as it certifies to the insurer that the unpaid Indebtedness exceeds the proceeds of insurance. Upon request the Mortgagee shall be furnished with the original copy of insurance policy coincident with the execution of this Mortgage and the original of each renewal policy not less than thirty (30) days prior to the expiration of the initial or each preceding renewal policy together with receipts or other evidence that the premiums thereon have been paid. During the construction of the improvements, Mortgagor shall comply with the insurance requirement of any applicable construction loan agreement between the parties. Upon completion of any Building and upon completion of all improvements, Mortgagor shall comply with the provisions of this section dealing with Property and Casualty insurance for the completed Building(s).

Section 4.6. Restoration Following Casualty.

If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, the Mortgagor will give notice thereof to the Mortgagee and in the event insurance proceeds are in excess of \$50,000, the net proceeds received from any insurance or other payments received with respect to such damage, loss or destruction (less expenses of collection) shall be paid over to the Mortgagee to be held in trust and shall at the election of the Mortgagor be applied to prepay the Note or to the restoration of the Mortgaged Property in the manner described below.

Mortgagor shall have the right, exercised by written notice to Mortgagee within sixty (60) days of the occurrence, to use the proceeds of said insurance to the extent necessary to repair, restore or replace the improvements to said real property to its condition immediately prior to such loss, provided Mortgagor can provide evidence of insurance for loss of rents sufficient to cover the anticipated loss of rents from the date the loss occurs through the expected completion date of such repair, restoration or replacement, and there is no then existing default by Mortgagor under this Mortgage or under any of the Loan Documents, and provided further, that all of the following conditions are met within 90 days after said loss occurs:

- (a) There is a sufficient sum available to complete the repair, restoration or replacement, which sum can be composed of a combination of any of the following items:
 - (i) Insurance proceeds;
 - (ii) A letter of commitment from a lending institution agreeing to finance the repair, restoration or replacement, upon terms and conditions reasonably satisfactory to Mortgagee;
 - (iii) Cash deposited with Mortgagee to be held in trust as described above by the Mortgagee; or
 - (iv) other security reasonably satisfactory to Mortgagee and deposited by Mortgagor with Mortgagee;

- (b) If the work is structural, or the cost of the work, estimated by Mortgagee, shall exceed Fifty Thousand (\$50,000.00) Dollars, plans and specifications for such work shall be prepared by a licensed architect or engineer reasonably satisfactory to Mortgagee, such plans and specifications to be subject to approval by Mortgagee, which approval as to architect or engineer, plans and specifications shall not be unreasonably withheld and shall be delivered as promptly as is reasonable.

If all of the foregoing conditions are met within ninety (90) days after said loss occurs, Mortgagee shall make the insurance proceeds available to the Mortgagor in accordance with a budget and completion schedule reasonably satisfactory to Mortgagee to insure the repair,

restoration or replacement of the Mortgaged Property; otherwise Mortgagee shall apply any such insurance proceeds received by it as a prepayment of the amount payable under the Note.

Section 4.7. Performance of Leases; Attornment; Subordination.

The Mortgagor will (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under each of the Leases, (b) intentionally left blank, (c) use all reasonable efforts to maintain each of the Leases in force and effect during the full term thereof, and (d) appear in and defend an action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other party of parties thereto.

Mortgagor shall furnish to Mortgagee, within thirty (30) days after a request by Mortgagee, a written statement containing the names of all Lessees or Sublessees of the Project or any portion thereof, the terms of their respective Leases, the space occupied and the rentals payable thereunder.

Section 4.8. (Intentionally left blank)

Section 4.9 Deposits for Taxes, Insurance, and Other Charges.

(a) After the occurrence of an event of default under any Loan Document, Mortgagee may require that Mortgagor deposit with Mortgagee on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Mortgagee), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Mortgagee the entire sum required to pay, when due the Impositions. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "**Imposition Deposits.**" The amount of the Imposition Deposits shall be sufficient to enable Mortgagee to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Mortgagee shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Mortgagee are held for the purpose of paying taxes, insurance premiums, and each other obligation of Mortgagor for which Imposition Deposits are required. Any waiver by Mortgagee of the requirement that Mortgagor remit Imposition Deposits to Mortgagee may be revoked by Mortgagee, only in the event of a default by Mortgagor.

(b) Imposition Deposits shall be held by Mortgagee. Mortgagee shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Mortgagee shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Mortgagee shall deposit such funds in an interest bearing account with Mortgagee. Mortgagor hereby pledges and grants to Mortgagee a security interest in the Imposition Deposits as additional security for all of Mortgagor's obligations under this Instrument and the other Loan Documents. Any amounts deposited with Mortgagee shall not be

trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Mortgagee for that purpose under this Section.

(c) If Mortgagee receives a bill or invoice for an Imposition, Mortgagee shall pay the Imposition from the Imposition Deposits held by Mortgagee. Mortgagee shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Mortgagee. Mortgagee may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Mortgagee for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Mortgagee, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Mortgagee for payment of a specific Imposition is less than the amount reasonably estimated by Mortgagee to be necessary, Mortgagor shall pay or cause to be paid to Mortgagee the amount of the deficiency within 15 days after notice from Mortgagee.

(e) If an Event of Default has occurred and is continuing, Mortgagee may apply any Imposition Deposits, in any amounts and in any order as Mortgagee determines, in Mortgagee's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Mortgagee shall refund to Mortgagor any Imposition Deposits held by Mortgagee.

Section 4.10.

(a) Mortgagor shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Mortgagee's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time upon reasonable notice by Mortgagee.

(b) Each of the statements, schedules and reports required by this Section shall be certified to be complete and accurate by an individual having authority to bind Mortgagor, and shall be in such form and contain such detail as Mortgagee may reasonably require. Unless otherwise required by Mortgagee, statements, schedules and reports need not be audited by independent certified public accountants. At its reasonable discretion, Mortgagee also may require that any statements, schedules or reports be audited at Mortgagor's expense by independent certified public accountants acceptable to Mortgagee.

(c) If Mortgagor fails to provide in a timely manner the statements, schedules and reports required by this Section, Mortgagee shall have the right to have Mortgagor's books and records audited, at Mortgagor's expense, by independent certified public accountants selected by Mortgagee in order to obtain such statements, schedules and reports, and all related costs and expenses of Mortgagee shall become immediately due and payable and shall become an additional part of the Indebtedness.

(d) If an Event of Default has occurred and is continuing, Mortgagor shall deliver to Mortgagee upon written demand all books and records relating to the Mortgaged Property or its operation.

(e) Mortgagor authorizes Mortgagee to obtain a credit report on Mortgagor at any time.

(f) If an Event of Default has occurred and Mortgagee has not previously required Mortgagor to furnish a quarterly statement of income and expense for the Mortgaged Property, Mortgagee may require Mortgagor to furnish such a statement within 45 days after the end of each fiscal quarter of Mortgagor following such Event of Default.

ARTICLE V. NEGATIVE COVENANTS

The Mortgagor hereby covenants and agrees with the Mortgagee that, until the entire Indebtedness shall have been paid in full and all of the obligations shall have been fully performed and discharged:

Section 5.1. Use Violations.

The Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property in a manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance, or (d) makes void, voidable or cancelable, or increases the premiums of, any insurance then in force with respect thereto. Mortgagor shall not be in default of this section if Mortgagor is pursuing legal remedies in accordance with the Iowa Uniform Landlord Tenant Act or other applicable statute.

Section 5.2. Alterations.

The Mortgagor will not commit or permit any waste of the Mortgaged Property and will not (subject to the provisions of Sections 4.4 and 4.6 hereinabove) without the prior written consent of the Mortgagee make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

Section 5.3. Replacement of Fixtures and Personalty.

The Mortgagor will not, without the prior written consent of the Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Premises or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by the Mortgagor, free and clear of any lien or security interest except such as may be first approved in writing by the Mortgagee.

Section 5.4. No Further Encumbrances.

Except as permitted by Mortgagee, the Mortgagor will not, without the prior written consent of the Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Encumbrances.

Section 5.5. Hazardous Substances.

Except as set forth in the Environmental Reports, the Mortgagor represents and warrants that to the best of Mortgagor's knowledge and belief, the Mortgaged Property never has been, and Mortgagor affirmatively states that the Mortgage Property never will be so long as this Mortgage remains a lien on the Mortgaged Property, used for the generation, manufacture, treatment, disposal, release or threatened release of any hazardous waste or substance, storage (except for those substances in type and amount normally used in the construction (during the construction period) or operation of an apartment complex), as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act ("SARA"), applicable state or Federal laws, or regulations adopted pursuant to any of the foregoing. The Mortgagor authorizes the Mortgagee and its agents to enter upon the Premises during normal business hours upon reasonable notice, subject to the limitations of the Iowa Uniform Landlord Tenant Act, to make such inspections and tests as Mortgagee may deem appropriate to determine compliance of the Premises with this paragraph. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person. The representations and warranties contained herein are based on Mortgagor's due diligence in investigating the Mortgaged Property for hazardous waste. Mortgagor hereby (a) releases and waives any future claims against Mortgagee for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Mortgagee against any and all claims and losses resulting from a breach of this paragraph of the Mortgage. This obligation to indemnify shall survive the payment of the Indebtedness and the satisfaction of this Mortgage.

ARTICLE VI. EVENTS OF DEFAULT

The term "Event of Default," as used herein shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

Section 6.1. Payment of Indebtedness.

If the Mortgagor shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable (subject to any period of grace

provided in the Loan Documents), and if no grace period is so provided, such failure to pay remains uncured for a period of ten (10) days after such amount is due, whether at the due date thereof stipulated in the Loan Documents, or at a date fixed for prepayment, or by acceleration or otherwise.

Section 6.2. Performance of Obligations.

If the Mortgagor shall fail, refuse or neglect to perform and discharge fully and timely any of the non-monetary Obligations as and when called for and such failure, refusal or neglect shall either be incurable or, if curable, shall remain uncured for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor. Notwithstanding the foregoing, there shall be an Event or Default hereunder as to a failure to perform or discharge any particular obligation if such failure constitutes an Event of Default in any shorter period of time under the terms of any other of the Loan Documents.

Section 6.3. False Representation.

If any representation or warranty made by the Mortgagor under or pursuant to the Loan Documents shall be false or misleading in any material respect (subject to any period of grace provided in the Loan Documents).

Section 6.4. Voluntary Bankruptcy.

If the Mortgagor shall (a) voluntarily be adjudicated as bankrupt or insolvent, (b) seek, consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property, (c) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction, (d) make a general assignment for the benefit of its creditors, or (e) admit in writing its inability to pay or its debts as they mature.

Section 6.5. Involuntary Bankruptcy.

If (a) a petition is filed against the Mortgagor seeking relief under the bankruptcy arrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction and such petition is not to be dismissed within sixty (60) days of the date of its filing, or (b) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of the Mortgagor, a receiver or trustee for it or for all or any part of its property.

Section 6.6 Transfers of the Mortgaged Property or Interests in Mortgagor.

(a) The occurrence of any of the following events shall constitute an Event of Default under the Mortgage:

- (1) Except for leases for residential purposes, or for laundry services for the residents of the Mortgaged Property in the ordinary course of business, a

Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;

- (2) a change in the general partner of the Mortgagor, except as expressly permitted pursuant to Section 10.2(e) of the Construction Loan Agreement;
- (3) a change in the ownership of the general partner from Hatch Development Group, L.L.C. and Kiernan Development and Construction, LLC and Ryan P. Galloway except as expressly permitted pursuant to Section 10.2(e) of the Construction Loan Agreement;

Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 6.6.

(b) The occurrence of any of the following events shall not constitute an Event of Default under the Mortgage, notwithstanding any provision of Section 6.6 to the contrary:

- (1) a transfer to which Mortgagee has consented;
- (2) a transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Mortgagee;
- (5) the grant of an easement, if before the grant Mortgagee determines that the easement will not materially affect the operation or value of the Mortgaged Property or Mortgagee's interest in the Mortgaged Property, and Mortgagor pays to Mortgagee, upon demand, all reasonable costs and expenses incurred by Mortgagee in connection with reviewing Mortgagor's request; and
- (6) the creation of a tax lien or a mechanic's, materialman's or judgment lien against the Mortgaged Property which is bonded off, released of record or otherwise remedied to Mortgagee's satisfaction within 30 days of the date of creation.

Section 6.7. Event of Default Under Loan Documents.

If an event of default has occurred under any of the Loan Documents and is continuing beyond any applicable cure period.

ARTICLE VII. DEFAULT AND FORECLOSURE

Section 7.1. Remedies.

If an Event of Default shall occur and be continuing, the Mortgagee may, at the Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

- (a) **Acceleration.** Declare the Principal Balance (defined hereby as meaning the then unpaid principal balance on the Note), the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which is hereby expressly waived by the Mortgagor) whereupon the same shall become immediately due and payable.
- (b) **Entry on Mortgaged Property.** Enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If the Mortgagor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent thereto, the Mortgagee may invoke any and all legal remedies to dispossess the Mortgagor. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.
- (c) **Operation of Mortgaged Property.** Subject to the provisions of Section 7.8 hereof, hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either by itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as the Mortgagee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking any and all other action with reference thereto, from time to time, as Mortgagee shall deem necessary or desirable), and apply all Rents and other amounts collected by the Mortgagee in connection therewith in accordance with the provisions of Section 7.7 herein below.
- (d) **Foreclosure and Sale.** Cause this Mortgage to be foreclosed in the manner prescribed by law.

In the event of foreclosure of this Mortgage and sale of the Mortgaged Property in sheriff's sale on special execution in said foreclosure proceedings, the period of one hundred eighty (180) days for redemption from said sale provided by Section 628.28 of the Code of Iowa may be reduced to ninety (90) days, or any shorter period then authorized by law, provided the Mortgagee waives in said foreclosure proceedings any rights to a deficiency judgment against the parties liable under the Note which may arise out of the foreclosure proceedings.

The period of redemption after a foreclosure of this Mortgage may be reduced to sixty (60) days or any shorter period then authorized by law if: (i) the Court finds affirmatively that the Mortgaged Property has been abandoned by the Mortgagor and those persons personally liable under this Mortgage at the time of such foreclosure; and (ii) the Mortgagee in such action files an election to waive any deficiency judgment against the parties liable under the Note or its successor in interest in such action.

All available redemption alternatives shall be at the sole option of the Mortgagee and no provision herein shall be deemed to be a limitation thereon. The period of redemption may be shortened or eliminated entirely to the extent then authorized under the circumstances and the then applicable laws of the State of Iowa.

Any sale or sales under this Section shall operate, after any applicable redemption period, to divest all estate, right, title, interest, claim or demand whatsoever, whether at law or in equity, of the Mortgagor in and to the premises, property, privileges and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor, its successors and assigns and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor, its heirs, successors or assigns.

- (e) **Receiver.** Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, make application to a court of competent jurisdiction as a matter of strict right and without notice to the Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the indebtedness, for appointment of a receiver of the Mortgaged Property and the Mortgagor or does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 7.7 hereinbelow. Such receiver shall retain possession of the Mortgaged Property throughout the redemption period in the case where a deficiency exists after the foreclosure sale.
- (f) **Other.** Exercise any and all other rights, remedies and resources granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

Section 7.2. Separate Sales.

The Mortgaged Property may be sold in one or more parcels and in such manner and order as the Mortgagee, in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales but other and successive sales may be made until all of the Mortgaged Property has been sold or until the Indebtedness has been fully satisfied.

Section 7.3. Remedies Cumulative, Concurrent and Non-Exclusive.

The Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Mortgaged Property, or any portion thereof), and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against the Mortgagor or against the Mortgaged Property, or against any one or more of them, at the sole discretion of the Mortgagee, (c) may be exercised as often as occasion therefor shall arise, it being agreed by the Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be and shall be, non-exclusive.

Section 7.4. Release of and Resort to Collateral.

The Mortgagee may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, the Mortgagee may resort to any other security therefor held by the Mortgagee in such order and manner as Mortgagee may elect. Without affecting the liability of any person or entity (other than the person or entity expressly released pursuant hereto) for payment of any Indebtedness secured hereby, and without affecting the lien hereof upon any property not expressly released pursuant hereto, Mortgagee may at any time and from time to time, without notice: (a) release any person or entity liable for payment of any indebtedness secured hereby, (b) extend the time, or agree to alter the terms, of payment of any of the Indebtedness, for any present or future owner, (c) accept additional security of any kind from present or future owner, (d) release any property securing the indebtedness, or (e) consent to the making of any map or plat of the premises, or the creation of any easements thereon or any covenants restricting use or occupancy thereof.

Section 7.5. Waiver of Redemption, Notice and Marshaling of Assets.

To the fullest extent permitted by law, the Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to the Mortgagor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of an Event of Default (except as may be provided for in the Loan Documents), or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshaling of assets or a sale in inverse order of alienation.

Section 7.6. Discontinuance of Proceedings.

In case the Mortgagee shall have proceeded to invoke an right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, the Mortgagee shall have the unqualified right so to do and, in such an event, the

Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of the Mortgagee shall continue as if same had never been invoked.

Section 7.7. Application of Proceeds.

The proceeds of any sale of the Mortgaged Property, and the Rents and other amounts generated by the holding, leasing, operation or other use of the Mortgaged Property, or by the exercise of the Mortgagee's remedies hereunder shall be applied by the Mortgagee (or the receiver, if one is appointed) to the extent that funds are so available therefrom, and subject to any requirements of law as to the application thereof, in the following orders of priority:

- (a) first, to the payment of the costs and expenses of exercising any remedies and of taking possession of the Mortgage Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) receivers' fees, (ii) court costs, (iii) reasonable attorneys' and accountants' fees, (iv) costs of advertisement, and (v) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (except those to which the Mortgaged Property has been sold subject to and without in any way implying the Mortgagee's prior consent to the creation thereof);
- (b) second, to the payment of all amounts, other than the Principal Balance and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents, together with interest thereon as provided therein;
- (c) third, to the payment of all accrued but unpaid interest due on the Note;
- (d) fourth, to the payment of the Principal Balance;
- (e) fifth, to Mortgagor, or to any other party as determined by the court in its decree in such foreclosure proceeding.

Section 7.8. Payment of Costs; Attorneys' Fees.

Should the Mortgagee exercise any remedy hereunder or under any other Loan Document for collection of the indebtedness, the Mortgagor shall reimburse Mortgagee on demand for all costs of exercising such remedy or remedies, including, without limitation, court costs and reasonable attorneys' fees, and such amounts shall be added to the Indebtedness and be secured by this Mortgage and the other Loan Documents, with interest thereon at the applicable rate under the Note from the date incurred until paid. Notwithstanding the foregoing, Mortgagor shall only be required to reimburse Mortgagee for such costs and fees provided Mortgagee is successful in its action against Mortgagor and provided such costs and fees are reasonable in their nature.

ARTICLE VIII. CONDEMNATION

Section 8.1. Condemnation.

Immediately upon its obtaining of notice of the institution of any proceeding for the condemnation of the Mortgaged Property, the Mortgagor shall notify the Mortgagee of such fact. The Mortgagor shall then, if requested by the Mortgagee, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to the Mortgagee for disposition pursuant to the terms of this Mortgage. The Mortgagor may be a party in such proceeding but the Mortgagee shall be entitled to participate in and to be represented therein by counsel of its own choice, and the Mortgagor will deliver or cause to be delivered, to the Mortgagee such instruments as may be requested by it from time to time to permit such participation. If the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to the Mortgagor by virtue of its interest in the Mortgaged Property shall be, and by these presents is, assigned, transferred and set over unto the Mortgagee to be held by it, in trust, subject to the lien and security interest of this Mortgage and applied as follows:

- (a) To prepay the amounts payable under the Note unless Mortgagor shall exercise its option to rebuild, restore or repair under Section 8.1(b) hereof.
- (b) To the extent necessary, to rebuild, restore or repair the Mortgaged Property or portion thereof so taken, upon written notice to Mortgagee within sixty (60) days following receipt of the award or settlement of Mortgagor's election to so rebuild, restore or replace, provided Mortgagor can provide evidence of sufficient moneys or insurance to cover the anticipated loss of rents from the date the loss occurs through the expected completion date of such rebuilding, restoration or replacement, and provided further, that all of the following conditions are met within 90 days after receipt of said award or settlement:
 - (i) Proceeds of the condemnation award or settlement;
 - (ii) A letter of commitment from a lending institution agreeing to finance the rebuilding, restoration or replacement, upon terms and conditions reasonably satisfactory to Mortgagee;
 - (iii) Cash deposited with Mortgagee to be held in a separate account by the Mortgagee; or
 - (iv) Other security reasonably satisfactory to Mortgagee and deposited by Mortgagor with Mortgagee;
- (c) There is a sufficient sum available to complete the rebuilding, restoration or replacement, which sum can be composed of a combination of any of the following items:
 - (i) Proceeds of the condemnation award or settlement;
 - (ii) A letter of commitment from a lending institution agreeing to finance the rebuilding, restoration or replacement, upon terms and conditions reasonably satisfactory to Mortgagee;
 - (iii) Cash deposited with Mortgagee to be held in a separate account by the Mortgagee; or
 - (iv) Other security reasonably satisfactory to Mortgagee and deposited by Mortgagor with Mortgagee;

- (d) If the work is structural, or the cost of the work, estimated by Mortgagee, shall exceed Fifty Thousand (\$50,000.00) Dollars, plans and specifications for such work shall be prepared by a licensed architect or engineer reasonably satisfactory to Mortgagee, such plans and specifications to be subject to approval by Mortgagee, which approval as to architect or engineer, plans and specifications shall not be unreasonably withheld and shall be delivered as promptly as is reasonable.
- (e) There is no then existing default by Mortgagor under this Mortgage or under any of the Loan Documents.

If all of the foregoing conditions are met within ninety (90) days after said loss occurs, Mortgagee shall make the condemnation proceeds available to the Mortgagor, based upon lien waivers and completion certificates reasonably satisfactory to Mortgagee, to insure that sufficient funds will be available to complete the rebuilding, restoration or replacement of the Mortgaged Property; otherwise Mortgagee shall apply any such insurance proceeds received by it as a prepayment of the amount payable under the Note to be applied against the last payment or payments due thereunder, but to the extent such prepayment is insurance proceeds, such prepayment will be without payment of a prepayment penalty or prepayment premium.

To the extent the total of the condemnation proceeds available, exclusive of any funds put up or arranged for by the Mortgagor, are in excess of the cost incident to such rebuilding, restoration or replacements, such excess condemnation proceeds shall be paid to Mortgagee as a reduction of the principal balance due on the Note, upon completion of such rebuilding, restoration or replacement.

In the event of a condemnation award or settlement, and the Mortgagor does not exercise its right to have such condemnation proceeds made available for rebuilding, restoration or replacement, and should there be any surplus over and above the amount then owing to the Mortgagee on the Note, the balance of said condemnation proceeds shall be paid over to the Mortgagor forthwith.

ARTICLE IX. SECURITY AGREEMENT

Section 9.1. Security Interest; Fixture Filing.

This Mortgage shall be construed as a mortgage on real property and it shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article 2 hereinabove a first and prior security interest under, the Uniform Commercial Code of the State of Iowa with respect to the Personalty, Fixtures, Leases and Rents. To this end, the Mortgagor does hereby Grant, Bargain, Convey, Assign, Transfer and Set Over, unto the Mortgagee a first and prior security interest and all of Mortgagor's right, title and interest in, to and under the Personalty, Fixtures, Leases and Rents, in trust, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the obligations. As to those items of Personalty described in this Mortgage that are, or are to become fixtures related to the real estate mortgaged herein, it is intended as to those items that this Mortgage shall be effective as a financing

statement filed as a fixture filing from the date of its filing in the real estate records of the County where the Mortgaged Property is situated. A carbon, photographic or other reproduction of this Mortgage may also be filed as a financing statement. The name of the record owner of said real estate is the Mortgagor, whose address is set forth in Article I hereof, and the addresses of the Debtor and the Secured Party are those of the Mortgagor and Mortgagee, respectively, set forth in Article I of this Mortgage. Information concerning the security interest created by this instrument may be obtained from Mortgagee. This document covers goods which are or are to become fixtures and other personal property. This Mortgage and Security Agreement constitutes a construction mortgage for purposes of Article 9 of the Iowa Uniform Commercial Code.

Section 9.2. Financing Statements.

The Mortgagor hereby agrees that Mortgagee may file Financing Statements and such further assurances as the Mortgagee may, from time to time, consider reasonably necessary to create, perfect, and preserve the Mortgagee's security interest herein granted, and the Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 9.3. Uniform Commercial Code Remedies.

The Mortgagee shall have all the rights, remedies and recourse with respect to the Personalty, Fixtures, Leases and Rents afforded a Secured Party by the Iowa Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded the Mortgagee by the Loan Documents.

Mortgagor agrees that:

- (a) if notice to any party of the intended disposition of the Personalty is required by law, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition;
- (b) Mortgagor will from time to time provide the Mortgagee, upon request, with itemizations of all such Personalty and, in case of foreclosure, will make the Personalty available to Mortgagee at a place or places acceptable to Mortgagee; and
- (c) all equipment, personal property and fixtures comprising the Personalty are, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement.

Section 9.4. No Obligation of Mortgagee.

The assignment and security interest herein granted shall not be deemed or construed to constitute the Mortgagee as a trustee in possession of the Mortgaged Property, to obligate the Mortgagee to lease the Mortgaged Property or attempt to do same, or to take any action, incur

any expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE X. MISCELLANEOUS

Section 10.1. Survival of Obligations.

Each and all of the obligations shall survive the execution and delivery of the Loan Documents, and the consummation of the Loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

Section 10.2. Further Assurances.

Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the then Mortgaged Property.

Section 10.3. Recording and Filing.

Mortgagor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

Section 10.4. Notices.

All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be deemed given when mailed by first class United States mail, postage prepaid, registered or certified or by delivering same in person to the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth in Article I hereof; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

Section 10.5. No Waiver.

Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor of any and all of such terms, provisions and conditions.

Section 10.6. Mortgagee's Right to Perform the Obligations.

If the Mortgagor shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then at any time thereafter and without notice to or demand upon the Mortgagor and without waiving or releasing any other right, or recourse the Mortgagee may have because of same, the Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the Mortgagor, and shall have the right to enter the Premises and Improvements for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. The Mortgagor shall indemnify the Mortgagee for all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by the Mortgagee pursuant to the provisions of this Section 10.6 or by reason of any other provision in the Loan Documents. All sums paid by the Mortgagee pursuant to this Section 10.6, and all other sums expended by the Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the applicable rate under the Note from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the Loan Documents and shall be paid by the Mortgagor to the Mortgagee upon demand.

Section 10.7. Covenants Running with the Land.

All Obligations contained in the Loan Documents are intended and shall be construed as, covenants running with the Mortgaged Property.

Section 10.8. Successors and Assigns.

All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

Section 10.9. Severability.

The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law. It is hereby expressly stipulated and agreed to be the intent of the Mortgagor and the Mortgagee at all times to comply with the usury, and all other, laws without the necessity of the execution of any new document, so as to comply with the then applicable law but so as to permit the recovery of the fullest amount otherwise called for in such Loan Documents.

Section 10.10. Entire Agreement and Modification.

The Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against whom enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective.

Section 10.11. Counterparts.

This Mortgage may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

Section 10.12. Applicable Law.

This Mortgage, Security Agreement and Fixture Financing Statement shall be governed by and construed according to the laws of the State of Iowa.

Section 10.13. Headings.

The Article, Paragraph and Section entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such Articles, Sections or Subsections.

Section 10.14. Subrogation.

If the Mortgagee pays from the proceeds of the loan secured by this Mortgage any prior lien, heretofore or hereafter arising, it shall be subrogated to the lien and rights of any such prior liens as fully as if the same had been assigned to the Mortgagee if without such subrogation it would not have a first lien, or any amounts so paid may at the option of the Mortgagee be included and taken on as additional amounts to be secured by this Mortgage.

Section 10.15. Single Asset Entity.

Until the Indebtedness is paid in full, Mortgagor (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

Section 10.16. Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT

TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS MORTGAGOR AND MORTGAGEE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

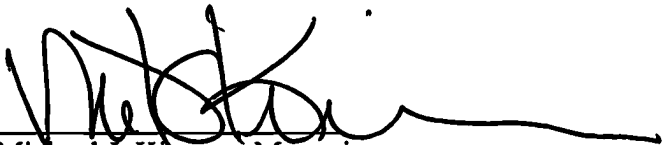
IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

[Signature Page to Follow]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, Security Agreement and Financing Agreement as of the day and year first above written.

W H S A, LLLP
an Iowa limited liability limited partnership

By: Winterset High School Flats, LLC,
general partner

By: 
Michael J. Kiernan, Managing
Member

STATE OF IOWA, POLK COUNTY, ss.

This instrument was acknowledged before me on the 12th day of May, 2023, by Michael J. Kiernan, as managing member of Winterset High School Flats, LLC as the general partner of W H S A, LLLP, an Iowa limited liability limited partnership, on its behalf.


Notary Public in and for the State of Iowa

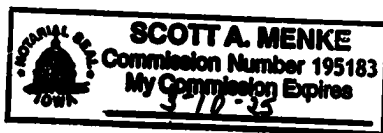


Exhibit A

Legal Description

Lots 1, 2, 3, 4, 5, 6, 7 and 8 in Block 32, Original Town of Winterset, Madison County, Iowa

AND

**The alley running East and West through Block 32, Original Town of Winterset, Madison
County, Iowa**

Exhibit B

Permitted Encumbrances

- a. City of Winterset zoning ordinance.
- b. Real estate taxes which are now due, but not delinquent.
- c. Plat filed August 21, 1849, in Record E, Page 202 in the records of the Madison County, Iowa, Recorder, including easements, building setbacks, restrictions, reservations, and notations.
- d. Retracement Plat of Survey filed May 10, 2021, in Book 2021, Page 1891 in the records of the Madison County, Iowa Recorder, including easements, building setbacks, restrictions, reservations, and notations.
- e. Gas Pipeline Easement to Iowa Power and Light Company filed September 6, 1977 in Deed Rec. 112, Page 319.