

REAL ESTATE MORTGAGE TO SECURE INDEBTEDNESS, PRESENT AND FUTURE, OF THE BORROWER

IND. REC. PAGE

THIS INDENTURE made this 13th day of December, 19 91 between Earlham Manor Care Center, Inc. hereinafter called the "Borrower(s)" of the County of Madison and State of Iowa, and FIRSTAR BANK DES MOINES, N.A., a national banking association organized and existing under the laws of the United States of America, whose address is Sixth & Walnut Street, Des Moines, Iowa 50304, hereinafter called the "Lender."

WITNESSETH: That Borrowers in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and to secure the payment of all indebtedness now owed to the Lender by the Borrower, in the present amount of \$ 7,300,000 and to secure all future indebtedness of the Borrower to the Lender, including all moneys advanced or to be advanced in the future by Lender to or on behalf of the Borrower for any reason; to insure the prompt and timely payment of all indebtedness or other obligations of every kind and nature owing from the Borrower to the Lender whether now owing or at any time in the future, together with interest thereon; and to secure the faithful performance of the covenants and agreements herein contained, does hereby SELL, CONVEY, AND MORTGAGE unto Lender, its successors and assigns, forever, the following described real estate situated in Madison County, Iowa to-wit:

Block Eight (8) Christopher Wilson's addition to the Town of Earlham, Madison County, Iowa; Being a part of the East Half of the South-east Quarter of Section One (1) Township Seventy-seven (77) North, Range Twenty-nine (29) West of the 5th Principal Meridian, Madison County, Iowa.

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91 DEC 16 AM 10:05

MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

Fee \$15.00

together with all personal property that may integrally belong to, or be or hereafter become an integral part of said real estate, and whether attached or detached (such as, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, storm doors, screens, linoleum, water heater, water softener, automatic heating equipment, heavy machinery and equipment, and other attached fixtures), and hereby granting, conveying and mortgaging also all of the easements, servient estates appurtenant thereto, rents, issues, uses, profits and right to possession of said real estate, and all crops raised thereon from now until the debt secured thereby shall be paid in full. As to any such personal property, rents, issues, profits, and fixtures, Borrower(s) hereby grants to Lender a Security Interest in said personal property, rents, issues, profits, and fixtures, and a Security Interest hereby attaches thereto, as provided by the Uniform Commercial Code.

Said Borrowers hereby covenant with Lender, or successor in interest, that said Borrowers hold clear title to said personal property, and title in fee simple to said real estate; that they have good and lawful authority to sell, convey and mortgage the same; that said premises are Free and Clear of all Liens and Encumbrances whatsoever except as may be above stated; and said Borrowers Covenant to Warrant and Defend the said premises and the said personal property against the lawful claims of all persons whomsoever, except as may be above stated.

TO HAVE AND TO HOLD the same unto the Lender, its successors and assigns forever.

CONDITIONED HOWEVER, That if the Borrower shall pay or cause to be paid the indebtedness of Borrower to said Lender or its successors and assigns in money which shall be legal tender in payment of all debts and dues, public and private, all at the time, place, and upon the terms provided by promissory note(s), loan agreements, or otherwise of the Borrower to Lender, whether now existing or hereafter created, including all future advancements, and shall perform the other provisions hereof, then this mortgage shall, upon the request of Borrower, be cancelled by Lender. This mortgage shall secure all present and future indebtedness of the Borrower to Lender, including all monies advanced or to be advanced in the future by Lender to or on behalf of Borrower for any reason and to secure the prompt and timely payment of all indebtedness or other obligations of every kind and nature owing from the Borrower to the Lender, whether now owing or at any time in the future, together with interest thereon until this mortgage is cancelled of record by Lender by the filing of an instrument of cancellation with the County Recorder in the county where the real estate is located.

1. OPEN-END FEATURE. This mortgage shall stand as security for the present indebtedness of the Borrower, and for all future and additional advances made by Lender to Borrower, Lender is hereby given authority to make such future and additional advances to the Borrower (either jointly or individually), upon Borrower's (either jointly or individually) signed order or receipt, and secured by the original obligation herein. This paragraph shall not constitute a commitment to make additional loans or advances in any amount.

1.1 JOINT AND/OR INDIVIDUAL DEBT. It is expressly understood and agreed to by the Borrower(s) that this mortgage shall stand as security for the existing and future joint and/or individual indebtedness of the Borrower(s), whether or not such existing or future debt is known by all of the Borrower(s) hereunder; whether or not all the Borrower(s) agreed or acquiesced in the granting of such advances by Lender; and whether any advances are made to the Borrowers, or either, or any of them.

1.2 NOTICE. This mortgage secures credit (maximum) in the amount of \$ 7,300,000. 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.

2. TAXES. Borrowers shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against said property, or any part thereof before same became delinquent, without notice or demand; and shall procure and deliver to said Lender, on or before the thirtieth day of June of each year; duplicate receipts of the proper officers for the payment of all such taxes and assessments then due.

3. INSURANCE. Borrowers shall keep in force insurance, premiums therefor to be prepaid without notice or demand, against loss by fire, tornado and other hazards, casualties and contingencies as Lender may require on personal property as herein referred to, and on all buildings and improvements, in companies to be approved by Lender in an amount not less than the full insurable value of such personal property and improvements or not less than the unpaid balance herein, whichever amount is smaller, with such insurance payable to Borrowers and Lender, as their interests may appear. Borrowers shall promptly deposit such policies with proper riders with the Lender.

4. REPAIRS TO PROPERTY. Borrowers shall keep the buildings and other improvements on said premises in as good repair and condition as same may now be or are hereafter placed, ordinary wear and tear only excepted; and shall not suffer or commit waste on or to said security.

5. ATTORNEYS' FEES. In case of any action, or in any proceedings in any court, to collect any sums payable or secured by this mortgage, or to protect the lien or title herein of the Lender, or in any other case permitted by law in which attorney fees may be collected from the Borrowers or charged upon the above described property, Borrowers agree to pay reasonable attorney fees.

6. CONTINUATION OF ABSTRACT. In event of any default herein by Borrowers, Lender may, at the expense of Borrowers procure an abstract of title, or continuation thereof, for said premises, and charge and add to the mortgage debt the cost of such abstract or continuation with interest upon such expense at the delinquent interest rate of the note(s) secured hereby.

7. ADVANCES OPTIONAL WITH LENDER. It is expressly understood and agreed that if the insurance above provided for is not promptly effected, or if the taxes or special assessments assessed against said property shall become delinquent, Lender may effect the insurance above provided for, and is hereby authorized to pay said taxes and special assessments (irregularities in the levy or assessment of said taxes being expressly waived), and all such payments with interest thereon at the delinquent interest rate of the note(s) secured hereby shall be a lien against said premises.

8. ACCELERATION OF MATURITY AND RECEIVERSHIP. It is agreed that if default shall be made in the payment of said note, or any part of the interest thereon, or any other advance or obligation which may be secured hereby or any agreed protective disbursement, such as taxes, special assessments, insurance and repairs or if Borrowers shall suffer or commit waste on or to said security, or if there shall be a failure to comply with any and every condition of this mortgage, then, at the option of the Lender, said note and the whole of the indebtedness secured by this mortgage, including all payments for taxes, assessments or insurance premiums, shall become due and shall become collectible at once by foreclosure or otherwise after such default or failure, and without notice of broken conditions; 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 the Lender, appoint a receiver to take immediate possession of said property, and of the rents and profits accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and shall be liable to account to said Borrowers only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and the indebtedness, charges and expenses hereby secured and herein mentioned.

9. IT IS EXPRESSLY UNDERSTOOD AND AGREED that if the Borrowers shall convey the real estate described herein or any part thereof to persons other than the Borrowers, or if the title thereto shall become vested in any person or persons other than the Borrowers in any manner whatsoever, then and in every such case the entire balance owing under this mortgage and the note it secures shall, at the option of the Lender, be and become immediately due and payable.

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10. SIX MONTHS AND 60 DAY PERIOD FOR REDEMPTION. It is further agreed that if this mortgage covers less than 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 of redemption from said sale provided by the statutes of the State of Iowa shall be reduced to 6 months provided the Lender, in such action files an election to waive any deficiency judgment against the Borrowers which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628, Code of Iowa. It is further agreed that the period of redemption after a foreclosure of this mortgage shall be reduced to 60 days if all of the three following contingencies develop: (1) The mortgaged real estate herein is less than 10 acres in size; (2) the Court finds affirmatively that said real estate has been abandoned by the owners and those persons personally liable under this mortgage at the time of such foreclosure; and (3) the Lender in such action files an election to waive any deficiency judgment against the Borrowers or their successor in interest in such action. If the redemption period is so reduced, the Borrowers or their successors in interest or the owner shall have the exclusive right to redeem for the first 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 Code of Iowa shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of the Borrowers shall be a presumption that the property is not abandoned.

10.1 OTHER REDEMPTION RULES. Notwithstanding anything to the contrary, it is further agreed that if this mortgage covers real property not used for agricultural purposes, as defined in Section 535.13, Code of Iowa, and is not the residence of the Borrower, or if it is the residence of the Borrower but not a single-family or two-family dwelling, the period of redemption after foreclosure is one hundred eighty (180) days, or if a deficiency judgment has been waived by the Lender, the period of redemption is reduced to ninety (90) days, and redemption is exclusively the right of the Borrower. Should the real property covered by this mortgage not be used for agricultural purposes, as defined in Section 535.13, Code of Iowa, and is a single-family or two-family dwelling which is the residence of the Borrower at the time of foreclosure and the Court finds that after foreclosure the dwelling has ceased to be the residence of the Borrower, the period of redemption shall be reduced to thirty (30) days from the date of the Court order and redemption is exclusively the right of the Borrower during the thirty-day (30) period.

11. DEFINITION OF TERMS. Unless otherwise expressly stated, the word "Borrower," as used herein, includes successors in interest of such Borrower; the "Lender," as used herein, unless otherwise expressly stated, includes the successors in interest of such Lender. All words referring to Borrower and Lender shall be construed to be of the appropriate gender and number, according to the context. This construction shall include the acknowledgement hereof.

12. TERMINATION OF MORTGAGE. This mortgage shall secure the indebtedness of Borrower for Thirty (30) years after the date of this mortgage unless released prior to said date by Lender.

13. ADDITIONAL LIENS. Borrower(s) will not, without prior written consent of the Lender, 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, with respect to the described real estate.

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.

IN WITNESS WHEREOF, SAID BORROWERS HAVE HEREUNTO SET THEIR HANDS THE DAY AND YEAR FIRST ABOVE WRITTEN. BORROWER(S) HEREBY ACKNOWLEDGE RECEIPT OF A FULL AND COMPLETE COPY OF THIS INSTRUMENT. This Mortgage is subject to the further terms and conditions of that certain Loan

Agreement entered into in December of 1991 by and among Borrower, Lender, JoAnn P. Webb-Nye and certain other corporations owned by Webb-Nye.

Borrowers: EARLHAM MANOR CARE CENTER, INC. By JoAnn P. Webb-Nye, President

EACH OF THE UNDERSIGNED HEREBY RELINQUISHES ALL RIGHTS OF DOWER, HOMESTEAD, AND DISTRIBUTIVE SHARE IN AND TO THE ABOVE DESCRIBED PREMISES AND WAIVES ALL RIGHTS OF EXEMPTION, AS TO ANY OF SAID PROPERTY.

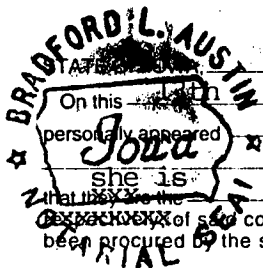
BORROWER UNDERSTANDS THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS CONTRACT, BORROWER VOLUNTARILY GIVES UP HIS RIGHTS TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT.

DATED 12-13, 1991

STATE OF IOWA, COUNTY, ss: On this day of A.D. 19, before me, the undersigned, a Notary Public in and for the State of Iowa, 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.

Notary Public in and for the State of Iowa



CERTIFICATE OF ACKNOWLEDGEMENT FOR CORPORATE BORROWER Polk COUNTY, ss: On this day of December, A.D. 1991, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared JoAnn P. Webb-Nye, she is President, to me personally known, who, being by me duly sworn, did say

that she is the duly authorized officer of the corporation executing the within and foregoing instrument, that (no seal has been procured by the said) corporation; that said instrument was signed on behalf of said corporation by authority of its Board of

Directors; and that the said JoAnn P. Webb-Nye as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by her voluntarily executed.

Notary Public in and for the State of Iowa

Form with fields for IOWA MORTGAGE No. 1445, MORTGAGE, From Firststar Bank Des Moines, N.A., Des Moines, Iowa, To, STATE OF IOWA, Madison County, This instrument was filed for Record the 16 day of December, A.D. 1991, at 2:25 o'clock A.M., and duly recorded in book 160 of Mtg at Page 560, Michelle Ntelax County Recorder, Betty M. Mills - deputy, When recorded return by mail to FIRSTSTAR BANK DES MOINES, N.A., 6th and Walnut Des Moines, Iowa 50304

INDEMNIFICATION AGREEMENT
AND
ADDENDUM TO MORTGAGE AGREEMENT

Undersigned represent and warrants the following: (a) that any Mortgaged Property and Undersigned are in compliance with all Environmental Laws (as hereinafter defined); (b) that there are no conditions on or about the Mortgaged Property and Undersigned existing currently or likely to exist during the term of this Loan which require or are likely to require cleanup, removal, remedial action, or other response pursuant to Environmental Laws; (c) that Undersigned is not a party to any litigation or administrative proceeding, nor so far as is known by the Undersigned is any litigation or administrative proceeding threatened against it, which asserts or alleges that Undersigned violated Environmental Laws; (d) that neither the Mortgaged Property nor Undersigned is subject to any judgment, decree, order, or citation related to or arising out of Environmental Laws; and (e) that no permits or licenses are required under Environmental Laws relative to the Mortgaged Property and Undersigned.


The term "Environmental Laws" shall mean all federal, state, and local laws including statutes, regulations, ordinances, codes, rules, and other governmental restrictions and requirements relating to the environmental or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, regulation of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect.

Undersigned covenants and agrees to (i) comply with all applicable Environmental Laws; (ii) provide to Firststar Bank Des Moines, N. A. ("Bank"), immediately upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree, or other document from any source asserting or alleging a circumstance or condition which required or may require a cleanup, removal, remedial action, or other response by or on the part of Undersigned under Environmental Laws or which seeks criminal or punitive penalties from Undersigned for an alleged violation of Environmental Laws; and (iii) advise Bank in writing as soon as Undersigned becomes aware of any condition or circumstance which makes the warranties contained in this Agreement in complete or inaccurate. In the event of any such circumstance, Undersigned agrees, at its expense and at the request of the Bank to permit an environmental audit solely for the benefit of the Bank, to be conducted by the Bank or any independent agent selected by the Bank. This provision shall not relieve the Undersigned from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws. If in the opinion of Bank there exists any provision of an Environmental Law or any condition which requires, or may require, a cleanup, removal, or other remedial action by the Undersigned under any Environmental Laws, and such cleanup, removal, or other remedial action is not completed within ninety (90) day from the date of written notice from Bank to Undersigned (or such longer period as may be required under the circumstances, such longer period not to exceed an additional sixty (60) days), the same shall at the option of Bank constitute a default hereunder.

Undersigned hereby indemnifies Bank and holds Bank harmless from and against any loss, liability, cost, damage, or expense, including, without limitation, attorneys' fees, arising from the imposition or recordation of a lien, the incurrence of any cleanup and removal costs under any Environmental Laws with respect to the Mortgaged Property or Undersigned, any liability to any third party in connection with any violation of any Environmental Laws or other action by Undersigned or its agents, any diminution in value of the Mortgaged Property, or any failure or defect in title occasioned by the failure of any of the representations and warranties contained in this Agreement.

EARLHAM MANOR CARE CENTER, INC.

By


JoAnn P. Webb-Nye, President