

MORTGAGE

**Document prepared by, and
after recording, please return to:**

City of _____

_____, Iowa _____

() ____ - ____

GRANTOR AND TAXPAYER: _____,

GRANTEE: _____,

LEGAL DESCRIPTION:

CDBG-UPPER STORY Contract Owner: _____

CDBG-UPPER STORY Contract Number: _____

Address: _____

MORTGAGE

THIS MORTGAGE IS A PURCHASE MONEY MORTGAGE AS DEFINED IN THE IOWA CODE.

THIS MORTGAGE IS A CONSTRUCTION MORTGAGE LIEN AS DEFINED IN THE IOWA CODE.

NOTICE: This mortgage secures credit in the amount of \$_____. 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 ("Mortgage"), dated _____, by and between the _____, an Iowa _____ ("Lender"), and _____, an Iowa _____ ("Borrower"), secures payment of the loan made by Lender to Borrower evidenced by a promissory note dated _____, as revised, in the principal amount of \$_____ ("Note"). This Mortgage secures to Lender: (a) the repayment of the debt as evidenced by the Note, and all renewals, extensions, modifications or refinancing thereof and any Promissory Note issued in substitution therefore; (b) all other obligations of Borrower to Lender, now existing or hereafter arising, whether direct or indirect, contingent or absolute and whether as maker or surety, including, but not limited to, future advances and amounts advanced and expenses incurred by Borrower pursuant to this Mortgage; and (c) the performance of Borrower's covenants and agreements under this Mortgage, the Note, the Community Development Block Grant Upper Story Rental Housing Conversion Program Development Agreement delivered to Lender by Borrower and dated _____ (the "Contract"), and the Agreement for Covenants and Restrictions delivered by Borrower to Lender and dated _____ (the "Covenants") (this Mortgage, the Note, the Contract, and the Covenants are hereinafter referred to as the "Loan Documents"), as applicable. For this purpose, Borrower does hereby mortgage, grant and convey the Lender a security interest in and to the following described property including any after acquired title or reversion thereto (the "Land") located in _____ County, Iowa:

TOGETHER WITH:

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

(b) **Personal Property.** All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether

attached or detached, including but not limited to, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air conditioning equipment and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

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

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

Borrower and Lender covenant and agree as follows:

1. Representations and Warranties of Borrowers. Borrowers represent, warrant, and covenant to Lender that (1) Borrowers hold clear title to the Mortgaged Property; (2) Borrowers have the right, power, and authority to execute this Mortgage and grant a security interest in the Mortgaged Property; (3) the Mortgaged Property is free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent, as otherwise stated herein, or encumbrances of record disclosed in the Lender's Title Guaranty Division Certificate issued in favor of the Lender; (4) Borrowers will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; and (5) all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land.

2. Payment. Borrower shall promptly repay principal and interest of the debt and any prepayment thereunder as evidenced by the Note, and timely perform all other obligations of Borrower under the Loan Documents. The provisions of the Loan Documents are hereby incorporated by reference into this Mortgage as if fully set forth herein.

3. Taxes. Borrower shall pay each installment of property taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand.

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

Unless Borrower obtains Lender's prior written approval, Borrower shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Borrower shall

pay, when due, the claims of all persons supplying labor or materials in connection with the Mortgaged Property.

Borrower shall promptly discharge any lien which has, or may attain, priority over this Mortgage unless Borrower: (1) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (2) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (3) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Mortgage. If Lender determines that any part of the Mortgaged Property is subject to a lien which may attain priority over this Mortgage, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten business days of the giving of notice.

5. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to Personal Property and for this purpose the name and address of debtor is the name and address of Borrower as set forth in Paragraph 23 herein and the name and address of the secured party is the name and address of the Lender as set forth in Paragraph 23 herein.

6. Compliance with Laws. Borrowers shall comply with all present and future statutes, laws, rules, orders, regulations, and ordinances affecting the Mortgaged Property, any part thereof, or the use thereof.

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

8. Insurance.

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

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

c. **Delivery of Policy or Certificate.** If requested by Lender, Borrower will deliver to Lender original policies satisfactory to Lender evidencing the insurance

which is required under this Mortgage, and Borrower shall promptly furnish to Lender all renewal notices and, upon request of Lender, evidence of payment thereof. At least ten calendar days prior to the expiration date of a required policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

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

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

f. **Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Lender. Lender agrees to apply all insurance proceeds from casualty or damage of the Project (after first deducting therefrom Lender's expenses incurred in collecting the same including but not limited to reasonable attorneys' fees) in the following order: (1) to bring loan current if it is in default due to delinquent payments; (2) to repayment of the indebtedness secured by this Mortgage and the Note if any other Event of Default has occurred prior to the casualty, and is continuing thereunder; (3) if no Event of Default exists, to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property that is damaged or destroyed and to Borrower's Replacement Reserve or Operating Reserve, in such manner as Lender shall determine, and (4) any remainder to be applied to the payment of the indebtedness.. Restoration will not remove or alter any existing obligations associated with the Loan Documents.

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

9. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Mortgaged Property (such

as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Mortgaged Property and Lender's rights in the Mortgaged Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Mortgaged Property to make repairs. Although Lender may take actions under this paragraph, Lender does not have to do so.

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

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

11. Condemnation.

a. **Notice, Assignment and Loss Adjustment.** Borrower shall give Lender prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Lender the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Lender is hereby authorized to intervene in any such action in the name of Borrower, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds.

b. **Application of Proceeds.** Lender agrees to apply all proceeds resulting from its intervention in any condemnation or eminent domain action or the compromise and settlement of such action or claim, or its collection of such proceeds (after first deducting therefrom Lender's expenses incurred including but not limited to reasonable attorneys' fees), in the following order: (1) to bring loan current if it is in default due to delinquent payments; (2) to repayment of the indebtedness secured by this Mortgage and the Note if any other Event of Default has occurred prior to the casualty, and is continuing thereunder; (3) if no Event of Default exists, to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property that is damaged or destroyed and to Borrower's Replacement Reserve or Operating Reserve, in such manner as Lender shall determine, and (4) any remainder to be applied to the payment of the indebtedness. Restoration will not remove or alter any existing obligations associated with the Loan Documents.

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

a. Borrower fails to make payment as required by the Note or breaches its agreements contained in paragraph 2 hereof or defaults in the due observance or

performance of or breaches any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of the Loan Documents or any document related thereto.

b. Borrower sells, leases (other than by residential leases in the ordinary course of business), transfers or otherwise disposes the Mortgaged Property without the prior written consent of the Lender.

c. Borrower, without the prior written consent of the Lender, permits any change in the ownership interests in the Borrower that, when added to any prior changes in the ownership interest in such entity, exceeds ten percent of the total aggregate ownership interest in Borrower.

d. Borrower makes an assignment for the benefit of its creditors, or a petition is filed by or against Borrower under the United States Bankruptcy Code or Borrower seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or does not, within 20 business days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

e. A judgment, writ or warrant of attachment or execution, or similar process is entered and becomes a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within 20 business days after its entry, issue or levy.

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

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

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

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

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

rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Note.

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

It is agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to 60 days if all three of the following contingencies develop: (1) The real estate is less than ten acres in size; (2) the Court finds affirmatively that the real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of foreclosure; and (3) Lender files an election to waive any deficiency judgment against Borrower or its successor in interest in such action. If the redemption period is so reduced, Borrower or its 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 for creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of Borrower shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any redemption provisions contained in Chapter 628 of the Iowa Code.

15. Attorney's Fees. Borrowers shall pay, on demand, all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses.

16. Additional Instruments. At any time and from time to time until payment in full of the Note, Borrower, at Lender's request, will promptly execute and deliver to Lender such additional instruments as may be reasonably required to further evidence the lien of this Mortgage and to further protect the security interest of Lender in connection with the Mortgaged Property. Such instruments may include, but are not limited to, additional security agreements, financing statements, and continuation statements. Any expenses incurred by Lender in connection with the recordation of any such instruments shall become additional obligations of Borrowers secured by this Mortgage and shall be immediately due and payable by Borrowers to Lender

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

Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy. No waiver by Lender of any particular provisions of this Mortgage shall be deemed effective unless such waiver is in writing signed by the Lender.

18. Rights and Remedies Cumulative. All rights and remedies provided for in this Mortgage or which Lender or holder of the Loan Documents may have otherwise, at law or in equity, shall be distinct, separate, and cumulative and may be exercised concurrently, independently, or successively in any order whatsoever, and as often as the occasion thereof arises.

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

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

21. Number and Gender. Words and phrases contained in this Mortgage, including acknowledgment hereof, shall be construed as in the singular or plural number and as masculine, feminine, or neuter gender according to the contexts.

22. Captions. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

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

a. If to Lender, to: _____

Attention: _____

b. If to Borrower, to: _____

Attention: _____

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

25. WAIVER OF MARSHALLING. Borrower, any party who consents to this Mortgage, and any party who now or hereafter acquires a lien on the Mortgage Property and who has actual or constructive notice of this Mortgage hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

26. Acknowledgement of Receipt of Copies of Mortgage and Note. Borrower hereby acknowledges the receipt of a copy of this Mortgage together with a copy of each Promissory Note secured hereby.

27. Release. Upon compliance with the Contract and/or payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower.

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

29. Additional Provisions: NONE

-END OF MORTGAGE – REFER TO FOLLOWING PAGE FOR SIGNATURES-

IN WITNESS WHEREOF, the parties have caused this mortgage to be duly executed by its duly authorized officers.

BORROWER:

By: _____
Print Name: _____
Authority: _____

By: _____
Print Name: _____
Authority: _____

STATE OF IOWA)
)
COUNTY OF _____)

On this ____ day of _____, 202__, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, the _____ for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public

STATE OF IOWA)
)
COUNTY OF _____)

On this ____ day of _____, 202__, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, the _____ for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public

LENDER:

By: _____
Print Name: _____
Authority: _____

By: _____
Print Name: _____
Authority: _____

STATE OF IOWA)
)
COUNTY OF _____)

On this ____ day of _____, 202__, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, the _____ for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public

STATE OF IOWA)
)
COUNTY OF _____)

On this ____ day of _____, 202__, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, the _____ for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public