

Whereupon, Council member Weland moved that the following resolution be adopted:

RESOLUTION NO. 2025-15

RESOLUTION AUTHORIZING A DEVELOPMENT AGREEMENT FOR 125 WEST BROADWAY FOR THE CDBG UPPER STORY HOUSING CONVERSION PROGRAM AND PERTINENT DOCUMENTS FOR CDBG UPPER-STORY HOUSING CONVERSION PROJECT

WHEREAS, the City Council of the City of Eagle Grove believes it to be in the best interest of the residents of the City of Eagle Grove to continue supporting upper-story housing conversion projects in the downtown zoning district; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EAGLE GROVE, IOWA, that the City Council of the City of Eagle Grove hereby authorizes the Mayor and City Clerk to execute the affixed documents for the continued completion of a CDBG Upper Story Housing Conversion Project located at 125 W Broadway. The following documents are as follows:


- 1. Development Agreement
- 2. Assignment of Leases and Rents
- 3. Covenants Form
- 4. Mortgage
- 5. Promissory Note

The motion was seconded by Council member Limerick and after due consideration thereof, the roll was called, and the following Council members voted:

Ayes: Weland, Limerick, Lorenzen, Vandewater, _____, _____

Nays: Axtell, _____, _____, _____, _____

Whereupon, the Mayor declared said Resolution duly passed and adopted this 18th day of February, 2025.



Michael Boyd, Mayor

ATTEST:



Bryce Davis, City Administrator/Clerk

Melanie Mitchell, Simmering-Cory, P.O. Box 141, Clear Lake IA 50428-0141

Preparer Information: (Individual's Name, Street Address, City, Zip, Phone)

Torkelson Properties, LLC, 910 S. Jackson Ave., Eagle Grove, Iowa 50533-2535

Taxpayer Information: (Individual/Company Name, Street Address, City, Zip)

City of Eagle Grove, Attn: Bryce Davis, City Administrator, P.O. Box 165, Eagle Grove, Iowa 50533

Return Document to: (Individual/Company Name, Street Address, City, Zip)

Type of Document: Development Agreement

Grantors: City of Eagle Grove, Iowa
P.O. Box 165
Eagle Grove, Iowa 50533

Grantees: Torkelson Properties, LLC
910 S. Jackson Ave.
Eagle Grove, Iowa 50533

See Page 1 **for Legal Description:**

Book & Page Reference:

**COMMUNITY DEVELOPMENT BLOCK GRANT UPPER STORY RENTAL HOUSING
CONVERSION PROGRAM DEVELOPMENT AGREEMENT**

THIS AGREEMENT (the "Agreement") is by and between the City of Eagle Grove, Iowa (herein called the "City") and Torkelson Properties, LLC (herein called the "Developer").

WITNESSETH THAT:

WHEREAS, the effective date of this Agreement is February 18, 2025; and

WHEREAS, the City received Community Development Block Grant (CDBG) funds from the Iowa Economic Development Authority (IEDA) under the Title I of the Housing and Community Development Act of 1974 and 24 CFR 570.480 et. Seq. for the rehabilitation of un-occupiable residential units in existing buildings or conversion of existing space into new residential units in existing buildings in spaces that are currently unoccupied ("CDBG-Upper Story"); and

WHEREAS, the City is the applicant to IEDA for said funds; and

WHEREAS, Developer will own, develop and manage the Project; and

WHEREAS, these funds will be used to assist in the conversion of existing buildings into rental housing Units by either rehabilitating un-occupiable units or converting existing non-residential spaces into new rental housing Units, all in spaces that are currently vacant and un-occupiable at (address) as depicted in Exhibit A; and

WHEREAS, the City has been designated as the recipient of these funds by IEDA and will receive, administer, and disburse these funds; and

WHEREAS, the City has relied upon the representations of the proposed activities by the Developer who will undertake the community development activities in accordance with the original funding application submitted by the City to the IEDA; and

WHEREAS, this project shall be subject to all the terms and conditions specified in the contract by and between the IEDA and the City for the implementation of the CDBG-Upper Story funds, in the attached Exhibit A, and all governing regulations set by City ordinances and codes; and

NOW, THEREFORE, it is agreed between the parties hereto that:

I. SCOPE OF SERVICE

A. Activities

1. As a condition of receiving up to \$530,000.00, the Developer will be responsible for developing, in a manner satisfactory to the City and IEDA and consistent with any standards required by this Agreement or federal or state laws and regulations, conversion of existing buildings into rental housing Units by either rehabilitating un-occupiable units or converting non-residential existing spaces into new rental housing Units, all in spaces that are currently vacant and un-occupiable at the project located at Legal Description: The South 80 feet of Lot

12 in Block 5, in the Town of Eagle Grove Junction, Wright County Iowa locally known as 125 W. Broadway, Eagle Grove, Iowa containing units (the "Project"). Unoccupiable units are defined as existing space that is not currently able to be occupied or would not be occupiable with minimal minor improvements and have been unoccupied for at least 5 years and will require major improvements and possible code updates to allow someone to reside in the unit. Additionally, the number of units in the project that must be leased to a persons and/or households at or below 80% of the area median family income, as determined by the U.S. Department of Housing and Urban Development must be the greater of (1) at least 51% of the rental UNITS (or 5 units) or (2) a percentage of units equal to the percentage of the total project cost paid by CDBG funds.

B. Funding

1. The City agrees to lend the project an amount not to exceed \$550,000.00 in CDBG-Upper Story funds, as more specifically set out in Exhibit B: Mortgage, Exhibit C: Promissory Note, Exhibit D: Assignment of Leases and Rents (as applicable), and Exhibit E: Agreement for Covenants and Restrictions (this Agreement, the Mortgage, the Promissory Note, the Assignment of Leases and Rents, and the Covenants and Restrictions shall collectively be known as the "Loan Documents"), which are attached hereto and by this reference made a part hereof as if set out in full in this section. The Mortgage and the Assignment of Leases and Rents securing the CDBG-Upper Story funds forgivable loan (non-receding) may be recorded in junior position to the principal conventional loan but must be recorded in senior position to any and all other funding in the project. The Agreement for Covenants and Restrictions should be filed prior to any mortgages being filed.
2. The Developer shall receive the CDBG-Upper Story Funds and use the proceeds thereof to pay eligible costs incurred by the Developer in connection with the construction and acquisition of the Project. The funding of the CDBG-Upper Story Funds and any portion thereof is expressly conditioned upon the Developer complying with all of the program requirements and the terms of this Contract. Proceeds of the CDBG-Upper Story Funds may only be applied to eligible uses. No costs incurred prior to the Effective Date of this Agreement may be included under this Agreement without prior written approval.
3. No CDBG-Upper Story funds or non-CDBG-Upper Story funds may be committed to the project until the City and the Developer have secured environmental approval from the IEDA, as provided in HUD regulation 24 CFR Part 58. In addition, pending environmental approval and pursuant to 24 CFR Part 58.22, no activities may be undertaken that may limit the choice of reasonable alternatives.
4. The award proceeds will be paid to Developer to be applied against the approved project expenses. Developer will have no authority to direct any of the funds elsewhere or to withdraw any of the funds without the express written permission of the City.

5. No CDBG-Upper Story funds may be used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public purpose.

C. Closing

1. Prior to or at the time of closing on/filing the CDBG-Upper Story Loan, the Developer shall:
 - (i) Execute and deliver this Agreement and the Exhibits, including the note, mortgage, assignment of leases and rents, and covenants and restrictions, to the City.
 - (ii) Have submitted a firm written commitment from each source of funds to the Project identified in Exhibit A. Each commitment shall include the amount, terms, estimated time of contribution, and conditions of the financial commitment, as well as any schedules. These commitments must be in a form and amount acceptable to the City. The Developer shall report any changes in these contributions to the City immediately, whether the change is made by the Developer or any other party.
 - (iii) Provide an attorney's title opinion regarding the land.
 - (iv) Provide a budget for the Project acceptable to the City.
 - (v) Provide the City with the due diligence materials requested by the City, all in form and substance reasonably satisfactory to the City.
 - (vi) Provide a construction schedule.

D. Disbursements

1. The City shall use the CDBG-Upper Story Funds it receives from IEDA and HUD with respect to the Project to reimburse the Developer for eligible costs incurred in connection with the development of the Project to the extent such costs are properly submitted to the City in accordance with the procedures set forth in this Agreement and all other terms and conditions of this Agreement. The Developer may not request a disbursement of CDBG-Upper Story Funds from the City until such funds are needed to pay eligible costs of the Project. Accordingly, the amount of each draw request must be limited to the amount of money needed to pay eligible costs actually incurred by the Developer at the time of the draw request, may not include amounts for prospective or future needs, and may not be placed into escrow accounts or advanced in lump sums to the Developer.
2. All claims for disbursement must be processed in accordance with IEDA's Policies and Procedures manual for this grant program. Before the Developer may request disbursement, the Developer shall submit to the City the following information:
 - (i) Signed Construction Contract(s) and contractor statements.
 - (ii) Building permits for the Project.
 - (iii) Required environmental clearance.
 - (iv) Remainder of CDBG-Upper Story loan documents properly

- signed or executed with due authority.
- (v) Proper recordation with the applicable county recorder and/or Iowa Secretary of State of the mortgage, UCC-1, assignment of leases and rents, covenants and restrictions, and any other documents required by the City.
 - (vi) Contractor and subcontractor clearance eligibility requests.
3. The Developer shall provide a draw request for CDBG-Upper Story Funds to the City using the procedures and forms specified by the City in coordination with IEDA. All eligible costs to be reimbursed must have adequate and itemized supporting documentation, including copies of receipts. The eligibility of any cost shall be determined by the City, in its sole discretion. A draw request must show expenses in whole dollar amounts. The Developer shall round down for any expense not in a whole dollar amount. A draw request must be equal to or greater than five hundred dollars (\$500.00), except for a final draw request. Further, a final draw request shall not be paid by the City until at least one monitoring visit of the Project has been conducted and any required or requested project reports and documents have been reviewed and approved by the City. The Developer shall not charge or allow CDBG-Upper Story Funds to pay any flat rate or estimate for service, meaning that any expense must be the actual cost for providing such good or service.
4. Ten percent of the CDBG-Upper Story Funds will be withheld until:
- (i) the Project has been constructed or rehabilitated,
 - (ii) the CDBG-Upper Story Units have been rented to eligible tenants in compliance with program guidance.
 - (iii) a monitoring visit has been satisfactorily completed by the City and/or IEDA.
5. The CDBG-Upper Story Funds must be used to pay eligible costs. The City shall determine the Developer's compliance with this requirement at the time each draw request of CDBG-Upper Story Funds is made based upon a review of the draw request. The City may request lien waivers as necessary and establish such additional limitations on the expenditure of CDBG-Upper Story Funds as it determines are appropriate to ensure compliance with program requirements.
6. In the event that the City shall determine that the CDBG-Upper Story Funds Grant have been used to pay ineligible costs, whether such costs are ineligible costs because they are not approved as eligible costs in accordance with this Agreement or because they violate program requirements, the City shall provide the Developer with written notice thereof and the Developer shall pay to the City, in immediately available funds within ten Business Days from the date of said notice, an amount equal to that portion of the CDBG-Upper Story Funds used to pay ineligible costs.
7. In the event that the City makes a determination that the Developer has failed to expend (or is unlikely to expend) sufficient CDBG-Upper Story Funds on eligible costs within the prescribed expenditure deadlines, the City shall have no

obligation to disburse any funds to the Developer under this Agreement and may, at the election of the City, recover or offset any CDBG-Upper Story Funds actually paid to the Developer with respect to the Project.

8. The City reserves the right to withhold funds until the City has received, reviewed, and approved all items, such as permits or licenses from other local, state or federal agencies, which may be required prior to Project commencement.
9. If the total amount of funding for a Project has not been requested by the Developer within 60 Days after its estimated construction completion date, then the City shall be under no obligation for further disbursement. Upon the submission and disbursement of a final Draw Request, any remaining CDBG-Upper Story Funds shall not be available.
10. Upon expiration of this Agreement, any remaining CDBG-Upper Story Funds will no longer be eligible for reimbursement to the Developer.
11. The Developer shall cooperate with the City in obtaining and providing any additional documentation that may be required by the City to approve the request for CDBG-Upper Story Funds.
12. The City will not make any payments to the Developer for costs that:
 - (i) are Ineligible Costs or otherwise prohibited under Program Requirements;
 - (ii) are not strictly in accordance with the terms of this Agreement;
 - (iii) were requested and/or incurred before the signing of this Agreement without prior City approval;
 - (iv) were requested and/or incurred after termination of this Agreement; or
 - (v) were requested during the occurrence and continuation of an uncured Event of Default.
13. The City is authorized to make modifications to the Draw Request procedure and to establish additional requirements for payment of the CDBG-Upper Story Funds to the Developer as may be necessary or advisable for compliance with all Program Requirements.

E. Repayments

There will be no repayments required on the \$550,000.00 of CDBG-Upper Story funds if all affordability and long-term monitoring conditions are fulfilled. Terms and conditions are further set forth in the Loan Documents. If the assisted rental project is sold or transferred to an alternate use during the compliance period following completion and acceptance, the entire amount of the CDBG-Upper Story forgivable loan shall be repaid.

F. Default

1. Any of the following events shall constitute an "Event of Default" under this

Agreement:

- (i) a breach by the Developer of any of its representations, covenants, or warranties contained in this Agreement or the Loan Documents or in the performance of any of its obligations under this Agreement, in either event that (a) has or might reasonably be expected to have a material adverse impact on the operation of the Project, and (b) is not cured within ten Business Days in the case of a monetary default or 20 Business Days in the case of a non-monetary default following notice of such breach or default from the City to the Developer, provided, however, that if a non-monetary default cannot reasonably be cured within 20 Business Days and the Developer commences a cure within 20 Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended for up to an additional 30 Business Days;
- (ii) a representation, warranty or statement made or furnished to the City by, or on behalf of the Developer in connection with the Application or this Agreement to induce the City to make an award to the Developer shall be determined by the City to be incorrect, false, misleading or erroneous in any material respect when made or furnished and shall not have been remedied to the City's satisfaction within 30 Days after written notice by the City is given to the Developer; or
- (iii) the Developer fails to make a payment when due under the terms of this Agreement within ten days following written notice of such overdue payment is given to the Developer by the City; or
- (iv) the Developer demonstrates a lack of capacity to carry out the approved Project in a timely manner, in the sole discretion of the City; or
- (v) the commencement of foreclosure proceedings with respect to any mortgage, which have not been withdrawn or dismissed within 30 Days after the date of such commencement; or
- (vi) a violation of any law, regulation, or order applicable to the Developer or the Project that has or might reasonably be expected to have a material adverse impact on the operation of the Project and is not cured within the applicable cure period, if any, provided in such law, regulation, or order; or
- (vii) gross negligence, fraud, willful misconduct, misappropriation of funds, or criminal activity other than a simple misdemeanor by the Developer or any Affiliate of the Developer providing services to or in connection with the Developer or the Project; or
- (viii) the estimated construction completion date as set forth in the Construction Schedule has been delayed by more than 30 Days and (a) the Developer has failed to submit an acceptable Action Plan to the City or (b) the City determines such delay will prevent the Developer, the Project or the City from complying with the Program Requirements; or
- (ix) the Developer is debarred, suspended, proposed for debarment, or

- placed on ineligibility status by HUD; or
 - (x) repeated or prolonged failure to provide any required reports; or
 - (xi) the Project fails to meet a National Objective or to maintain the Program Requirements for the Affordability Period(s) of the CDBG-Upper Story Units for the entire affordability period; or
 - (xii) Developer fails to satisfy or appeal any judgment against Developer.
- 2. In the event of a default, the City shall follow 2 CFR part 200 for suspension or termination of this Agreement. This includes temporarily withholding cash payments, disallowing all or part of the costs of the Project, wholly or partly suspending or terminating this Agreement, withholding further awards from CDBG-Upper Story, requiring the immediate repayment of the full amount of CDBG-Upper Story Funds disbursed, or taking any other remedies that may be legally available. Costs incurred by the Developer during a suspension or after termination of this Agreement are not allowable for reimbursement unless the City, in its sole discretion, expressly authorizes reimbursement.
- 3. The City shall have the right to exercise any of the following remedies upon an Event of Default:
 - (i) temporarily suspend making disbursements of CDBG-Upper Story Funds under this Agreement pending correction of the deficiency or default by the Developer;
 - (ii) require the repayment of the CDBG-Upper Story Loan;
 - (iii) declare the Developer and its principals "not in good standing" with respect to the City;
 - (iv) cease making any further payments of CDBG-Upper Story Funds under this Agreement;
 - (v) terminate this Agreement;
 - (vi) require the immediate repayment of CDBG-Upper Story Funds advanced pursuant to this Agreement;
 - (vii) require that the Developer, the property manager, the Contractor or any other party providing services to the Developer to be replaced;
 - (viii) "Reserved"
 - (ix) draw upon and apply any escrows and/or reserve accounts in accordance with their terms;
 - (x) exercise any rights it may have under the CDBG-Upper Story Loan Documents, including, but not limited to, foreclosure of the Note and Mortgage thereunder, in order to assure for repayment of the CDBG-Upper Story Funds; and
 - (xi) exercise any other rights and remedies that may be available under law or in equity.
- 4. In addition to the remedies described, the Developer shall, upon demand by the City following an Event of Default, repay any amount of CDBG-Upper Story Funds previously disbursed to the Developer under the terms of this Agreement.

5. The City may defer the enforcement of remedies upon the occurrence of an Event of Default for such period as it determines appropriate, if it determines that any Lender is taking appropriate measures to correct the circumstances giving rise to the Event of Default.
6. The City may consult with and advise any Lender as to its intention to exercise remedies hereunder.
7. Each right and remedy provided in this Agreement is distinct from all other rights or remedies under this Agreement, the Loan Documents, or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.
8. The City may provide a Lender with a copy of any written notice of default provided to the Developer pursuant to the terms of this Article. The City hereby agrees that any cure of any default made or tendered by any Lender shall be deemed to be a cure by the Developer and shall be accepted or rejected on the same basis as if such cure were made or tendered by the Developer.
9. The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Agreement is to assure compliance of the Project and the Developer with the Program Requirements, AND BY REASON THEREOF, THE DEVELOPER IN CONSIDERATION FOR RECEIVING THE CDBG-UPPER STORY LOAN FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE CITY, IEDA, HUD AND/OR THE RESIDENTS OF THE PROJECT SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED ABOVE OR BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE DEVELOPER AND ITS SUCCESSORS AND ASSIGNS OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY STATE COURT OF COMPETENT JURISDICTION FOR ANY AND ALL BREACH OF THE CONDITIONS AND RESTRICTIONS HEREOF. The Developer hereby further specifically acknowledges that the beneficiaries of the Developer's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
10. If the City determines at any time that the Developer has expended funds for Ineligible Costs, the Developer will be notified of the questioned costs and given an opportunity to justify questioned costs prior to the City's final determination of the disallowance of costs. Refer to Section 7.4(B) for repayment. If it is the City's final determination that costs previously paid by the City are Ineligible Costs under the terms of this Agreement, the expenditures will be disallowed, and the Developer shall repay to the City all Ineligible Costs.

G. Affordability

1. The Developer agrees that maintain, throughout the affordability period, that the

greater of (1) at least 51% of the rental units or (2) a percentage of units equal to the percentage of the total project cost paid by CDBG funds, whichever is greater, will be leased to persons and/or households at or below 80% of the area median family income, as determined by the US Department of Housing and Urban Development. The maximum (gross) rent limits allowed on the CDBG-Upper Story Units shall not exceed the most current HOME Program 65% rent limits in accordance with 24 CFR 92.252(a), including the subtraction of essential tenant utilities from the rental amount. The remaining units can be rented without income and rent restrictions. Consideration must be given to keeping all units in the project, both assisted and non-assisted, consistent with each other in terms of bedroom sizes, square footage, similar design features and similar amenities.

The income of each CDBG-Upper Story tenant must be determined initially in accordance with "affordable housing" requirements as defined from time to time by the United States Department of Housing and Urban Development (HUD). Initially incomes must be determined by using third party verification per HUD requirements using the Part 5 (24 CFR 5.609) income definition of inclusions and exclusions. The income of each tenant in a unit assisted with CDBG-Upper Story funds should be renewed annually for the term of affordability (five years). In addition to tenant income data, the Developer must also provide documentation on their compliance efforts with their Affirmative Marketing Plan.

2. The CDBG-Upper Story units will remain affordable rental housing for a period of three years (the "affordability period") from the time of project completion, occupancy and the provision of final demographic information for tenants to the City and IEDA. Throughout this period of affordability, the Developer or their designees shall agree to periodic reporting requirements, compliance monitoring and inspections for tenant incomes, tenant rents on the affordable units, appropriate unit mix and property standards compliance.
3. The City, at the direction of IEDA, who has determined that the subject property property has failed to comply with the affordability requirement during the period of affordability referred to above or the rental time-period requirement, will send a demand letter to the Developer to repay the loan within 60 days from receipt of said letter.

H. Inspections

1. The City or its agents may perform periodic inspections at any reasonable time to ensure compliance with this agreement and the Loan Documents. The City or its agents shall perform a final inspection to certify project completion prior to final disbursement of the loan proceeds. The Developer agrees to keep this project in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals and additions in a timely manner.
2. Prior to disbursement of loan proceeds or for any other purpose in connection with the completion of the improvements, the City or its agents shall have free

access and right of entry at any reasonable time of the day to inspect all or any portion of the property and the improvements. These inspections are for the benefit of the City as lender, to assure that the loan proceeds are being expended on the property in accordance with the approved loan application and the construction contract and for the benefit of the local government to assure that local law is being complied with in the project. In the event of any such inspection, the City may inform the Developer of any noncompliance with respect to the construction contract, but the City shall not issue direct orders or instructions to the contractor or subcontractor performing the work, except as authorized by the Developer. The Developer shall take all steps necessary to assure that the City or its agents are permitted to examine and inspect such work, and all contracts, materials, equipment, fixtures, payrolls and conditions of employment pertaining to the work, and all relevant data, books, and records of the Developer.

I. Timing

The Developer agrees to use their good faith efforts to obtain a building permit for the project and begin construction by January 1, 2025. They also agree to use their good faith efforts to complete the project on or before the end date of the City's Contract with IEDA.

II. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER

The Developer hereby represents, warrants and covenants to the City that the following are true as of Execution and will be true on the due date of each disbursement of CDBG-Upper Story Funds, and as applicable, throughout the term of this Agreement:

- A. The Developer is a duly organized Limited Liability Company (LLC) validly existing under the laws of the state of its organization, is authorized to do business in the State of Iowa and has full power and authority to perform its obligations under this Agreement.
- B. No litigation, demand, investigation, claim or proceeding against the Developer or any other litigation or proceeding directly affecting the Project is pending or, to the best knowledge of the Developer, threatened, before any court, administrative agency or other Governmental Authority that would, if adversely determined, have a material adverse effect on the Developer or the construction, use and operation of the Project. The Developer and its Project Team shall promptly notify the City of the initiation of any claims, lawsuits or proceedings brought against the Developer.
- C. No default by the Developer or any Affiliate thereof having any relationship with the Project has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the financing documents for the Project or other documents or instruments governing the development, use, occupancy, and operation of the Project.
- D. The Developer has not entered into any verbal or written contracts, agreements or arrangements of any kind which are inconsistent with this Agreement.

- E. All material building, zoning, health, safety, business and other applicable certificates, permits and licenses necessary to permit the construction, use, occupancy and operation of the Project have been or will, at the time required, be obtained and maintained (other than, prior to completion of construction of the Project or a specified portion thereof, such as are issuable only upon completion of construction or such specified portion thereof); and the Developer has not received any notice nor has any knowledge of any violation with respect to the Project of any law, rule, regulation, order or decree of any Governmental Authority having jurisdiction which would have a material adverse effect on the Project or the construction, use or occupancy thereof, except for violations which have been cured or can be cured within any applicable cure period, and are in the process of being cured, and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.
- F. Before disbursement of CDBG-Upper Story Funds, the Developer will have a fee simple interest in the Project and good and marketable title thereto, free and clear of any liens, charges or encumbrances other than the encumbrances the Developer is permitted to create under the terms of this Agreement, matters of title as of the effective date of the City's title opinion, and mechanics' or other liens that have been bonded against (or as to which other cash equivalent security has been provided) in such a manner as to preclude the holder of such lien from having any recourse to the Project or the Developer for payment of any debt secured thereby.
- G. No Event of Default has occurred and is continuing.
- H. No Event of Bankruptcy has occurred as to the Developer.
- I. As of the date of Execution, all reserves and accounts required to be maintained by the Developer under the terms of this Agreement are currently funded (or will be funded at the time(s) required) up to the specified levels.
- J. The Developer will complete the Project.
- K. All utilities are, or will be, available to the Project, including sanitary and storm sewers, water, gas (if applicable) and electricity.
- L. The sources of funds available to the Developer are sufficient to enable the Developer to complete construction of the Project in accordance with the Plans and Specifications.
- M. All financial statements and related materials concerning the Project provided to the City are true and correct in all material respects and completely and accurately represent the subject matter thereof as of the effective date of the statements and related materials, and no material adverse change has occurred since that date.
- N. Unless the City consents to a transfer of the Project by Developer, the Project will continue to be owned and operated by the Developer through the expiration of this Agreement or, if later, the date, (if any), through which the Developer is required to own and operate the Project pursuant to any of the documents governing the use and operation of the Project.

- O. Tenants for the residential units in the Project will be screened and selected from a pool of eligible tenants based on uniformly applied tenant selection criteria that are commonly employed by other property owners in determining tenant eligibility in similar projects to the Project throughout the Affordability Period(s), and:
- P. No preferences or discrimination will be employed in selecting tenants (i.e., no discrimination based on religion, race, color, creed, national origin, ancestry, legal residency, sex, sexual preference or orientation, gender identity, age, physical handicap, medical condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), family status, marital status, pregnancy, childbirth or related medical condition, or membership in the sponsoring organization) as will be consistent with federal housing policy governing nondiscrimination as determined under HUD rules and regulations.
- Q. Each of the representations and disclosures made by the Developer to the City in any application for CDBG-Upper Story Funds is true and correct as of the date hereof. Each of the covenants, agreements and conditions contained in the such applications have been duly performed or satisfied by the Developer to the extent that performance or satisfaction is required on or prior to the date of Execution, and the Developer has no reason to believe that the covenants, agreements, and conditions required to be performed or satisfied after the date hereof will not be performed or satisfied in a timely manner.
- R. The Project is not located in a special flood hazard area identified by the Federal Emergency Management Agency (FEMA).
- S. The Developer shall not employ, award a contract to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD.
- T. No federal appropriated funds have been paid or will be paid, by or on behalf of the Developer, to any Person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- U. No funds have been paid for influencing or attempting to influence an officer or employee of a Member of Congress in connection with a federal contract, grant, loan and/or cooperative agreement benefiting the Developer. To the best knowledge of the Developer, the Developer has complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal entity in connection therewith, if applicable.

- V. Neither the Developer nor any of its partners, members, managers, officers, directors, or employees, nor, to the best knowledge of the Developer, any of the Developer Parties has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD.
- W. To the best knowledge of the Developer, no Developer or Developer Parties, nor any of the Developer's property is or has ever been subject to or a party to or bound by any agreement or other arrangement with any person who has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD.
- X. The Developer will prevent, and has instituted or will institute, (and will update from time to time to correspond to changes in circumstances and changes in applicable laws and regulations) policies and procedures to prevent, any circumstance or event described in subclauses T. and V. above.
- Y. The Developer and all other applicable Developer Parties have not engaged and shall not engage in any act or omission that would violate anti-money-laundering laws, including but not limited to 18 USC § 1956; have complied or will comply with requirements for instituting an anti-money laundering compliance program required under 31 USC § 5318(h) and applicable to all "financial institutions" as defined in 31 USC § 5312(a)(2); and have instituted or will institute policies and procedures and use commercially reasonable due diligence to identify and report Suspicious Transactions to relevant U.S. Government officials. "Suspicious Transactions" that may require reporting include, but are not limited to, (i) individual or related transactions in which a third-party provides payment in U.S. or foreign currency in excess of \$10,000 that may require reporting under 31 USC § 5331 and 26 USC § 6050I; (ii) any transaction where the Developer or any Developer Party knows, suspects, or has reason to know that the transaction (A) is for an illegal purpose, including but not limited to money laundering; (B) is otherwise an attempt to disguise funds derived from illegal activity or evade reporting requirements under U.S. law; or (C) is suspicious because the transaction appears to serve no business or lawful purpose.
- Z. "The Recipient certifies, to the best of his or her knowledge and belief, that:
 - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee, or an employee of a Member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.

iii. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

III. NOTICES

Communication and details concerning this Agreement shall be directed to the City Clerk at 121 North Commercial Avenue, Eagle Grove, Iowa 50533 and directed to the Developer at 910 S. Jackson Avenue, Eagle Grove, Iowa 50533.

IV. SPECIAL CONDITIONS

A. Compliance

The Developer agrees to comply with all applicable federal, state, and local laws and regulations governing the funds provided under this agreement.

B. Governing Law

The Developer agrees to comply with the requirements of the Housing and Community Development Act of 1974, Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations concerning the CDBG Program, all federal regulations and policies issued pursuant to these regulations, and all notices issued in the Federal Register pertaining to these CDBG-Upper Story funds. The Developer further agrees to utilize funds available under this agreement to supplement rather than supplant funds otherwise available.

C. IEDA

The project shall be subject to all the terms and conditions specified in the contract by and between the IEDA and the City for the implementation of the CDBG-Upper Story program, and all governing regulations set by City ordinances and codes.

V. GENERAL CONDITIONS

A. Independent Contractor

Nothing contained in this agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Developer shall at all times remain an independent contractor with respect to the services to be performed under this agreement. The City shall not be responsible for payment of Unemployment Compensation, FICA, retirement, life and/or medical insurance, and Workers Compensation Insurance for the employees of the Developer.

B. Hold Harmless

The Developer shall hold harmless, defend and indemnify the City, the State of Iowa and the Iowa Economic Development Authority, and their respective Board members, employees, agents, elected and appointed officials, harmless against all obligations, claims, losses, costs, damages, expenses (including the costs of the investigation), deficiencies, demands, and liabilities of whatsoever nature or kind including, but not limited to, attorney fees, including the reasonable value of time of the Attorney General's office, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgment and, any loss from a judgment directly or indirectly resulting from, arising out of, or related to the subject matter of this agreement.

C. Workers' Compensation

The Developer shall provide Workers' Compensation Insurance coverage for all employees involved in the performance of this agreement.

D. Insurance and Bonding

The Developer shall carry sufficient insurance coverage to protect real estate and or personal property related to the Project from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Developer shall comply with the bonding and insurance requirements in Subpart C of OMB Circular A-110. The Developer shall have the City and the IEDA identified as additional insureds on any insurance policy it takes out related to the Project during construction and throughout the affordability period.

E. Grantor Recognition

The Developer shall insure recognition of the role of the grantor agency in providing services through this agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Developer will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. Specifically, the Developer must comply with the grantor recognition requirements as determined by the IEDA.

F. Amendments

The City or the Developer may amend this agreement at any time provided that such amendments make specific reference to this agreement, and are executed in writing, and signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this agreement, nor relieve or release the City or Developer from their obligations under this agreement.

The City may, in its discretion, amend this agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other valid reasons. If such amendments result in a change in the funding, the scope of services, or the schedule of activities to be undertaken as part of this agreement, such modifications will be incorporated only by written amendment signed by both the City and the Developer.

G. Suspension or Termination

Either party may terminate this agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Developer under this agreement shall, at the option of the City, become the property of the City, and the Developer shall be entitled to receive just and suitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

The City may also suspend or terminate this agreement, in whole or in part, if the Developer materially fails to comply with any term of this agreement, or with any of the rules, regulations or provisions referred to herein; and the City may declare the Developer ineligible for any further participation in city contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the Developer is in noncompliance with any applicable rules or regulations, the City may withhold up to fifteen (15) percent of said funds until such time as the Developer is found to be in compliance by the City or is otherwise adjudicated to be in compliance.

H. Retention

The Developer shall retain all records pertinent to expenditures incurred under this agreement for a period of three (3) years after the date the state CDBG contract has been closed by HUD. Records for non-expendable property acquired with funds under this agreement shall be retained for five (5) years after final disposition of such property. Additional information on retention is contained in Article 9 of the original IEDA agreement.

I. Disclosure

The Developer understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Developer's responsibilities with respect to services provided under this agreement, is prohibited unless written consent is obtained from such person receiving the service or, in the case of a minor, that of a responsible parent/guardian.

J. Property Records

The Developer shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(7) and 570.505.

K. National Objectives

The Developer agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this agreement meet one or more of the CDBG program's national objective, Housing Activities, as defined in 24 CFR Part 570.483.

- L. Close-Outs
Developer obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets, and determining the custodianship of records.
- M. Reversion of Assets
Upon the expiration of this agreement, the Developer shall transfer to the City any CDBG-Upper Story funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-Upper Story funds, as well as ensure that any real property acquired or improved with CDBG-Upper Story funds in excess of \$25,000 meets all requirements specified in 24 CFR 570.503(b)(7).
- N. Building Standards
The Developer shall meet all applicable local codes, ordinances, zoning, and Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) at the time of completion and for the duration of the Affordability Period. The Developer agrees to follow the state building code if no local codes are in place. The Developer agrees to meet the industry-recognized green building standard as outlined in IEDA's baseline Green Streets Criteria if Green Streets funding was awarded to said project.
- O. Audits and Inspections
All Developer records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, the Iowa Economic Development Authority, the Federal Government, or any of their designees at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Developer within 30 days after receipt by the Developer. Failure of the Developer to comply with the above audit requirements will constitute a violation of this agreement and may result in the withholding of future payments. The Developer hereby agrees to have agency audit(s) conducted in accordance with the Single Audit, formerly known as OMB Circular A-133.
- P. Procurement
The Developer shall comply with 24 CFR 85.36 ("Common Rule") and the current IEDA policy concerning the purchase of equipment and shall maintain an inventory record of all non-expendable personal property as defined by such policy as may be procured with funds provided herein.
- Q. Conflict of Interest
The Developer shall comply with the conflict-of-interest policy found at 24 CFR 570.489(h). Specifically, the employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of Developers who exercise or have exercised any functions or responsibilities with respect to CDBG-Upper Story activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a

CDBG-assisted activity, or with respect to the proceeds of the CDBG-Upper Story-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

VI. ADMINISTRATIVE REQUIREMENTS

A. Applicable Laws

The Developer certifies and assures that the project will be conducted and administered in compliance with all applicable Federal and State laws, regulations and orders. Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. The Recipient certifies and assures compliance with the applicable orders, laws and implementing regulations, including but not limited to:

1. Financial Management guidelines issued by the U.S. Office of Management and Budget, OMB Circular A-133 ("Single Audit Act Amendment of 1996"), OMB Circular A-122 ("Cost Principles for Nonprofit Organizations"), OMB Circular A-87 ("Principles for Determining Cost Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments").
2. Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.); and regulations which implement these laws,
3. Title VI of the Civil Rights Act of 1964 as amended (Public Law 88-352; 42 U.S.C. 2000d et seq.); Title VIII of the Civil Rights Act of 1968 as amended (Public Law 90-284; 42 U.S.C. 3601 et seq.); the Iowa Civil Rights Act of 1965; Iowa Code Section 19B.7, and Executive Order #34, dated July 22, 1988; Iowa Code Chapter 216, Presidential Executive Order 11063, as amended by Executive Order 12259; Presidential Executive Order 11246, as amended; Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794); the Age Discrimination Act of 1975 as amended (42 U.S.C. 6101 et seq.); the Americans with Disabilities Act, as applicable, (P.L. 101-336, 42 U.S.C. 12101-12213); and related Civil Rights and Equal Opportunity statutes; and regulations which implement these laws.
4. Fair Housing Act, Public Law 90-284. The Fair Housing Act is part of Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. 3601 et seq.); Section 109 of the Title I of the Housing and Community Development Act of 1974, as amended; Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1701u) (24 CFR 75); and regulations which implement these laws.
5. Department of Housing and Urban Development regulations governing the CDBG program, 24 Code of Federal Regulations, Part 570. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235), and implementing regulations.

6. Requirements for the Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule (24 CFR Part 35, et al.), including the identification and evaluation of lead-based paint hazards and implementation of lead-based paint hazard control measures. To the extent that lead-based paint is located in any existing building at the project, the Developer shall provide the City with a plan for handling such lead-based paint in a safe manner and in accordance with the foregoing regulations and comply with the plan during any construction at the project.
7. Davis-Bacon Act, as amended (40 U.S.C. 276a – 276a-5) under Section 110 of the Housing and Community Development Act of 1974, as amended; Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); the Copeland Anti-Kickback Act (18 U.S.C. 874); the Department of Defense Reauthorization Act of 1986; and regulations which implement these laws. The Davis Bacon Act and the Contract Work Hours and Safety Standards Act only apply to residential projects if the project is for 8 or more units.
8. National Environmental Policy Act of 1969 and implementing regulations.
9. National Historic Preservation Act of 1966, as amended (16 USC 70) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the PROJECT.
10. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA)(42 U.S.C. 4601 – 4655) and implementing regulations; Section 104(d) of the Housing and Community Development Act of 1974, as amended, governing the residential anti-displacement and relocation assistance plan; and Section 105(a)(11) of the Housing and Community Development Act of 1974, as amended, governing optional relocation assistance.
11. Iowa CDBG Program Administrative rules adopted by the Iowa Department of Economic Development, 261 Iowa Administrative Code, Chapter 23, to the extent applicable to the Program and not in conflict with the Program rules.
12. Financial and Program Management guidelines issued by the Iowa Department of Economic Development, the Iowa Housing Fund Management Guide and the IEDA Audit Guide, as applicable.
13. Government-wide Restriction on Lobbying Certification [Section 319 of Public Law 101-121] and implementing regulations.
14. Fair Labor Standards Act and implementing regulations
15. Hatch Act (regarding political partisan activity and federally funded activities) and implementing regulations.

16. Citizen participation, hearing and access to information requirements found under sections 104(a)(2) and 104(a)(3) of Title I of the Housing and Community Development Act of 1974, as amended and as modified by the waivers and alternative requirements published in the Federal Register on September 11, 2008.
17. Subsection 104(l) of Title I of the Housing and Community Development Act of 1974, as amended, regarding the prohibition of the use of excessive force in nonviolent civil rights demonstrations and the enforcement of state and local laws on barring entrance to or exit from facilities subject to such demonstrations.
18. Drug-Free Workplace Act.
19. All Federal law and regulations described in 24 CFR subpart K.

VII. PERSONNEL AND PARTICIPANT CONDITIONS

A. Reporting and Monitoring: Hiring Practices during Construction

1. The Developer and their contractors must comply with the Equal Employment Opportunity, Executive Order 11246, as amended (41 CFR Part 60) prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex familial status or national origin and Section 3 of the Housing and Urban Development Act of 1968 as amended (12 USC 1701u) that requires to the greatest extent feasible, opportunities for training and employment arising from the funding provided to be offered low-income persons residing in the program service area. Also to the greatest extent feasible, contracts for work to be performed will be awarded to Certified Section 3 business concerns.
2. The Developer agrees to comply with the Section 3 requirements as applicable. Section 3 requirements provide that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the areas of the project. The Developer or their contractors will be required to provide information related to labor hours worked on the project, and the income certification of labors in order to establish a percentage of Section 3 labor hours worked on the project. Additionally, the developer may need to report on marketing to Section 3 certified business concerns and residents. The Developer agrees that they will use their best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this agreement. As used in this context, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 USC 632) and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. The Developer may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu

of an independent investigation. The Developer or their contractor will be required to complete forms on Minority and Women Contractors and Section 3 hiring during the construction period on forms provided by the City before City releases final payments. The City will review these reports in conjunction with the Minority and Women Owned Business Plan submitted by the Developer.

3. Federal Davis-Bacon wage requirements are applicable to this Agreement if the number of units in the Project is 8 or more. The Developer agrees to comply with 24 CFR Section 570.603 and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 USC 276(a) to (1-7) as it applies to any construction work financed in whole or in part with CDBG funds. All contracts and subcontracts for construction shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations. The Developer shall maintain documentation and records which demonstrate compliance with wage and hour requirements, including contract provisions and payroll records.
4. The Developer also agrees to comply with the Contract Work Hours and Safety Standards Act (40 USC 327-333), as supplemented by the Department of Labor regulations contained in 29 CFR Part 5 if the Project is 8 units or more.
5. The Developer agrees to comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented by the Department of Labor regulations contained in 24 CFR Part 3.
6. Contractor and Subcontractor Review. The requirements of 2 CFR Part 2424 are applicable to CDBG-Upper Story Funds. The Developer shall obtain information on each contractor and subcontractor to prior to start of construction to determine if any contractor has been debarred or disqualified by HUD (24 CFR Part 5 and 24 CFR Part 24). The Developer shall not enter into a contract with any person, agency, or entity that is debarred, disqualified, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689. In the event that the Developer has entered into a contract or subcontract with a debarred or suspended party, no CDBG funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor.

B. Civil Rights

1. Nondiscrimination

The Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Developer will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Developer agrees to post or otherwise make available equal opportunity and nondiscrimination information for employees and applicants for

employment.

2. Section 504

The Developer agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide the Developer with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

The Developer shall ensure, to the maximum extent feasible that five percent of the total dwelling units, shall be readily accessible to and usable by individuals with mobility impairments. An additional two percent, shall be accessible for persons with sensory impairments. The total number of units in this assisted project, regardless of whether they are all CDBG assisted, is used as the basis for determining the minimum number of accessible units.

C. Affirmative Action

1. Approved Plan

The Developer agrees that it shall comply with the City's Affirmative Action Program, in keeping with the principles as provided in Executive Order 11246.

2. WBE/MBE

The Developer will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women.

3. Access to Records

The Developer shall furnish and cause each of its sub-Developers to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, IEDA, HUD and/or their agents, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. EEO/AA Statement

The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that it is an equal opportunity or affirmative action employer.

5. Subcontract Provisions

The Developer will include the Civil Rights and Affirmative Action provisions of this Agreement in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Developer or vendor.

D. Conduct

1. Assignability

The Developer shall not assign or transfer any interest in this agreement without the

prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Developer from the City under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

(i) Approvals

The Developer shall not enter into any subcontracts with any agency or individual in the performance of this agreement without the written consent of the City prior to the execution of such agreement.

(ii) Monitoring

The Developer will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(iii) Content

The Developer shall cause all of the provisions of this agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this agreement.

(iv) Selection Process

The Developer shall undertake to ensure that all subcontracts let in the performance of this agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Copyright

If this Agreement results in any copyrightable material, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.

4. Religious Organization

The Developer agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with regulations specified in 24 CFR 570.200(j).

F. Eligibility Restrictions for Certain Resident Aliens (570.613)

1. Restriction

The Developer agrees to comply with 24 CFR 570.613, which states that certain newly legalized aliens, as described in 24 CFR Part 5 Subpart E are not eligible to apply for benefits under covered activities funded by CDBG programs. "Benefits" under this

section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities funded through CDBG programs. "Benefits" do not include relocation services and payments to which displacees are entitled by law.

2. Covered Activities

"Covered activities" under this section means activities meeting the requirements of Section 570.208(a)(3).

3. Limitation on Coverage

The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this agreement.

4. Compliance

Compliance can be accomplished by the Developer obtaining certification as provided in 24 CFR Part 5 Subpart E, Section 5.508 evidencing citizenship or Section 5.510 eligible immigration status.

VIII. Final Disbursement

After completion of the improvements, the Developer will furnish the City a Disposition of Funds Statement, showing in detail how the loan proceeds have been disbursed. The City shall then provide a statement on the amount of retainage being held until the City approves the beginning date of affordability. By executing such statement, the Developer agrees that the improvements have been completed in accordance with the construction contract, except for any warranty items (which the Developer are responsible to have the warrantor correct). By such execution, the Developer further agree to assess no claim against the City, or any defense against collection of the loan, with respect to any defect or inadequacy in the construction, whether or not the Developer is aware of such defect or inadequacy. The following documents shall be provided upon construction completion:

- A. A certificate of occupancy;
- B. A certificate from the Developer stating the total construction cost;
- C. A certificate from a third party professional (architect or engineering firm) stating that the project has been completed in accordance with the plans and specifications, in a good and workmanlike manner and in accordance with all laws, ordinances, rules and regulations or all governmental authorities having or purporting to have jurisdiction over the project. This certification shall also include compliance with the Architectural Barriers Act of 1968 (42 USC 4151-4157); the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614; the Americans with Disabilities Act of 1990; the Lead Based Paint Poisoning Prevention Act (42 USC 4831(b) and the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856) and implementing regulations at 24 CFR Part 35; and Section 504 of the Rehabilitation Act of 1973; and the regulations that implement these laws; and
- D. Evidence that the project has been completed lien-free (which evidence shall include without limitation, final lien waivers from the general contractor and all major

subcontractors and expiration of the lien periods provided by applicable State law) in form and substance reasonably satisfactory to the City.

VIII. Miscellaneous

A. Rules of Construction

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

1. Words importing the singular number include the plural number and words importing the plural number include the singular number;
2. Words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;
3. The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;
4. Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof;
5. Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;
6. Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and
7. When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

B. The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

C. No waiver by the City of any Event of Default hereunder shall operate as a waiver of any other Event of Default or of the same Event of Default on any future occasion. No delay on the part of the City in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by the City shall preclude future exercise thereof or the exercise of any other right or remedy.

D. No provision of this Agreement shall be construed in any manner so as to create any

rights in Persons or Entities that are not a party to this Agreement, except where specific rights in the IEDA are created herein.

- E. This Agreement shall be interpreted in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall only be commenced in the Iowa District Court for Polk County or in the United States District for the Southern District of Iowa. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity in state or federal court, which may be available to the City or the State. By signing this Agreement, the Developer waives the right to jury trial in the event of any legal proceedings.
- F. The Developer shall pay upon demand any and all reasonable fees and expenses of the City, including the fees and expenses of their attorneys, experts and agents, in connection with the exercise or enforcement of any of the rights of the City under this Agreement.
- G. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto. Any counterpart of this Agreement, which has attached to it separate signature pages which together contain the signatures of all the parties hereto or is executed by an attorney in fact on behalf of some or all of the parties, shall for all purposes be deemed a fully executed instrument.
- H. All representations, warranties, and indemnifications contained herein shall survive the termination of this Agreement.
- I. Separability of Provisions; Rights and Remedies; Arbitration; Consistency with Program Requirements
 - 1. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.
 - 2. Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.
 - 3. The provisions of this Agreement are intended to implement CDBG-Upper Story in accordance with Program Requirements and shall be interpreted

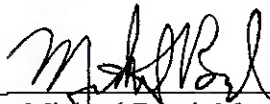
consistently therewith. In the event of any conflict between the provisions of this Agreement and the Program Requirements, the Program Requirements shall govern and, to the extent necessary, the inconsistent provisions of this Agreement shall be without effect.

- J. This Agreement contains the entire understanding between the Developer and the City and any representations that may have been made before or after the signing of this Agreement, which are not contained therein, are nonbinding, void and of no effect. None of the parties have relied on any such prior representation in entering into this Agreement.
- K. Time is of the essence with respect to the performance of the terms of this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement.

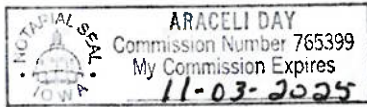
City: City of Eagle Grove, Iowa

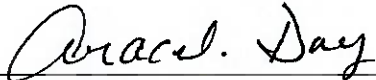
By: 
Michael Boyd, Mayor
City of Eagle Grove

STATE OF IOWA)
)
COUNTY OF WRIGHT)

On this 20th day of February, 2025, before me, the undersigned, a Notary Public, personally appeared Michael Boyd, Mayor, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

(SEAL)




Notary Public
Araceli Day
(Type or print name)

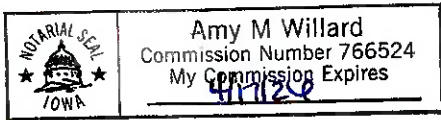
Developers: ~~Torkelson Properties, LLC~~


By: 
Bob Torkelson
Torkelson Properties, LLC

STATE OF IOWA)
)
COUNTY OF WRIGHT)

On this 19 day of February, 2025, before me, the undersigned, a Notary Public, personally appeared Bob Torkelson, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

(SEAL)




Notary Public
Amy Willard
(Type or print name)

Exhibits:

Exhibit A – Project Application (printed from iowagrants.gov)

Exhibit B - Mortgage

Exhibit C - Promissory Note

Exhibit D – Assignment of Leases and Rents

Exhibit E – Agreement for Covenants and Restrictions

ASSIGNMENT OF LEASES AND RENTS

Prepared by: Melanie Mitchell, Simmering-Cory, PO Box 141, Clear Lake IA 50428 /
Phone: 641-357-7554
Return Document to: City of Eagle Grove, PO Box 165, Eagle Grove IA 50533

GRANTOR AND TAXPAYER: Torkelson Properties, LLC, 910 S. Jackson Ave., Eagle Grove IA 50533

GRANTEE: City of Eagle Grove, PO Box 165, Eagle Grove IA 50533

LEGAL DESCRIPTION: The South 80 feet of Lot 12 in Block 5, in the Town of Eagle Grove Junction, Wright County Iowa locally known as 125 W. Broadway, Eagle Grove, Iowa

CDBG-UPPER STORY Contract Owner: Torkelson Properties, LLC

CDBG-UPPER STORY Contract Number: 24-HSGU-004

Address: 125 W. Broadway, Eagle Grove IA 50533

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment"), dated as of February 18, 2025, is made by Torkelson Properties, LLC, an Iowa Developer ("Assignor"), whose address is 910 S. Jackson Avenue, Eagle Grove IA 50533, in favor of City of Eagle Grove, an Iowa Municipality, whose address is 121 N. Commercial Avenue, Eagle Grove IA 50533 (the "Assignee"), as the holder of the Promissory Note effective February 18, 2025, as amended, in the aggregate principal amount of \$530,000.00 maturing 3 (Three) years from the receipt of the Certificate of Occupancy (CO) or a letter from the City or Architect that the building has been completed according to State of Iowa building codes and is considered livable, if a CO is not issued (the "Note"), in connection with the loan to the Assignor pursuant to a Community Development Block Grant Upper Story Rental Housing Conversion Program Development Agreement (the "Contract") effective as of February 18, 2025, as amended, between the Assignor and the Assignee, and which loan is evidenced by the aforesaid Note.

This Assignment is executed with reference to the following facts:

A. To secure payment of the Note, Assignor has executed and delivered that certain Mortgage recorded simultaneously herewith, to Assignee, as lender, which Mortgage encumbers Assignor's interest in real property located in Wright County, Iowa, more particularly described in Exhibit A, made a part hereof (the "Property"). Capitalized terms used herein and not otherwise defined shall have the same meanings as set forth in the Contract and Mortgage referred to above.

B. Assignor desires to absolutely, irrevocably and unconditionally assign to Assignee, all of Assignor's right, title and interest, if any, in and to all present and future leases, subleases, underlettings, concession agreements, management agreements, licenses and other agreements relating to the use or occupancy of the Property or any part thereof, now existing or subsequently entered into by Assignor and whether written or oral and all guarantees of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases").

For value received, the receipt and legal sufficiency of which is hereby acknowledged, Assignor hereby agrees as follows:

1. Assignment of Rents.

1.1 Rents. Assignor hereby presently, absolutely and unconditionally grants, transfers and assigns to Assignee all right, title and interest of Assignor in and to any and all rents, subrents, issues and royalties of and from the Property ("Rents"). It is the intention of Assignor to establish a present, absolute and irrevocable transfer and assignment to Assignee of all Rents and to authorize

and empower Assignee to collect and receive all Rents without the necessity of further action on the part of the Assignor. Promptly upon request by Assignee, Assignor agrees to execute and deliver such further assignments as Assignee may from time to time require. Assignor and Assignee intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of rents, and for no other purpose, Rents shall not be deemed to be a part of the Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the State of Iowa, then the Rents shall be included as part of the Property and Mortgaged Property and it is the intention of the Assignor that in this circumstance this Assignment create and perfect a lien on Rents in favor of Assignee, which lien shall be effective as of the date of this Assignment. Until the occurrence of an Event of Default, Assignee hereby grants Assignor a revocable license to collect and receive all such Rents which become payable prior to an Event of Default, to hold all Rents in trust for the benefit of Assignee and to apply all Rents, subject, however, to the terms of the Loan Agreement and Mortgage. Upon the occurrence of an Event of Default and upon Assignee's election to collect the rents, subrents, issues, royalties, income and profits as hereinafter provided, Assignor's license to collect Rents shall automatically terminate and the right to collect and use any of such proceeds shall cease, and Assignee shall have the right, with or without taking possession of the Property, and either in person, by agent, or through a court-appointed receiver (Assignor hereby consents to the appointment of Assignee or Assignee's designee as such receiver), to sue for or otherwise collect all such rents, subrents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all reasonable costs and expenses of operation and collection, including attorney fees (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), shall be applied toward the payment of any and all amounts due under the Note, the Contract and the Mortgage (collectively, the "Obligations"). Such right of collection and use of such proceeds by Assignee shall exist both before and after the exercise of the power of sale provisions of the Mortgage, foreclosure of the Mortgage and throughout any period of redemption. The rights granted under this Section 1.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Property is in danger of being lost, removed, or materially injured, or whether the Property or any other security is adequate to discharge the Obligations. Assignee's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Assignee thereafter to collect the same. Neither any provision contained herein, nor Assignee's exercise of Assignee's right to collect such proceeds, shall be, or be construed to be, an affirmation by Assignee of any tenancy, lease, sublease, option, or other interest in the Property, or an assumption of liability under, or subordination of the lien or charge of the Mortgage to, any tenancy, lease, sublease, option, or other interest in the Property. At any time on or after the date of Assignee's demand for Rents in

accordance with this Section 1.1, Assignee may give, and Assignor hereby irrevocably authorizes Assignee to give, notice to all tenants of the Property instructing them to pay all Rents to Assignee. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default and no tenant shall be obligated to pay to Assignor any amounts which are actually paid to Assignee in response to such a notice. Any such notice by Assignee shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Assignor shall not interfere with and shall cooperate with Assignee's collection of such Rents. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Assignor in connection with the Property or any portion thereof are hereby authorized and directed to pay the rents, subrents, issues, royalties, income, and profits payable by them with respect to the Property, or any part thereof, directly to Assignee on the demand of Assignee, in accordance with this Section 1.1. Assignee's receipt of such rents, subrents, issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the tenant, lessee, sublessee, or other person concerned to make the payment connected with the amount so received by Assignee. When all of the Obligations have been fully satisfied and such satisfaction is evidenced by a recorded release of the Mortgage, this assignment shall no longer be of effect and shall be void.

1.2 Entry on Property. If Assignee enters the Property, Assignee shall be liable to account only to Assignor and only for those Rents actually received. Assignee shall not be liable to Assignor, anyone claiming under or through Assignor or anyone having an interest in the Property, by reason of any act or omission of Assignee under this Assignment, and Assignor hereby releases and discharges Assignee from any such liability to the fullest extent permitted by law, except for any act or omission constituting fraud, gross negligence or willful misconduct by Assignee. If the Rents are not sufficient to meet the costs of taking control of and managing the Property and collecting the Rents, any funds extended by Assignee for such purposes shall become an additional part of the Obligations. The entering upon and taking possession of the Property or any portion of the Property or the collection of rents, subrents, issues, royalties, income, profits, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default under the Loan Documents, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of any scheduled installments provided for in any of the Obligations.

2. Assignment of Leases.

2.1 Leases. Assignor hereby presently, absolutely and unconditionally grants, transfers and assigns to Assignee all right, title and interest of Assignor in and to the Leases including Assignor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the

intention of Assignor to establish a present, absolute and irrevocable transfer and assignment to Assignee of all of Assignor's right, title and interest in, to and under the Leases. Assignor and Assignee intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the State of Iowa, then the Leases shall be included as part of the Property and Mortgaged Property and it is the intention of Assignor that in this circumstance this Assignment create and perfect a lien on the Leases in favor of Assignee, which lien shall be effective as of the date of this Assignment. Until Assignee gives notice to Assignor of Assignee's exercise of its rights under this Section, Assignor shall have all rights, power and authority granted to Assignor under any Lease (except as otherwise limited by this Section or any other provision of this Assignment), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, and during the continuation thereof, the permission given to Assignor pursuant to the preceding sentence to exercise all rights, power and authority under the Leases shall automatically terminate. Assignor shall comply with and observe Assignor's obligations under all Leases, including Assignor's obligations pertaining to the maintenance and disposition of tenant security deposits.

2.2 Not Mortgagee in Possession. Assignor acknowledges and agrees that the exercise by Assignee, either directly or by a receiver, of any of the rights conferred under this Assignment shall not be construed to make Assignee a mortgagee-in-possession of the Property so long as Assignee has not itself entered into actual possession of the Land and the improvements located thereon. The acceptance by Assignee of the assignment of the Leases or Rents pursuant to this Assignment shall not at any time or in any event obligate Assignee to take any action under this Assignment or to expend any money or to incur any expenses. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Property. Prior to Assignee's actual entry into and taking possession of the Property, Assignee shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to any Lease or the Property; or (iii) be responsible for the operation, control, care, management or repair of the Property or any portion of the Property. The execution of this Assignment by Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Assignor, prior to such actual entry and taking of possession.

2.3 Exercise of Rights. Upon delivery of notice by Assignee to Assignor of Assignee's exercise of Assignee's rights under this Assignment at any time after the occurrence of an Event of Default (and during the continuation thereof), and without the necessity of Assignee entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the State of Iowa, Assignee immediately shall have all rights, powers and authority granted to Assignor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

2.4 Delivery of Leases. Assignor shall, promptly upon Assignee's request, deliver to Assignee an executed copy of each Lease then in effect.

2.5 No Advance Payments of Rent. Assignor shall not receive or accept Rent under any Lease for more than two months in advance.

2.6 No Non-Residential Leases. Assignee shall not lease any portion of the Property for non-residential use.

3. Reimbursement. Assignor shall pay immediately and without demand all sums reasonably expended by Assignee pursuant to the provisions hereof, and all attorneys' fees incurred in connection with the enforcement of the terms hereof and/or the collection of the obligations secured hereby. All such amounts shall constitute obligations secured by the Mortgage and this Assignment.

4. Representations, Warranties and Covenants. As a material inducement to the execution and acceptance of this Assignment, Assignor represents, warrants and covenants to Assignee that:

4.1 No Prior Assignment. Assignor has not executed any prior assignment of the Leases or of its right, title and interest therein or in the rents to accrue thereunder.

4.2 No Limitations on Assignee. Assignor has not performed nor will perform any act or executed, nor will execute, any instrument which might prevent Assignee from operating under any of the terms and conditions hereof, or which would limit Assignee in such operation.

4.3 No Advance Rent Payments. Assignor has not accepted any payment of advance rent under any of the Leases presently in effect for any period subsequent to the next period for which rent shall become due and payable.

4.4 Assignor is Absolute Owner of the Leases. Assignor is the absolute owner of the Leases and the rents thereof, having full right and authority to assign the Leases and the rents due or to become due hereunder.

5. Events of Default. As used herein, the term "Event of Default" shall mean any "Event of Default" under the Note, the Mortgage or the Contract. Upon the occurrence and during the continuance of an Event of Default beyond any applicable cure period, Assignor's license shall automatically terminate and Assignee shall receive and collect any and all income, rents, issues, profits and proceeds pursuant to the Leases hereby assigned to Assignee, including any which may be past due and unpaid, and Assignee may at any time and without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the obligations secured hereby, enter upon, take possession of, manage and operate the Property or any part thereof, together with any other real or personal property located thereon, make, enforce, cancel, terminate, modify and accept the surrender of Leases, or any of them, obtain or evict tenants, fix or modify rents, and do any acts which Assignee deems proper. In taking possession of the Property, Assignee shall be entitled to exercise all of the rights, remedies and powers of an owner thereof, may conduct the business of Assignor in its own name or in the name of Assignor, may use any and all of the properties and facilities of Assignor, and may deal with the creditors, debtors, tenants, agents, employees and other persons and/or companies having any relationship whatsoever with Assignor and the Property, and alter or amend any contracts between them, in any manner Assignee in its sole discretion may determine. All rights, remedies and powers given to Assignee herein may be exercised by Assignee either in person, by agent or by a receiver to be appointed by a court, and such exercise shall not cure or waive any default or notice of default hereunder or under the Mortgage or invalidate any act done pursuant to any such notice.

6. No Assumption of Leases. Neither this Assignment nor any action or inaction on the part of Assignee shall constitute an assumption on the part of Assignee of any obligation or liability under any of the Leases. No action or inaction on the part of Assignor shall affect or limit in any way the rights of Assignee under this Assignment or, through this Assignment, under any of the Leases.

7. Remedies Cumulative. Each right, power and remedy of Assignee provided for in this Assignment or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Assignment or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Assignee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Assignee of all such other rights, powers or remedies. No failure or delay on the part of Assignee to exercise any such right, power or remedy shall operate as a waiver thereof.

8. Indemnification of Assignee. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or any of them, or under or by reason of this Assignment. Assignor shall indemnify Assignee against and defend and hold Assignee harmless from any and all liability, loss or damage which Assignee may or might incur as

Assignee under this Assignment under the Leases, or any of them, or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on Assignee's part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except such claims. If Assignee incurs any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate provided in the Note, shall be secured by the Mortgage, and by this Assignment, and Assignor shall reimburse Assignee therefor immediately upon demand.

9. Continued Leasing of the Property. Until the payment of all indebtedness secured hereby, Assignor covenants and agrees, subject to the terms of the Contract and the Agreement for Covenants and Restrictions to exercise reasonable efforts to keep leased at good and sufficient rental all the Property and the improvements located thereon. Notwithstanding the foregoing, Assignor shall not enter into or execute any Lease of all or any portion of the Property, except in accordance with the terms and provisions of the Mortgage, this Assignment, the Contract and the Agreement for Covenants and Restrictions.

10. Termination of Assignment. Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording of a satisfaction of the Mortgage, this Assignment shall become and be void and of no effect.

11. Notices. All notices given or served on any party hereto pursuant to the terms hereof shall be served by the means and to the addresses, and shall be deemed effective within the time periods, established pursuant to the Contract.

12. Successors and Assigns. This Assignment inures to the benefit of Assignee and its successors and assigns, and binds Assignor and Assignor's successors and assigns. Assignor may not assign its rights or obligations under this Assignment without the prior written consent of Assignee. All rights and remedies of Assignee hereunder and under any other agreement are cumulative and not exclusive, and are in addition to all other rights and remedies provided by law, agreement or otherwise. Notice of acceptance of this Assignment by Assignee is waived.

13. Waiver of Notice of Exercise of Assignment of Rents. Assignor hereby waives any right to notice and waives any right to any hearing, judicial or otherwise, prior to Assignee's exercise of its rights under this Assignment and/or the Mortgage with respect to the Assignment of Rents hereunder or under the Mortgage.

14. Governing Law; Venue. THIS ASSIGNMENT SHALL BE GOVERNED EXCLUSIVELY BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF IOWA, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES.

15. Miscellaneous. This Assignment or any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. All the terms of this Assignment shall be binding upon the successors and assigns of Assignor and shall inure to the benefit of and be enforceable by Assignee, any successor holder of the Note and any trustee appointed for the benefit of the holder of the Note. This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of Iowa. The headings in this Assignment are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Assignment may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

-END OF ASSIGNMENT OF LEASES AND RENTS-
-REFER TO FOLLOWING PAGE FOR SIGNATURES-

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

ASSIGNOR: Torkelson Properties, LLC

By: [Signature]
Print Name: Bob Torkelson
Authority: Owner

STATE OF IOWA)
)
COUNTY OF WRIGHT)

On this 19th day of February, 2025, in front of the undersigned notary public, in and for the State of Iowa, personally appeared Bob Torkelson, the Owner for Torkelson Properties, LLC, an Iowa Company organized in the State of Iowa, and that Bob Torkelson, as such officer, acknowledged the execution of said instrument to be the voluntary act of him.



[Signature]
Signature of Notary Public

ASSIGNEE: City of Eagle Grove, Iowa

By: [Signature]
Print Name: Michael Boyd
Authority: Mayor

STATE OF IOWA)
)
COUNTY OF WRIGHT)

On this 20th day of February, 2025, in front of the undersigned notary public, in and for the State of Iowa, personally appeared Michael Boyd, the Mayor for City of Eagle Grove, IA, a Municipality organized in the State of Iowa, and that Michael Boyd, as such officer, acknowledged the execution of said instrument to be the voluntary act of him.



[Signature]
Signature of Notary Public

(EXHIBIT A)

LEGAL DESCRIPTION

The following described real estate located in the City of Eagle Grove, Wright County, Iowa:

The South 80 feet of Lot 12 in Block 5, in the Town of Eagle Grove Junction, Wright County Iowa locally known as 125 W. Broadway, Eagle Grove, Iowa

AGREEMENT FOR COVENANTS AND RESTRICTIONS

Prepared by: Melanie Mitchell, Simmering-Cory, PO Box 141, Clear Lake IA 50428 / Phone:
641-357-7554

Return Document to: City of Eagle Grove, PO Box 165, Eagle Grove IA 50533

GRANTOR AND TAXPAYER: Torkelson Properties, LLC, 910 S. Jackson Ave., Eagle Grove
IA 50533

GRANTEE: City of Eagle Grove, PO Box 165, Eagle Grove IA 50533

LEGAL DESCRIPTION: The South 80 feet of Lot 12 in Block 5, in the Town of Eagle Grove
Junction, Wright County Iowa locally known as 125 W. Broadway, Eagle Grove, Iowa

CDBG-UPPER STORY Contract Owner: Torkelson Properties, LLC

CDBG-UPPER STORY Contract Number: 24-HSGU-004

Address: 125 W. Broadway, Eagle Grove IA 50533

**AGREEMENT FOR COVENANTS AND RESTRICTIONS
(COMMUNITY DEVELOPMENT BLOCK GRANT – UPPER STORY RENTAL
HOUSING CONVERSION PROGRAM)**

THIS AGREEMENT FOR COVENANTS AND RESTRICTIONS (“Agreement”), effective as of February 18, 2025, is between City of Eagle Grove, IA, (the "City"), and Torkelson Properties, LLC (the "Owner").

WITNESSETH:

WHEREAS, the City received Community Development Block Grant-Upper Story Rental Housing Conversion Program (CDBG-Upper Story) funds from the Iowa Economic Development Authority (IEDA); and

WHEREAS, the Owner has applied for and received approval for funding from the City, and the Owner and the City have entered into a Community Development Block Grant-Upper Story Rental Housing Conversion Program Development Agreement (the “Contract”), dated February 18, 2025, and a Promissory Note (the “Note”), dated February 18, 2025 (the Contract and the Note shall be known collectively as the “Loan Documents”), and

WHEREAS, the agreements, obligations, and covenants of the Owner pursuant to the Loan Documents are secured by a Mortgage, dated February 18, 2025 (the Mortgage) and an Assignment of Leases and Rents, dated February 18, 2025, both granted to the City by the Owner, and

WHEREAS, pursuant to the Loan Documents, the City made an award in the amount of \$530,000.00 (“CDBG Funds”) to the Owner for the purpose of financing a portion of the costs of the project described in the Exhibits to the Loan Documents (the "Project") to be located on the real estate described in **Exhibit A** hereto (the “Property”); and

WHEREAS, in accordance with the Loan Documents, the Owner is required to provide certain housing benefits for low-and-moderate income families as set forth therein, and is further required to comply throughout the term of the Loan Documents with the requirements and covenants set forth therein;

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

"Affordable Rental Units" means those units contained on the Property that are occupied by Low-and-Moderate Income Families at any given time. The Grantor is not required to designate specific units as Affordable Rental Units but must meet the requirements of Section 2 hereof at all times during the Term of Affordability.

"Community Development Block Grant-Upper Story Rental Housing Conversion Program" or "CDBG-Upper Story" means the grant program authorized under Title I of the Housing and Community Development Act of 1974 and 24 CFR 570.480 et. Seq. for the rehabilitation of unoccupiable residential units in existing buildings or conversion of existing space into new residential units in existing buildings in spaces that are currently unoccupied.

"IEDA" means the Iowa Economic Development Authority.

"Low-and-Moderate Income Families" means those families earning no more than 80% of area median income as determined

by the latest U.S. Department of Housing and Urban Development, Section 8 income guidelines. Unrelated individuals shall

be considered as one-person families for this purpose.

2. As a condition to receipt of CDBG Funds, and in order to help ensure compliance by the Owner and any future owner of the Project with the requirements and covenants set forth in the Loan Documents throughout the required period of time ("Affordability Period") as set forth in the Contract and Exhibits thereto, so as to maintain the housing benefits for which assistance has been provided through CDBG-Upper Story and therefore protect the investment of the City and IEDA in the Project, and in order to give the City and IEDA the ability to fulfill its obligations under CDBG-Upper Story to ensure such compliance, certain covenants and restrictions enforceable by the City must be placed on the real estate described in **Exhibit A** hereto governing the use of the Project, which covenants and restrictions shall run with the land and be binding on the Owner and its successors or assigns. The Owner, for itself and for its successors or assigns, makes the following covenants as to the use of the Project and the real estate described in **Exhibit A**:

(a) All of the CDBG Funds shall be spent on Eligible Costs of the Project described in the Contract, in accordance with the Project described in Exhibit A to the Contract;

(b) The Project shall be completed so as to provide the project benefits as required by and specified in the regulations and as referenced in the Loan Documents;

(c) The Project shall constitute an eligible activity in compliance with CDBG-Upper Story as described in the Loan Documents, and the Owner shall comply with all of the CDBG-Upper Story requirements and shall own, operate and manage the Project as an eligible project **throughout the Affordability Period ending Three (3) years from when the City has determined the Project Activity has been completed and initial lease-up and demographic information entered into the HUD Grant Reporting system;**

(d) Throughout the Affordability Period, the Owner shall rent 51% of the units in the Project assisted units to households at or below 80% of the area median income (the "CDBG-Upper Story Units) and the maximum (gross) rent limits allowed on the CDBG-Upper Story Units shall not exceed the most current HOME Program 65% rent limits in accordance with 24 CFR 92.252(a);

(e) Throughout the Affordability Period, the Owner shall allow inspections of the Project to ensure continued compliance with all locally adopted and enforced building codes and standards, or, in the absence of any locally adopted and enforced building codes and standards, the requirements of the current Iowa State Building Code;

(f) Throughout the Affordability Period, the owner shall comply with all of the statutes, regulations, and notices in the Federal Register that govern CDBG-Upper Story, including, but not limited to, Title I of the Housing and Community Development Act of 1974 and 24 CFR 570.480 et. Seq., as amended, and all notices published by HUD in the Federal Register and related thereto;

(g) In order to ensure compliance with the covenants in subparagraphs (d), (e), and (f) above, Owner shall submit to the City, as required by the Loan Documents, its certification of compliance with such covenant, together with documentation in form and substance satisfactory to the City evidencing compliance with such covenant; and

(h) The Owner shall comply with all the covenants set forth in the Loan Documents.

3. All the covenants herein shall run with the real estate described in **Exhibit A** hereto and the Project thereon and be binding upon the Owner and its successors or assigns, for the Affordability Period. Notwithstanding any other provisions of this Agreement, this entire Agreement, or any of the provisions or paragraphs hereof, may be terminated upon written agreement by the City and the Owner.

4. Notwithstanding the provisions of Section 3, such covenants shall cease to apply to the Mortgaged Property prior to the end of the Term of Affordability, in the event of involuntary noncompliance therewith caused by a fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or action of a federal agency after the date of making of the Loan which prevents the City or its successors or assigns from enforcing the covenants, or condemnation or similar event, but only if, within a reasonable period, amounts received by the Grantor as a consequence of such event are used to provide a project which meets the requirements of the CDBG-Upper Story program.

5. Notwithstanding the provisions of Section 4, if once the Mortgaged Property has been subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, and at any time during the part of the Term of Affordability subsequent to such event, the Grantor or a related person to the Grantor obtains an ownership interest in the Project for tax purposes, the covenants herein shall once again run with the land described in Attachment A hereto and the Project thereon and be binding on the Grantor or such related person and their respective successors or assigns for the remainder of the Term of Affordability.

6. Performance by the Owner of its agreements, covenants, and obligations pursuant to this Agreement are secured by the

Mortgage against the real estate described in Exhibit A hereto, executed by the Owner and delivered to the City pursuant to the Contract

7. The Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in such manner and in such places as the City may reasonably request, and shall pay all fees and charges incurred in connection therewith.

8. This Agreement may be amended only by an amendment in writing executed by the parties hereto and properly recorded in the County Recorder's office.

9. Except for the rental of units in the Project to tenants, the Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any interest therein without obtaining the prior written consent of the City, which shall be conditioned solely upon receipt of evidence satisfactory to the City that the Owner's purchaser or transferee (i) has assumed in writing and in full the Owner's duties and obligations under this Agreement, the Loan Documents and all related documents thereto; (ii) has the financial capability to carry out such obligations; and (iii) is knowledgeable in the operation and management of facilities similar to the Project facilities. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this paragraph may be ineffective to relieve the Owner of its obligations under this Agreement, the Loan Documents and all related documents thereto.

10. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Agreement, and if such default remains uncured for a period of 10 Business Days in the case of a monetary default or 20 Business Days in the case of a non-monetary default, provided, however, that if a non-monetary default cannot reasonably be cured within 20 Business Days and the Developer commences a cure within 20 Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended for up to an additional 30 Business Days, then the City may declare that the Owner is in default hereunder and may take any one or more of the following steps, at its option:

- (a) temporarily suspend making disbursements of CDBG-Upper Story Funds under this Agreement pending correction of the deficiency or default by the Developer;
- (b) require the repayment of the CDBG-Upper Story Loan;
- (c) declare the Developer and its principals "not in good standing" with respect to the City;
- (d) cease making any further payments of CDBG-Upper Story Funds under this Agreement;
- (e) terminate this Agreement;
- (f) require the immediate repayment of CDBG-Upper Story Funds advanced pursuant to this Agreement;
- (g) require that the Developer, the property manager, the Contractor or any other party providing services to the Developer to be replaced;
- (h) "Reserved"
- (i) draw upon and apply any escrows and/or reserve accounts in accordance with their terms;

- (j) exercise any rights it may have under the CDBG-Upper Story Loan Documents, including, but not limited to, foreclosure of the Note and Mortgage thereunder, in order to assure for repayment of the CDBG-Upper Story Funds; and
- (k) exercise any other rights and remedies that may be available under law or in equity.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of the City to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

10. This Agreement shall be governed by the laws of the State of Iowa.

11. Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

City: City of Eagle Grove, IA
121 N Commercial Avenue
Eagle Grove IA 50533
Attention: Bryce Davis, City Administrator

Owner: Torkelson Properties, LLC
910 S. Jackson Avenue
Eagle Grove IA 50533
Attention: Bob Torkelson, Owner

12. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

13. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

14. All the rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

EXHIBIT A

LEGAL DESCRIPTION

The following described real estate located in the City of Eagle Grove, Wright County, Iowa:

LEGAL DESCRIPTION: The South 80 feet of Lot 12 in Block 5, in the Town of Eagle Grove Junction, Wright County Iowa locally known as 125 W. Broadway, Eagle Grove, Iowa

MORTGAGE

Prepared by: Melanie Mitchell, Simmering-Cory, PO Box 141, Clear Lake IA 50428 /

Phone: 641-357-7554

Return Document to: City of Eagle Grove, PO Box 165, Eagle Grove IA 50533

GRANTOR AND TAXPAYER: Torkelson Properties, LLC, 910 S. Jackson Ave., Eagle Grove IA 50533

GRANTEE: City of Eagle Grove, PO Box 165, Eagle Grove IA 50533

LEGAL DESCRIPTION: **The South 80 feet of Lot 12 in Block 5, in the Town of Eagle Grove Junction, Wright County Iowa locally known as 125 W. Broadway, Eagle Grove, Iowa**

CDBG-UPPER STORY Contract Owner: Torkelson Properties, LLC

CDBG-UPPER STORY Contract Number: 24-HSGU-004

Address: 125 W. Broadway, Eagle Grove IA 50533

MORTGAGE

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

NOTICE: This mortgage secures credit in the amount of \$530,000.00. 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 ("Mortgage"), dated February 18, 2025, by and between the City of Eagle Grove, an Iowa Municipality ("Lender"), and Torkelson Properties, LLC, an Iowa Legal Company ("Borrower"), secures payment of the loan made by Lender to Borrower evidenced by a promissory note dated February 18, 2025, as revised, in the principal amount of \$530,000.00 ("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 February 18, 2025 (the "Contract"), and the Agreement for Covenants and Restrictions delivered by Borrower to Lender and dated February 18, 2025 (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 Wright County, Iowa:

The South 80 feet of Lot 12 in Block 5, in the Town of Eagle Grove Junction, Wright County Iowa locally known as 125 W. Broadway, Eagle Grove, 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: City of Eagle Grove
PO Box 154
Eagle Grove IA 50533
Attention: Bryce Davis, City Administrator

- b. If to Borrower, to: Torkelson Properties, LLC
910 S. Jackson Avenue
Eagle Grove IA 50533
Attention: Bob Torkelson

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-

