



THIS INDENTURE OF MORTGAGE, made this [redacted], is between Dale D. Berg, an unmarried individual (hereafter together called "MORTGAGOR"), and the City of La Crosse, Wisconsin, a municipal corporation of the State of Wisconsin, having its principal office at City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601 (hereinafter called MORTGAGEE):

WITNESSETH THAT, the said Mortgagor in consideration of the sum of **Two Hundred Thousand Dollars (\$200,000)** principal to Mortgagor in hand paid by said Mortgagee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey a security interest unto said Mortgagee, its successors and assigns, forever, all that certain tract or parcel of land lying and being in the City of La Crosse, County of La Crosse, and the State of Wisconsin as more fully described as:

Return to  
City Planning Department  
400 La Crosse St.  
La Crosse, WI 54601

Parcel No.: 17-30094-10

**SEE ATTACHED FOR LEGAL DESCRIPTION**

Property Address: 1305 South Ave, La Crosse  
Tax Parcel No.: 17-30094-10

Mortgagor for itself, successors, and assigns, does covenant with said Mortgagee, its successors, and assigns, as follows:

That Mortgagor is lawfully seized of said premises and has good right to sell and convey the same; the same is free from all encumbrances, except a certain first mortgage lien in the principal amount not to exceed \$1,893,000 in favor of Citizens Bank of La Crosse and a certain second mortgage lien in the original principal amount of \$600,000 in favor of the City of La Crosse, which loan from the Upper Floor Renovation program shall be used solely for improvements to above real estate.

Mortgagor will warrant and defend the title to same against all lawful claims not hereinbefore expressly excepted.

PROVIDED, NEVERTHELESS, if the said Mortgagor, its permitted successors, and assigns shall pay to the Mortgagee all sums of principal and interest due and payable pursuant to each of the certain Promissory Note #1, Promissory Note #2, and Promissory Note #3 more fully described as follows:

**Promissory Note #1 of even date herewith in the principal amount of Two Hundred Thousand Dollars (\$200,000) with interest thereon at two percent (2%) per annum, amortized over 15 years, with interest only payments for year 1, and as scheduled therein, due and payable in full, as provided for in the Promissory Note #2, and not later than ten (10) years from the date payments commence.**

**Promissory Note #2 of even date herewith in the principal amount of Two Hundred Thousand Dollars (\$200,000) with interest thereon at two percent (2%) per annum, amortized over 15 years, with interest only payments for year 1, and as scheduled therein, due and payable in full, as provided for in the Promissory Note #2, and not later than ten (10) years from the date payments commence.**

**Promissory Note #3 of even date herewith in the principal amount of Two Hundred Thousand Dollars (\$200,000) with interest thereon at two percent (2%) per annum, amortized over 15 years, with interest only payments for year 1, and as scheduled therein, due and payable in full, as provided for in the Promissory Note #2, and not later than ten (10) years from the date payments commence.**

All as amended by those certain Change in Terms Agreements executed herewith, and concurrently executed Loan Modification Agreement, including any other amendments and modifications to same.

Mortgagor agrees also pay all sums advanced by Mortgagee in protecting the lien of this Mortgage, including subsequent and future advances, in payment of taxes on said premises, insurance premiums covering the buildings thereon, principal or interest on any prior liens, expenses, and reasonable attorneys' fees as herein provided for and keep and perform all covenants and agreements herein contained, then this second mortgage shall be null and void and it shall be released by Mortgagee.

FURTHERMORE, THE MORTGAGOR, for itself, its successors, and assigns does hereby covenant and agree with the Mortgagee, its successors, and assigns as follows:

1. **Fixtures.** This mortgage includes all fixtures, and if a Chattel Security Agreement is executed herewith, it will constitute a fixture filing and cover goods, including but not limited to those items specified in such Chattel Security Agreement which are now or hereafter installed and/or affixed to the described real estate.
2. **Rents and Leases.** Mortgagor hereby pledges all the rents, profits and income which shall arise or be had therefrom, thereby releasing and waiving all right to retain possession of said premises after any default in any payment of the obligation referred to herein, or breach of any of the covenants or agreements in the documents which this mortgage secures.
3. **Due on Sale.** In the event that the mortgaged premises or any part thereof are sold, conveyed, or transferred, or in the event that either legal or equitable title, in any manner whatsoever, shall vest in any person other than the Mortgagor for any reason whatsoever, the entire indebtedness pursuant to this mortgage and the note that it secures shall become due and payable forthwith, without further notice, unless the Mortgagee consents to such transfer. If this mortgage is executed by a partnership, any change of general partners shall be deemed a transfer of title as referred to in this paragraph.
4. **Taxes and Assessments.** The Mortgagor agrees to pay all taxes and special levies and a reasonable sum of money as and all reasonable attorneys' fees in case of foreclosure hereof, bankruptcy or other litigation with respect to the loan and paid by the Mortgagee, shall be added to the indebtedness and secured by this mortgage. In the event of the improper performance of any of the conditions contained in the note or mortgage, the Mortgagee may commence proceedings to foreclose the mortgage. Mortgagor shall pay, before they become delinquent, all taxes and assessments and other charges now due or that may hereafter be levied or assessed against the property described above.
5. **This mortgage also secures all debts, liabilities, and obligations of the Mortgagor to Mortgagee heretofore, now, or hereafter made, incurred, or created, whether voluntary or involuntary, and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, under any interest rate swap, cap, collar, or development agreement entered into thereunder, all as amended, modified, supplemented or amended from time to time.**
6. **Insurance.** Mortgagor shall keep the improvements on the property insured against loss or damage occasioned by fire, extended coverage perils, and such other hazards as Mortgagee may require, through insurers approved by the Mortgagee, in an amount not less than the unpaid balance of the Note due Mortgagee, and shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of the Mortgagee and, unless Mortgagee otherwise agrees in writing, the original of all policies covering the property shall be deposited with the Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. All proceeds from such insurance shall be applied, at Mortgagee's option, to the installments of the Note in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the property.
7. **Condition and Repair.** To keep the property in good and tenantable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures.
8. **Liens.** To keep the property free from liens and encumbrances superior to the lien of this mortgage except for the lien of Citizens State Bank of La Crosse.
9. **Mortgagee May Cure Defaults.** In the event of any default by Mortgagor of any kind under this Mortgage or any Obligation secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the Obligation secured by this Mortgage and shall constitute a lien upon the Property.
10. **Prior Mortgages.** To perform all of the Mortgagor's obligations and duties under any mortgage or security agreement with a lien which has priority over this Mortgage and any failure to do so shall constitute a default under this Mortgage.
11. **Waste.** Not to commit waste or permit waste to be committed upon the property, to keep the Property in good condition and repair, to keep the Property free from future liens superior to the lien of this Mortgage and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.
12. **Conveyance.** Not to sell, assign, mortgage, convey, or otherwise transfer any legal or equitable interest in all or part of the property, by deed, land contract, option, or in any other way, or to permit the same to occur without the written consent of the Mortgagee unless the indebtedness secured by this Mortgage is first paid in full. Upon any such sale, conveyance, or transfer, the entire indebtedness shall become due and payable.
13. **Alteration or Removal.** Not to remove, demolish or materially alter any part of the property without Mortgagee's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility.
14. **Condemnation.** To pay to Mortgagee all compensation received for taking of the property, or any part, by condemnation proceedings (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the property, or any part. The compensation shall be applied in such manner as Mortgagee determines to rebuilding of the property or to installments of the Note in the inverse order of their maturities (without penalty for prepayment).
15. **Ordinances; Inspections.** To comply with all laws, ordinances, and regulations affecting the property. Mortgagee and its authorized representatives may enter the property at reasonable times to inspect it and, at Mortgagee's option, repair or restore it.
16. **Authority of Mortgagee to Perform for Mortgagor.** If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, Mortgagee may perform the duties or cause them to be performed, including paying any amount so required, and the

cost shall be due on demand and secured by this Mortgage, bearing interest at a rate not in excess of the maximum rate permitted by law from the date of expenditure by Mortgagee to the date of payment by Mortgagor.

- 17. **Default; Acceleration; Remedies.** If, a) there is a failure to make a payment under the Note when due and such default continues for a period of ten (10) days, b) Mortgagor fails timely to observe or perform any of the Mortgagor's covenants contained in this Mortgage, Promissory Note #1, or Loan and Development Agreement; c) any representation or warranty made in this Mortgage or otherwise to induce Mortgagee to extend credit to Mortgagor is false in any material respect when made, or d) Mortgagor for the Note dies, ceases to exist or becomes insolvent or the subject of bankruptcy or other insolvency proceedings, the Note will, at the option of the Mortgagee be payable immediately, and Mortgagee may collect the same in a suit at law or by foreclosure of this Mortgage by action or advertisement or by the exercise of any other remedy available at law or equity.
- 18. **Environmental Provision.** Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner or person using the Property; (c) without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components ("PCBs") or underground storage tanks; (d) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) Mortgagor in the past has been, at the present is and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including reasonable attorney fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Mortgagee in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.
- 19. **Waiver.** Mortgagee may waive any default without waving any subsequent or prior default by Mortgagor.
- 20. **Power of Sale.** In the event of foreclosure, Mortgagee may sell the property at public sale and execute and deliver to the purchasers deeds of conveyance pursuant to statute.
- 21. **Receiver.** Upon the commencement or during the pendency of an action to foreclose this Mortgage, or enforce any other remedies of Mortgagee under it, without regard to the adequacy or inadequacy of the property as security for the Note, the court may appoint a receiver of the property without bond, and may empower the receiver to take possession of the property and collect the rents and profits of the property, and exercise such other powers as the court may grant until the confirmation of sale, and may order the rents and profits, when so collected, to be held and applied as the court may direct.
- 22. **Expenses.** To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses, including without limitation, attorneys' fees and expenses of obtaining title evidence, incurred by Mortgagee in foreclosing this Mortgage.
- 23. **Severability.** Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision.

IN TESTIMONY WHEREOF, the said Mortgagor has caused these presents to be executed in its name the day and year first above written.

By:

\_\_\_\_\_  
Dale D. Berg

STATE OF WISCONSIN        )  
  ) ss.  
COUNTY OF LA CROSSE )

Personally came before me, this [redacted], Dale D. Berg, to me known to be the person who executed the foregoing as their own free act and deed.

\_\_\_\_\_  
Notary Public, La Crosse County, Wisconsin

My commission expires \_\_\_\_\_

Drafted by the City of La Crosse Planning Department

## LEGAL DESCRIPTION

Lot 1 and the South ½ of Lot 2 in Block 11 of Burn's Addition to the City of La Crosse, La Crosse County, Wisconsin.

**Property Address: 1305 South Avenue, La Crosse**

**Tax Parcel No.: 17-30094-10**