

(Top 3 inches reserved for recording data)

Mortgage, Assignment of Rents, Security Agreement, and Fixture Financing Statement
(4040 West 70th Street)

THIS MORTGAGE IS EXEMPT FROM MORTGAGE REGISTRY TAX IN ACCORDANCE WITH MINN. STAT. § 287.04(f), AS IT SECURES A LOAN MADE UNDER A LOW AND MODERATE INCOME OR OTHER AFFORDABLE HOUSING PROGRAM AND MORTGAGEE IS A FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY.

DATE: _____, 2020

This Mortgage, Assignment of Rents, Security Agreement, and Fixture Financing Statement (the "Mortgage") is given by EAST EDINA HOUSING FOUNDATION, a Minnesota nonprofit corporation dba EDINA HOUSING FOUNDATION ("Mortgagor"), to the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota ("Mortgagee").

Mortgagor and Mortgagee have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, or supplemented from time to time, the "Loan Agreement") pursuant to which Mortgagee is making a secured loan to Mortgagor in the aggregate original principal amount of **\$3,650,000.00** (the "Loan"). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by a note dated the date hereof made by Mortgagor to Mortgagee in an aggregate amount equal to the principal amount (as the same may be amended, modified, restated, renewed, replaced, or supplemented from time to time, the "Note").

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "Loan Documents"), including (i) the payment of interest and other amounts which would accrue and become due and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "Indebtedness"), Mortgagor hereby irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest, to and in favor of Mortgagee, WITH POWER OF SALE, all of Mortgagor's right, title and interest in and to the real property in Hennepin County, Minnesota, legally described as follows: see attached **Exhibit A**,

together with the buildings, structures, fixtures and other improvements now or hereafter located thereon and all tenements, hereditaments, and appurtenances belonging thereto (collectively, the "Property"), subject to the following liens or encumbrances, if any: see attached **Exhibit B**;

TO HAVE AND TO HOLD the Property unto Mortgagee and its successors and assigns, forever;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. Repayment of Indebtedness. If Mortgagor (a) pays the Indebtedness to Mortgagee according to the terms of the Note, final payment of which is due no later than **June 1, 2022** (subject extension pursuant to the terms and conditions of the Loan Agreement); (b) pays interest on the Indebtedness as provided in the Note, as applicable; (c) repays to Mortgagee, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, if any; and (d) keeps and performs all the covenants and agreements contained herein, then Mortgagor's obligations under this Mortgage will be satisfied, and Mortgagee will deliver an executed satisfaction of this Mortgage to Mortgagor.

2. Statutory Covenants. Mortgagor makes and includes in this Mortgage the following covenants and provisions set forth in Minn. Stat. Section 507.15, and the relevant statutory covenant equivalents contained therein are hereby incorporated by reference:

- (a) To warrant the title to the Property;
- (b) To pay the Indebtedness as herein provided;
- (c) To pay all taxes and special assessments now and hereafter levied and assessed on the Premises before the same become delinquent;
- (d) That the Property shall be kept in repair and no waste shall be committed;
- (e) To pay principal and interest on prior mortgages (if any).

3. Additional Covenants and Agreements of Mortgagor. Mortgagor makes the following additional covenants and agreements with Mortgagee.

(a) Mortgagor shall keep all buildings, improvements, and fixtures now or later located on all or any part of the Property (collectively, the "Improvements") insured against loss by fire, lightning, and such other perils as are included in a standard all-risk endorsement, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy, including, without limitation, vandalism, malicious mischief, burglary, theft, and if applicable, steam boiler explosion. Such insurance shall be in an amount no less than the full replacement cost of the Improvements, without deduction for physical depreciation. Mortgagor shall procure and maintain liability insurance against claims for bodily injury, death, and property damage occurring on or about the Property in amounts reasonably satisfactory to Mortgagee and naming Mortgagee as an additional insured, all for the protection of Mortgagee.

(b) Each insurance policy required pursuant to Section 3(a) must contain provisions in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgagee clause. Each policy must be issued by an insurance company or companies licensed to do business in Minnesota. Each policy must provide for not less than 10 days written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage. Mortgagor will deliver to Mortgagee

a duplicate original or certificate of such insurance policies and of all renewals and modifications of such policies upon request.

(c) No part of the Improvements shall be removed, demolished, or altered without the prior written consent of Mortgagee.

(d) Upon reasonable prior notice to Mortgagor, Mortgagee will have the right, at any time and for any reason, to enter onto the Property to inspect the same.

(e) Except as otherwise provided in the Loan Agreement, Mortgagor shall not, without the prior written consent of Mortgagee which may be withheld in Mortgagee's sole and absolute discretion, directly or indirectly (i) sell, assign, lease, or transfer, or permit to be sold, assigned, leased or transferred (A) any part of the Property, or any interest therein; or (B) any interest or right in any ownership interest in Mortgagor; or (ii) pledge or otherwise encumber, create or permit to exist any mortgage, pledge, lien or claim for lien or encumbrance (A) upon any part of the Property or interest therein; or (B) any interest or right in any ownership interest in Mortgagor.

(f) If the Property is damaged by fire or other casualty, Mortgagor must promptly give notice of such damage to Mortgagee and the insurance company. The proceeds of any insurance policies payable by reason of such damage shall be applied, at Mortgagee's option, to either the Indebtedness, whether or not then due and payable, or to the restoration of the Improvements.

(g) If all or any part of the Property is taken in condemnation proceedings instituted under power of eminent domain or is conveyed in lieu thereof under threat of condemnation, the money paid pursuant to such condemnation or conveyance in lieu thereof must be applied to payment of the amounts due by Mortgagor to Mortgagee under the Note, even if such amounts are not then due to be paid.

(h) Mortgagor shall, upon request by Mortgagee, execute and deliver such further instruments, financing statements and/or continuation statements under the Uniform Commercial Code and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Mortgage.

(i) Mortgagor shall pay all mortgage registry tax payable upon this Mortgage and any amendment hereof or supplement hereto pursuant to Minn. Stat. Chapter 287, if required.

(j) Mortgagor shall pay any other expenses and attorneys' fees incurred by Mortgagee pursuant to the Note or as reasonably required for the protection of the lien of this Mortgage.

(k) Mortgagor shall promptly comply with, or cause to be complied with (i) all statutes, ordinances, and requirements of any governmental authority relating to the Property, including, without limitation Environmental Laws (defined below); (ii) all obligations of any instruments recorded against the Property; and (iii) the terms of the other Loan Documents.

4. Payment by Mortgagee. If Mortgagor fails to pay any amounts to be paid hereunder to Mortgagee or any third parties, or to insure the Improvements, and deliver the policies or certificates thereof as required herein, Mortgagee may make such payments or secure such insurance. The sums so paid shall be additional Indebtedness, bear interest from the date of such payment at the same rate set forth in the Note, be an additional lien upon the Property, and be immediately due and payable upon written demand. This Mortgage secures the repayment of such advances.

5. Security Interest. This Mortgage shall constitute a security agreement with respect to all personal property owned by Mortgagor and located on or used in connection with the Property, and Mortgagor hereby grants Mortgagee a security interest therein (the “Security Interest”). Mortgagor hereby consents to the filing of any and all financing statements which Mortgagee may reasonably consider necessary or appropriate to perfect the Security Interest.

6. Fixture Filing. This Mortgage shall constitute a “fixture filing” against all of the Property that is or is to become fixtures, and the following information is provided so that this Mortgage shall comply with the requirements of the UCC for a mortgage instrument to be filed as a financing statement.

- (i) Name and Address of Mortgagor, as debtor: East Edina Housing Foundation, 4801 West 50th Street, Edina, Minnesota 55424.
- (ii) Name and Address of Mortgagee, as secured party: Edina Housing and Redevelopment Authority, 4801 West 50th Street, Edina, Minnesota 55424.
- (ii) The name of the record owner of the security is Mortgagor described above.
- (iii) Mortgagor is organized as a nonprofit corporation.
- (iv) Mortgagor’s jurisdiction of organization is Minnesota.

7. Assignment of Rents; Appointment of Receiver. Prior to written notice from Mortgagee to Mortgagor of a default under this Mortgage or Note, Mortgagor shall enjoy a license (the “License”) to collect and receive all of the rents, issues, profits, proceeds, and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property (collectively, the “Rents”) and shall apply such Rents to the sums secured by this Mortgage as required under the terms of the Note and may apply the balance of the Rents to Mortgagor’s own account. Mortgagor hereby authorizes Mortgagee to collect the Rents and hereby directs each tenant of the Property to pay such Rents to Mortgagee or Mortgagee’s agents. Upon delivery of written notice by Mortgagee to Mortgagor of a breach by Mortgagee of any covenant or agreement in this Mortgage (and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Property in person, by agent, or by a court-appointed receiver), such License shall be revoked and Mortgagee will immediately be entitled to possession of all Rents as the same become due and payable, including but not limited to Rents then due and unpaid. In furtherance of the foregoing, and subject to the License, (i) Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all of Rents, regardless of to whom the Rents are otherwise payable and (ii) Mortgagor and Mortgagee intend this assignment of Rents to constitute an absolute assignment and not an assignment for additional security only.

In addition to any rights granted under the terms of this Mortgage, Mortgagor irrevocably consents, and Mortgagee will be entitled as a matter of right, to the appointment of a limited receiver (as defined in Minn. Stat. 576.21) without notice and without giving bond, and without regard to the solvency or insolvency of Mortgagor, waste, or adequacy of the security. The receiver will have all the rights, powers, and remedies provided by law (including without limitation the rights of receiver under Minn. Stat. Section 576.25, subd. 5 and Minn. Stat. Section 576.29, as each is amended). From appointment through any period of redemption, the receiver will: (i) collect the Rents; (ii) manage the Property so as to prevent waste; (iii) execute leases within or beyond the receivership; (iv) perform the terms of this Mortgage; and (v) apply the Rents to the payment of the expenses set forth in Minn. Stat. Section 576.25, subd. 5(d), to all expenses for maintenance of the Property, to the costs and expenses of the receivership, including attorneys’ fees, and to the repayment of the Indebtedness.

8. Default. The following shall each be an “Event of Default” hereunder: (a) the failure of Mortgagor to pay the sums to be paid under the Note or this Mortgage, when the same become due, and such failure shall continue for a period of five calendar days after written notice of such failure has been given by Mortgagee to Mortgagor; (b) the default by Mortgageor of any of the covenants set forth in the Note or this Mortgage, and such failure shall continue for a period of 30 days after written notice of such failure has been given by Mortgagee to Mortgagor; or (c) the occurrence of an “Event of Default” as defined in the Loan Agreement. Upon the occurrence of an Event of Default, Mortgagee may (i) declare the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice; (ii) exercise any additional rights and remedies stated in this Mortgage, the Note, and/or the Loan Agreement; and (iii) and Mortgagor hereby authorizes and empowers Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same in fee simple in accordance with Minn. Stat. Chapter 580, and out of the monies arising from such sale, to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorneys’ fees permitted by law, which costs, charges, and fees Mortgagor agrees to pay. No remedy herein conferred upon or otherwise available to Mortgagee is intended to be or shall be construed to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity.

9. Additional Terms. Mortgagor makes the following additional covenants and with Mortgagee makes the following additional representations and warranties for the benefit of Mortgagee:

(a) Mortgagee’s rights and remedies hereunder with respect to an assignment of rents from, and/or the appointment of a receiver for rents from, the Property upon the occurrence and during the continuance of an Event of Default shall include, without limitation, the fullest range and benefit of the rights and remedies made available to a mortgagee pursuant to Minnesota Statutes Chapter 576 and Section 559.17, as said statutes may be amended from time to time. Nothing contained herein which may be construed as contrary to said statutes shall invalidate any other provision hereof. If Mortgagee elects to exercise its remedies under said statute or any of said remedies, the terms and provisions of said statute, as amended, governing the exercise of said remedies shall govern, control and take precedence of any contrary terms contained in this Mortgage. All rents collected by Mortgagee or any receiver shall first be applied as provided for in Minnesota Statutes Section 576.25, subd. 5, and any remaining collected rents shall be applied as otherwise provided for in this Mortgage. The exercise by Mortgagee of the statutory remedies referenced herein shall not constitute Mortgagee a “mortgagee-in-possession” under Minnesota law, or give rise to any liability which might otherwise attach to Mortgagee as a mortgagee-in-possession.

(b) Mortgagor hereby waives to the full extent lawfully allowed the benefit of any homestead, appraisalment, evaluation, stay and extension laws now or hereinafter in effect. Mortgagor hereby waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Property, or as to require Mortgagee to exhaust its remedies against a specific portion of the Property before proceeding against the other and does hereby expressly consent to and authorize the sale of the Property or any part thereof as a single unit or parcel.

(c) Mortgagor represents and warrants that as of the date of this Mortgage, the Property is not in agricultural use as defined in Minn. Stat. Section 40A.02, Subd. 3 and is not used for agricultural purposes.

10. Indemnification. Mortgagor agrees to defend, indemnify and hold harmless Mortgagee, its directors, officers, employees and agents from and against any and all loss, cost, expense or liability (including reasonable attorneys’ fees) incurred in connection with any and all claims or proceedings (whether brought by a private party or governmental agency) as a result of, or arising out of or relating to:

(a) bodily injury, property damage, abatement or remediation, environmental damage or impairment or any other injury or damage resulting from or relating to any hazardous or toxic substance or contaminated material (as determined under Environmental Laws located on or migrating into, from or through property previously, now or hereafter owned or occupied by Mortgagor, which Mortgagee may incur due to the making of any loan from Mortgagee to Mortgagor, the exercise of any of its rights under this Mortgage and the other Loan Documents, or otherwise;

(b) any transaction financed or to be financed, in whole or in part, directly or indirectly, with the proceeds of any loan made by Mortgagee to Mortgagor; or

(c) the entering into and performance of the Loan Documents or any other document or instrument relating hereto by Mortgagee.

This indemnity will survive foreclosure of any security interest or mortgage or conveyance in lieu of foreclosure and the repayment of the Note and the discharge and release of any Loan Documents.

For purposes of this Mortgage, the term “Environmental Laws” means all federal, state and local laws, including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or solid, liquid or hazardous substances, materials or wastes, including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency and regulations of the Minnesota Pollution Control Agency or any other State Environmental Protection Agency now or at any time hereafter in effect.

11. Notices. All notices or other communications required or permitted to be given by this Mortgage must be given in accordance with the Loan Agreement.

12. Governing Law; Severability. This Mortgage shall be governed by the laws of Minnesota. If any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision.

13. Amendments. This Mortgage and the other Loan Documents may be amended only by a written amendment signed by Mortgagor and Mortgagee.

14. Binding Effect. This Mortgage and the other Loan Documents shall be binding upon and shall inure to the benefit of the respective successors and assigns of Mortgagor and Mortgagee except that Mortgagor’s rights and obligations may not be assigned without the prior written consent of Mortgagee.

15. Time of the Essence. Time is of the essence with respect to payment of Obligations, the performance of all covenants of Mortgagor and the payment of taxes, assessments, sewer, water and similar charges and insurance premiums.

16. Release from Personal Liability. Subject to Article 7 of the Loan Agreement, it is agreed that the execution of this Mortgage shall impose no personal liability on Mortgagor for the payment of the obligations described herein, and Mortgagee's sole recourse shall be against the Property.

[Remainder of page left blank, signature page follows.]

EAST EDINA HOUSING FOUNDATION,
a Minnesota nonprofit corporation

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, the _____ of East Edina Housing Foundation, a Minnesota
nonprofit corporation, on behalf of the corporation.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, the _____ of East Edina Housing Foundation, a Minnesota
nonprofit corporation, on behalf of the corporation.

Notary Public

This document was drafted by:
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

[Signature Page to Mortgage, Assignment of Rents, Security Agreement, and Fixture Financing Statement]

Exhibit A

Legal Description of the Property

Tract C, Registered Land Survey No. 1365, Hennepin County, Minnesota

Torrens Property

[Exhibit A to Mortgage, Assignment of Rents, Security Agreement, and Fixture Financing Statement]

Exhibit B

Permitted Encumbrances

1. Real estate taxes and installments of special assessments due and payable in 2020 and thereafter.
2. Matters that would be disclosed by a survey or inspection of the Property.
3. Rights or claims of tenants, as tenants only, in possession under unrecorded leases.
4. Sanitary sewer easement as shown on plats of South Office Park First Addition and Replat of Lot 2, Block 1, South Office Park First Addition.