

BK: 2019 PG: 790
Doc # 2019 790
Date: 5/31/2019 at 4:13:20.0 PM
County Recording Fee: \$47.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$50.00
Revenue Tax:
CARLEEN BRUNING, RECORDER
Montgomery County, Iowa

Preparer Information: Steven H. Krohn, P.O. Box 249, Council Bluffs, IA 51502-0249 (712) 328-1833
Return Document to: American National Bank, 333 W. Broadway, Council Bluffs, IA 51503
Address Tax Statements to: City View Apartments, 4407 SW 9th St, Des Moines, IA 50315

AMENDMENT TO MORTGAGE

THIS AMENDMENT TO MORTGAGE (the "Amendment"), is made effective as of the 15th day of May, 2019 by and between BIGHORN PROPERTIES, LLC, an Iowa limited liability company (herein "Bighorn"), CITY VIEW APARTMENTS OF RED OAK, LLC, an Iowa limited liability company (herein "City View"), and AMERICAN NATIONAL BANK, 333 West Broadway, Council Bluffs, IA 51503 (hereinafter, "Bank").

WITNESSETH:

WHEREAS,

A. Bank previously made a certain loan to Bighorn in the original principal amount of Two Million Forty-Nine Thousand Six Hundred and Seventy-Nine and Twenty-Six Hundredths Dollars (\$2,049,679.26) (the "\$2,049,679.26 Loan"), which Loan is evidenced by a certain Promissory Note from Bighorn to Bank dated September 7, 2017, in the original principal amount of Two Million Forty-Nine Thousand Six Hundred and Seventy-Nine and Twenty-Six Hundredths Dollars (\$2,049,679.26) (the "\$2,049,679.26 Note").

B. The \$2,049,679.26 Loan as evidenced by the \$2,049,679.26 Note is secured, among other collateral, by a Mortgage made, executed and delivered to Bank by Bighorn, dated September 7, 2017, and recorded September 12, 2017, in Book 2017, Page 1473 as Document #2017 1473 in the office of the Recorder of Montgomery County, Iowa (the "Montgomery County Mortgage") which Montgomery County Mortgage encumbers the real property described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Montgomery County Property"), together with all equipment, buildings and improvements and certain other tangible and intangible personal property located thereon or related thereto.

EXHIBIT F

C. The Montgomery County Mortgage also secures by its terms, all other obligations, debts and liabilities, plus interest thereon of Bighorn to Bank.

D. Contemporaneously with the execution of this Amendment, the Montgomery County Property is being conveyed by Bighorn to City View and City View (along with Valley View Apartments of Shenandoah, LLC, an Iowa limited liability company (herein "Valley View")) is assuming the \$2,049,679.26 Loan as evidenced by the \$2,049,679.26 Note.

E. In connection with the assumption by City View and Valley View of the \$2,049,679.26 Loan as evidenced by the \$2,049,679.26 Note, City View and Valley View, with other persons and entities, are executing and delivering to Bank, among other agreements and documents, a Loan Assumption Agreement and Release (the "Loan Assumption Agreement") and an amendment to the \$2,049,679.26 Note (the "\$2,049,679.26 Note Amendment").

F. Pursuant to the terms of the Loan Assumption Agreement and Release, City View also agreed to execute and deliver to Bank an Amendment to the Montgomery County Mortgage assume all obligations imposed by the Montgomery County Mortgage.

G. Bank also previously made another loan to Bighorn in the original principal amount of Eight Hundred and Four Thousand Five Hundred and Ten and Fifty Hundredths Dollars (\$804,510.50) (the "\$804,510.50 Loan"), which \$804,510.50 Loan is evidenced by a certain Promissory Note from Bighorn to Bank dated February 21, 2017, in the original principal amount of Eight Hundred and Four Thousand Five Hundred and Ten and Fifty Hundredths Dollars (\$804,510.50) (the "\$804,510.50 Note").

H. Contemporaneously with the execution of this Amendment, the \$804,510.50 Loan as evidenced by the \$804,510.50 Note is being assumed by Seneca Place Apartments of Storm Lake, LLC ("Seneca") pursuant to the terms of a separate Loan Assumption Agreement and Release and the \$804,510.50 Note is being amended by a separate amendment to the \$804,510.50 Note (the "\$804,510.50 Note Amendment").

I. City View intends that the Montgomery County Mortgage secure, in addition to the \$2,049,679.26 Loan as evidenced by the \$2,049,679.26 Note as amended by the \$2,049,679.26 Note Amendment, the \$804,510.50 Loan as evidenced by the \$804,510.50 Note as amended by \$804,510.50 Note Amendment and all other obligations, debts and liabilities, plus interest thereof of Seneca to Bank, whether now existing or hereafter incurred, of any nature or type.

J. City View, Bighorn and Bank desire to amend the terms of the Montgomery County Mortgage to release Bighorn from the obligations imposed by the Montgomery County Mortgage on Bighorn as the "Grantor" thereunder, to provide that City View assumes the obligations imposed by the Montgomery County Mortgage on Bighorn as the "Grantor" thereunder and to provide that the Montgomery County Mortgage secures, in addition to the \$2,049,679.26 Loan as evidenced by the \$2,049,679.26 Note as amended by the \$2,049,679.26 Note Amendment, the \$804,510.50 Loan as evidenced by the \$804,510.50 Note as amended by

\$804,510.50 Note Amendment and any and all additional loans that the Bank may make in the future to City View, City View or Seneca or any of them together or separately and for that purpose, Bighorn, City View and Bank enter into this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Bighorn hereby assigns to City View all of Bighorn's right, title and interests in the Montgomery County Mortgage. City View hereby personally and unconditionally assumes and agrees to pay, perform and discharge all obligations of the "Grantor" under the Montgomery County Mortgage with the same force and effect as if City View originally executed and delivered the Montgomery County Mortgage as the "Grantor" instead of Bighorn.

Upon the execution of this Agreement by all parties, City View shall thereafter be deemed to be the "Grantor" under the Montgomery County Mortgage for all purposes in substitution for Bighorn and in every location where the name "Bighorn Properties, LLC" appears, the name "Bighorn Properties, LLC" is deleted and the name "City View Apartments of Red Oak, LLC" is inserted in its place.

Bighorn is hereby released from any liability or obligation to pay, perform and discharge the obligations of the "Grantor" under the Montgomery County Mortgage.

City View and Bank agree that all of the terms and provisions of the Montgomery County Mortgage shall remain unchanged except as stated in this Amendment.

City View agrees to fully and timely perform each and every term and condition of the Montgomery County Mortgage and agrees to be bound by all of the conditions and covenants in the Montgomery County Mortgage.

All references in the Montgomery County Mortgage to "Bighorn Properties, LLC" are hereby amended to "City View Apartments of Red Oak, LLC". Without limiting the generality of the preceding sentence, the definition of "Borrower" on page 9 of the Montgomery County Mortgage is amended to read as follows: "The word "Borrower" means City View Apartments of Red Oak, LLC and includes all co-signors and co-makers signing the Note and all their successors and assigns".

All references to the Montgomery County Mortgage in the \$2,049,679.26 Note as amended and in any agreements and documents evidencing, securing or relating to the \$2,049,679.26 Loan shall be deemed to refer to the Montgomery County Mortgage as hereby amended and as assumed by City View hereunder.

2. City View and Bank agree that the first paragraph of the Montgomery County Mortgage on page 1 of the Montgomery County Mortgage is hereby modified and amended to read as follows:

“NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$2,842,737.26. 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.”

3. The address stated as the address for Bighorn Properties, LLC in the third paragraph of the Montgomery County Mortgage on page 1 is amended to insert the address for City View as follows: 4407 SW 9th St, Des Moines, IA 50315.

4. City View and Bank agree that the paragraph entitled “CROSS-COLLATERALIZATION” of the Montgomery County Mortgage on page 1 is amended to read as follows:

“CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures a certain Promissory Note from originally from Bighorn Properties, LLC to Lender dated February 21, 2017 in the original principal amount of Eight Hundred and Four Thousand Five Hundred and Ten and Fifty Hundredths Dollars (\$804,510.50) which Promissory Note has been assumed by Seneca Place Apartments of Storm Lake, LLC and this Mortgage also secures all obligations, debts and liabilities, plus interest thereon, of Grantor, of Valley View Apartments of Shenandoah, LLC or of Seneca Place Apartments of Storm Lake, LLC or of any one or more of them, to Lender as well as all claims by Lender against Grantor, Valley View Apartments of Shenandoah, LLC or Seneca Place Apartments of Storm Lake, LLC or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Borrower or Grantor or Valley View Apartments of Shenandoah, LLC or Seneca Place Apartments of Storm Lake, LLC may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.”

5. City View and Bank agree that the paragraph entitled “FUTURE ADVANCES” of the Montgomery County Mortgage on page 2 is amended to read as follows:

“FUTURE ADVANCES. In addition to the Note and in addition to a certain Promissory Note originally from Bighorn Properties, LLC to Lender dated February 21, 2017 in the original principal amount of Eight Hundred and Four Thousand Five Hundred and Ten and Fifty Hundredths Dollars (\$804,510.50) which has been assumed by Seneca Place Apartments of Storm Lake, LLC, this Mortgage secures all future advances made by Lender to Borrower or Grantor or Valley View Apartments of Shenandoah, LLC or Seneca Place Apartments of Storm Lake, LLC, whether or not the advances are made pursuant to a commitment.

Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note and in addition to the amounts specified in a certain Promissory Note from originally from Bighorn Properties, LLC to Lender dated February 21, 2017 in the original principal amount of Eight Hundred and Four Thousand Five Hundred and Ten and Fifty Hundredths Dollars (\$804,510.50) which has been assumed by Seneca Place Apartments of Storm Lake, LLC, all future amounts Lender in its discretion may loan to Borrower or to Grantor or to Valley View Apartments of Shenandoah, LLC or to Seneca Place Apartments of Storm Lake, LLC, together with all interest thereon.”

6. City View and Bank agree that the subparagraph entitled “Payment Default” under the paragraph “EVENTS OF DEFAULT” in the Montgomery County Mortgage on page 6 is amended to read as follows:

“Payment Default. Grantor and/or Valley View Apartments of Shenandoah, LLC and/or Seneca Place Apartments of Storm Lake, LLC, fail to make any payment when due under the Indebtedness.”

7. City View and Bank agree that the subparagraph entitled “Note” on page 10 of the Montgomery County Mortgage under the paragraph entitled “DEFINITIONS” is amended to read as follows:

Note. The word "Note" means a certain Promissory Note from originally from Bighorn Properties, LLC to Lender dated September 7, 2017, in the original principal amount of Two Million Forty-Nine Thousand Six Hundred and Seventy-Nine and Twenty-Six Hundredths Dollars (\$2,049,679.26) which has been assumed by City View Apartments of Red Oak, LLC, an Iowa limited liability company and by Valley View Apartments of Shenandoah, LLC, an Iowa limited liability company, together with all renewals of, extensions of, modifications of, refinancings and consolidations of, and substitutions for the promissory note or agreement.

8. City View and Bank agree that the subparagraph entitled “Indebtedness” on page 10 of the Montgomery County Mortgage under the paragraph entitled “DEFINITIONS” is amended to read as follows:

“Indebtedness. The word "Indebtedness" means all principal, interest and late fees, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents, and under a certain Promissory Note originally from Bighorn Properties, LLC to Lender dated February 21, 2017, in the original principal amount of Eight Hundred and Four Thousand Five Hundred and Ten and Fifty Hundredths Dollars (\$804,510.50) which has been assumed by Seneca Place Apartments of Storm Lake, LLC and Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the said Promissory Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as

provided in this Mortgage. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Mortgage.”

9. The terms of the Montgomery County Mortgage are hereby amended and modified accordingly. All references to the Montgomery County Mortgage in any note or related document or other loan document shall refer to the Montgomery County Mortgage as amended and modified hereby.

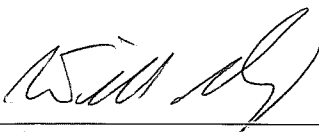
10. City View (i) reaffirms the continued existence and validity of the Note as described in the Montgomery County Mortgage as amended hereby and other loan documents and of the Montgomery County Mortgage as amended hereby; (ii) acknowledges, covenants and agrees that the liens and interests of the Montgomery County Mortgage as amended hereby are and shall remain a valid and existing first priority lien and interest on the Montgomery County Property in favor of Bank; (iii) acknowledges and agrees that City View has no defense to the full and complete performance of the obligations evidenced by the Montgomery County Mortgage as amended hereby; and (iv) represents, warrants and agrees that the modifications of the Montgomery County Mortgage as herein provided, do not in any way effect or impair the validity and enforceability of the Montgomery County Mortgage or any other loan document with respect to City View nor does the same in any way affect or impair the liability of City View thereunder.

11. This Amendment shall be governed by and construed in accordance with the laws of the State of Iowa.

12. All terms and provisions contained in this Amendment shall be incorporated into and made a part of the \$2,049,679.26 Note as amended by the \$2,049,679.26 Note Amendment and shall be incorporated into and made a part of the \$804,510.50 Note as amended by the \$804,510.50 Note Amendment and all other loan documents. All terms and conditions set forth in any and all the \$2,049,679.26 Note as amended by the \$2,049,679.26 Note Amendment and in the \$804,510.50 Note as amended by \$804,510.50 Note Amendment or other loan documents shall remain in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have executed and delivered this AMENDMENT TO MORTGAGE as of the day and year first set forth above.

BIGHORN PROPERTIES, LLC,
an Iowa limited liability company:

By: 
Printed Name: William M. Shipley
Its: Manager

CITY VIEW APARTMENTS OF RED OAK, LLC,
an Iowa limited liability company

By: [Signature]

Printed Name: Caleb Fritzler

One of the four managers of City View Apartments of Red Oak, LLC

By: [Signature]

Printed Name: Mitchel Kressin

One of the four managers of City View Apartments of Red Oak, LLC

By: [Signature]

Printed Name: William Shipley

One of the four managers of City View Apartments of Red Oak, LLC

By: [Signature]

Printed Name: Brandi Jorgensen

One of the four managers of City View Apartments of Red Oak, LLC

AMERICAN NATIONAL BANK

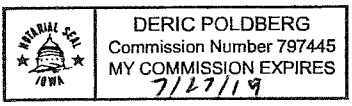
By: [Signature]

Printed Name: Deire Poldberg

Its: Assistant Vice President

STATE OF Iowa)
) ss.
COUNTY OF Pottawattomie)

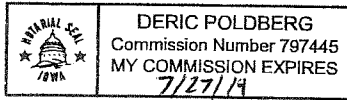
This instrument was acknowledged before me on this 15th day of May, 2019 by William M. Shipley, as the Manager of Bighorn Properties, LLC, an Iowa limited liability company.



[Signature]
Printed Name: Deric Poldberg
NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF Iowa)
) ss.
COUNTY OF Pottawattamie)

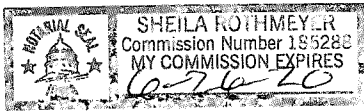
This instrument was acknowledged before me on this 15th day of May, 2019 by Caleb Fritzler, Mitchel Kressin, William Shipley and Brandi Jorgensen as the Managers of City View Apartments of Red Oak, LLC, an Iowa limited liability company.



Deric Poldberg
Printed Name: Deric Poldberg
NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF Iowa)
) ss.
COUNTY OF Pott.)

This instrument was acknowledged before me on this 15th day of May, 2019 by Deric Poldberg, as the Assistant Vice President of American National Bank.



Sheila Rothmeyer
Printed Name: Sheila Rothmeyer
NOTARY PUBLIC IN AND FOR SAID STATE

EXHIBIT A

Parcel A of Lot 1 in Senate Subdivision to the City of Red Oak, Montgomery County, Iowa; and a parcel of land in the SW 1/4 NE 1/4 and NW 1/4 NE 1/4, Section 21, Township 72 North, Range 38 West of the 5th Principal Meridian, Montgomery County, Iowa, more particularly described as follows: Commencing at the center of Section 21-72-38; thence North a distance of 899.7 feet to a point on the centerline of U.S. Highway 34; thence continuing North a distance of 374.02 feet thence East a distance of 33.0 feet to the point of beginning; thence North a distance of 251.21 feet; thence East a distance of 47.0 feet; thence South along the West line of Lot 1, Senate Subdivision, a distance of 251.21 feet; thence West a distance of 251.21 feet; thence West a distance of 47.0 feet to the point of beginning