Delaware

36 **NOTICE: This Mortgage secures credit in the amount of $ 24,102.00. 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 also secures necessary advances for protection of the security, interest and costs.**

CONSUMER CREDIT CODE MORTGAGE

49164

SS# [redacted]

MORTGAGE

1. **Parties & Grant of Mortgage & Security Interest.** For full and valuable consideration, receipt of which is hereby acknowledged JOHN M BEHRNS & SUSAN K BEHRNS, HUSBAND AND WIFE whose address is RR1 BOX 46A, DELHI, IA 52223, hereinafter called Mortgagor, hereby assigns, sells, conveys, mortgages, and grants a security interest in the property herein described as the Mortgaged Property to FIRSTAR BANK CEDAR RAPIDS, N.A., a National Banking Organization organized and existing under the laws of the United States, having its principal place of business and post office address at 222 Second Avenue S.E. Cedar Rapids, IA 52401 its successors and assigns hereinafter called Mortgagee.

2. **Mortgaged Property.** The property hereby mortgaged (collectively called the Mortgaged Property) includes the following:

a. **Land.** The following described land situated in DELAWARE County, Iowa, to-wit: Lot Eight (8) and that part of Lot Nine (9) of the Subdivision of Briar Cliff Development Corporation in Part of the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Twenty Three (23), Township Eighty-Eight (88) North, Range Five (5), West of the Fifth Principal Meridian, Delaware County, Iowa, according to plat recorded in Book 3 Plats, Page 187, described as commencing at the Southeast corner of said Lot Nine (9), thence Northeasterly fifty (50) feet along the East line of said Lot Nine (9), thence Northwesterly parallel to the South line of said Lot Nine (9) to the West line of said Lot Nine (9) at a point which is approximately fifty (50) feet North of the Southwest corner of said Lot Nine (9), thence Southeast to the point of beginning

b. **Real Estate & Personal Property.** All rights, privileges, easements, appurtenances, buildings, fixtures, and improvements on the land or that may hereafter be erected thereon, whether attached or detached; all gas, steam or electric heating, lighting, plumbing, ventilating, water, and power systems, appliances, refrigeration, air conditioning, fences, trees, shrubs, shades, rods, venetian blinds, awnings, fixtures and apparatus; all storm and screen windows and doors, and all other fixtures located on or used in connection with the land; all estates, contingent or vested, including reversions; all expectancies, homestead and dower rights in the land, the right of possession thereof, and all other rights thereto belonging, or in any way now or hereafter appertaining thereto, and the rents, issues, uses, profits and income therefrom, and all of the crops at any time raised thereon from the date of this agreement until the terms of this instrument are complied with and fulfilled and subrogation to the rights of any holder of a lien on said property where the money loaned by Mortgagee to Mortgagor is used to pay such lienholder the assignment of rents herein granted is effective as of the date hereof and not just by the event of default

c. **Other Property.**

105-311

For Release, See Book 133 **Page** 7 12/30/96

3. **Obligation Secured.** This Mortgage secures the following (hereinafter collectively referred to as the "Obligations"):

a. The payment of the loan made by Mortgagee to JOHN M BEHRNS & SUSAN K BEHRNS evidenced by a Mortgage Note dated NOVEMBER 26, 1993, in the principal amount of $ 24,102.00 with a due date of DECEMBER 1, 1996, any renewals, extensions, modifications or refinancing thereof and any notes issued in substitution therefor; and

b. Any additional loans and advances for any purpose whatsoever which hereafter may be made under this Mortgage by the Mortgagee to the original Mortgagor (or either Mortgagor if more than one) while still record owner of the above property, said additional advances to have the same priority and rights as if made at this date; provided, however, that said additional loans and advances shall not include indebtedness incurred in a "consumer credit transaction" as defined in the Iowa Consumer Credit Code.

c. Any advances made by the Mortgagee for the purpose of protecting its mortgage and security interest in the Mortgaged Property.

This paragraph shall not constitute a commitment to make additional loans in any amount.

Unless applicable law (or the Mortgage Note) provides otherwise, all payments received by Mortgagee shall be applied first to any protective advances made pursuant to Paragraph 3(c) then to late charges and after maturity interest then to interest and principal on any additional loans and advances made pursuant to Paragraph 3(b) then to interest and last to principal on the note referred to in Paragraph 3(a).

4. **Mortgagor's Representations & Warranties.** Mortgagor represents and warrants to Mortgagee that:

a. The Mortgagor is lawfully seized of the Mortgaged Property in fee simple; that Mortgagor has good right and lawful authority to sell and convey the same; that the Mortgaged Property is free from all liens and encumbrances (except a first Mortgage held by PEOPLES FED S&L ASSOC ASSIGNED TO AMERICA'S MTG SERVICING INC dated the 11TH day of JULY, 1986 in the original principal amount of U.S. $ 37,240.00); that the Mortgagee shall, and is hereby granted the right to quietly enjoy and possess the same; and Mortgagor hereby warrants and covenants to defend the title to the Mortgaged Property against all persons whomsoever.

b. There is not present on, in or under the Mortgaged Property or any improvements thereon any asbestos, urea formaldehyde foamed-in-place insulation, polychlorinated biphenyl ("PCBs"), or other hazardous or toxic materials the release or disposal of which is regulated by any law, regulation, code or ordinance (all of the foregoing being herein called "Hazardous Materials"), and that the Mortgaged Property has not in the past been used, is not presently being used, and will not in the future (for so long as the Mortgagor owns the same) be used for handling, storage, transportation or disposal of any Hazardous Materials, that there are no known wells, solid waste disposal sites, or underground storage tanks on the Mortgaged Property.

5. **Mortgagor's Affirmative & Negative Covenants & Agreements.** Mortgagor, for itself and its heirs, successors and assigns and for the vendees of the Mortgaged Property hereby promises, covenants and agrees:

a. The Mortgagor will pay the principal of and the interest on the Obligations secured hereby at the times and in the manner therein provided to the extent not prohibited by law. The Mortgagor shall pay in case of suit the expense of continuation of abstract, and all expenses incurred by Mortgagee by reason of litigation with Mortgagor, his successors, or with third parties to protect the lien of this Mortgage.

b. The Mortgagor shall timely make all payments due under the first mortgage referred to in paragraph 4(a) hereof. The Mortgagor shall not increase the amount due under said first mortgage.

c. The Mortgagor will keep the improvements now existing or hereafter erected on the Mortgaged Property, insured as may be required from time to time by the Mortgagee against loss by fire and other hazards, casualties and contingencies in such amounts and for such periods as it may require and will pay promptly, when due, any premiums on such insurance. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by it and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee, provided, however, if the Mortgagee should at any time release the Mortgagor from the obligation to deposit with Mortgagee such policies and renewals thereof such release shall not act as a waiver of the right to in the future require such deposit. In the event of loss, Mortgagor will give immediate notice by mail to the Mortgagee who may make proof of loss if not made promptly by the Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option, either to the reduction of the obligations hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the debt secured hereby, all right, title, and interest of the Mortgagor in and to the proceeds for any loss and to any insurance policies then in force shall pass to the purchaser or grantee, regardless of whether or not there is a deficiency judgment after foreclosure sale or non-judicial foreclosure.

d. The Mortgagor agrees to pay all and singular the taxes, assessments, levies and encumbrances of every nature heretofore or hereafter assessed against the Mortgaged Property before they have become delinquent, and if the same be not promptly paid before they become delinquent, the Mortgagee or its representative may at any time pay the same and the official receipts for monies so paid shall be conclusive proof of the validity and amount of such taxes and assessments.

e. If now or hereafter demanded, the Mortgagor agrees to pay to the Mortgagee with each installment payment on the Mortgage Note an additional sum equal to a fraction of the total amount the Mortgagee estimates to be required to pay when due taxes, assessments, and premiums on insurance policies. The additional payment shall be for the purpose of accumulating a fund with which to pay when due, taxes, assessments, and premiums on insurance policies. The fraction shall be a numerator of one and a denominator equal to the number of installments payable on the Mortgage Notes per year.

f. If the taxes are not paid or the insurance not kept in force by Mortgagor, Mortgagee may pay such taxes and keep the property insured and recover immediately from Mortgagor the amount so expended. All monies so paid by the Mortgagee shall bear interest at the rate provided in the Mortgage Note but not more than any applicable interest rate limitation, if any, and shall be included as additional amounts secured by this Mortgage.

g. If this Mortgage is released of record, the release thereof shall be filed and recorded at the expense of the Mortgagor.

h. The signing of this Mortgage, and the Mortgage Note secured hereby, by the spouse of the owner is not only for the purpose of releasing dower or distributive share but also for the express purpose of creating personal liability of the spouse for the indebtedness evidenced by said Mortgage Note and secured by this Mortgage, and the Mortgagee expressly relies upon the foregoing as a material and necessary representation and covenant by such spouse.

i. If at any time all or any portion of the above described Mortgaged Property shall be taken or damaged by condemnation proceedings under the power of eminent domain, all compensation awarded shall be paid directly to the Mortgagee and applied on the obligations.

j. If more than one party joins in the execution hereof as a Mortgagor, or any be of the feminine sex, the word Mortgagor , the pronouns and relative words herein used shall be read as if written in the plural or the feminine, respectively. The covenants herein contained shall bind, and the benefits and advantages inure to, the respective heirs, executors, administrators, successors, joint tenants, and assigns of the parties hereto.

FILE No. 349-2084
RECORDING FEE $ 11.00
TRANSFER FEE $

FILED FOR RECORD THE 5 DAY OF Jan 19 94 AT 11:12
O'CLOCK A. M. BOOK 121 PAGE 274

STATE OF IOWA, DELAWARE COUNTY
Deborah L. Peyton, Recorder
LM CM 31

k. In the event of the initiation of voluntary or involuntary proceedings by or against the Mortgagor under the United States Bankruptcy Law, as they may from time to time be amended, then the Mortgagee shall be entitled to adequate protection by payment or provision of additional security in an amount equal to the sum of the interest accruing from the date of filing at the rate specified in the Mortgage Note. The foregoing definition of adequate protection is agreed to because of a recognition that the rate of depreciation of the value of the collateral is difficult to determine.

l. Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the above-described premises, and waives any rights of exemption, as to any of said property.

m. Mortgagor 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.

n. Mortgagee, and its agents, shall have the rights at all reasonable times, to enter upon the Mortgaged Property for the purposes of inspecting the Mortgaged Property or any part thereof. Mortgagee shall, however, have no duty to make such inspection. Any inspection of the Mortgaged Property by Mortgagee shall be entirely for its benefit and Mortgagor shall in no way rely or claim reliance thereon.

o. Mortgagor shall take good care of the Mortgaged Property; shall keep the building and 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. Mortgagor shall not make any material alteration to the Mortgaged Property without the prior written consent of Mortgagee.

p. If enactment or expiration of applicable laws has the effect of rendering any provision of the Mortgage Note or this Mortgage unenforceable according to its terms, Mortgagee at its option may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by this Mortgage.

q. The Mortgagor shall indemnify, defend and hold the Mortgagee harmless from and against any claim, loss or damage to which the Mortgagee may be subjected as a result of such past, present or future existence, use, handling, storage, transportation or disposal of Hazardous Materials, and the existence of wells and underground storage tanks. Unless previously delivered by the Mortgagor to the Mortgagee, the Mortgagee, at its sole option, may obtain, at the Mortgagor's expense, a report from a reputable environmental consultant of the Mortgagee's choice as to the presence of such wells, underground storage tanks and Hazardous Materials and as to whether the Mortgaged Property has been or presently is being used for the handling, storage, transportation or disposal of any Hazardous Materials. If the report indicates the presence of wells, underground storage tanks or Hazardous Materials or such past or present use, handling, storage, transportation or disposal of Hazardous Materials, the Mortgagee may require that all violations of law with respect thereto be corrected and/or that the Mortgagor obtain all necessary environmental permits therefor. The indemnification provided herein shall survive payment in full of the obligations.

r. Mortgagor will not sell or transfer all or any part of the Mortgaged Property or an interest therein without Mortgagee's prior written consent, excluding (1) the creation of a lien or encumbrance subordinate to this Mortgage; (2) the creation of a purchase money security interest for household appliances; (3) a transfer by devise, descent or operation of law upon the death of a joint tenant; and (4) the grant of any leasehold interest of three years or less not containing an option to purchase.

6. **Maturity Date.** Last payment on the Mortgage Note secured hereby is due the 1ST day of DECEMBER, 1996.

7. **Mortgagor Not Released; Forbearance by Mortgagee Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release the liability of the original Mortgagor or Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against 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 Mortgagor or Mortgagor's successors in interest. Any forbearance by Mortgagee in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

8. **Notices.** Any notice to Mortgagor provided for in this Mortgage shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Address shown in paragraph 1 hereof or any other address Mortgagor designates by notice to Mortgagee. Any notice to Mortgagee shall be given by first class mail to Mortgagee's address stated herein or any other address Mortgagee designates by notice to Mortgagor. Any notice provided for in this Mortgage shall be deemed to have been given to Mortgagor or Mortgagee when given as provided in this paragraph. Each Mortgagor, if married, hereby authorizes the Mortgagee and its agents to communicate with his or her spouse in connection with the transaction and the collection of the Obligations secured hereby and Mortgagor does hereby consent to such communications.

9. **Fixture Filing.** From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing and for this purpose the name and address of the Debtor is the name and address of Mortgagor as set forth herein and the name and address of Secured Party is the name and address of the Mortgagee as set forth herein, this document covers goods which are or are to become fixtures and the above-named Debtor is the record owner of the land.

10. **Default.** Any of the following shall constitute a breach which materially impairs the condition, value or protection of or the Mortgagee's right in the Mortgaged Property and shall evidence a material impairment of the Mortgagee's prospect of paying the obligation and therefore shall constitute an event of default hereunder ("Event of Default"):

a. Mortgagor shall fail to pay any installment of the obligations referred to in Paragraph 3 hereof within ten days of when it is due.

b. Any of Mortgagor's representations or warranties contained in Paragraph 4 hereof shall at any time be untrue.

c. Mortgagor shall default in the due observance or performance of or breach its affirmative and negative covenants and agreements contained in Paragraph 5 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage, or any amendment to this Mortgage or any other agreement executed in connection with or securing or guaranteeing the obligations.

d. Mortgagor shall make an assignment for the benefit of its creditors, or a petition shall be filed by or against Mortgagor under the United States Bankruptcy Code or Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) 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 shall be entered and become 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 thirty (30) days after its entry, issue or levy.

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

If a court should determine that one or more of the above do not constitute a default under the Iowa Consumer Credit Code, Mortgagor agrees that reinstatement of the obligations shall be the Mortgagor's sole remedy and Mortgagor shall not be entitled to any damages by reason of Mortgagee's exercise of any of its remedies provided for herein.

11. **Remedies.** If an Event of Default shall occur and, after mailing notice of Right to Cure if required by law, such event of default shall not be cured within the applicable cure time, if any, then Mortgagee may, at its option, without notice exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

a. Mortgagee may declare all of the debt represented by the Obligations due and payable in full.

b. Mortgagee may unless prohibited by law foreclose this Mortgage by applicable nonjudicial procedures.

c. Mortgagee may exercise all the rights and remedies afforded a secured party under the Iowa Uniform Commercial Code.

d. Mortgagee may foreclose this Mortgage by judicial proceedings in accordance with the laws of the State of Iowa.

e. Mortgagee either before commencement of suit, or at any time thereafter, shall be entitled to the possession of the Mortgaged Property, and shall also be entitled to the appointment of a Receiver, who shall have the power and is hereby granted absolute authority to take and hold possession of all of the Mortgaged Property, to rent the same, and to collect the rents and profits therefrom for the benefit of Mortgagee, and such Receiver shall be appointed upon the application of Mortgagee by the court in which such action shall be brought, or by any judge of said court, at any time after the default of the Mortgagor in any of the provisions hereof, either independently of or in connection with the commencement of foreclosure, or when suit is begun, or at any time thereafter, and such rights shall in no event be barred, forfeited or retarded by reason of delay, or of a judgment, decree, or sale ordered in any suit; and, further, such right to have such Receiver appointed upon application of said Mortgagee shall exist regardless of the solvency or insolvency of the Mortgagor or any of them, and irrespective of the value of said premises, or of the rents and profits thereof; and such taking of possession by the Receiver shall in no way retard collection, or the institution of suit, and Receiver shall be held to account only for the net profits derived from said property.

12. **Shortened Redemption Period.** Mortgagor hereby agrees that in the event of judicial foreclosure of this Mortgage, the Mortgagee may, at its sole option, elect:

a. Pursuant to Iowa Code § 628.26 to reduce the period of redemption after sale or foreclosure to six months, or

b. Pursuant to Iowa Code § 628.27 to reduce the period of redemption after sale or foreclosure to sixty days, or

c. Pursuant to Iowa Code § 628.28 or any other Iowa Code Section to reduce the period of redemption after sale or foreclosure to such time as may be then applicable and provided by law, or

d. Pursuant to Iowa Code § 654.20 to foreclose without redemption.

NOTICE TO CONSUMER: 1. DO NOT SIGN THIS PAPER BEFORE YOU READ IT. 2. YOU ARE ENTITLED TO A COPY OF THIS PAPER. 3. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY AND MAY BE ENTITLED TO RECEIVE A REFUND OF UNEARNED CHARGES IN ACCORDANCE WITH THE LAW.

IN WITNESS WHEREOF, this Mortgage has been signed and delivered by the persons denoted herein as Mortgagor.

Mortgagor acknowledges receipt of a copy of this mortgage.

Dated this 26TH day of NOVEMBER, 1993 at CEDAR RAPIDS, Iowa.

John M Behrns

JOHN M BEHRNS [redacted]

Susan K Behrns

SUSAN K BEHRNS [redacted]

STATE OF IA
COUNTY OF LINN, SS.

ON THIS 26TH DAY OF NOVEMBER, 1993, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY IN SAID STATE, PERSONALLY APPEARED JOHN M BEHRNS & SUSAN K BEHRNS, HUSBAND AND WIFE, TO ME KNOWN TO BE THE IDENTICAL PERSONS NAMED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME AS THEIR VOLUNDARY ACT AND DEED.

Shelley Frondle

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

ORIGINAL

SHELLEY FRONDLE
MY COMMISSION EXPIRES
April 10, 1996