REAL ESTATE MORTGAGE-IOWA

Form 163
(Revised 1-1-87)

REAL ESTATE MORTGAGE-IOWA

(To secure initial mortgage note - Also future loans and advances to the extent permitted by Section 654.12A, The Code)

THIS INDENTURE made this 2 day of April, A. D. 19 94

between Thomas L Gesell and Judith Ann Gesell, Husband and Wife

Mortgagors

of the County of Delaware, and the State of Iowa, and

John Deere Community Credit Union

Mortgagee

of the County of Black Hawk, and State of Iowa.

WITNESSETH: That the said Mortgagors, in consideration of

NINETEEN ~~XXX~~ Ten thousand nine hundred eighty-four and 78/100---------- DOLLARS

($ 19984.78) loaned by Mortgagee, received by Mortgagors, and evidenced by the promissory note of even date herewith and such additional loans or advances at the option of the Mortgagee referred to in Paragraph 1 below, do, by these presents SELL, CONVEY AND MORTGAGE, unto

the said Mortgagee John Deere Community Credit Union

(To establish a joint tenancy in more than one Mortgagee, use appropriate clause to create same)

the following described Real Estate situated in the County of Delaware, State of Iowa, to-wit:

Lake Delhi Cottage #18, Section 23-88-5
Land leased from Junior Schneider,
Schneider's Camp, Section 23-88-5
Property is located in the SW of SW of Section 23-88-5

For Release, See Book 126
Page 208 6/16/95

together with all personal property that may integrally belong to, or be or hereafter become an integral part of said real estate, and whether attached or detached (such as, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, storm doors, screens, linoleum, water heater, water softener, automatic heating equipment and other attached fixtures), and hereby granting, conveying and mortgaging also all of the easements, servient estates appurtenant thereto, rents, issues, uses, profits and right to possession of said real estate, and all crops raised thereon from now until the debt secured thereby shall be paid in full. As to any such personal property, or fixtures, or both, a Security Interest hereby attaches thereto, as provided by the Uniform Commercial Code. (Also see footnote number 3.)

Said Mortgagors hereby covenant with Mortgagee, or successor in interest, that said Mortgagors hold clear title to said personal property, and title in fee simple to said real estate; that they have good and lawful authority to sell, convey and mortgage the same; that said premises are Free and Clear of all Liens and Encumbrances whatsoever except as may be above stated; and said Mortgagors Covenant to Warrant and defend the said premises and the said personal property against the lawful claims of all persons whomsoever. except as may be above stated.

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

I(WE) UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE, AND THAT BY SIGNING THIS CONTRACT (MORTGAGE), I(WE) VOLUNTARILY GIVE UP MY(OUR) RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT (MORTGAGE). (See footnote No. 4.)

CONDITIONED HOWEVER, That if said Mortgagors shall pay or cause to be paid to said Mortgagees, or his successors, or assigns, said sum of money which shall be legal tender in payment of all debts and dues, public and private, at time of payment, all at the time, place, and upon the terms provided by one (1) promissory note of Mortgagors to Mortgagee, of even date herewith, and as may be supplemented by loans under Paragraph 1 below, and shall perform the other provisions hereof, then these presents will be void, otherwise to remain in full force and effect.

1. **NOTICE: THIS MORTGAGE SECURES (maximum) CREDIT IN THE AMOUNT OF $ 19984.78. 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.** (See limiting feature as to such advances per footnote No. 1.) Mortgagee is hereby given authority to make such loans and advances to Mortgagors upon their signed order or receipt and secured by the original obligation herein. (See footnote No. 2.) **THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS OR ADVANCES IN ANY AMOUNT.** The foregoing limitation upon the total amount of principal loans and advances shall not be considered as limiting the amounts secured hereby if for accruing interest or for any amount for any protective disbursement advanced, or that may be taxed as costs to protect the security for loan or loans made in accordance with the terms and provisions contained in this mortgage.

2. **TAXES.** Mortgagors shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against said property, or any part thereof before same become delinquent, without notice or demand; and shall procure and deliver to said Mortgagee, on or before the fifteenth day of April and October of each year, duplicate receipts of the proper officers for the payment of all such taxes, and assessments then due.

3. **INSURANCE.** Mortgagors shall keep in force insurance, premiums therefor to be prepaid without notice or demand against loss by fire, tornado and other hazards, casualties and contingencies as Mortgagee may require on personal property as herein referred to, and on all buildings and improvements, in companies to be approved by Mortgagee in an amount not less than the full insurable value of such personal property and improvements or not less than the unpaid balance herein, whichever amount is smaller, with such insurance payable to Mortgagors and Mortgagees, as their interests may appear. Mortgagors shall promptly deposit such policies with proper riders with the Mortgagee.

4. **REPAIRS TO PROPERTY.** Mortgagors shall keep the buildings and other improvements on said premises in as good repair and condition as same may now or are hereafter placed, ordinary wear and tear excepted; and shall not suffer or commit waste on or to said security.

5. **ATTORNEY'S FEES.** In case of any action, or in any proceedings in any court, to collect any sums payable or secured by this mortgage, or to protect the lien or title herein of the Mortgagee, or in any other case permitted by law in which attorney fees may be collected from Mortgagors, or charged upon the above described property, Mortgagors agree to pay reasonable attorney fees.

6. **CONTINUATION OF ABSTRACT.** In event of any default herein by Mortgagor, Mortgagee may, at the expense of Mortgagors, procure an abstract of title, or continuation thereof, for said premises, and charge and add to the mortgage debt the cost of such abstract or continuation with interest upon such expense at the highest legal rate applicable to a natural person; or if the Mortgagor is a corporation, then at the default rate provided in the note secured hereby.

7. **ADVANCES OPTIONAL WITH MORTGAGEE.** It is expressly understood and agreed that if the insurance above provided for is not promptly effected, or if the taxes or special assessments assessed against said property shall become delinquent, Mortgagee (whether electing to declare the whole mortgage due and collectible or not), may (but need not) effect the insurance above provided for, and need not, but may and is hereby authorized to pay said taxes and special assessments (irregularities in the levy or assessment of said taxes being expressly waived), and all such payments with interest thereon at the highest legal rate applicable to a natural person (or if the Mortgagor is a corporation, then at the default rate provided in the note secured hereby) from time of payment shall be a lien against said premises.

FILE No. 27-3119	FILED FOR RECORD THE 14 DAY OF	STATE OF IOWA, DELAWARE COUNTY
RECORDING FEE $ 11.00	April, 1994 AT 9:26	Deborah L. Peyton, Recorder
TRANSFER FEE $	O'CLOCK A. M. BOOK 122 PAGE 296	LM CM 31

8.1. **ACCELERATION OF MATURITY AND RECEIVERSHIP.** It is agreed that if default shall be made in the payment of said note, or any part of the interest thereon, or any other advance or obligation which may be secured hereby or any agreed protective disbursement, such as taxes, special assessments, insurance and repairs, or if Mortgagors shall suffer or commit waste on or to said security, or if there shall be a failure to comply with any and every condition of this mortgage, then, at the option of the Mortgagee, said note and the whole of the indebtedness secured by this mortgage, including all payments for taxes, assessments or insurance premiums, shall become due and shall become collectible at once by foreclosure or otherwise after such default or failure, and without notice of broken conditions; 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 the Mortgagee, appoint a receiver to take immediate possession of said property, and of the rents and profits accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and shall be liable to account to said Mortgagors only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and the indebtedness, charges and expenses hereby secured and herein mentioned. And it is hereby agreed, that after any default in the payment of either principal or interest, such sums in default secured by this mortgage shall draw interest at the highest legal rate applicable to a natural person; or if the Mortgagor is a corporation, then at the default rate provided in the note secured hereby.

8.2. **SIX MONTHS' AND 60 DAY PERIOD FOR REDEMPTION.** It is further agreed that if this mortgage covers less than 10 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 6 months provided the Mortgagee, in such action files an election to waive any deficiency judgment against the Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628, Code of Iowa. It is further agreed that the period of redemption after a foreclosure of this mortgage shall be reduced to 60 days if all of the three following contingencies develop: (1) The mortgaged real estate herein is less than 10 acres in size; (2) the Court finds affirmatively that said real estate has been abandoned by the owners **and** those persons personally liable under this mortgage at the time of such foreclosure; and (3) the Mortgagee in such action files an election to waive any deficiency judgment against the Mortgagors or their successors in interest in such action. If the redemption period is so reduced, the Mortgagors or their 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 by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Code shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of the Mortgagors shall be a presumption that the property is not abandoned.

9. **IT IS EXPRESSLY UNDERSTOOD AND AGREED,** but subject to the provisions of Subsection 2.c. of Section 535.8, the Code, that if the Mortgagors shall convey the real estate described herein or any part thereof to persons other than the Mortgagors, or if the title thereto shall become vested in any person or persons other than the Mortgagors in any manner whatsoever, then and in every such case the entire balance owing under this mortgage and the note it secures shall, at the option of the Lender be and become immediately due and payable.

10. **FINAL PAYMENT.** The date of the final payment of the obligations herein is April 1, 1994.

11. This is ( ) is not (X) (strike one) a **CONSTRUCTION MORTGAGE LIEN** as defined in Sec. 572. 18, the Code.

12. **The address of the Mortgagee is** 1422 Flammang Drive
(Street and Number)
Waterloo (City) Iowa (State) 50702 (Zip Code) (See last sentence of Section 447.9 The Code).

13. **Mortgagor(s) acknowledges receipt of a fully completed copy of this instrument.** (See Footnote No. 4.)

IN WITNESS WHEREOF, said Mortgagors have set their hands the day and year first above written, namely: April 2, 1994
(To be dated by Mortgagors)

Sec. 331.602, The Code, requires typed or legibly printed name of signatory **beneath** each original signature.

Thomas L Gesell

Judith Ann Gesell

Mortgagors

STATE OF IOWA, Black Hawk COUNTY, ss.

On this 2 day of April, A. D. 1994, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Thomas L Gesell and Judith Ann Gesell, 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 voluntary act and deed.

Matthew E. Frasoht exp 5-4-96
Notary Public in the State of Iowa
Matthew E Frasoht

STATE OF IOWA, _____ COUNTY, SS.

On this _____ day of _____, A. D. 19____, before me, the undersigned, a Notary Public in the State of Iowa, appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively, of said corporation executing the within and foregoing instrument, that (no seal has been procured by the said) corporation; that said instrument was signed (and sealed) on behalf of said (the seal affixed thereto is the seal of said) corporation by authority of its Board of Directors; and that the said _____ and _____ as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in the State of Iowa

EXPLANATORY NOTES FOR GUIDANCE PURPOSES ONLY - NOT A PART OF THE MORTGAGE

1. Section 654.12A, the Code, entitled "Priority of Advances Under Mortgages," which is subject to Section 572.18, the Code, re mechanic's lien, contains the following limiting clause: "However, the priority of a prior recorded mortgage under this section does not apply to loans or advances made **after receipt of notice** of foreclosure or action to enforce a subsequently recorded mortgage **or** other subsequently recorded or filed lien."
2. Loans and advances pursuant to Paragraph 1 of this mortgage should be signed by the Mortgagor and if the Mortgagor is a natural person, by such person and spouse, and specifically refer to this original Mortgage, and preferably identified by book and page.
3. Uniform Commercial Code. If security interests are desired both in real estate and also on personal property, crops, fixtures or livestock and increase thereof, use and file appropriate financing statement.
4. This provision relating to homestead property required by Section 561.22, the Code, and provision at Paragraph 12 relating to acknowledgment of receipt of fully completed copy required by Section 535.14, the Code.

27-3119

IOWA MORTGAGE No. 18414.10

MORTGAGE

From Thomas L. Gesell & Wife

To John Deere Community Credit Union

Filed for record the _____ day of _____, A. D. 19____, at _____ o'clock ____M., and recorded in Book _____ of Mortgages on page _____

FILED
94 APR 14 AM 9 26
BOOK 122 PAGE 296
RECORDER
$11.00

Black Hawk County Iowa
Deputy _____ Recorder _____ County Records

WHEN RECORDED RETURN TO
John Deere Community Credit Union
P O Box 6000 - Waterloo, IA 50704

MATT PARROTT & SONS CO., WATERLOO, IOWA P-625

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