FIDLAR & CHAMBERS CO. FORM 245D-10

NOTE: This form has a clause for a six months' period of redemption. Use official Form No. 13.2 for the twelve months' period.

REAL ESTATE MORTGAGE – IOWA

(Open-End: To Secure Present and Future Obligations and Advances)

THIS INDENTURE made this 9th day of May, A.D. 1994 between

Darrell D. McElligott and Amy M. McElligott, husband and wife

Mortgagors

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

DELHI SAVINGS BANK

DELHI, IOWA

Mortgagee,

of the County of Delaware, and State of Iowa

For Release, See Book 47 Page 5 1/23/98

WITNESSETH: That the said Mortgagors, in consideration of

Thirty Six Thousand andno/100---------- DOLLARS

($ 36,000.00) loaned by Mortgagee, received by Mortgagors, and evidenced by the promissory note hereinafter referred to, and such additional loan or loans at the option of the Mortgagee, referred to in Paragraph 1, below, do, by these presents SELL, CONVEY AND MORTGAGE, unto the said Mortgagee It's Successors and/or Assigns

(To create a joint tenancy for more than one Mortgagee, use appropriate words)

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

Lot Eight (8), Block Eight (8), Hobbs Addition to Delhi, According to plat recorded in Book D, L.D., Pages 516-517; and the West Four (4) rods of the East Eight (8) rods of that part of the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of Section Seventeen (17), Township Eighty Eight (88) North, Range Four (4), West of the Fifth P.M., described as commencing at a point Thirty Two (32) rods and Five (5) links South of the Northwest corner of said Northeast Quarter (NE¼) of the Southwest Quarter (SW¼), thence East Forty (40) rods, thence South Nine (9) rods, thence West Forty (40) rods, thence North Nine (9) rods to the point of beginning.

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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.

Said Mortgagors hereby covenant with Mortgagee, or successor in interest, that said Mortgagors hold said real estate by title in fee simple; 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 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 share in and to the above described premises, and waives any rights of exemption, as to any of said property.

CONDITIONED HOWEVER, That if said Mortgagors shall pay or cause to be paid to said Mortgagee, or his successor, 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' 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. **OPEN-END FEATURE.** This mortgage shall stand as security for said note and for any and all future advances made by the holder of said note to the Mortgagors, in any amount so that the total principal herein does not exceed $ 36,000.00 and Mortgagee is hereby given authority to make any such additional advances to Mortgagors herein, upon their signed order or receipt, and secured as the original obligation herein. Such limitation upon the total amount of principal 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. **THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.**

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 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 against loss by fire, tornado and other hazards, casualties and contingencies as Mortgagee may require on all buildings and improvements, in companies to be approved by Mortgagee in an amount not less than $ _____ . Mortgagors shall deposit such policies with the Mortgagee. Such policies shall be payable to the parties as their interests may appear. Mortgagors shall pay all premiums therefor when due without notice or demand.

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 be or are hereafter placed, ordinary wear and tear only 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.

FILE No. 35-3418
RECORDING FEE $ 11.00
TRANSFER FEE $ _____

FILED FOR RECORD THE 11 DAY OF May, 1994 AT 11:27 O'CLOCK A. M. BOOK 35 PAGE 149

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

6. **CONTINUATION OF ABSTRACT.** In event of any default herein by Mortgagors, 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.

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 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 from time of payment shall be a lien against said premises.

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 any 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.

8.2 **SIX MONTHS' 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 waives in such foreclosure proceedings any rights to a deficiency judgment against the Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with all provisions of Chapter 289, 59th G. A., amending Chapter 628, I. C. A.

9. **DEFINITION OF TERMS.** Unless otherwise expressly stated, the word "Mortgagors," as used here, includes heirs, executors, administrators, assigns and successors in interest of such "Mortgagors"; the word "Mortgagee," as used herein, unless otherwise expressly stated, includes the heirs, executors, administrators, assigns, and successors in interest of such "Mortgagee." All words referring to "Mortgagors" or "Mortgagee" shall be construed to be of the appropriate gender and number, according to the context. This construction shall include the acknowledgment hereof.

10. **The address of the Mortgagee is** 311 Franklin St.
(Street and Number)
Delhi, Iowa 52223
(City) (Zone) (State) (See last sentence of Section 447.9 I.C.A.)

11. **ADDITIONAL PROVISIONS.** The following additional provisions are hereby incorporated herein: **(insert due date or due dates if desired)**[4] The principal obligation herein, the one promissory note above referred to is payable $ _____ on _____ and _____ on _____.

I 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, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

Darrell D. McElligott 5/9/94
(Signature) (Date)

Amy M. McElligott 5/9/94
(Signature) (Date)

IN WITNESS WHEREOF, said Mortgagors have hereunto set their hands the day and year first above written.

Darrell D. McElligott

Amy M. McElligott

Mortgagors

STATE OF IOWA, Delaware COUNTY, ss:

On this 9th day of May, A.D. 19 94, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Darrell D. McElligott and Amy M. McElligott

to me known to be the identical persons in and who executed the foregoing instrument, and acknowledged ~~that they executed~~ the same as their voluntary act and deed.

NOTARIAL SEAL IOWA
LARRY R. HILLERS
MY COMMISSION EXPIRES
4-7-96

Larry R. Hillers
Notary Public in and for said County

[1]Only one original promissory note is contemplated with the use of this mortgage form. But see 3 below.
[2]If later advances are made, the order, receipt or additional promissory note should be signed by husband and wife, and specifically refer to the security of this original mortgage, which should be identified by book and page.
[4]CONSIDER THE STATUTE OF LIMITATIONS. If this loan, and later advances constitute a long term transaction (over ten years), consider the advisability of making the maturity date or dates in the original note a matter of public record by insertion in this mortgage. See Iowa Land Title Examination Standards, Problems 10.4 and 10.5

35-3418

IOWA MORTGAGE
No. _____

MORTGAGE

From Darrel E. McElligott and wife

To Delhi Savings Bank

Filed for record the _____ day of _____, A.D. 19 _____
at _____ o'clock _____ M., and recorded in Book _____ of Mortgages on page 149
_____ County Records.
Recorder
Deputy

$11.00

35-3418

WHEN RECORDED RETURN TO
Delhi Savings Bank
P O Box 185
Delhi, IA 52223