127-3028
DELAWARE COUNTY IOWA
FILED

'95 MAY 16 AM 10 33

BOOK 126 PAGE 138
DEBORAH L. PEYTON
DELAWARE CO. RECORDER
$36.00

3135

FILED
RECORDERS OFFICE
JONES COUNTY IOWA

95 MAY 11 AM 9:49

BOOK 378 PAGE 49
LINDA J. [illegible]
RECORDER 36.00

INDEXED IN
CHATTEL MTG. INDEX ✓

State of Iowa — Space Above This Line For Recording Data

OPEN-END REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is MAY 9, 1995 and the parties and their addresses are as follows:

MORTGAGOR: MYRON C. ZUMBACH
RR 1 BOX 78
COGGON, IA 52218

CAROL M. ZUMBACH
RR 1 BOX 78
COGGON, IA 52218

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: COMMUNITY SAVINGS BANK
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF IOWA
P.O. BOX 77
EDGEWOOD, IA 52042

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, warrants, conveys and mortgages to Lender the following described property: SEE ATTACHED EXHIBIT A

Subordination to FmHA
For Extension, See Book 1999
Page 142 113499

The property is located in DELAWARE/JONES (County) at
RR 1 BOX 78 (Address), COGGON (City), Iowa 52218 (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF $ 640,656.34. 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. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed the amount stated above. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt): PROMISSORY NOTES DATED 5/9/95 OF $362,166.56 AND $278,489.78

(e.g., borrower's name, note amount, interest rate, maturity date)

Subordination to Wilmington Trust
For Extension, See Book 134
Page 8 3/28/97

FILE No. 127-3028	FILED FOR RECORD THE 16 DAY OF	STATE OF IOWA, DELAWARE COUNTY
RECORDING FEE $ 36.00	May, 1995 AT 10:33	Deborah L. Peyton, Recorder
TRANSFER FEE $	O'CLOCK A M. BOOK 126 PAGE 138	LM CM 31

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt and whether or not such future advances or obligations are incurred for any purpose that was related or unrelated to the purpose of the Evidence of Debt.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.

E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, warrant, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.

B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.

C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created

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by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. ASSIGNMENT OF LEASES AND RENTS. Mortgagor grants, bargains, warrants, and conveys as additional security all the right, title and interest in and to any and all:

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases").

B. Rents, issues and profits (all referred to as "Rents"), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

Mortgagor will promptly provide Lender with true and correct copies of all existing and future Leases. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. Any amounts collected shall be applied at Lender's discretion to payments on the Secured Debt as therein provided, to costs of managing the Property, including, but not limited to, all taxes, assessments, insurance premiums, repairs, and commissions to rental agents, and to any other necessary related expenses including Lender's attorneys' fees and court costs.

Mortgagor acknowledges that this assignment is immediately effective between the parties to this assignment and effective as to third parties on the recording of this Mortgage. Mortgagor agrees that Lender is entitled to notify Mortgagor or Mortgagor's tenants to make payments of Rents due or to become due directly to Lender after such recording, however Lender agrees not to notify Mortgagor's tenants until Mortgagor defaults and Lender notifies Mortgagor of the default and demands that Mortgagor and Mortgagor's tenants pay all Rents due or to become due directly to Lender. Immediately after Lender gives Mortgagor the notice of default, Mortgagor agrees that either Lender or Mortgagor may immediately notify the tenants and demand that all future Rents be paid directly to Lender. On receiving the notice of default, Mortgagor will endorse and deliver to Lender any payments of Rents. If Mortgagor becomes subject to a voluntary or involuntary bankruptcy, then Mortgagor agrees that Lender is entitled to receive relief from the automatic stay in bankruptcy for the purpose of making this assignment effective and enforceable under state and federal law and within Mortgagor's bankruptcy proceedings.

Mortgagor covenants that no default exists under the Leases or any applicable landlord law. Mortgagor also covenants and agrees to maintain, and to require the tenants to comply with, the Leases and any applicable law. Mortgagor will promptly notify Lender of any noncompliance. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will obtain Lender's written authorization before Mortgagor consents to sublet, modify, cancel, or otherwise alter the Leases, to accept the surrender of the Property covered by such Leases (unless the Leases so require), or to assign, compromise or encumber the Leases or any future Rents. Mortgagor will hold Lender harmless and indemnify Lender for any and all liability, loss or damage that Lender may incur as a consequence of the assignment under this section.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Any party obligated on the Secured Debt fails to make payment when due;

B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;

C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;

D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;

E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;

F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or

G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

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29. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.

☒ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.

☒ **Crops; Timber; Minerals; Rents, Issues, and Profits.** Mortgagor grants to Lender a security interest in all crops, timber and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

☒ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

30. OTHER TERMS. If checked, the following are applicable to this Mortgage:

☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.

☒ **Agricultural Property.** Mortgagor covenants and warrants that the Property will be used principally for agricultural or farming purposes and that Mortgagor is an individual or entity allowed to own agricultural land as specified by law.

☒ **Additional Terms.** "Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☐ Actual authority was granted to the parties signing below by resolution signed and dated ..... .

Entity Name: MYRON C. ZUMBACH

Myron C Zumbach 5-9-95
(Signature) (Date)

....
(Signature) (Date)

Entity Name: CAROL M. ZUMBACH

Carol M. Zumbach 5-9-95
(Signature) (Date)

....
(Signature) (Date)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

ACKNOWLEDGMENT:

(Individual)

STATE OF IOWA , COUNTY OF DELAWARE/JONES } ss.
On this 9TH day of MAY , 1995 before me, a Notary Public in the state of Iowa, personally appeared MYRON C. ZUMBACH AND CAROL M. ZUMBACH to me known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that MYRON C. ZUMBACH AND CAROL M. ZUMBACH executed the same as THEIR voluntary act and deed.
My commission expires: 6-14-96
(Seal)

Linda A Bessey
(Notary Public)
LINDA A. BESSEY

(Business or Entity Acknowledgment)

STATE OF ..... , COUNTY OF ..... } ss.
On this ..... day of ..... , ... before me, a Notary Public in the state of Iowa, personally appeared ..... to me personally known, who being by me duly sworn or affirmed did say that that person is ..... of said entity, that (the seal affixed to said instrument is the seal of said entity or no seal has been procured by said entity) and that said instrument was signed and sealed, if applicable, on behalf of the said entity by authority of its board of directors/partners/members and the said ..... acknowledged the execution of said instrument to be the voluntary act and deed of said entity by it voluntarily executed.
My commission expires:
(Seal)

..... (Notary Public)

(In the following statement "I" means the Mortgagor.) **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 rights to this protection for this property with respect to claims based upon this contract.**

Myron C Zumbach 5-9-95
(Signature) (Date)
MYRON C. ZUMBACH 5/9/95

Carol M. Zumbach
(Signature) (Date)
CAROL M. ZUMBACH 5/9/95

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EXHIBIT A

THE EAST ONE-HALF (E 1/2) OF THE SOUTHEAST QUARTER (SE 1/4), AND THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY FOUR (34), TOWNSHIP EIGHTY SEVEN (87) NORTH, RANGE FIVE (5), WEST OF THE FIFTH P.M. EXCEPT THAT PART OF THE NORTHEAST QUARTER (NE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) DESCRIBED AS COMMENCING ON THE EAST LINE OF THE SOUTHEAST QUARTER (SE 1/4) AT A POINT ONE THOUSAND NINE HUNDRED EIGHTY SIX (1986.0) FEET NORTH OF THE SOUTHEAST CORNER THEREOF, RUNNING THENCE WEST TWO HUNDRED EIGHTY (280.0) FEET, THENCE NORTH THREE HUNDRED TWENTY (320.0) FEET, THENCE EAST TWO HUNDRED EIGHTY (280.0) FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER (SE 1/4), THENCE SOUTH THREE HUNDRED TWENTY (320.0) FEET TO THE POINT OF BEGINNING

E 1/2 SW 1/4; AND LOTS 1, 2, 3, 4, 5, 6, 7, 8 AND 9 OF THE SUBDIVISION OF THE W1/2 SW1/4; AND ALL THAT PART OF THE S1/2 NW 1/4 LYING SOUTH OF THE CREEK EXTENDING SOUTHEASTERLY ACROSS SAID TRACT OF LAND, EXCEPTING: COMMENCING AT THE NORTHEAST CORNER OF THE N1/2 SE1/4 NW1/4; THENCE SOUTH ABOUT 97 RODS; THENCE IN A NORTHWESTERLY DIRECTION ALONG ONE CERTAIN FENCE THAT RUNS IN A NORTHWESTERLY DIRECTION TO THE POINT WHERE SAID FENCE INTERSECTS THE NORTH LINE OF THE N1/2 SW1/4 NW1/4; THENCE EAST TO THE POINT OF BEGINNING; ALL IN SECTION 7; AND

THE NORTH 10 ACRES OF THE W1/2 NW1/4, BEING OTHERWISE DESCRIBED AS LOTS 1 AND 2 OF THE SUBDIVISION OF THE W1/2 NW1/4 OF SECTION 18;

ALL IN TOWNSHIP 86, NORTH, RANGE 3, WEST OF THE 5TH P.M.;

AND

THE EAST 25 ACRES OF THE SE1/4 SE1/4; E1/2 SE1/4 NE1/4 SE1/4; AND THE SE1/4 NE1/4 OF SECTION 12, TOWNSHIP 86, NORTH, RANGE 4, WEST OF THE 5TH P.M.

THE EAST ONE-HALF (E 1/2) OF THE SOUTHWEST QUARTER (SW 1/4), THE EAST ONE-HALF (E 1/2) OF THE NORTHWEST QUARTER (NW 1/4) AND THE SOUTH ONE-HALF (S 1/2) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWENTY SIX (26), TOWNSHIP EIGHTY SEVEN (87) NORTH, RANGE FIVE (5), WEST OF THE FIFTH P.M.