276-1699

'96 NOV 26 AM 11 48

DELAWARE COUNTY, IOWA
FILED

55 306

This instrument was drafted by: Farmers Bank
Independence, Iowa 50644
Address: 230 1st Street East
Phone Number: 319-334-7181
After recording return to: Farmers Bank
230 1st Street East Independence, Iowa 50644

Do not use this form if this is a consumer credit transaction.

Assignment and Mortgage of Buyer's Interest In Real Estate Contract for Security Purposes

This Assignment and Mortgage is made by Lynn Sites
Farmers State Savings Bank Independence, Iowa (hereinafter referred to individually and collectively as "Assignors") to ("Assignee").

NOTICE: THIS ASSIGNMENT AND MORTGAGE SECURES CREDIT IN THE AMOUNT OF $ 32,500.00 AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

1. **Acknowledgement of Receipt of Copy of Debt Instrument.** Assignors hereby acknowledge the receipt of a copy of this Assignment and Mortgage.

2. **Assignment and Mortgage.** Assignors hereby sell, convey, assign, mortgage, transfer and set over unto Assignee, its successors and assigns, all of Assignors' right, title and interest in and to:

(a) The Real Estate Contract concerning the following described property (the "Real Estate") situated in Delaware County, Iowa:

Lots one (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), and eight (8), Block Three (3). Dundee, Delaware County, Iowa

dated the 1st day of July, 19 86, by and between Doran & Beverly Welch as seller(s) and Lynn Sites as buyer(s) recorded in the office of the Delaware County Recorder's Office on the 19th day of March, 19 87, in Book 46 at Page 346 (hereinafter referred to as the "Contract"); and

(b) The Real Estate and all buildings, structures and other improvements now standing or hereafter constructed or placed upon the Real Estate, together with all easements, hereditaments, issues and profits, appurtenances, riparian rights, rents, royalties, mineral rights, oil and gas rights and profits, water rights and all fixtures now or hereafter attached to the Real Estate, all of which (including replacements and additions to all such items) shall be deemed to be and remain a part of the Real Estate, and all other rights and interests now or hereafter belonging to or in any way pertaining to the Real Estate. The Real Estate, together with the foregoing, are hereinafter referred to as the "Property".

If Assignors shall perform and pay or cause to be paid to Assignee all of the Obligations, as hereinafter defined, then this Assignment and Mortgage shall be void; otherwise to remain in full force and effect. If this Assignment and Mortgage is released of record, the release shall be filed and recorded at the expense of Assignors. Assignee does not by the acceptance of this Assignment and Mortgage agree to perform any obligations of Assignors under the Contract and shall not be obligated to perform any of Assignors' obligations under the Contract.

3. **Grant of Security Interest.** Assignors hereby grant Assignee a security interest under the Uniform Commercial Code of Iowa in and to Assignors' interest in the Contract together with all fixtures and other personal property described in paragraph 2(b) of this Assignment and Mortgage.

4. **Representations and Warranties of Assignors.** Assignors hereby represent, warrant and covenant to Assignee that (i) Assignors have good and lawful authority to sell, convey, assign, mortgage, transfer, grant a security interest in and encumber the Property and the Contract; (ii) the Property and the Contract are free and clear of all liens and encumbrances whatsoever except as may be otherwise stated herein; (iii) the Contract is genuine and enforceable against the buyer and seller in accordance with its terms; (iv) Assignors will defend the Property and the Contract against the claims of all persons whomsoever, except as otherwise stated herein; (v) Assignors will pay or cause to be paid all taxes, assessments and other charges of every nature which may be levied or assessed against the Contract or the Property; (vi) Assignors will insure or cause to be insured the Property against risks in coverage, form and amount satisfactory to Assignee with Assignee named as an insured on the policies and Assignors shall deliver to Assignee such policies or certificates of insurance; (vii) Assignors will assure that the Property is taken good care of and will not permit its value to be impaired and will immediately give Assignee notice of any loss or damage to the Property; and (viii) there is not present on, or under the Real Estate or any improvements thereon any asbestos, urea formaldehyde foamed-in- place insulation, polychlorinated biphenyl ("PCB's"), 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 Material") and that the Real Estate has not in the past been used, is not presently being used, and will not in the future be used for the 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 Real Estate. Assignor shall indemnify, defend and hold the Assignee harmless from and against any claim, loss or damage to which the Assignee 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. The indemnification provided shall survive the payment in full of the Obligations.

5. **Obligations Secured.** This Assignment and Mortgage is made to secure the payment of and performance of the following obligations (collectively referred to herein as the "Obligations"):

All indebtedness and obligations of Assignors to Assignee now existing or hereafter incurred, whether incurred individually or jointly, whether direct or indirect, contingent or absolute, whether as maker or surety and of every kind and character, whether from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred, whether or not such other indebtedness and obligations are secured by additional or different collateral and whether or not such additional indebtedness and obligations arise or arose from or are or were acquired by Assignee by purchase, assignment or otherwise, including, but not limited to, any sums advanced by Assignee for legal expenses and attorneys' fees arising out of the enforcement of or foreclosure under this Assignment and Mortgage and all costs and expenses advanced by Assignee hereunder.

Indebtedness incurred in a "Consumer Credit Transaction" as defined in the Iowa Consumer Credit Code shall not be secured by this Assignment and Mortgage.

Assignment
For Release, See Book 1999
Page 1460 4-28-99

DATE 11-26-96 BOOK 55 PAGE 306

8. **Remedies.** Assignors agree that in the event of the non-payment of or non-performance under any of the Obligations secured hereby in accordance with their terms or at maturity, whether such maturity be by acceleration or otherwise, or in the event of the failure of Assignors to keep and perform any of the conditions, stipulations and covenants herein contained or required to be kept by the terms of any of the Obligations, Assignee may, at its option, declare the whole amount of principal and interest of the Obligations then unpaid to be due and payable in full, without notice to Assignors; in such event, suit may be brought from the collection thereof and for the foreclosure of this Assignment and Mortgage, without any prior notice to Assignors. Assignors agree that Assignee, its successors or assigns, may, if it so elects, perform Assignors' obligations hereunder, including the payment of fees, insurance premiums, costs of repairs, taxes, amounts secured by encumbrances on the Property and amounts necessary to perform Assignors' obligations under the Contract, and that any monies so expended shall become part of the Obligations and such sums shall be payable on demand and until paid shall accrue interest at the rate of interest set forth in the most recent promissory note secured hereby with such interest accruing from the date of such actual advancement by Assignee until repayment thereof to Assignee.

7. **Acquisition of Title by Assignors.** In the event Assignors pay their obligations under the Contract and acquire title to the Property, Assignors agree that the mortgage granted in this Assignment and Mortgage by Assignors to Assignee shall continue to constitute a mortgage against the Property without any further documentation or filing.

8. **Attorneys Fees, Costs and Abstract Expense.** Assignors shall pay on demand all costs and expenses incurred by Assignee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees, legal expenses, court costs, title searches and abstracting expenses and such costs and expenses shall become part of the Obligations of Assignors secured by this Assignment and Mortgage.

9. **Appointment of a Receiver.** Upon acceleration of the Obligations or abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Assignee shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the Obligations. The receiver shall be liable to account only for those rents actually received.

10. **Due on Sale.** If all or any part of Assignors' interest in the Contract or the Property is sold, conveyed, assigned, mortgaged, encumbered, hypothecated or transferred without Assignee's prior written consent, Assignee may, at Assignee's sole option, declare all sums secured hereby immediately due and payable.

11. **Redemption.** If the Property is less than ten (10) acres in size and if Assignee waives in any foreclosure proceeding any right to a deficiency judgment against Assignors, then the period of redemption from judicial sale shall be reduced to six (6) months. If the court finds that the Property has been abandoned by Assignors and if Assignee waives any right to a deficiency judgment against Assignors, then the period of redemption from judicial sale shall be reduced to sixty (60) days.

12. **Forebearance Not a Waiver, Rights and Remedies Cumulative.** No delay by Assignee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Assignee of any particular provisions of this Assignment and Mortgage shall be deemed effective unless in writing signed by Assignee. All such rights and remedies provided for herein or which Assignee or the holder of the Obligations may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises.

13. **Severability.** In the event any portion of this Assignment and Mortgage shall, or any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be effected thereby and shall continue to be valid and enforceable and if for any reason a court finds that any provision of this Assignment and Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

14. **Notices.** All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed to the appropriate party at the address of such party as set forth in this Assignment and Mortgage or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

15. **Further Assurances.** At any time and from time to time until payment in full of the Obligations, Assignors will, at the request of Assignee, promptly execute and deliver to Assignee such additional instruments and agreements as may be reasonably required to further evidence the lien and security interest of this Assignment and Mortgage and to further protect the interest of Assignee pursuant to this Assignment and Mortgage with respect to the Contract and Property including, but not limited to, additional security agreements, financing statements and continuation statements. Any expenses incurred by Assignee pursuant to this Paragraph 15 shall be immediately due and payable by Assignors to Assignee and shall become part of the Obligations secured by this Assignment and Mortgage.

16. **Successors and Assigns Bound; Number; Gender; Captions.** The rights, covenants and agreements contained herein shall be binding upon an inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts. The captions and headings of the paragraphs of this Assignment and Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Governing Law.** This Assignment and Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

18. **Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Contract and the Property and waives all rights of exemption as to the Contract and the Property.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

DATED Nov 15, 19 96

ADDRESS OF ASSIGNEE:

Farmers State Savings Bank
Street Address
230 1st St e Independence, Iowa 50644
City State Zip

Lynn Sites, Assignor

, Assignor

Box 156
Address
Dundee, Iowa 52308
City State Zip

(Complete if the Property includes the "homestead", within the meaning of Chapter 561 of the Iowa Code and is "agricultural land" as defined in Section 172C.1 of the Iowa Code, or dwellings, buildings, or other appurtenances located on the land.)

I (WE) UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT MY (OUR) SIGNING THIS ASSIGNMENT AND MORTGAGE, I (WE) VOLUNTARILY GIVE UP MY (OUR) RIGHT TO THIS PROTECTION FOR THIS MORTGAGED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS ASSIGNMENT AND MORTGAGE.

DATED 11-15-, 19 96 Lynn Sites, Assignor

DATED , 19 , Assignor

, Assignor

1/94

ACKNOWLEDGMENT:

(Individual)

STATE OF Iowa, COUNTY OF Buchanan
On this 15th day of November 1996, before me, a Notary Public in the state of Iowa, personally appeared Lynn Sites to me known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that Lynn Sites executed the same as his voluntary act and deed.
My commission expires: 12/3/97
(Seal)

GEORGE L. VANDE VORDE MY COMMISSION EXPIRES

(Notary Public)

(Business or Entity Acknowledgment)

STATE OF ....., COUNTY OF .....
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 ..... the voluntary act and deed of said entity by it voluntarily executed.
My commission expires:
(Seal)

.....
(Notary Public)

GEORGE L. VANDE VORDE MY COMMISSION EXPIRES 12/3/97