Abstract Co.

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DELAWARE COUNTY IOWA
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1998 JL 22 PM 4:15
BOOK 49 PAGE 118
DEBORAH L PETON
DELAWARE CO RECORDER
8.00

Name State Bank Address 110 1st Ave W Ph. (319) 855-2415
Worthington, IA

DEED OF TRUST

THIS INDENTURE made and executed this 21st day of July, 19 98 by and between Kevin J. Smith and Kimberly J. Smith, husband and wife, of the City of Earlville, County of Delaware, State of IA, first parties, and State Bank Worthington, Iowa, second party.

WITNESSETH:

That first parties for and in consideration of the indebtedness to the second party and of the trust hereinafter created, and in further consideration of the sum of One Dollar ($1.00) and other valuable consideration to them in hand paid by the second party, receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto second party, its successors and assigns forever, the certain real estate and the appurtenances thereunto belonging, situated in the County of Delaware, State of Iowa, to-wit:

56-328

Lot Six (6) and the west eight (8) feet of lot Five (5), Block thirteen (13), Pitkin's Addition to Nottingham, Delaware County, Iowa, according to plat recorded in book I, L.D. , Pages 456-457; now a part of the incorporated town of Earlville, Iowa;

together with all personal property that may integrally belong to, or be or here-after become an integral part of said real estate, and hereby granting and conveying all easements, servient estates appurtenant thereto, and also all of the rents, issues, use and profits of said land and the crops raised thereon, from date hereof until the debt secured thereby shall be paid in full, the intention being to convey hereby an absolute title in fee to the property hereinabove described, including any right of homestead and dower and also every contingent right therein.

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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.

Dated this 21st **day of** July, **19** 98.

Kevin J. Smith

Kevin J. Smith

Kimberly J. Smith

Kimberly J. Smith

TO HAVE AND TO HOLD the said real estate with all appurtenances thereto belonging unto the second party, its successors and assigns, forever, first parties hereby covenanting for themselves, their executors, administrators and assigns, that they have full right, power and authority to convey said real estate and its appurtenances, and that they will warrant and defend the title thereto unto second party, its successors and assigns, against the claims of all persons whomsoever lawfully claiming the same; and the first parties hereby relinquish all their contingent rights, including dower and homestead, which they have in and to said described real estate.

Provided always, that this conveyance is made in trust for the following uses and purposes:

To secure payment to second party, its successors or assigns, of all notes, obligations and liabilities of first parties to second party, and on which note or notes, obligations and liabilities first parties, either jointly or severally, is or are maker, endorser, surety or guarantor. The intention of first parties hereby is to cover and secure payment to second party of any indebtedness now owing by first parties and, to the extent provided below, to cover and secure payment of any future advances made by second party to first parties for the purpose of improving the real estate or for any other purpose, and also to secure payment of any extensions or renewals of any such indebtedness or any part thereof. NOTICE: THIS DEED OF TRUST SECURES CREDIT IN THE AMOUNT OF $ 99,800.00. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED DEEDS OF TRUST AND LIENS. The promissory note or notes evidencing such future advances shall contain a recital that it or they are secured by this Deed of Trust and such additional note or notes shall be included in the word "note" wherever it appears in the context of this Deed of Trust. This paragraph shall not constitute a commitment to make any additional loans or advances in any amount. When all such notes, obligations and liabilities and any renewals or extensions thereof shall be fully paid, together with interest thereon, then these presents shall be void, otherwise they shall be and remain in full force and effect.

If all or any part of the above described real estate, or any interest in it, is sold or transferred by first parties without second party's written consent, second party, at its option, may require immediate payment in full of all sums and indebtedness secured by this Deed of Trust. If second party exercises its option, second party shall give first parties notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which first parties must pay all sums secured by this Deed of Trust. If first parties fail to pay these sums prior to the expiration of said 30-day period, second party may invoke any remedy permitted by this Deed of Trust without further notice or demand on first parties.

First parties hereby agree to pay all taxes and assessments, general or special, upon or against any of the real estate hereinabove described, or any part thereof, before such taxes or general or special assessments become delinquent. First parties agree to keep all of said property and the buildings and improvements thereon insured against loss or damage by fire, tornado, and other hazards, casualties, and contingencies with extended coverage during the existence of this Deed of Trust, in at least the full insurable value of such buildings and improvements, in insurance companies approved by second party, its successors or assigns, with such insurance payable to first parties and second party as their interests may appear. First parties also agree to deliver such insurance policies, together with any applicable riders, to second party as further security for the payment of the obligations herein secured. First parties also hereby agree that in the event of loss or damage of any such property by any of the hazards insured against, the proceeds of such insurance, at the option of the second party, its successors or assigns, shall be paid to and received by second party, its successors or assigns, and applied toward payment of the obligations secured by this Deed of Trust. First parties also agree to 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 excepted, and shall not suffer or commit waste on or to said security.

It hereby expressly is agreed by and between the parties hereto and made part of this Deed of Trust that in the event of the nonpayment of any of said notes, obligations and liabilities in accordance with their terms at maturity, whether such maturity be by acceleration or otherwise, or in the event of the failure of first parties to keep and perform any of the conditions, stipulations and covenants herein contained, that then the whole amount of principal and interest secured by this Deed of Trust and then unpaid shall become due and payable absolutely, at the option of second party, its successors or assigns, and without notice to first parties, suit may be brought for the collection thereof, and for the foreclosure of this Deed of Trust. It further hereby is agreed by and between the parties that second party, its successors or assigns, may, if it so elects, pay any delinquent taxes, general or special assessments against the above described property or any part thereof, and insurance premiums and that any moneys so expended shall become part of the obligations secured hereby in addition to the other notes and obligations secured hereby and shall draw interest at the rate of 21 percent per annum from date of such actual advancement by second party until repayment thereof to second party.

First parties hereby agree that in the event legal proceedings by foreclosure or otherwise are instituted to collect any of the notes, obligations or liabilities hereby secured, or in the event of the collection of any such notes or obligations by an attorney at law, that a reasonable attorney's fee and also the reasonable cost and expense of an abstract of title and title search shall be allowed and added to the debt secured hereby and become a lien upon all of the property hereinabove described. And first parties agree to pay such attorney's fees, abstract expenses and title search expense, and such attorney's fees and expenses shall be taxed as part of the costs in any judgment or decree rendered in such proceedings. If the holder of this Deed of Trust at any time becomes involved in any legal, equitable, or other proceedings involving any of the securities hereinbefore mentioned, or involving the proceeds of any of such security, first parties hereby agree to pay the reasonable expenses, including attorney's fees of the holder hereof by reason thereof, and this Deed of Trust shall stand as security for all such sums.

It is hereby further agreed that in case of default in any respect in the strict performance of any of the covenants, agreements or conditions of this Deed of Trust, that the second party, its successors or assigns, either before or on commencement of any action to foreclose this Deed of Trust, or at any time thereafter, shall be entitled to the appointment of a receiver who shall have the power to take and hold possession of the hereinabove described real estate, and rent the same and collect the rents and profits therefrom, and such rights shall in no event be barred, forfeited or retarded by reason of a judgment, decree or sale in foreclosure, and the right to have such receiver appointed on application of second party, or its successors or assigns, shall exist during the statutory period of redemption, regardless of the solvency or insolvency of the first parties and regardless of the value of the aforesaid premises or the waste, loss or destruction of the rents and profits of said premises.

It is further agreed that if this Deed of Trust covers less than ten acres of land, and in the event of the foreclosure of this Deed of Trust 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 six months provided second party, in such action, files an election to waive any deficiency judgment against the first parties which may arise out of the foreclosure proceedings. It is further agreed that the period of redemption after a foreclosure of this Deed of Trust shall be reduced to 60 days if all of the three following contingencies develop: (1) the real estate herein is less than ten 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 Deed of Trust at the time of such foreclosure; and (3) the second party files an election to waive any deficiency judgment against first parties, or their successors in interest, in such action. Notwithstanding the foregoing, if the above described real estate is not used for agricultural purposes, as defined in Section 535.13 of the Iowa Code, or any amendment thereto, and is not the residence of the first parties, or if it is the residence of the first parties but not a single family or two family dwelling, the period of redemption after foreclosure shall be 180 days; or if a deficiency judgment is waived by second party, the period of redemption shall be reduced to 90 days.

In case the title to any of the property covered by this Deed of Trust is attacked, first parties hereby authorize second party to employ an attorney and contest the claim, and first parties hereby agree that the reasonable attorney's fee of such attorney shall be allowed and added to the debt secured hereby, and shall become a lien upon the property covered by this Deed of Trust, and that such fees and expenses so expended shall become a part of the principal secured hereby, in addition to the notes, liabilities and obligations secured hereby, and shall draw interest at the rate of 21 percent per annum.

Unless otherwise expressly stated, the word "first parties" as used herein includes successors in interest of such first parties; the word "second party" as used herein, unless otherwise expressly stated, includes the successors in interest of such second party. All words referring to "first parties" or "second party" shall be construed to be of the appropriate gender and number, according to the context. This construction shall include the acknowledgment hereof.

IN WITNESS WHEREOF, first parties have hereunto set their hands and seals this twenty first day of July, 19 98.

Kevin J. Smith
Kevin J. Smith

Kimberly J. Smith
Kimberly J. Smith

STATE OF IOWA)
)
COUNTY OF DUBUQUE) ss:

On this 21st day of July, 19 ____, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Kevin J Smith and Kimberly J. Smith to me known to be the persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Matthew J Goerdt
Notary Public in and for State of Iowa

MATTHEW J. GOERDT
MY COMMISSION EXPIRES
5-1-01

STATE OF IOWA)
)
COUNTY OF DUBUQUE) ss:

On this _____ day of _____, 19 ____, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____

_____

of _____, the corporation which executed the above and foregoing instrument, who being by me duly sworn, each for himself, did say that they are, respectively, the _____ of said corporation; that (the seal affixed thereto is the seal of said corporation) (no seal has been procured by the said corporation) and that the said instrument was by them signed on behalf of said corporation by authority of its board of directors, and each of them acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and each of them voluntarily executed.

_____
Notary Public in and for State of Iowa