DELAWARE COUNTY IOWA
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2003 JAN 15 AM 9:18
BOOK 2003 PAGE 150
DEBORAH HEROLD
DELAWARE CO. RECORDER
26.00

Preparer Information ⊗ Fidelity Bank + Trust P.O. Box 277 | Lawson Waterman (Individual's Name) | 208 2nd Street S.E. (Street Address) | Dyersville, IA 52040 (City) | (563)-853-2245 (Phone)

MORTGAGE
(Open-End)

THIS MORTGAGE ('Mortgage") encumbers both real and personal property, contains an after-aquired property clause and secures present and future loans and advances.

NOTICE: This Mortgage secures credit in the amount of $ 17,000.00 . 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.

☐ If this box is checked, this Mortgage also constitutes a Construction Mortgage as defined in the Iowa Code.

☐ If this box is checked, this Mortgagee is a Purchase Money Mortgage as defined in the Iowa Code.

THIS MORTGAGE is made between
CHARLES M FUNK and SHARON K FUNK

("Mortgagors") and FIDELITY BANK & TRUST Luxemburg Office, 208 2nd Street S.E., Dyersville, IA 52040 ("Mortgagee").

1. **Grant of Mortgage and Security Interest.** Mortgagors hereby sell, convey and mortgage unto Mortgagee, and grant a security interest to Mortgagee in the following described property:

a. **Land and Buildings.** All of Mortgagor's right, title and interest in and to the following described real estate situated in Delaware County, Iowa (the "Land");

53-18

LOTS THREE (3) AND FOUR (4), BLOCK TWO (2), FIRST WESTERN ADDITION TO COLESBURG, IOWA, ACCORDING TO CORRECTED AND AMENDED PLAT OF THE INCORPORATED TOWN OF COLESBURG RECORDED IN BOOK 1 PLATS, PAGES 73 TO 86. Property Address: 508 JACKSON ST.

and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditaments, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads, adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Land.

b. **Personal Property**. All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether attached or detached, including but not limited to, light fixtures, shades, rods, blinds, Venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air-conditioning equipment and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

c. **Revenues and Income**. All rents, issues, profits, leases, condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the Land, Buildings and Personal Property, or any part thereof (the"Revenues and Income"). The lien on the rents herein granted is not a pledge of rents but is a grant of a lien and security interest in all rents, issues, profits, leases now or hereafter arising from the ownership, occupancy or use of the Mortgaged Property and is primary security for the indebtedness secured hereby and shall be effective from the date hereof and not just in the event of default. The rights of the Mortgagee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Mortgagee shall, to the extent not prohibited by law, extend from the date hereof through the filing of any suit to foreclose the lien of the mortgage, the obtaining of any judgment foreclosing the lien of the mortgage, and any period allowed by law for the redemption of the premises after any foreclosure sale.

TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the "Mortgaged Property"), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns.

2. **Obligations**. This Mortgage secures the following (hereinafter collectively referred to as the "Obligations"):

a. The payment of the loan made by Mortgagee to CHARLES M FUNK and SHARON K FUNK evidenced by a promissory note dated 12/15/2003 in the principal amount of $ 17,000.00 with a due date of 12/15/2013, any renewals, extensions, modification or refinancing thereof and any promissory notes issued in substitution therefor, and

b. All other obligations of Mortgagors to Mortgagee, now existing or hereafter arising, whether direct or indirect, contingent or absolute and whether as maker or surety, including, but not limited to, future advances and amounts advanced and expenses incurred by Mortgagee pursuant to this Mortgage. 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 Mortgagee fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Mortgagee fails to give any required notice of the right of rescission.

THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.

3. **Representations and Warranties of Mortgagors.** Mortgagors represent, warrant and covenant to Mortgagee that (i) Mortgagors hold clear title to the Mortgaged Property and title in fee simple in the Land; (ii) Mortgagors have the right, power and authority to execute this Mortgage and to mortgage, and grant a security interest in Mortgaged Property; (iii) the Mortgaged Property is free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent and except as otherwise stated in this paragraph; (iv) Mortgagors will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; and (v) all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land. The following liens and encumbrances, if any, are the only liens and/or mortgages to which the Mortgaged Property is subject, other than real estate taxes not yet delinquent:

4. **Payment and Performance of the Obligations.** Mortgagors will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagors under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

5. **Taxes.** Mortgagors shall pay each installation of all taxes and special assessments of every kind, now or hereafter levied aggainst the Mortgaged Property before the same become delinquent, without notice or demand, and shall deliver to Mortgagee proof of such payment within fifteen (15 days after the date in which such tax or assessment becomes delinquent.

6. **Liens.** Mortgagors shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagors shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

7. **Compliance with Laws.** Mortgagors shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof.

8. **Permitted Contests.** Mortgagors shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 5 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as Mortgagors shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of Mortgagors' liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax assessment, charge or lien, encumbrances or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged property or any part thereof. Mortgagors shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 8.

9. **Care of Property.** Mortgagors shall take good care of the Mortgaged Property; shall keep the Buildings and Personal Property now or later placed upon the Mortgaged Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Mortgage. Mortgagors shall not make any material alteration to the Mortgaged Property without the prior written consent of Mortgagee.

10. **Insurance.**

a. **Risks to be Insured.** Mortgagors, at their sole cost and expense, shall maintain insurance as follows:

i. If this is a Construction Mortgage, during the period of construction, Mortgagors will maintain builder's risk insurance, written on the so-called "builder's risk-completed value basis", in an amount equal to 100% of the insurable value of the Mortgaged Property at the date of completion, and with coverage available on the so-called "all risk", non-reporting form of policy; provided that, to the extent that any contractor for such construction shall provide a duplicate insurance policy or builder's risk policy or certificate of insurance showing that the same coverage as is herein required is being carried by such contractor and adequately protects the interest of Mortgagee and Mortgagors with respect to the Mortgaged Property or a part thereof, Mortgagee shall not be required to maintain separate coverage. The insurance provided for by this subparagraph (i) with respect to the Mortgaged Property or such part thereof shall not be required while the Mortgaged Property or part thereof is so insured.

ii. If this is a Construction Mortgage, during the period of construction, Mortgagors will maintain comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, complete operations and contractual liability insurance) against bodily injury and property damaged in amounts satisfactory to Mortgagee. If this is not a Construction Mortgage, or upon completion of construction, Mortgagors will maintain comprehensive general public liability insurance and property damage liability insurance in amounts satisfactory to Mortgagee to protect Mortgagors from claims (including all costs and expenses of defending the same) for personal injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of use thereof) occurring in, on or about the Mortgaged Property.

iii. If this is not a Construction Mortgage, or upon completion of construction, Mortgagors will maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards as Mortgagee may from time to time require, such insurance to have a Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of the Obligations. Mortgagors' option, such policy may have a coinsurance clause of not less than 90% of replacement cost provided the policy contains an appropriate form of cost escalation endorsement. Mortgagors will at their sole cost and expense, from time to time, and at any time at the request of Mortgagee, provided Mortgagee with evidence satisfactory to Mortgagee of the replacement cost of Mortgaged Property.

iv.If this is a Construction Mortgage, during the period of construction, Mortgagors will maintain worker's compensation insurance with respect to all employees of Mortgagors and each contractor; and, if this is not a Construction Mortgage, or upon completion of construction, Mortgagors will maintain worker's compensation insurance with respect to all employees of Mortgagors.

v. At all times, Mortgagors will maintain such other insurance as Mortgagee may reasonably require.

b. **Policy Provisions.** All insurance policies and renewals thereof maintained by Mortgagors pursuant to this Mortgage shall be written by an insurance carrier satisfactory to Mortgagee, be payable to the parties as their interest may appear, contain a standard or union-type loss payable clause in favor of mortgagee, contain an agreement of the insurer that it will not amend, modify or cancel the policy except after thirty (30) days prior written notice to Mortgagee, and be reasonably satisfactory to Mortgagee in all other respects.

c. **Delivery of Policy or Certificate.** If requested by Mortgagee, Mortgagors will deliver to Mortgagee original policies satisfactory to Mortgagee evidencing the insurance which is required under this Mortgage, and Mortgagors shall promptly furnish to Mortgagee all renewal notices and, upon request of Mortgagee, evidence of payment thereof. At least ten (10) days prior to the expiration date of a required policy, Mortgagors shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee.

d. **Assignment of Policy.** If the Mortgaged Property is sold at a foreclosure sale or if Mortgagee shall acquire title to the Mortgaged Property, Mortgagee shall have all of the right, title and interest of Mortgagors in and to any insurance policies required hereunder, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

e. **Notice of Damage or Destruction; Adjusting Loss.** If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagors will, within five (5) calendar days after the occurrence of such damage or destruction, give written notice thereof to the insurance carrier and to Mortgagee and will not adjust any damage or loss which is estimated by Mortgagors in good faith to exceed $25,000 unless Mortgagee shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four (4) months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four (4) month period or at any time thereafter, Mortgagee may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagors do hereby irrevocably authorize, empower and appoint Mortgagee as attorney-in-fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagors.

f. **Application of insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagee, which shall, at its option, apply the same (after first deducting therefrom Mortgagee's expenses incurred in collecting the same including but not limited to reasonable attorney's fees) to the reduction of the Obligations or to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property that is damaged or destroyed in such manner as Mortgagee shall determine and secondly to the reduction of the Obligations. Any application of insurance proceeds to principal of the Obligations shall not extend or postpone the due date of the installments payable under the Obligations or change the amount of such installments.

g. **Reimbursement of Mortgagee's Expenses.** Mortgagors shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorney's fees, and all such expenses shall be additional amounts secured by this Mortgage.

11. **Inspection.** Mortgagee, and its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property or any part thereof. Mortgagee shall, however, have no duty to make such inspection. Any inspection of the Mortgaged Property by Mortgagee shall be entirely for its benefit and Mortgagors shall in no way rely or claim reliance thereon.

12. **Protection of Mortgagee's Security.** Subject to the rights of Mortgagors under paragraph 8 hereof, if Mortgagors fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then Mortgagee, at Mortgagee's option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses disbursed or incurred by Mortgagee in good faith pursuant to this paragraph 12 with interest thereon at the rate of 21.0 % per Annum (if no rate is stated, then at the rate of interest in effect from time to time under the promissory note referred to in paragraph 2.a of this Mortgage, including any renewals, extensions, modifications, or refinancing thereof, or any note issued in substitution therefor), shall become an Obligation of Mortgagors secured by this Mortgage. Such amounts advanced or disbursed by Mortgagee hereunder shall be immediately due and payable by Mortgagors unless Mortgagors and Mortgagee agree in writing to other terms of repayment. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act hereunder, and Mortgagee shall not be liable to Mortgagors for any damage or claims arising out of action taken by Mortgagee pursuant to this paragraph.

13. **Condemnation.** Mortgagors shall give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Mortgagee the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Mortgagee is herby authorized to intervene in any such action in the name of Mortgagors, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

14. **Fixture Filing.** From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the Personal Property and for this purpose the name of the debtor(s) is the name of Mortgagors and the name of the secured party is the name of the Mortgagee.

15. **Events of Default.** Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

a. Mortgagors sell, convey, transfer, hypothecate, or in any other manner cease to be the owners or in possession of all or any portion of or interest in the Mortgaged Property, except as agreed to by Mortgagee in writing or as permitted under applicable law.

b. Mortgagors shall default in the due observance or performance of or breach its agreement contained in paragraph 4 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.

c. Default shall also exist if any loan proceeds are 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 agriculture commodity, further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

d. Mortgagors shall make an assignment for the benefits of its creditors, or a petition shall be filed by or against Mortgagors under the United States Bankruptcy Code or Mortgagors shall seek or consent to or acquiesce in appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

e. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

f. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

16. **Acceleration; Foreclosure.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, at its option, after such notice as may be required by law, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

a. Mortgagee may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

b. Mortgagee shall have and may exercise with respect to the Personal Property, all the rights and remedies accorded upon default to a secured party under the Iowa Uniform Commercial Code. If notice to Mortgagors of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagors at least ten (10) days prior to the date of intended disposition.

c. Mortgagee may (and is hereby authorized and empowered to) judicially or at its option non-judically foreclose this mortgage in accordance with the law of the State of Iowa, 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 Mortgagee appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagors only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations. Mortgagor hereby consents to and agrees that at any time after commencement of a judicial action of foreclosure, through and including during the period of redemption, the Court having jurisdiction of the case shall at the request of the Mortgagee appoint a receiver to take possession of the Mortgaged Property and of the rents and profits accruing therefrom, and Mortgagor hereby waives its right to possession, statutory or otherwise. Mortgagor agrees that this Mortgage gives to the Mortgagee the right to possession before sale and termination of the right of redemption, pledges the rents and profits, creates in favor of the Mortgagee a lien upon and interested in the right of possession given by Iowa statute, and upon the revenue which arises from it, and waives the right to challenge the appointment of a receiver.

17. **Redemption Period.** Mortgagor hereby agrees that in the event of judicial foreclosure of this Mortgage, the Mortgagee may, at its sole option, elect:

a. Pursuant to Iowa Code § 628.26 as now enacted or hereafter modified, amended or replaced to reduce the period of redemption after sale on foreclosure to six months, or

b. Pursuant to Iowa Code § 628.27 as now enacted or hereafter modified, amended or replaced to reduce the period of redemption after sale on foreclosure to sixty days, or

c. Pursuant to Iowa Code § 628.28 as now enacted or hereafter modified, amended or replaced or any other Iowa Code Section to reduce the period of redemption after sale on foreclosure to such time as may be then applicable and provided by law, or

d. Pursuant to Iowa Code § 654.20 as now enacted or hereafter modified, amended or replaced to foreclose without redemption.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the 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) Mortgagee in such action files an election to waive any deficiency judgement against Mortgagors or their successors in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (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 Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be a presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

18. **Attorneys' Fees.** Mortgagors shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses as permitted by applicable law.

19. **Forbearance not a Waiver, Rights and Remedies Cumulative.** No delay by Mortgagee in exercising and 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 Mortgagee of any particular provisions of this Mortgage shall be deemed effective unless in writing signed by Mortgagee. All such rights and remedies provided for herein or which Mortgagee 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.

20. **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 as follows:

a. If to Mortgagor(s), to the address(es) provided by Mortgagor(s) to Mortgagee in connection with this Mortgage;

b. If to Mortgagee, to:

FIDELITY BANK & TRUST, Luxemburg Office

PO Box 277

Dyersville, IA 52040

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.

21. **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this 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.

22. **Further Assurances.** At any time and from time to time until payment in full of Obligations Mortgagors will, at the request of Mortgagee, promptly execute and deliver to Mortgagee such additional instruments as may be reasonably required to further evidence the lien of this Mortgage and to further protect the security interest of Mortgagee with respect to the Mortgaged Property, including, but not limited to, additional security agreements, financing statements and continuation statements. Any expenses incurred by Mortgagee in connection with the recordation of any such instruments shall become additional Obligations of Mortgagors secured by this Mortgage. Such amounts shall be immediately due and payable by Mortgagors to Mortgagee.

23. **Successors and Assigns bound; Number; Gender; Agents; Captions.** The rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgment 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 Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

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

25. **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 Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property.

26. **Acknowledgment of Receipt of Copies of Debt Instrument.** Mortgagors hereby acknowledge the receipt of a copy of this Mortgage together with a copy of each promissory note secured hereby.

27. **Nonstatutory Liens.** Mortgagor hereby represents, warrants and agrees that the liens granted hereby are not the type of lien referred to in Chapter 575 of the Iowa Code, as now enacted or hereafter modified, amended or replaced. Mortgagor, for itself and all persons claiming by through or under Mortgagor, agrees that it claims no lien or right to a lien of the type contemplated by Chapter 575 or any other chapter of the Code of Iowa and further waives all notices and rights pursuant to said law with respect to the liens hereby granted, and represents and warrants that it is the sole party entitled to do so and agrees to indemnify and hold harmless Mortgagee from any loss, damage, and costs, including reasonable attorney fees, threatened or suffered by Mortgagee arising either directly or indirectly as a result of any claim of the applicability of said law to the liens hereby granted.

28. **Additional Provisions.** Add Addendum

NOTICE

ORAL OR IMPLIED CHANGES TO THIS OR ANY OTHER CREDIT AGREEMENT(S) (EXCEPT CONSUMER LOANS OR OTHER EXEMPT TRANSACTIONS) WITH THIS LENDER ARE NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

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. THIS NOTICE ALSO APPLIES TO ANY OTHER CREDIT AGREEMENTS (EXCEPT CONSUMER LOANS OR OTHER EXEMPT TRANSACTIONS) NOW IN EFFECT BETWEEN YOU AND THIS LENDER.

Dated 12/15/2003

Charles M Funk
CHARLES M FUNK

Sharon K Funk
SHARON K FUNK , Mortgagors

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 MORTGAGE, VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS MORTGAGED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

Dated 12/15/2003

Charles M Funk
CHARLES M FUNK

Dated 12/15/2003

Sharon K Funk
SHARON K FUNK

STATE OF IOWA

} **ss.**

COUNTY OF Dubuque

On this 12/15/2003, before me, the undersigned, a Notary Public, personally appeared CHARLES M FUNK and SHARON K FUNK.

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

NOTARIAL SEAL IOWA
LAWSON WATERMAN
Commission Number 703362
My Commission Expires
05/24/06

Lawson Waterman
Lawson Waterman Notary Public