Book 2008 Page 3855

Document 2008 3855 Type 04 001 Pages 4
Date 12/22/2008 Time 8:55:47AM
Rec Amt $22.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

| | | | |
|---|---|---|---|
| **Prepared by**: Jason Heisler | Address | City, State, Zip | Phone |
| ENV. (X) **Return to**: Fidelity Bank & Trust | 208 2nd St. SE PO Box 277 | Dyersville, IA 52040 | (563) 875-7157 |

# DEED OF TRUST AND SECURITY AGREEMENT

**Date 12/18/08**

| MORTGAGOR(GRANTOR) NAME AND ADDRESS | MORTGAGEE(GRANTEE) NAME AND ADDRESS |
|---|---|
| **TERRY ELGIN**<br>**BRENDA ELGIN**<br>**P.O. BOX 443**<br>**EARLVILLE, IA 52041** | **FIDELITY BANK & TRUST**<br>**208 2nd St SE PO Box 277**<br>**Dyersville, IA 52040**<br>**(563) 875-7157** |

13a-361

THIS INDENTURE, made and executed this 18th day of December, 2008, by and between **TERRY AND BRENDA ELGIN, AS HUSBAND AND WIFE** of the City of Earville, County of Delaware, State of Iowa, first parties and **FIDELITY BANK & TRUST**, a corporation organized under the laws of the State of Iowa with its principal office and place of business at 4250 Asbury Rd., Dubuque, IA 52002, 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, to 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 and the State of Iowa to wit:

**SEE ATTACHED EXHIBIT A, PAGE 4**

☐ **"THIS IS A PURCHASE MONEY MORTGAGE AS DEFINED BY IOWA LAW."**
(If marked)

Address of property: SHERWOOD RD., EARLVILLE, IA 52041.

and also all of the rents, issues, use and profits of said land and 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 also every contingent right therein. During the existence of this "Deed of Trust," first parties shall not, without prior written consent of Fidelity Bank & Trust, give, sell, convey or otherwise transfer title to any third party, the premises mortgaged herein.

TO HAVE AND TO HOLD the said real estate with all appurtenances thereto belonging unto 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.

TJE
BKE

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, all of 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 or hereafter owing by first parties and also to secure payment of any extensions or renewal of any such indebtedness or any part thereof. 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.

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 special assessments become delinquent and agree to keep all of the said property and the buildings thereon, insured against loss or damage by fire with extended coverage during the existence of this Deed of Trust, in at least the insurable value of such buildings in insurance companies approved by second party, its successors or assigns, and also hereby agree to deliver such insurance policies to second party as further security for the payment of the obligation 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, that the proceeds of such insurance, at the option of second party, it 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.

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 the 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 elect, pay any delinquent taxes, general or special, against the above described property or any part thereof, and insurance premiums and that any moneys 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 or 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 any 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. Any first parties agree to pay such attorney's fees, abstract expense and title search expense, and 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 security hereinbefore mentioned, or involving the proceeds of any 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 all cases of default in any respect in the strict performance of any 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 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 there from, 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 on application of second party, or its successors or assigns, shall exist during the statutory period of reception, 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 hereby further agreed and understood that in case the first parties default hereunder in any respect, that the second party, its successors or assigns, is authorized at its option to take immediate possession of the aforesaid real estate, or any

part thereof, and to rent the said real estate and shall be liable to account to the first parties only for the net profits thereof. And it is further agreed that the taking of possession of such property by second party, its successors or assigns, as provided above shall in no manner prevent or retard the collection of the notes or obligations hereunder payable, by foreclosure or otherwise. And second party, its successors or assigns, hereby is authorized to hold or to continue such possession until the said real estate is sold and if redemption of any of the property is permitted by law, then until such property has been redeemed, or until the time for redemption has expired.

Obligations of the first parties secured by this conveyance may not be assumed by a purchaser without written consent of the second party, its successors or assigns hereto.

In case the title to any of the property covered by this Deed of Trust is attached, first parties hereby authorize second party, its successor or assigns to employ an attorney and contest the claim, and first parties hereby agree after that, the reasonable attorney's fees 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 expanded 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 per cent per annum.

IN WITNESS WHEREOF, first parties have hereunto set their hands and seals at Dyersville, Iowa, on the date first hereinabove written.

NOTICE: This mortgage secures credit in the amount of **$585,000.00**. 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. Nothing contained in this mortgage shall constitute a commitment to make additional loans of any amount.

X Terry Elgin (Seal) X Brenda Elgin (Seal)
**TERRY ELGIN** **BRENDA ELGIN**

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrowers and recorded with it.

**"I understand that homestead property is in many cases protected from the claim of creditors and exempt from judicial sales, 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."**

X Terry Elgin (Seal) X Brenda Elgin (Seal)
**TERRY ELGIN** **BRENDA ELGIN**

**ACKNOWLEDGMENT**

*State of Iowa* )
) *SS*
*County of DUBUQUE* )

On this 18th day of December, 2008, before me, the undersigned, a Notary Public in and for DUBUQUE County, Iowa, personally appeared TERRY AND BRENDA ELGIN, 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.

Witness my hand and notary seal the day and year last above written.

JASON M. HEISLER
Commission Number 719133
My Commission Expires
10/18/11

*Notary Public in and for DUBUQUE County, Iowa*

Exhibit A

THE SOUTHEAST QUARTER (SE1/4) OF THE NORTHWEST QUARTER (NW1/4) AND THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4), AND THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHEAST QUARTER (SE1/4), AND ALL NORTH OF THE ROAD OF THE NORTH ONE-HALF (N1/2) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION SEVENTEEN (17), TOWNSHIP EIGHTY-EIGHT (88) NORTH, RANGE THREE (3), WEST OF THE 5TH P.M., EXCEPT PARCEL D PART OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) AND PART OF THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHEAST QUARTER (SE1/4), ALL IN SECTION SEVENTEEN (17), TOWNSHIP EIGHTY-EIGHT (88) NORTH, RANGE THREE (3), WEST OF THE 5TH P.M., DELAWARE COUNTY, IOWA, ACCORDING TO PLAT RECORDED IN BOOK 2008, PAGE 2217.



TJE
RKE