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DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

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

ENV. ⊗

DEED OF TRUST AND SECURITY AGREEMENT

Date 09-28-2009

MORTGAGOR(GRANTOR) NAME AND ADDRESS	MORTGAGEE(GRANTEE) NAME AND ADDRESS
K & K BUILDING & SUPPLY, INC. **an Iowa Corporation** **598 6th Ave SW** **Dyersville, IA 52040**	**FIDELITY BANK & TRUST** **208 2nd St SE PO Box 277** **Dyersville, IA 52040** **(563) 875-7157**

123-227
2009-3687

THIS INDENTURE, made and executed this 28th day of September, 2009, by and between **K & K BUILDING & SUPPLY, INC., an Iowa Corporation** of the City of Dyersville, County of Dubuque, 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 Attachment "A" (page 4)

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

Address of property: _

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. 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 Worthington, Iowa, on the date first hereinabove written.

NOTICE: This mortgage secures credit in the amount of **$ 1,500,000.00**. 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.

K & K BUILDING & SUPPLY, INC.
by Jerome L Koch (Seal)
JEROME L. KOCH, PRESIDENT

K & K BUILDING & SUPPLY, INC.
by Jeanine Koch (Seal)
JEANINE KOCH, SECRETARY/TREASURER

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."

by Jerome L Koch (Seal)
JEROME L. KOCH, PRESIDENT

by Jeanine Koch (Seal)
JEANINE KOCH, SECRETARY/TREASURER

ACKNOWLEDGMENT

State of Iowa)
) *SS*
County of Dubuque)

On this 28TH day of September, 2009, before me, the undersigned, a Notary Public in and for Dubuque County, Iowa, personally appeared JEROME L. KOCH and JEANINE KOCH, to me personally known, who being duly sworn or affirmed did say that that person is PRESIDENT and SECRETARY/TREASURER, of said entity, that ~~(the seal affixed to said instrument is the seal of 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 JEROME L. KOCH and JEANINE KOCH, acknowledge the execution of said instrument to be the voluntary act and deed of said entity by it voluntarily executed.

MINDY S. BURDS
Commission Number 726352
My Commission Expires
1-13-2010

Mindy S. Burds
Notary Public in and for Dubuque County, Iowa.

Parcel M & Parcel N of the NE ¼ SE ¼, Section 36, T89N, R3W, of the 5th P.M., in the City of Dyersville, Delaware County, Iowa, according to plat recorded in Book 2009 , Page 1600; also Lot Six (6) of West Side Business Park, Being a Subdivision of the SE ¼ of the SE ¼ of Section 36, T89N, R3W of the Fifth P.M., City of Dyersville, Delaware County, Iowa, according to plat recorded in Book 7 Plats, Page 175; also Lot E West Side Business Park No. 3, City of Dyersville, Delaware County, Iowa, according to plat recorded in Book 8 Plats, Page 35; and also Lot Three (3) of Southwest Commercial Park 2nd Addition in the SE ¼, Section 36, T89N, R3W, of the 5th P.M., in the City of Dyersville, Delaware County, Iowa, according to plat recorded in Book 2009, Page 3594.