

**BK: 2020 PG: 2449**  
**Recorded: 7/9/2020 at 11:46:11.0 AM**  
**Pages 10**  
**County Recording Fee: \$52.00**  
**Iowa E-Filing Fee: \$3.00**  
**Combined Fee: \$55.00**  
**Revenue Tax:**  
**LISA SMITH RECORDER**  
**Madison County, Iowa**

**REAL ESTATE MORTGAGE**  
**Recorder's Cover Sheet**

**Preparer Information:** (name, address and phone number)

Daniel M. Manning, Jr.  
317 6<sup>th</sup> Ave., Suite 300  
Des Moines, IA 50309  
(515) 243-8157

**Taxpayer Information:** (name and complete address)

Stephen M. DeVos and Amanda K. DeVos  
5108 Westwood Dr.  
West Des Moines, IA 50266

**Return Document To:** (name and complete address)

Daniel M. Manning, Jr.  
317 6th Ave., Suite 300  
Des Moines, IA 50309

**Grantors:**

Vince Otto

**Grantees:**

Stephen M. DeVos and Amanda K. DeVos

**Legal Description:** See Page 2

**Document or instrument number of previously recorded documents:** N/A

**REAL ESTATE MORTGAGE**

**THIS MORTGAGE** is made between Vince Otto, ("Mortgagee"), and Stephen M. DeVos and Amanda K. DeVos, husband and wife ("Mortgagors").

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

**Lot Nine (9) of Copper Fox Estates Subdivision located in the East Half (½) of the Southeast Quarter (¼) of Section Seventeen (17), in Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa.**

**Locally known as: 1867 Nature Ct., Winterset, IA 50273**

**a. Land and Buildings.** All of Mortgagors' right, title and interest in and to the following described real estate situated in Polk County, Iowa (the "Land"); and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditament, 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"). TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the "the property"), together with all privileges, hereditament thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagees, their 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 Mortgagees to Mortgagor evidenced by a promissory note dated **July 9, 2020**, in the principal amount of **\$330,000.00 (THREE HUNDRED THIRTY THOUSAND DOLLARS)** with a due date of **August 1, 2050**, any renewals, extensions, modifications 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.

**3. Representations and Warranties of Mortgagors.** Mortgagors represent, warrant and covenant to Mortgagee that (i) Mortgagor holds clear title to the property and title in fee simple in the Land; (ii) Mortgagor has the right, power and authority to execute this Mortgage and to mortgage, and grant a security interest in the property; (iii) the property is free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent and except as otherwise stated in subparagraph 1a. herein; (iv) Mortgagor will warrant and defend title to the 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; (vi) Mortgagor not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Mortgagor hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

**4. Payment and Performance of the Obligations.** Mortgagors will pay all amounts payable when due under the Section 2 of this Agreement and will timely perform all other obligations. The provisions defining Mortgagors' Obligations in Section 2 of this Agreement are hereby incorporated by reference into this Mortgage as if fully set forth herein.

**5. Taxes.** Mortgagor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the property before the same become delinquent, without notice or demand, and shall deliver to Mortgagees 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 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. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the property, so as not to cause a mechanics lien encumbering title to the property.

**7. Compliance with Laws.** Mortgagors shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the 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.** Mortgagor shall take good care of the property; shall keep the Buildings and Personal Property now or later placed upon the 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. Mortgagor shall not make any material alteration to the property without the prior written consent of Mortgagees.

**10. Insurance.**

a. **Mortgagee Requirements.** Mortgagors will list Mortgagee as an additional insured on their policy. Mortgagors will remain solely responsible for payment of all fees and costs of any kind associated with their insurance policy, failure to make payment will constitute a default under this Agreement. Mortgagee requires Mortgagors send evidence of annual payments on their policy for the benefit of his review and inspection.

b. **Risks to be Insured.** Mortgagors, at their sole cost and expense, shall maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the the property against loss by fire, extended coverage perils and such other hazards as Mortgagees 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. At 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. Mortgagor will at her sole cost and expense, from time to time, and at any time at the request of Mortgagees, provide Mortgagees with evidence satisfactory to Mortgagees of the

replacement cost of the property. Mortgagor will maintain such other insurance as Mortgagees may reasonably require.

c. **Policy Provisions.** All insurance policies and renewals thereof maintained by Mortgagor 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 Mortgagees, and be reasonably satisfactory to Mortgagees in all other respects.

d. **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 Mortgagees 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.

e. **Assignment of Policy.** If the property is sold at a foreclosure sale or if Mortgagee shall acquire title to the 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 property prior to such sale or acquisition.

f. **Notice of Damage or Destruction; Adjusting Loss.** If the 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 Mortgagor 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, Mortgagor does hereby irrevocably authorize, empower and appoint Mortgagees 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 Mortgagor.

g. **Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagees, 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 the property that is damaged or destroyed in such manner as Mortgagees 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.

h. **Reimbursement of Mortgagee's Expenses.** Mortgagors shall promptly reimburse Mortgagees 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.** Mortgagees, and their agents, shall have the right at all reasonable times, to enter upon the property for the purpose of inspecting the property or any part thereof. Mortgagees shall, however, have no duty to make such inspection. Any inspection of the property by Mortgagees shall be entirely for their benefit and Mortgagor 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 Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which affects the property or the

interest of the Mortgagees therein, or the title thereto, then Mortgagees, at Mortgagees' option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagees deem necessary to protect Mortgagees' interest. Any amounts or expenses disbursed or incurred by Mortgagees in good faith pursuant to this paragraph 12 with interest thereon at the rate of 2.5% per annum, shall become an Obligation of Mortgagor, secured by this Mortgage. Such amounts advanced or disbursed by Mortgagees hereunder shall be immediately due and payable by Mortgagor, unless Mortgagor and Mortgagees agree in writing to other terms of repayment. Mortgagee shall, at his 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 Mortgagees 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 hereby authorized to intervene in any such action in the names of Mortgagor, 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 reduce that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the 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 and address of the debtor is the name and address of the Mortgagor as set forth in paragraph 20 herein and the name and address of the secured party is the name and address of the Mortgagees as set forth in paragraph 20 herein.

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

a. Mortgagors shall default in the due observance or performance of or breach of any 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.

b. 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 Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the 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 property, have such appointment vacated.

c. 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 property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

d. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the property.

**16. Acceleration; Foreclosure.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagees may, at their 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) 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 Mortgagees appoint a receiver to take immediate possession of the 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 Mortgagor 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.

**17. Redemption.** It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage 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 (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

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 judgment against Mortgagors or their successors in interest in such action. If the redemption period is so reduced, Mortgagor or her 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 Mortgagor 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 Mortgagees in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses.

**19. Forbearance not a Waiver, Rights and Remedies Cumulative.** No delay by Mortgagees 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 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 Mortgagors, to:

**Stephen M. DeVos and Amanda K. DeVos**  
**1687 Nature Ct.**  
**Winterset, IA 50273**

b. If to Mortgagee, to:

**Vince Otto**  
**3916 N. Potsdam Ave.**  
**PMB 4855**  
**Sioux Falls, SD 57104**

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

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 property and waives all rights of exemption as to any of the property.

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

**THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK  
COMPETENT LEGAL ADVICE.**

[Signatures follow]

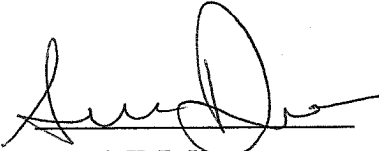
By signing below, Mortgagors accept and agrees to be bound by the terms and covenants contained in this Real Estate Mortgage Agreement.



**AGREED AND ACCEPTED BY MORTGAGORS:**

  
Stephen M. De Vos


7/9/2020  
Date

  
Amanda K. De Vos

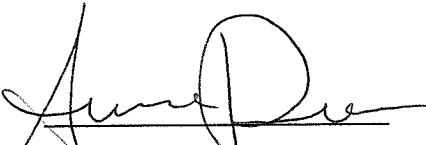
7-9-2020  
Date

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

**AGREED AND ACCEPTED BY MORTGAGORS:**

  
Stephen M. De Vos

7/9/2020  
Date

  
Amanda K. De Vos

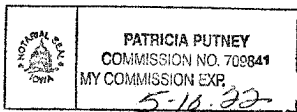
7.9.2020  
Date

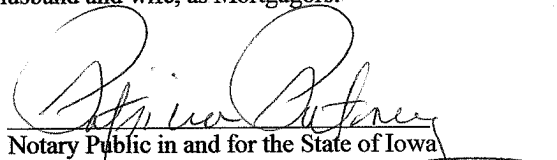
STATE OF IOWA :

: SS

COUNTY OF Polk :

This record was acknowledged before me on 7.9.2020, 2020, by Stephen M. DeVos and Amanda K. DeVos, husband and wife, as Mortgagors.



  
Notary Public in and for the State of Iowa

**GUARANTY**

The undersigned, Michael and Sandy Phillips, husband and wife, do hereby personally guarantee, severally and jointly, to Lender, full, complete and timely performance by the Borrowers of all obligations of the Borrowers as set forth under the foregoing Promissory Note.

**GUARANTORS:**

Michael Phillips

Michael Phillips

7-9-2020

Date

Sandy Phillips

Sandy Phillips

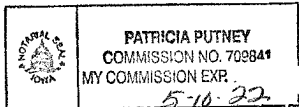
7-9-2020

Date

STATE OF IOWA :

COUNTY OF POIK : SS :

This record was acknowledged before me on 7.9.2020 2020, by Michael Phillips and Sandy Phillips, husband and wife, as Guarantors.



Patricia Putney  
Notary Public in and for the State of Iowa