

MICHELLE UTSLER, COUNTY RECORDER  
MADISON IOWA

COMPUTER	<input checked="" type="checkbox"/>
RECORDED	<input checked="" type="checkbox"/>
COMPARED	<input checked="" type="checkbox"/>

The Instrument was Prepared By and  
When Recorded Should Be Returned To:

Home Equity of America, Inc.  
~~1000 East 80th Place~~ *E/ First American*  
~~North Tower~~  
~~Merrillville, IN 46410~~ *1228 Euclid Ave # 400*  
*Cleveland OH 44115*

(Space Above This Line for Recording Data)

97624 070

**OPEN-END MORTGAGE**

00000000862504966

THIS MORTGAGE ("Mortgage") is given on July 6, 2006  
The mortgagor is



TIFFINY MARTINEZ AND JESSE MARTINEZ, HUSBAND AND WIFE AND  
STEVEN VANPELT, SINGLE AS JOINT TENANTS WITH FULL RIGHTS OF  
SURVIVORSHIP AND NOT AS TENANTS IN COMMON

("Borrower"). Borrower is the mortgagor under this Security Instrument. This Mortgage is given to  
**HOME EQUITY OF AMERICA, INC.**  
 which is organized and existing under the laws of **OHIO** and whose address is  
**1000 E. 80TH PLACE N. TOWER MERRILLVILLE, IN 46410** ("Lender").  
 Borrower owes Lender the principal sum of Thirty Thousand Five Hundred AND 00/100

Dollars (U.S. 30,500.00) (herein, the "Indebtedness"). This indebtedness is evidenced by Borrower's note, credit agreement or other evidence of indebtedness, dated the same date as this Mortgage, with the full indebtedness, if not paid earlier, due and payable on 07/06/26 (herein, the "Loan Documents").  
 TO SECURE to Lender (a) the repayment of the Indebtedness evidenced by the Loan Documents and any extensions or renewals thereof, with interest thereon, the payment of all other funds, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, or contained in the Loan Documents or any document executed in connection therewith, and (b) the repayment of any and all other loans, advances or indebtedness of Borrower owed to Lender and all affiliates of Lender, of any nature whatsoever (collectively the "Obligations") and (c) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to Item 20 hereof (herein "Future Advances"), Borrower does hereby mortgage, grant, warrant and convey to Lender, with mortgage covenants, the following described property located in the County of MADISON State of IOWA, to wit (herein, the "Real Estate"):

SEE ATTACHED EXHIBIT "A"

which has the address of  
("Property Address"); 2364 ST CHARLES ROAD WINTERSSET, IA 50273-0000

TOGETHER WITH all the improvements now or hereafter erected on the Real Estate, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, and fixtures now or hereafter a part of the property. All right, title and interest of Borrower in and to the land lying in the street and roads, in front of and adjoining the Real Estate. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, warrant, and convey the Property, that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend the title of the Property against all claims and demands, subject to any encumbrances of record.

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*JM*  
*EM*

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Loan Documents, any extensions or renewals thereof, prepayment and late charges as provided in the Loan Documents, the principal and interest on any Future Advances, Obligations or other sums secured by this Mortgage.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Charges; Liens.** Borrower shall pay all taxes, liens, assessments and other charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any, by Borrower making payment when due, directly to the Payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and Borrower shall promptly furnish Lender receipts evidencing such payment.

**3. Property Insurance, Flood Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower. Within thirty (30) days prior to the expiration date of each flood insurance policy, Borrower shall deliver to Lender a renewal policy or endorsement together with evidence satisfactory to Lender that the premium therefore has been paid. Borrower hereby indemnifies, saves and holds Lender harmless from any losses incurred by Lender arising out of Borrower's failure to obtain or maintain such insurance.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 3 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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*JM*

4. **Application of Payments.** Unless otherwise agreed, all payments are to be applied in the following order: costs, expenses, attorney's fees, interest, escrow, late fees or penalties and then principal. In the event this mortgage secures more than one note or other debt instrument, at Lender's option, payments may be applied on any of the outstanding notes, or concurrently on more than one of the outstanding notes.

5. **Preservation and Maintenance of the Property; Leasehold; Condominiums; Planned Unit Developments.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. If this Mortgage is on a unit in a condominium or planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, and the by-laws and regulations of the condominium or planned unit development. Lender or its agent may make reasonable entries upon and inspections of the Property. If this Mortgage is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

6. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, foreclosure, code enforcements, deed restrictions and registrations, or arrangements or proceedings involving a bankruptcy or decedent, Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

7. **Environmental Laws.** (a) Except as set forth in Exhibit 7(a) hereto, Borrower has obtained all permits, licenses and other authorizations which are required under any now existing or hereafter enacted or amended federal, state or local statute, ordinance, code or regulation affecting or regulating the environment ("Environmental Laws") and, to the best of Borrower's knowledge, Borrower is in compliance in all material respects with all terms and conditions of the required permits, licenses and authorizations, and is also in compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws;

(b) Except as set forth in Exhibit 7(b) hereto, Borrower is not aware of, and has not received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance or continued compliance in any material respect with Environmental Laws, or may give rise to any material common law or legal liability, or otherwise form the basis of any material claim, action, demand, suit, proceeding, hearing, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant, chemical, or industrial, toxic or hazardous substance or waste; and

(c) Except as set forth in Exhibit 7(c) hereto, there is no civil, criminal or administrative action, suit, demand, claim hearing, notice or demand letter, notice of violation, investigation, or proceeding pending or threatened against Borrower, relating in any way to Environmental Laws; and

(d) Lender will not be deemed to assume any liability or obligation or duty to clean-up or dispose of wastes on or relating to the Property. Borrower agrees to remain fully liable and will indemnify, defend and hold Lender harmless from any and all costs, losses and expenses (including, without limitation attorney's fees) relating to any Environmental Laws or Borrower's breach of any of the foregoing representations or warranties. The provisions of this Item 7 will survive the release or satisfaction of this Mortgage or the foreclosure hereof.

8. **Inspection; Condemnation.** If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause. Additionally, Lender shall have the right to inspect the books and records of the operation of the Property and make copies thereof during normal business hours and upon notice to Borrower. Borrower shall keep its books and records in accordance with generally accepted accounting principles covering the operation of the Property, should the same be income-producing. Lender may in its discretion require Borrower to deliver to Lender within 90 days after the close of each Borrower's fiscal years an audited statement of condition and profit and loss statement for the Property for the preceding fiscal year, prepared and certified by a certified public accountant acceptable to Lender. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. No awards or settlements shall be accepted without Lender's prior written consent. Lender is authorized to settle any claim, collect any award, and apply the net proceeds, after deducting all costs of collection, including attorney's fees, at Lender's option, either to restoration or repair of the Property, or to the sums secured by this Mortgage, and if, in the sole discretion of Lender, Lender is not satisfied with the adequacy of collateral for any remaining indebtedness, Lender may without further demand or notice elect to declare the whole of the remaining indebtedness immediately due and payable and may invoke any of the remedies afforded it by law, and/or by this Mortgage, including those permitted by Section 16 hereof. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of any installment payments referred to in Section 1 hereof or change the amount of such installments.

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**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Remedies Cumulative.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage, the note evidencing the indebtedness or any of the Loan Documents, or as afforded by law or equity and may be exercised concurrently, independently or successively.

**11. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Borrower and Lender, subject to the provisions of Sections 15 and 16 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the Sections of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

**12. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**13. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**14. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**15. Transfer of the Property or a Beneficial Interest Therein.** As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold, transferred, encumbered or otherwise conveyed by Borrower (or if Borrower is not a natural person and a beneficial interest in Borrower is sold, transferred, encumbered or otherwise conveyed) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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**16. Acceleration; Remedies.** Upon the occurrence of an Event of Default (as defined in the Loan Documents) or a default in payment of the Indebtedness, the Obligations or Future Advances hereby secured or any part thereof in accordance with the terms of this Mortgage, of the aforesaid Loan Documents or of any other document executed in conjunction with this Mortgage or the Loan Documents, or in the performance of any covenant or agreement of Borrower in this Mortgage or in the payment or performance of any document or instrument securing any Indebtedness or Obligation, or upon the filing of any lien or charge against the Property or any part thereof which is not removed to the satisfaction of Lender within a period of 30 days thereafter, the institution of any proceeding to enforce the lien or charge upon the Property or any part thereof, the filing of any proceeding by or against Borrower in bankruptcy, insolvency or similar proceedings, assignment by Borrower of its property for the benefit of its creditors, the placing of Borrower's property in receivership, trusteeship or conservatorship with or without action or suit in any Court, or the abandonment by Borrower of all or any part of the Property (herein "Events of Default"), then the Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without notice to the Borrower.

The sums secured hereby shall bear interest at the highest rate permitted to be charged on delinquent installments of principal and interest under the Loan Documents or the highest rate allowed by law, and this Mortgage shall become absolute and subject to foreclosure. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, costs of documentary evidence, abstracts, title reports and reasonable attorney's fees.

**17. Borrower's Right to Redeem.** Borrower shall have such rights of redemption as are provided by the law of the State where the Property is located.

**18. Waivers.** Borrower relinquishes all right of dower and waives all right of homestead and distributive share in and to the Property. Borrower waives any right of exemption as to the Property.

**19. Assignments of Rents.** Upon the occurrence of an Event of Default, the Lender shall have the right without notice and without regard to the adequacy of any security for the sums hereby secured and with or without appointment of a receiver, to enter upon and take possession of the Property, and Lender may operate, manage, rent and lease the Property and collect any rents, issues, income and profits therefrom, the same being hereby absolutely assigned and transferred to and for the benefit and protection of Lender, contingent only upon the occurrence of an Event of Default. All rents collected by Lender may be applied to the cost of operation, maintenance and repair, and reasonable collection, management and attorney's fees, and then in reduction of any sums hereby secured in such other proportions as Lender may determine.

**20. Future Advances.** Upon request of the Borrower, Lender, at Lender's option, may make Future Advances to Borrower. Such future and additional loan advances, with interest thereon, shall be secured by this Mortgage, when evidenced by promissory notes stating that such notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Indebtedness plus \$0.

**21. Collection Costs.** To the extent permitted by law, Borrower agrees to pay on demand Lender's reasonable fees and costs, including but not limited to, fees and costs of attorneys and other agents (including without limitation paralegals, clerks and consultants), whether or not such attorney or agent is an employee of Lender, which are incurred by Lender in collecting any amount due or enforcing or protecting any right or remedy under this Mortgage, whether or not suit is brought, including, but not limited to, all fees and costs incurred on appeal, in bankruptcy, and for postjudgment collection actions.

**22. Rental of Property Restricted.** Borrower shall not make, or suffer to be made, any lease of the Property or any part thereof, or any modification, extension or cancellation of any existing or future lease, without Lender's prior written consent. If, with Lender's written consent, there is a lease on the Property, Borrower is to perform all of Borrower's obligations under such lease or leases. Borrower is not to accept any prepayment of rent for more than one month in advance without Lender's prior written consent. Upon Lender's request from time to time, Borrower is to furnish Lender a statement, in affidavit form, in such reasonable detail as Lender may require, of all leases on the Property and, on demand, to furnish Lender executed counterparts of any and all such leases.

If Borrower shall enter into any lease agreement, written or oral, concerning the Property or any part thereof without having obtained Lender's prior written consent, Lender shall not be bound by, or obligated to perform under, any such lease in the event it exercises its remedies set for in Section 16 or any provision hereof.

**23. Release.** Upon payment of all Indebtedness, Obligations and Future Advances or any sums secured by this Mortgage, and, if this Mortgage secures a Credit Agreement evidencing a line of credit, upon Borrower's signed, written instructions to terminate the Credit Agreement, Lender may charge Borrower a fee for releasing this Mortgage but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

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**24. Mortgage as Security for Other Liabilities.** This Mortgage shall serve as security for every other liability or liabilities of the Borrower to the Lender and any of its affiliates however created, direct or contingent, due or to become due, whether now or hereafter existing and whether the same may have been or shall be participated in, in whole or in part by others, by trust agreement or otherwise, or on any manner acquired by or accruing to the holder hereof, whether by agreement with, or by assignment or endorsement to the Lender by anyone whomsoever.

It is the express intent of the parties hereto that this Mortgage and the note or notes given contemporaneously herewith, and any extensions or renewals thereof, shall also evidence and secure any additional loan advances made after the delivery of this Mortgage to the recorder for the record.

Notwithstanding the above, no debt or other liability, as described above shall be secured by the within Mortgage, if it shall hereafter be created in a "consumer credit transaction" as defined in Title 1, Consumer Credit Protection Act, 15 U.S.C.A., Sections 1601 et. seq., as amended, or any successor federal statute, or any applicable state statute containing substantially similar provisions.

**25. Zoning and Private Covenants.** Borrower shall not initiate or consent to any change in the zoning provisions or private covenants effecting the use of the Property without Lender's prior written consent. If Borrower's use of the Property is or becomes a nonconforming use under any zoning provision, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Borrower will immediately provide Lender with written notice of any proposed changes to the zoning provisions or private covenants affecting the Property.

**26. Security Agreement Under Uniform Commercial Code.** This Mortgage shall be considered a security agreement, financing statement and fixture filing to be filed in the real property records and elsewhere pursuant of the Uniform Commercial Code (as adopted by the state(s) where the Property, the Borrower and the third party obligated to perform any Obligation or pay any indebtedness are located) covering all personal property and fixtures included in the definition of the Property above, together with any and all replacements thereof, substitutions therefore and additions thereto, whether now owned or hereafter acquired (the Chattels), and Borrower hereby grants Lender a security interest in such Chattels. Borrower is the debtor for the purposes of this grant and perfection of a security interest and the secured party is the Lender. Upon demand, Borrower shall make, execute and deliver such other and further security agreements (as such term is defined in said Uniform Commercial Code) as Lender at any time may deem necessary or proper or require to grant to Lender a perfected security interest in the Chattels and, upon Borrower's failure to do so, Lender is authorized to sign any such agreement as the agent of the Borrower. Borrower hereby authorizes Lender to file financing statements (as such term is defined in said Uniform Commercial Code) with respect to the Chattels, at any time, describing such Chattels, generically as Lender may choose, including by reference to "all assets" of Borrower. Borrower will pay all filing fees for the filing of such financing statements and for the refiling, continuation or other amendment thereof at the time required, in the opinion of the Lender, by said Uniform Commercial Code.

**27. Indemnification.** Lender shall not assume or be responsible for the performance of any of Borrower's obligations with respect to the Property under any circumstance. Borrower shall immediately provide Lender with written notice of and indemnify and hold Lender and its shareholders, directors, officers, employees, and agents harmless from all claims, damages, liabilities (including attorneys' fees and legal expenses as provided by applicable law), causes of action, actions, suits or other legal proceeding (cumulatively "Claims") pertaining to the Property (including, but not limited to, those involving substances described in Section 7(b)). Borrower, upon the request of Lender, shall hire a legal counsel, acceptable to Lender, to defend Lender from such Claims, and pay the attorneys' fees, legal expenses and other costs incurred in connection therewith. In the alternative, as provided by applicable law, Lender shall be entitled to employ its own legal counsel to defend such Claims at Borrower's cost. Borrower's obligation to Indemnify Lender under this section shall survive the termination, release or foreclosure of this Mortgage.

**28. Subrogation of Lender.** Lender shall be subrogated to the rights of the holder of any previous lien, security interest or encumbrance discharged with funds advanced by Lender, regardless of whether such liens, security interests or other encumbrances have been released of record.

**29. Preservation of Liability and Priority.** Without affecting the liability of Borrower or any guarantor of the Obligations, or any other person (except a person expressly released in writing) for the payment and performance of the Obligations, and without affecting the rights of Lender with respect to any Property not expressly released in writing, and without impairing in any way the priority of this Mortgage over the interest of any person acquired or first evidenced by recording subsequent to the recording of this Mortgage, Lender may, either before or after the maturity of the Obligations, and without notice or consent, release any person liable for payment or performance of all or any part of the Obligations; make any agreement altering the terms of payment or performance of all or any part of the Obligations; exercise or refrain from exercising or waive any right or remedy that Lender may have under this Mortgage; accept additional security of any kind for any of the Obligations; or release or otherwise deal with any real or personal property securing the Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property shall be deemed, by acquiring such interest or recording any evidence thereof, to have consented to all or any such actions by Lender.

**30. Duplicate and Electronic Records.** Borrower authorizes Lender to convert any documents related to this transaction into accurate duplicates or electronic format and to destroy the original documents and acknowledge that such duplicates or electronic versions of the documents shall have the same force and effect as the originals to the fullest extent required by law, hereby adopt and accept such duplicate or electronic versions as authenticated records, identifying Borrower as a party thereto.

*Scrp*  
*JM*

31. Jury Waiver. IT IS MUTUALLY AGREED BY AND BETWEEN BORROWER AND LENDER THAT THE RESPECTIVE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE MORTGAGE OR THE TRANSACTION CONTEMPLATED HEREBY.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

32. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Mortgage (but not prior to acceleration under Section 16 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 16, including, but not limited to, reasonable attorneys' fees and costs of title evidence, as allowed by Applicable Law.

33. HOMESTEAD EXEMPTION WAIVER. 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.

X <u>Steven C Van Pelt</u>	<u>7-6-06</u>
	[Date]
X <u>Jill M...</u>	<u>7-6-06</u>
	[Date]
X <u>John O...</u>	<u>7-6-06</u>
	[Date]

34. Redemption Period. If the Property is less than 10 acres in size and Lender waives in any foreclosure proceeding any right to a deficiency judgment against Borrower, the period of redemption from judicial sale shall be reduced to 6 months. If the court finds that the Property has been abandoned by Borrower and Lender waives any right to a deficiency judgment against Borrower, the period of redemption from judicial sale shall be reduced to 60 days. The provisions of this Section 28 shall be construed to conform to the provisions of Sections 628.26 and 628.27 of the Code of Iowa.

**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.**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Mortgage and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_ X Steven Vanpelt (Seal)  
STEVEN VANPELT

\_\_\_\_\_ (Seal)

X Jesse Martinez (Seal)  
JESSE MARTINEZ

X Tiffany Martinez (Seal)  
TIFFINY MARTINEZ

STATE OF Iowa, Madison COUNTY

On this 6th DAY OF July, 2006, before me, a Notary Public in and for said County and State, personally appeared

TIFFINY MARTINEZ AND JESSE MARTINEZ, HUSBAND AND WIFE AND STEVEN VANPELT, SINGLE AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

the individual(s) who executed the foregoing instrument and acknowledged that HE/SHE did examine and read the same and did sign the foregoing instrument, and that the same is HIS/HER free act and deed.  
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires: 3/16/2009

(Seal)

Chad Welch  
Notary Public





EXHIBIT A



SITUATED IN THE COUNTY OF MADISON AND STATE OF IOWA:

ALL THAT PART OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 8 WHICH LIES WEST OF THE WEST LINE OF THE PUBLIC HIGHWAY WHICH COMMENCES 1081 FEET EAST OF THE CENTER OF SAID SECTION 8, AND RUNS THENCE SOUTH, 15 DEGREES 20 MINUTES EAST, 790.5 FEET, THENCE SOUTHEASTERLY ALONG A 3843 - FOOT RADIUS CURVE WITH CENTRAL ANGLE OF 8 DEGREES 55 MINUTES A DISTANCE OF 599.6 FEET, THENCE SOUTH, 24 DEGREES 15 MINUTES EAST, 545.6 FEET, THENCE SOUTHEASTERLY ALONG A 669.6 FOOT RADIUS CURVE WITH CENTRAL ANGLE OF 13 DEGREES 33 MINUTES, A DISTANCE OF 158.3 FEET TO A POINT ON THE SOUTH LINE OF SAID 20-ACRE TRACT WHICH IS 848.4 FEET WEST OF THE EAST LINE OF SAID SECTION 8, AND THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 8 EXCEPT COMMENCING AT THE SOUTHEAST CORNER THEREOF, AND RUNNING THENCE WEST 264.1 FEET THENCE NORTH, 3 DEGREES 37 MINUTES WEST, 350.5 FEET, THENCE NORTH, 77 DEGREES 36 MINUTES WEST, 142.3 FEET THENCE NORTH, 67 DEGREES 22 MINUTES WEST, 196.7 FEET, THENCE NORTH, 57 DEGREES 24 MINUTES WEST, 114.8 FEET, THENCE NORTH, 44 DEGREES 52 MINUTES WEST, 171.4 FEET, THENCE EAST 848.4 FEET TO SECTION LINE, THENCE SOUTH 660 FEET TO THE POINT OF BEGINNING AND CONTINUING 6.8 ACRES, MORE OR LESS, ALL IN TOWNSHIP OF 75 NORTH, RANGE 27 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.

Permanent Parcel Number: 000001108400005  
TIFFINY MARTINEZ AND JESSE MARTINEZ, HUSBAND AND WIFE AND  
STEVEN VANPELT, SINGLE AS JOINT TENANTS WITH FULL RIGHTS  
OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

2364 SAINT CHARLES ROAD, WINTERSET IA 50273  
Loan Reference Number : 07003525/57/04559/FAM

9762470

 VAN PELT  
9762470  
FIRST AMERICAN LENDERS ADVANTAGE  
OPEN END MORTGAGE  


When recorded mail to:  
FIRST AMERICAN TITLE INSURANCE  
LENDERS ADVANTAGE  
1228 EUCLID AVENUE, SUITE 400  
CLEVELAND, OHIO 44115  
ATTN: FT1120