

FILED NO. 3979

BOOK 207 PAGE 378

99 MAR 31 PH 3: 52

MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

RELEASED 8-4-99 SEE

Mtg RECORD 211 PAGE 125

REC \$ 35.00
AUD \$ _____
R.M.F. \$ 1.00

Document Prepared by: ✓ **MERCANTILE BANK - EUGENE TURNER, 431 East Locust, Des Moines, IA 50309, 515-248-7700**

MORTGAGE

COMPUTER ✓
RECORDED ✓
COMPARED ✓

Mercantile Bank Midwest
431 East Locust
Des Moines, IA 50309
515-248-7700 (Lender)

BORROWER WAYNE J. TETZLAFF BARBARA A. TETZLAFF		MORTGAGOR WAYNE J. TETZLAFF, HUSBAND AND BARBARA A. TETZLAFF, WIFE	
ADDRESS 1805 E. LACONA AVENUE DES MOINES, IA 50320		ADDRESS 1805 E. LACONA AVENUE DES MOINES, IA 50320	
TELEPHONE NO. 515-288-3989	IDENTIFICATION NO. [REDACTED]	TELEPHONE NO. 515-288-3989	IDENTIFICATION NO. [REDACTED]
ADDRESS OF REAL PROPERTY: RUSTIC AVENUE WINTERSET, IA 50273			

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$ 123,000.00. 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.

1. **GRANT.** Mortgagor hereby mortgages, grants, assigns and conveys to Lender, identified above, the real property described in Schedule A which is attached to this Mortgage and incorporated herein together with all future and present improvements and fixtures; privileges, hereditaments, and appurtenances; leases, licenses and other agreements; rents, issues and profits; water, well, ditch, reservoir and mineral rights and stock, and standing timber and crops pertaining to the real property (cumulatively "Property").

2. **OBLIGATIONS.** This Mortgage shall secure the payment and performance of all of Borrower and Mortgagor's present and future, indebtedness, liabilities, obligations and covenants (cumulatively "Obligations") to Lender pursuant to:

(a) this Mortgage and the following promissory notes and other agreements:

INTEREST RATE	PRINCIPAL AMOUNT/ CREDIT LIMIT	FUNDING/ AGREEMENT DATE	MATURITY DATE	CUSTOMER NUMBER	LOAN NUMBER
FIXED	\$123,000.00	03/31/99	10/01/99		

all other present or future written agreements between Borrower or Mortgagor and Lender (whether executed for the same or different purposes than the preceding documents);

b) all amendments, modifications, replacements or substitutions to any of the foregoing.

3. **PURPOSE.** This Mortgage and the Obligations described herein are executed and incurred for Consumer purposes.

4. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option so long as this Mortgage secures indebtedness held by Lender, may make future advances to Borrower. Such future advances, with interest thereon, shall be secured by this Mortgage. 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 \$ 123,000.00.

5. **CONSTRUCTION PURPOSES.** If checked, this Mortgage secures an obligation incurred for the construction of an improvement on land, and is a "construction mortgage" within the meaning of Section 554.9313 of the Iowa Uniform Commercial Code. This Mortgage also secures loans or advancements made to directly finance work or improvements upon the real estate described herein, and is a "construction mortgage lien" within the meaning of Section 572.18 of the Iowa Code.

6. **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Mortgagor represents, warrants and covenants to Lender that:

(a) Mortgagor shall maintain the Property free of all liens, security interests, encumbrances and claims except for this Mortgage and those described in Schedule B which is attached to this Mortgage and incorporated herein by reference;

(b) Neither Mortgagor nor, to the best of Mortgagor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substance, or related material (cumulatively "Hazardous Materials") in connection with the Property or transported any Hazardous Materials to or from the Property. Mortgagor shall not commit or permit such actions to be taken in the future. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to, (i) petroleum; (ii) friable or nonfriable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; or (vi) those substances, materials or wastes defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute or any other similar statute, rule, regulation or ordinance now or hereafter in effect. To the best of Mortgagor's knowledge, there are no agricultural drainage wells, abandoned wells, solid waste disposal sites or underground storage tanks on the Property;

(c) Mortgagor has the right and is duly authorized to execute and perform its Obligations under this Mortgage and these actions do not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may be binding on Mortgagor at any time;

(d) No action or proceeding is or shall be pending or threatened which might materially affect the Property;

(e) Mortgagor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement which might materially affect the Property (including, but not limited to, those governing Hazardous Materials) or Lender's rights or interest in the Property pursuant to this Mortgage;

(f) Mortgagor is lawfully seized of the Property in fee simple; the Property is free from all liens and encumbrances except those described in Schedule B attached to this Mortgage; and Mortgagor hereby warrants and covenants to defend the title to the Property against all persons whatsoever;

(g) If Mortgagor is a corporation, Mortgagor is duly organized, validly existing, and in good standing under the laws of its State of incorporation and is in good standing and authorized to do business in the State of Iowa, and has full corporate power and authority to execute this Mortgage, own its properties, conduct its business as presently operated, and to carry out the terms of this Mortgage; and

(h) No loan broker as defined by Iowa Code Chapter 535C has been involved in this mortgage transaction.

21. DEFAULT. Mortgagor shall be in default under this Mortgage in the event that Mortgagor, Borrower or any Guarantor of any Obligation:

- (a) fails to pay any Obligation to Lender when due;
- (b) fails to perform any Obligation or breaches any warranty or covenant to Lender contained in this Mortgage or any other present or future written agreement;
- (c) allows the Property to be damaged, destroyed, lost or stolen in any material respect;
- (d) seeks to revoke, terminate or otherwise limit its liability under any guaranty to Lender;
- (e) allow the Property to be used by anyone to transport or store goods the possession, transportation, or use of which, is illegal;
- (f) causes Lender, in good faith, to believe the prospect of payment or performance is impaired; or
- (g) if Mortgagor is a corporation, Mortgagor merges, dissolves or liquidates.

22. RIGHTS OF LENDER ON DEFAULT. If there is a default under this Mortgage, Lender shall be entitled to exercise one or more of the following remedies without notice or demand (except as required by law):

- (a) to declare the Obligations immediately due and payable in full;
- (b) to collect the outstanding Obligations with or without resorting to judicial process;
- (c) to require Mortgagor to deliver and make available to Lender any personal property constituting the Property at a place reasonably convenient to Mortgagor and Lender;
- (d) to take immediate possession, management and control of the Property without seeking the appointment of a receiver;
- (e) to collect all of the rents, issues, and profits from the Property from the date of default through the expiration of the last redemption period following the foreclosure of this Mortgage;
- (f) to apply for and obtain prior to commencement of suit or thereafter without notice and upon ex parte application, the appointment of a receiver for the Property without regard to Mortgagor's financial condition or solvency, the adequacy of the Property to secure the payment or performance of the Obligations, or the existence of any waste to the Property; and Mortgagor waives Mortgagor's right to possession, statutory or otherwise, and the right to challenge the appointment of a receiver;
- (g) to foreclose this Mortgage as provided by law by judicial proceedings or, unless prohibited by law, by applicable nonjudicial proceedings;
- (h) to set-off Mortgagor's Obligations against any amounts due to Lender including, but not limited to, monies, instruments, and deposit accounts maintained with Lender; and
- (i) to exercise all other rights available to Lender under any other written agreement or applicable law.

Lender's rights are cumulative and may be exercised together, separately, and in any order. In the event that Lender institutes an action seeking the recovery of any of the Property by way of a prejudgment remedy in an action against Mortgagor, Mortgagor waives the posting of any bond which might otherwise be required.

23. REDEMPTION PERIOD. Mortgagor hereby agrees that in the event of judicial foreclosure of this Mortgage, Lender may, at its sole option, elect:

- (a) Pursuant to Iowa Code § 628.26 as now enacted or hereafter modified, amended or replaced, to reduce the period of redemption after sale on foreclosure to six months, or
- (b) Pursuant to Iowa Code § 628.27 as now enacted or hereafter modified, amended or replaced, to reduce the period of redemption after sale on foreclosure to sixty days, or
- (c) Pursuant to Iowa Code § 628.28 as now enacted or hereafter modified, amended or replaced, or any other Iowa Code Section, to reduce the period of redemption after sale on foreclosure to such time as may be then applicable and provided by law, or
- (d) Pursuant to Iowa Code § 654.20 as now enacted or hereafter modified, amended or replaced, to foreclose without redemption.

24. WAIVER OF HOMESTEAD AND OTHER EXEMPTIONS. Mortgagor hereby waives all homestead or other exemptions to which Mortgagor would otherwise be entitled under any applicable law and waives all rights of dower and distributive share in the Property.

25. REIMBURSEMENT OF AMOUNTS EXPENDED BY LENDER. Upon demand, Mortgagor shall immediately reimburse Lender for all amounts (including attorneys' fees and legal expenses) expended by Lender in the performance of any action required to be taken by Mortgagor or the exercise of any right or remedy of Lender under this Mortgage, together with interest thereon at the lower of the highest rate described in any Obligation or the highest rate allowed by law from the date of payment until the date of reimbursement. These sums shall be included in the definition of Obligations herein and shall be secured by the interest granted herein.

26. APPLICATION OF PAYMENTS. All payments made by or on behalf of Mortgagor may be applied against the amounts paid by Lender (including attorneys' fees and legal expenses) in connection with the exercise of its rights or remedies described in this Mortgage and then to the payment of the remaining Obligations in whatever order Lender chooses.

27. POWER OF ATTORNEY. Mortgagor hereby appoints Lender as its agent or attorney-in-fact to endorse Mortgagor's name on all instruments and other documents pertaining to the Obligations. In addition, Lender shall be entitled, but not required, to perform any action or execute any document required to be taken or executed by Mortgagor under this Mortgage. Lender's performance of such action or execution of such documents shall not relieve Mortgagor from any Obligation or cure any default under this Mortgage. The powers of attorney described in this paragraph are coupled with an interest and are irrevocable.

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 these liens, security interests or other encumbrances have been released of record.

29. COLLECTION COSTS. If Lender hires an attorney to assist in collecting any amount due or enforcing any right or remedy under this Agreement, Mortgagor agrees to pay Lender's attorneys' fees and collection costs.

30. PARTIAL RELEASE. Lender may release its interest in a portion of the Property by executing and recording one or more partial releases without affecting its interest in the remaining portion of the Property.

31. MODIFICATION AND WAIVER. The modification or waiver of any of Mortgagor's Obligations or Lender's rights under this Mortgage must be contained in a writing signed by Lender. Lender may perform any of Mortgagor's Obligations or delay or fail to exercise any of its rights without causing a waiver of those Obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Mortgagor's Obligations under this Mortgage shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the Obligations belonging to any Mortgagor, third party or any of its rights against any Mortgagor, third party or the Property.

32. SUCCESSORS AND ASSIGNS. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees and devisees.

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR: WAYNE J. TETZLAFF
Wayne J. Tetzlaff
WAYNE J. TETZLAFF

MORTGAGOR: BARBARA A. TETZLAFF
Barbara A. Tetzlaff
BARBARA A. TETZLAFF

Dated: MARCH 31, 1999

Mortgagor acknowledges that Mortgagor has read, understands, and agrees to the terms and conditions of this Mortgage, and that Mortgagor has received an exact copy of this Mortgage.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT. THIS NOTICE ALSO APPLIES TO ANY OTHER CREDIT AGREEMENTS (EXCEPT EXEMPT TRANSACTIONS) NOW IN EFFECT BETWEEN YOU AND THIS LENDER.

39. ADDITIONAL TERMS.

38. PURCHASE MONEY. If checked, this Mortgage is a purchase money mortgage.

37. MISCELLANEOUS. Mortgagor and Lender agree that time is of the essence. Mortgagor waives presentment, demand for payment, notice of dishonor and protest except as required by law. All references to Mortgage in this Mortgage shall include all persons signing below. If there is more than one Mortgage, their Obligations shall be joint and several. This Mortgage and any related documents represent the complete integrated understanding between Mortgagor and Lender pertaining to the terms and conditions of those documents.

36. WAIVER OF JURY TRIAL. MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS MORTGAGE OR THE PROPERTY SECURING THIS MORTGAGE.

35. APPLICABLE LAW. This Mortgage shall be governed by the laws of the state in which the property is located. Mortgagor consents to the jurisdiction and venue of any court located in the state in which the property is located in the event of any legal proceeding under this Mortgage.

34. SEVERABILITY. If any provision of this Mortgage violates the law or is unenforceable, the rest of the Mortgage shall continue to be valid and enforceable.

33. NOTICES. Any notice or other communication to be provided under this Mortgage shall be in writing and sent to the parties at the addresses described in this Mortgage or such other address as the parties may designate in writing from time to time.

AGRICULTURAL HOMESTEAD DISCLOSURE: MORTGAGOR UNDERSTANDS THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS CONTRACT, MORTGAGOR VOLUNTARILY GIVES UP MORTGAGOR'S RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT.

Dated: MARCH 31, 1999

MORTGAGOR:

Wayne J. Tetzlaff

MORTGAGOR:

Barbara A. Tetzlaff

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

STATE OF Iowa)
COUNTY OF Polk) SS:

On this 31 day of March 1999, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Wayne J. Tetzlaff & Barbara A. Tetzlaff

to me personally known to be the identical person(s) named in and who executed the within and foregoing instrument, and acknowledged that he/she executed the same as his/her voluntary act and deed.

My Comm. Expires 8-9-99

Vickie Simpson

_____, Notary Public
in and for said County and State

STATE OF _____)
COUNTY OF _____) SS:

On this _____ day of _____, before me, the undersigned, a Notary Public in and for said county and state, personally appeared _____

to me personally known, who being by me duly sworn, did say that the person is one of the partners of _____, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

_____, Notary Public
in and for said County and State

STATE OF _____)
COUNTY OF _____) SS:

On this _____ day of _____, before me, the undersigned, a Notary Public in and for said county and state, personally appeared _____

to me personally known, who being by me duly sworn, did say that they are the _____ respectively, of said corporation executing the within and foregoing instrument; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said _____ as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

_____, Notary Public
in and for said County and State

SCHEDULE B

[Faint, illegible handwritten notes]

The legal description of the Property is:
SEE ATTACHED ADDENDUM "A"

The permanent tax identification number of the Property is:

[Faint handwritten notes]

The street address of the Property (if applicable) is:
RUSTIC AVENUE
WINTERSSETT, IA 50273

SCHEDULE A



ADDENDUM "A"

Parcel "C" which is a part of the existing Parcel "B", located in the Northwest Quarter (¼) of the Southwest Quarter (¼) of Section One (1), Township Seventy-five (75) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa, as shown in Plat of Survey filed in Book 3, Page 405 on March 18, 1999, in the Office of the Recorder of Madison County, Iowa

