

RELEASED 2-1-00  
 MTD RECORD 215 PAGE 172

REC \$ 25<sup>00</sup>  
 ADD \$  
 R.M.F. \$ 1<sup>00</sup>

FILED NO. 000100  
 BOOK 210 PAGE 232

COMPUTER ✓  
 RECORDED ✓  
 COMPARED ✓

1999 JUL -7 PM 3:45

MICHELLE UTSLER  
 RECORDER  
 MADISON COUNTY, IOWA

After Recordation Return to:  
 Community State Bank  
 1401 North Jefferson  
 Indianola, IA 50125

**MORTGAGE**

|   |                           |  |                           |
|---|---------------------------|--|---------------------------|
| <b>BORROWER</b>                                 |                           | <b>MORTGAGOR</b>                                     |                           |
| JOHN L JACOBS<br>SHERRY L JACOBS                |                           | JOHN L JACOBS<br>SHERRY L JACOBS<br>HUSBAND AND WIFE |                           |
| <b>ADDRESS</b>                                  |                           | <b>ADDRESS</b>                                       |                           |
| 4304 MARCOURT LANE<br>WEST DES MOINES, IA 50266 |                           | 4304 MARCOURT LANE<br>WEST DES MOINES, IA 50266      |                           |
| <b>TELEPHONE NO.</b>                            | <b>IDENTIFICATION NO.</b> | <b>TELEPHONE NO.</b>                                 | <b>IDENTIFICATION NO.</b> |
|   |                           |  |                           |

In consideration of the loan or other credit accommodation hereinafter specified and any future advances or future Obligations, as defined herein, which may hereafter be advanced or incurred and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby warrants and mortgages to Community State Bank, 1401 North Jefferson, Indianola, IA 50125 ("Lender"),

its successors and assigns, with power of sale and right of entry and possession all of Mortgagor's present and future estate, right, title and interest in and to the real property described in Schedule A which is attached to this Mortgage and incorporated herein by this reference, together with all present and future improvements and fixtures; all tangible personal property, including, without limitation, all machinery, equipment, building materials, and goods of every nature (excluding household goods) now or hereafter located on or used in connection with the real property, whether or not affixed to the land; all privileges, hereditaments, and appurtenances, including all development rights associated with the real property, whether previously or subsequently transferred to the real property from other real property or now or hereafter susceptible of transfer from the real property to other real property; all leases, licenses and other agreements; all rents, issues and profits; all water, well, ditch, reservoir and mineral rights and stocks pertaining to the real property (cumulatively "Property"); until payment in full of all Obligations secured hereby.

Moreover, in further consideration, Mortgagor does, for Mortgagor and Mortgagor's heirs, representatives and assigns, hereby expressly warrant, covenant, and agree with Lender its successors and assigns as follows:

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

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

| INTEREST RATE | PRINCIPAL AMOUNT/<br>CREDIT LIMIT | FUNDING/<br>AGREEMENT DATE | MATURITY DATE | CUSTOMER NUMBER | LOAN NUMBER |
|---------------|-----------------------------------|----------------------------|---------------|-----------------|-------------|
| FIXED         | \$110,000.00                      | 07/03/99                   | 10/31/99      |                 | 4066        |

(b) all other present or future written agreements with Lender which refer specifically to this Mortgage (whether executed for the same or different purposes than the foregoing);

(c) any guaranty of obligations of other parties given to Lender now or hereafter executed which refers to this Mortgage;

(d) future advances, whether obligatory or optional, to the same extent as if made contemporaneously with the execution of this Mortgage, made or extended to or on behalf of Mortgagor or Borrower. Mortgagor agrees that if one of the Obligations is a line of credit, the lien created by this Mortgage shall continue until payment in full of all debt due under the line notwithstanding the fact that from time to time (but before termination of the line) no balance may be outstanding. At no time shall the lien of this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed \$ 110,000.00; and

(e) all amendments, extensions, renewals, modifications, replacements or substitutions to any of the foregoing.

As used in this Paragraph 1, the terms Mortgagor and Borrower shall include and also mean any Mortgagor or Borrower if more than one.

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

(a) Mortgagor has fee simple marketable title to the Property and 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, which Mortgagor agrees to pay and perform in a timely manner;

(b) Mortgagor is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to "Hazardous Materials", as defined herein, and other environmental matters (the "Environmental Laws"), and neither the federal government nor the state where the Property is located nor any other governmental or quasi governmental entity has filed a lien on the Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Mortgagor's knowledge, threatened, which involve the Property. Neither Mortgagor nor, to the best of Mortgagor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any 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; and (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 state or federal statute, rule, regulation or ordinance now or hereafter in effect. Mortgagor shall not lease or permit the sublease of the Property to a tenant or subtenant whose operations may result in contamination of the Property with Hazardous Materials or toxic substances;

(c) All applicable laws and regulations including, without limitation, the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. (and all regulations promulgated thereunder) and all zoning and building laws and regulations relating to the Property by virtue of any federal, state or municipal authority with jurisdiction over the Property, presently are and shall be observed and complied with in all material respects, and all rights, licenses, permits, and certificates of occupancy (including but not limited to zoning variances, special exceptions for nonconforming uses, and final inspection approvals), whether temporary or permanent, which are material to the use and occupancy of the Property, presently are and shall be obtained, preserved and, where necessary, renewed;

(d) 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;

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

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

**3. PRIOR MORTGAGES.** Mortgagee represents and warrants that there are no prior mortgages affecting any part of the Property except as set forth on Schedule B attached to this Mortgage which Mortgagee agrees to pay and perform in a timely manner. If there are any prior mortgages then Mortgagee agrees to pay all amounts owed, and perform all obligations required, under such mortgages and the indebtedness secured thereby and further agrees that a default under any prior mortgage shall be a default under this Mortgage and shall entitle Lender to all rights and remedies contained herein or in the Obligations to which Lender would be entitled in the event of any other default.

**4. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGORS OR BORROWERS.** In the event of a sale, conveyance, lease, contract for deed or transfer to any person of all or any part of the real property described in Schedule A, or any interest therein, or of all or any beneficial interest in Borrower or Mortgagee (if Borrower or Mortgagee is not a natural person or persons but is a corporation, limited liability company, partnership, trust, or other legal entity), Lender may, at its option, declare the outstanding principal balance of the Obligations plus accrued interest thereon immediately due and payable. At Lender's request, Mortgagee or Borrower, as the case may be, shall furnish a complete statement setting forth all of its stockholders, members or partners, as appropriate, and the extent of their respective ownership interests.

**5. ASSIGNMENT OF RENTS.** In consideration of the Obligations which are secured by this Mortgage, Mortgagee absolutely assigns to Lender all Mortgagee's estate, right, title, interest, claim and demand now owned or hereafter acquired in all existing and future leases of the Property (including extensions, renewals and subleases), all agreements for use and occupancy of the Property (all such leases and agreements whether written or oral, are hereafter referred to as the "Leases"), and all guarantees of leases' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, all proceeds payable as a result of a lessee's exercise of an option to purchase the Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind which Mortgagee may have against any lessee under the Leases or any occupants of the Property (all of the above are hereafter collectively referred to as the "Rents"). This assignment is subject to the right, power and authority given to the Lender to collect and apply the Rents. This assignment is recorded in accordance with applicable state law; the lien created by this assignment is intended to be specific, perfected, and choate upon the recording of this Mortgage, all as provided by applicable state law as amended from time to time. As long as there is no default under the Obligations or this Mortgage, Lender grants Mortgagee a revocable license to collect all Rents from the Leases when due and to use such proceeds in Mortgagee's business operations. However, Lender may at any time require Mortgagee to deposit all Rents into an account maintained by Mortgagee or Lender at Lender's institution. Upon default in the payment of, or in the performance of, any of the Obligations, Lender may at its option take possession of the Property and have, hold, manage, lease and operate the Property on terms and for a period of time that Lender deems proper. Lender may proceed to collect and receive all Rents, from the property, and Lender shall have full power to periodically make alterations, renovations, repairs or replacements to the Property as Lender may deem proper. Lender may apply all Rents in Lender's sole discretion, to payment of the Obligations, or to the payment of the cost of such alterations, renovations, repairs and replacements and any expenses incident to taking and retaining possession of the Property and the management and operation of the Property. Lender may keep the Property properly insured and may discharge any taxes, charges, claims, assessments and other liens which may accrue. The expense and cost of these actions may be paid from the Rents received, and any unpaid amounts shall be added to the principal of the Obligations. These amounts, together with other costs, shall become part of the Obligations secured by this Mortgage.

**6. LEASES AND OTHER AGREEMENTS.** Mortgagee shall not take or fail to take any action which may cause or permit the termination or the withholding of any payment in connection with any Lease pertaining to the Property. In addition, Mortgagee, without Lender's prior written consent, shall not: (a) collect any monies payable under any Lease more than one month in advance; (b) modify any Lease; (c) assign or allow a lien, security interest or other encumbrance to be placed upon Mortgagee's rights, title and interest in and to any Lease or the amounts payable thereunder; or (d) terminate or cancel any Lease except for the nonpayment of any sum or other material breach by the other party thereto. If Mortgagee receives at any time any written communication asserting a default by Mortgagee under a Lease or purporting to terminate or cancel any Lease, Mortgagee shall promptly forward a copy of such communication (and any subsequent communications relating thereto) to Lender. All such Leases and the amounts due to Mortgagee thereunder are hereby assigned to Lender as additional security for the Obligations.

**7. COLLECTION OF INDEBTEDNESS FROM THIRD PARTY.** Lender shall be entitled to notify or require Mortgagee to notify any third party (including, but not limited to, lessees, licensees, governmental authorities and insurance companies) to pay Lender any indebtedness or obligation owing to Mortgagee with respect to the Property (cumulatively "indebtedness") whether or not a default exists under this Mortgage. Mortgagee shall diligently collect the indebtedness owing to Mortgagee from these third parties until the giving of such notification. In the event that Mortgagee possesses or receives possession of any instruments or other remittances with respect to the indebtedness following the giving of such notification or if the instruments or other remittances constitute the prepayment of any indebtedness or the payment of or contribution to the instruments and other remittances to Lender, and immediately provide Lender with possession of the instruments and other remittances, Lender shall be entitled, but not required, to collect (by legal proceedings or otherwise), extend the time for payment, compromise, exchange or release any obligation, or collateral, or other security, to the extent of the indebtedness whether or not an Event of Default exists under this Mortgage. Lender shall not be liable to Mortgagee for any action, error, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom.

**8. USE AND MAINTENANCE OF PROPERTY.** Mortgagee shall take all actions and make any repairs needed to maintain the Property in good condition. Mortgagee shall not commit or permit any waste to be committed with respect to the Property. Mortgagee shall use the Property solely in compliance with applicable law and insurance policies. Mortgagee shall not make any alterations, additions or improvements to the Property without the beneficial interest belonging to Lender, shall not be removed without Lender's prior written consent, and shall be made at Mortgagee's sole expense.

**9. LOSS OR DAMAGE.** Mortgagee shall bear the entire risk of any loss, theft, destruction or damage (cumulatively "Loss or Damage") to the Property or any portion thereof from any cause whatsoever. In the event of any Loss or Damage, Mortgagee shall, at the option of Lender, repair the affected Property to its previous condition or pay or cause to be paid to Lender the decrease in the fair market value of the affected Property.


**10. INSURANCE.** The Property will be kept insured for its full insurable value (replacement cost) against all hazards including loss or damage caused by flood, earthquake, tornado and fire, theft or other casualty to the extent required by Lender. Mortgagee may obtain insurance on the Property from such companies as are acceptable to Lender in its sole discretion. The insurance policies shall require the insurance company to provide Lender with at least 30 days' written notice before such policies are altered or cancelled in any manner. The insurance policies shall name Lender as a loss payee and provide that no act or omission of Mortgagee or any other person shall affect the right of Lender to be paid the insurance proceeds pertaining to the loss or damage of the Property. In the event Mortgagee fails to acquire or maintain insurance, Lender (after providing notice as may be required by law) may in its discretion procure appropriate insurance coverage upon the Property and the insurance cost shall be an advance payable and bearing interest as described in Paragraph 21 and secured hereby. Mortgagee shall furnish Lender with evidence of insurance indicating the required coverage. Lender may act as attorney-in-fact for Mortgagee in making and settling claims under insurance policies, cancelling any policy or endorsing Mortgagee's name on any draft or negotiable instrument drawn by any insurer. All such insurance policies shall be immediately assigned, pledged and delivered to Lender as further security for the Obligations. In the event of loss, Mortgagee shall give Lender written notice and Lender is authorized to make proof of loss. Each insurance company is directed to make payments directly to Lender instead of to Lender and Mortgagee. Lender shall have the right, at its sole option, to apply such monies toward the Obligations or toward the cost of rebuilding and restoring the Property. Any amount may at Lender's option be applied in the inverse order of the due dates thereof.

**11. ZONING AND PRIVATE COVENANTS.** Mortgagee shall not initiate or consent to any change in the zoning provisions or private covenants affecting the use of the Property without Lender's prior written consent. If Mortgagee's use of the Property is or becomes a nonconforming use under any zoning provision, Mortgagee shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Mortgagee will immediately provide Lender with written notice of any proposed changes to the zoning provisions or private covenants affecting the domain proceeding pertaining to the Property. All monies payable to Mortgagee from such condemnation or taking are hereby assigned to eminent domain proceeding. Mortgagee shall immediately provide Lender with written notice of any actual or threatened condemnation or eminent domain proceeding. Lender shall be applied first to the payment of Lender's attorneys' fees, legal expenses and other costs (including appraisal fees) in connection with the condemnation or eminent domain proceedings and then, at the option of Lender, to the payment of the Obligations or the restoration or repair of the Property.

**12. CONDEMNATION.** Mortgagee shall immediately provide Lender with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Property. All monies payable to Mortgagee from such condemnation or taking are hereby assigned to eminent domain proceeding. Lender shall be applied first to the payment of Lender's attorneys' fees, legal expenses and other costs (including appraisal fees) in connection with the condemnation or eminent domain proceedings and then, at the option of Lender, to the payment of the Obligations or the restoration or repair of the Property.

**13. LENDER'S RIGHT TO COMMENCE OR DEFEND LEGAL ACTIONS.** Mortgagee shall immediately provide Lender with written notice of any actual or threatened action, suit, or other proceeding affecting the Property. Mortgagee hereby appoints Lender as its attorney-in-fact to commence, intervene in, and defend such actions, suits, or other legal proceedings and to compromise or settle any claim or controversy pertaining thereto. Lender shall not be liable to Mortgagee for any action, error, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Nothing contained herein will prevent Lender from taking the actions described in this paragraph in its own name.

**14. INDEMNIFICATION.** Lender shall not assume or be responsible for the performance of any of Mortgagee's obligations with respect to the Property under any circumstances. Mortgagee 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), causes of action, actions, suits and other legal proceedings (cumulatively "Claims") pertaining to the Property (including, but not limited to, those involving Hazardous Materials). Mortgagee, upon the request of Lender, shall hire legal counsel to defend Lender from such Claims, and pay the attorneys' fees, legal expenses and other costs incurred in connection therewith. In the alternative, Lender shall be entitled to employ its own legal counsel to defend such Claims at Mortgagee's cost. Mortgagee's obligation to indemnify Lender under this paragraph shall survive the termination, release or foreclosure of this Mortgage.

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**15. TAXES AND ASSESSMENTS.** Mortgagor shall pay all taxes and assessments relating to the Property when due and immediately provide Lender evidence of payment of same. Upon the request of Lender, Mortgagor shall deposit with Lender each month one-twelfth (1/12) of the estimated annual insurance premium, taxes and assessments pertaining to the Property. So long as there is no default, these amounts shall be applied to the payment of taxes, assessments and insurance as required on the Property. In the event of default, Lender shall have the right, at its sole option, to apply the funds so held to pay any taxes or against the Obligations. Any funds applied may, at Lender's option, be applied in reverse order of the due date thereof.

**16. INSPECTION OF PROPERTY, BOOKS, RECORDS AND REPORTS.** Mortgagor shall allow Lender or its agents to examine and inspect the Property and examine, inspect and make copies of Mortgagor's books and records pertaining to the Property from time to time. Mortgagor shall provide any assistance required by Lender for these purposes. All of the signatures and information contained in Mortgagor's books and records shall be genuine, true, accurate and complete in all respects. Mortgagor shall note the existence of Lender's beneficial interest in its books and records pertaining to the Property. Additionally, Mortgagor shall report, in a form satisfactory to Lender, such information as Lender may request regarding Mortgagor's financial condition or the Property. The information shall be for such periods, shall reflect Mortgagor's records at such time, and shall be rendered with such frequency as Lender may designate. All information furnished by Mortgagor to Lender shall be true, accurate and complete in all respects, and signed by Mortgagor if Lender requests.

**17. ESTOPPEL CERTIFICATES.** Within ten (10) days after any request by Lender, Mortgagor shall deliver to Lender, or any intended transferee of Lender's rights with respect to the Obligations, a signed and acknowledged statement specifying: (a) the outstanding balance on the Obligations; and (b) whether Mortgagor possesses any claims, defenses, set-offs or counterclaims with respect to the Obligations and, if so, the nature of such claims, defenses, set-offs or counterclaims. Mortgagor will be conclusively bound by any representation that Lender may make to the intended transferee with respect to these matters in the event that Mortgagor fails to provide the requested statement in a timely manner.

**18. EVENTS OF DEFAULT.** An Event of Default will occur under this Mortgage in the event that Mortgagor, Borrower or any guarantor of the 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 agreement;
- (c) destroys, loses or damages the Property in any material respect or subjects the Property to seizure, confiscation, or condemnation;
- (d) seeks to revoke, terminate or otherwise limit its liability under any guaranty to Lender or any individual guarantor dies;
- (e) dies, becomes legally incompetent, is dissolved or terminated, becomes insolvent, makes an assignment for the benefit of creditors, fails to pay debts as they become due, files a petition under the federal bankruptcy laws, has an involuntary petition in bankruptcy filed in which Mortgagor, Borrower or any guarantor is named, or has property taken under any writ or process of court;
- (f) allows goods to be used, transported or stored on the Property, the possession, transportation, or use of which, is illegal;
- (g) allows any party other than Mortgagor or Borrower to assume or undertake any Obligation without the written consent of Lender; or
- (h) causes Lender to deem itself insecure due to a significant decline in the value of the Property; or if Lender, in good faith, believes for any reason that the prospect of payment or performance is impaired.

**19. RIGHTS OF LENDER ON EVENT OF DEFAULT.** Upon the occurrence of an Event of 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, such acceleration shall be automatic and immediate if the Event of Default is a filing under the Bankruptcy Code;
- (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 or Chattels constituting the Property at a place reasonably convenient to Mortgagor and Lender;
- (d) to enter upon and take possession of the Property without applying for or obtaining the appointment of a receiver and, at Lender's option, to appoint a receiver without bond, without first bringing suit on the Obligations and without otherwise meeting any statutory conditions regarding receivers, it being intended that Lender shall have this contractual right to appoint a receiver;
- (e) to employ a managing agent of the Property and let the same, in the name of Lender or in the name of Mortgagor, and receive the rents, incomes, issues and profits of the Property and apply the same, after payment of all necessary charges and expenses, on account of the Obligations;
- (f) to pay any sums in any form or manner deemed expedient by Lender to protect the security of this Mortgage or to cure any default other than payment of interest or principal on the Obligations;
- (g) to foreclose this Mortgage;
- (h) to set-off Mortgagor's Obligations against any amounts owed Mortgagor by Lender including, but not limited to, monies, instruments, and deposit accounts maintained with Lender or any currently existing or future affiliate of 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. Lender or Lender's designee may purchase the Property at any sale. The Property or any part thereof may be sold in one parcel, or in such parcels, manner or order as Lender in its sole discretion may elect, and one or more exercises of the power herein granted shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations are paid in full.

**20. SECURITY INTEREST UNDER THE UNIFORM COMMERCIAL CODE.** This Mortgage shall be considered a financing statement and a fixture filing pursuant to the provisions of the Uniform Commercial Code (as adopted by the state where the Property is located) covering fixtures, chattels, and articles of personal property now owned or hereafter attached to or to be used in connection with the Property together with any and all replacements thereof and additions thereto (the "Chattels"), and Mortgagor hereby grants Lender a security interest in such Chattels. The debtor is the Mortgagor described above. The secured party is the Lender described above. Upon demand, Mortgagor shall make, execute and deliver such 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 Mortgagor's failure to do so, Lender is authorized to sign any such agreement as the agent of Mortgagor. Mortgagor 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, without the signature of Mortgagor. Mortgagor will, however, at any time upon request of Lender, sign such financing statements. Mortgagor will pay all filing fees for the filing of such financing statements and for the re-filing thereof at the times required, in the opinion of Lender, by said Uniform Commercial Code. If the lien of this Mortgage is subject to any security agreement covering the Chattels, then in the event of any default under this Mortgage, all the right, title and interest of Mortgagor in and to any and all of the Chattels is hereby assigned to Lender, together with the benefit of any deposits or payments now or hereafter made thereof by Mortgagor or the predecessors or successors in title of Mortgagor in the Property.

**21. REIMBURSEMENT OF AMOUNTS EXPENDED BY LENDER.** Lender, at Lender's option, may expend funds (including attorneys' fees and legal expenses) to perform any act required to be taken by Mortgagor or to exercise any right or remedy of Lender under this Mortgage. Upon demand, Mortgagor shall immediately reimburse Lender for all such amounts expended by Lender 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 beneficial interest granted herein. If the Obligations are paid after the beginning of publication of notice of sale, as herein provided, or in the event Lender shall, at its sole option, permit Mortgagor to pay any part of the Obligations after the beginning of publication of notice of sale, as herein provided, then, Mortgagor shall pay on demand all expenses incurred by the Lender in connection with said publication, including reasonable attorneys' fees to the attorneys for the Lender, and this Mortgage shall be security for all such expenses and fees.

**22. 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.

**23. POWER OF ATTORNEY.** Mortgagor hereby appoints Lender as its attorney-in-fact to endorse Mortgagor's name on all instruments and other documents pertaining to the Obligations or the Mortgage. 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. All powers of attorney described in this Mortgage are coupled with an interest and are irrevocable.

**24. 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.

**25. COLLECTION COSTS.** To the extent permitted by law, Mortgagor agrees to pay 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 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 post-judgment collection actions.

**26. 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. Nothing herein shall be deemed to obligate Lender to release any of its interest in the Property (except as required under Paragraph 34), nor shall Lender be obligated to release any part of the Property if Mortgagor is in default under this Mortgage.

**27. 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 Borrower's or Mortgagor's Obligations, delay or fail to exercise any of its rights or accept payments from Mortgagor or anyone other than Mortgagor 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, Borrower or third party or any of its rights against any Mortgagor, Borrower or third party or any of the Property. Lender's failure to insist upon strict performance of any of the Obligations shall not be deemed a waiver, and Lender shall have the right at any time thereafter to insist upon strict performance.

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

*John L. Jacobs*  
MORTGAGOR: JOHN L. JACOBS

*Sherry L. Jacobs*  
MORTGAGOR: SHERRY L. JACOBS

Dated this 3rd day of July, 1999

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

**39. ADDITIONAL TERMS:**

- 38. JURY TRIAL WAIVER, LENDER AND MORTGAGOR HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS 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 Mortgagor in this Mortgage shall include all persons signing below. If there is more than one Mortgagor, their Obligations shall be joint and several. This Mortgage represents the complete integrated understanding between Mortgagor and Lender pertaining to the terms and conditions hereof.
- 36. WAIVER OF HOMESTEAD.** Mortgagor hereby waives all homestead exemptions in the Property to which Mortgagor would otherwise be entitled under any applicable law.
- 35. CONSTRUCTION LOAN.**  This Mortgage is a construction mortgage under the Uniform Commercial Code to secure an obligation incurred for the construction of an improvement on land, including the acquisition costs of land. This Mortgage secures a construction loan, and it will be subject to the terms of a construction loan agreement between Mortgagor and Lender. Any materials, equipment or supplies used or intended for use in the construction, development, or operation of the Property, whether stored on or off the Property, shall also be subject to the lien of this Mortgage.
- 34. DEFEASANCE.** Upon the payment and performance in full of all of the Obligations, Lender will execute and deliver to Mortgagor those documents that may be required to release this Mortgage of record. Mortgagor shall be responsible to pay any costs of recordation.
- 33. PRESERVATION OF LIABILITY AND PRIORITY.** Without affecting the liability of Borrower, Mortgagor, 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 in 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.
- 32. NO THIRD-PARTY RIGHTS.** No person is or shall be a third-party beneficiary of any provision of the Mortgage. All provisions of the Mortgage in favor of Lender are intended solely for the benefit of Lender, and no third party shall be entitled to assume or expect that Lender will waive or consent to the modification of any provision of the Mortgage, in Lender's sole discretion.
- 31. APPLICABLE LAW.** This Mortgage shall be governed by the laws of the state where the Property is located. Unless applicable law provides otherwise, Mortgagor consents to the jurisdiction and venue of any court selected by Lender, in its sole discretion, located in that state.
- 30. SEVERABILITY.** Whenever possible, each provision of this Mortgage shall be interpreted so as to be effective and valid under applicable state law. If any provision of this Mortgage violates the law or is unenforceable, the rest of this Mortgage shall continue to be valid and enforceable.
- 29. NOTICES.** Except as otherwise required by law, 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. Any such notice so given and sent by first class mail, postage prepaid, shall be deemed given the earlier of three (3) days after such notice is sent or when received by the person to whom such notice is being given.
- 28. 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.

STATE OF IOWA )  
COUNTY OF WARREN )

SS:

On this 3<sup>rd</sup> day of JULY, 1999, before me, the undersigned, a Notary Public in and for said county and state, personally appeared JOHN L JACOBS & SAGARY L JACOBS

to me personally known to be the identical person 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.



*[Signature]*

\_\_\_\_\_, Notary Public  
in and for said County and State

**SCHEDULE A**

The following described real property located in the County of MADISON, State of Iowa:

That part of the Southwest Quarter (1/4) of Section Thirty (30), Township Seventy-seven (77) North, Range Twenty-eight (28) West of the Fifth Principal Meridian, Madison County, Iowa, described as follows: Commencing at the southwest corner of said Section Thirty (30); thence on an assumed bearing of North 00°01'27" West along the west line of said Southwest Quarter (1/4) 460.10 feet to the point of beginning; thence continuing North 00°01'27" West along said west line 876.79 feet; thence South 88°13'03" East 438.63 feet; thence South 00°38'51" East 608.80 feet; thence South 86°18'31" East 46.91 feet; thence South 00°50'13" East 190.32 feet; thence South 89°15'22" West 184.88 feet; thence South 10°48'24" West 65.65 feet; thence South 88°52'44" West 297.40 feet to the west line of said Southwest Quarter (1/4) and the point of beginning. Said tract contains 8.88 acres more or less and is subject to a Madison County Highway easement over the westerly 1.28 acres thereof and is subject to any encumbrances of record,



**SCHEDULE B**

THIS DOCUMENT WAS PREPARED BY: **Community State Bank**

AFTER RECORDING RETURN TO LENDER AT ITS ADDRESS DESCRIBED ABOVE.

*[Signature]*