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MTG RECORD 214 PAGE 813

COMPUTER ✓
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FILED NO. 000377
BOOK 210 PAGE 732
99 JUL 27 AM 10:31
MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

RETURN TO:
Commercial Federal Bank
Attn: Michele Ohnemus
5947 Ashworth Road
West Des Moines, IA 50266

REC \$ 55.00
AUD \$
R.M.F. \$ 7.00

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

CONSTRUCTION DEED OF TRUST - IOWA
(Due on Transfer - Creditworthy Restriction)

This Instrument is a Construction Mortgage as defined in the Iowa Code that secures a loan and advances made thereunder to directly finance work or improvements upon the herein described real property.

Loan No. 250249

THIS DEED OF TRUST is made this 21st day of July 1999, between Morton E. Machir, Jr. and Monica L. Machir, Husband and Wife (collectively "Borrower"), whose address is 544 Marlou Parkway, Des Moines, Iowa 50320 and Commercial Federal Bank, a Federal Savings Bank ("Lender"), whose address is 5947 Ashworth Road, West Des Moines, Iowa 50266. Borrower and Lender covenant and agree as follows:

1. Property in Trust. Borrower, in consideration of the indebtedness herein recited, hereby grants, mortgages, warrants and conveys unto Lender its successors and assigns, the following described property located in the County of Madison, State of Iowa:

See Attached Exhibit "A"

which has the address of 1814 Quarry Trail, Winterset, Iowa 50273 (Property Address), together with all its appurtenances ("Property"). The Property shall include, in addition to the described land, the following:

- (a) All buildings, structures and improvements now or hereafter located thereon, as well as all rights of way, easements and other appurtenances thereto;
- (b) All of Borrower's right, title and interest in any land lying between the boundaries of said land and the center line of any adjacent street, road, avenue or alley, whether opened or proposed;
- (c) All water, ditch, well and reservoir rights which are appurtenant to or which have been used in connection with said land and all taps and tap fees, including without limitation, water and sewer taps and tap fees;
- (d) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above such land;
- (e) All machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached, and including all trade, domestic and ornamental fixtures) now or hereafter located in, upon or under said land or improvements and used or usable in connection with any present or future construction upon or operation thereof, including but not limited to all heating, air-conditioning, freezing, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, cooking, and communications apparatus, boilers, water heaters, ranges, furnaces and burners, appliances, vacuum cleaning systems, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, refrigerators, attached cabinets, partitions, ducts and compressors, rugs and carpets, draperies, and all additions thereto and replacements therefor;
- (f) All development rights associated with such land, whether previously or subsequently transferred to such land from other real property or now or hereafter susceptible to transfer from such land to other real property;
- (g) All awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any of such Property;
- (h) All building materials and equipment now or hereafter delivered to and intended to be installed in or on the Property, all plans and specifications for the improvements to the Property, and all of

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Borrower's rights (but not its obligations) under any contracts relating to the Property, the planned or existing improvements thereon or the Chattels and Intangible Personality;

(i) All permits, licenses and other rights and privileges obtained in connection with the Property, the improvements thereon or the Chattels and Intangible Personality; and

(j) Other or greater rights and interests of every nature in said Property and in the possession or use thereof and income and proceeds therefrom, whether now owned or subsequently acquired by Borrower.

(k) "Chattels" as used herein shall mean: all goods, fixtures, building and other materials, supplies and other tangible personal property of every nature now owned or hereafter acquired by Borrower and used, intended for use or usable in the construction, development or operation of the Property, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof.

(l) "Intangible Personality" as used herein shall mean: the right to use the trademark or trade name "N/A" and symbols or logos used in connection therewith, or any modifications or variations thereof, in connection with the sale, marketing, identification or operation of the improvements existing or to be constituted on the Property, together with all other accounts and general intangibles (whether now owned or hereafter acquired, and including proceeds thereof) relating to or arising from Borrower's ownership, use, operation, leasing or sale of all or any part of the Property, specifically including but in no way limited to any right which Borrower may have or acquire to transfer any development rights from the Property to other real property, and any development rights which may be so transfused.

2. Note; Other Obligations Secured. This Mortgage is given to secure to Lender:

(a) The repayment of the indebtedness evidenced by Borrower's Promissory Note and Construction Loan Agreement ("Note") dated July 21, 1999, in the principal sum of One Hundred Twenty-eight Thousand Dollars, (\$128,000.00) with interest on the unpaid principal balance from July 21, 1999, until paid, at the initial rate of Nine percent (9.000%) per annum, with principal and interest payable at Commercial Federal Bank, a Federal Savings Bank, 5947 Ashworth Road, West Des Moines, Iowa 50266 (or such other place as the Lender may designate), in accordance with the terms of the Note beginning August 1, 1999; such payments to continue until the entire indebtedness evidenced by said Note is fully paid; however, if not sooner paid, the entire principal amount outstanding and accrued interest thereon, shall be due and payable on August 1, 2000, and Borrower is to pay to Lender a late charge of 5.0% of any payment not received by the Lender within 25 days after payment is due; and Borrower has the right to prepay the principal amount outstanding under said Note, in whole or in part, at any time without penalty except: NONE

Notice: This Mortgage secures credit in the amount set forth above. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently filed or recorded mortgages and liens.

(b) The payment of all other sums with interest thereon in accordance with the Note disbursed by Lender and in accordance with this Mortgage to protect the security of the Mortgage, including any amendments, extensions or modifications to the Note and this Mortgage. This Mortgage also secures all future advances made on request of Borrower and granted at Lender's option prior to release of this Mortgage, plus interest; this Mortgage secures all other sums, with interest, advanced under the Note and this Mortgage to protect Lender's security in the property and any and all other charges and advances as may be due and payable to Lender under the Note and Mortgage.

(c) The performance of the covenants and agreements of Borrower contained herein and in the Note.

(d) The performance of all other covenants and agreements of Borrower under the terms of any other loan from Lender to Borrower.

3. Title/Due Authorization. Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date and except: NONE If Borrower is other than a natural person, then each individual who executes this document on behalf of Borrower represents and warrants to Lender that such execution has been duly authorized by all necessary corporate, partnership or other action on the part of Borrower.

4. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all the Borrower's other covenants contained in the Note.

5. Application of Payments. All payments received by Lender under the terms hereof shall be applied by Lender first in payment of amount due as escrow funds for taxes and insurance, then to amounts disbursed by Lender to protect Lender's security, and the balance in accordance with the terms and conditions of the Note.

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6. Prior Mortgages and Liens; Charges; Mechanic's Liens. Borrower shall perform all of Borrower's obligations under any prior mortgage and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Mortgage, and leasehold payments or ground rents, if any, in the manner set out in this instrument or, if not required to be paid in such manner, by Borrower making payment when due, directly to the payee thereof. Borrower will keep the Property free and clear of all liens and claims of liens by contractors, subcontractors, mechanics, laborers, materialmen and other such persons, and will cause any recorded statement of any such lien to be released of record within 30 days after the recording thereof; or at Lender's option, Lender may require Borrower to post a bond in accordance with applicable law. Notwithstanding the preceding sentence, however, Borrower will not be deemed to be in default under this section if and so long as Borrower:

- (a) Contests in good faith the validity or amount of any asserted lien and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, and
- (b) Provides Lender with such security as Lender may require (including without limitation a cash deposit with Lender or an escrow agent of Lender's choosing in the amount of at least 150% of the asserted lien amount) to protect Lender against all loss, damage and expense, including attorneys' fees, which Lender might incur if the asserted lien is determined to be valid.

7. Defense of Actions. Borrower will defend, at Borrower's expense and with counsel selected by Lender, any action, proceeding or claim which affects any property encumbered hereby or any interest of Lender in such Property or in the secured obligations, and will indemnify and hold Lender harmless from all loss, damage, cost or expense, including attorneys' fees, which Lender may incur in connection therewith.

8. Expense of Enforcement. Borrower will pay all costs and expenses, including attorney's fees, which Lender may incur in connection with any effort or action (whether or not litigation or foreclosure is involved) to enforce or defend Lender's rights and remedies under any Note, this Mortgage, any Loan Agreement given in connection with the Note and any and all other related documents pertaining to the debt secured by this Mortgage (collectively the "Loan Documents"), including but not limited to all attorney's fees and other expenses incurred by Lender in securing title to or possession of, and realizing upon, any security for the secured obligations.

9. Property Insurance. Borrower shall keep the improvements now existing or hereafter created on the Property insured against loss by fire or hazards included within the term "extended coverage" in such amount as may be required by Lender, but in any event in an amount at least sufficient to pay the sums secured by this Mortgage as well as any prior encumbrances on the Property. All of the foregoing shall be known as "Property Insurance".

The insurance carrier providing the insurance shall be qualified to write Property Insurance in Iowa and shall be chosen by Borrower subject to Lender's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to Lender at or before closing. Lender shall have the right to hold the policies and renewals thereof.

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.

Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with this instrument by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

Any such application of proceeds to principal shall not extend or postpone the due date of the installment payments under the Note or hereunder or change the amount of such installments. Notwithstanding anything herein to the contrary, if by exercise of Lender's remedies the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

Borrower shall also carry and keep in full force and effect other insurance in such types and amounts as may be reasonably required by Lender from time to time, including, but not limited to Builder's Risk and Worker's Compensation insurance.

10. Preservation and Maintenance of Property. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property or the Chattels; nor will Borrower cause or permit any part of the Property, including but not limited to any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement, to be removed, demolished or materially altered without the prior written consent of Lender. Borrower shall comply with the provisions of any lease if the Mortgage is on a leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

11. Zoning and Private Covenants. Borrower will not initiate, join in or consent to any change in any zoning ordinance or classification, any change in the "zone lot" or "zone lots" (or similar zoning unit or units) presently comprising the Property, any transfer of development limiting or defining the uses which may be made of the Property or any change in any other public or private restriction limiting or defining the uses which may be made of the Property or any part thereof, without the express written consent of Lender. If under applicable zoning provisions the use of all or any part of the Property is or becomes a nonconforming use, Borrower will not cause or permit such use to be discontinued or abandoned without the express written consent of Lender.

12. Further Encumbrance of Property and Chattels. Borrower will neither create nor permit any junior lien or encumbrance against the Property or the Chattels, other than with the prior written consent of Lender, which may be withheld or conditioned in the sole discretion of Lender.

13. Use of Proceeds. Borrower will not use any funds advanced by Lender under the Loan Documents for any purpose other than (a) payment of the cost of labor, services, materials, and equipment used in the construction of improvements on the Property, and (b) such related purposes as may be or have been approved by Lender in writing.

14. Protection of Lender's Security/Performance of Defaulted Obligations. Except when Borrower has exercised Borrower's rights under paragraph 6 above, if the Borrower fails to perform the covenants and agreements contained in this Mortgage, or if a default occurs under the terms of a prior lien, or if a mechanic's or construction lien is filed against the Property, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, 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. Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance. Borrower hereby irrevocably appoints Lender as the true and lawful attorney-in-fact for Borrower to make any such payment and perform any such obligation in the name of Borrower.

Any amounts disbursed by Lender (including attorney fees) pursuant to this paragraph, with interest thereon at the default rate of interest set forth in the Note from the date paid, shall become additional indebtedness of Borrower secured by the Mortgage. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest at the rate set forth in the Note. Nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder. In lieu of advancing Lender's own funds for such purposes, Lender may use any funds of Borrower which may be in Lender's possession.

15. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property.

16. Condemnation. 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, for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such proceeds are subject to the rights of any holder of a prior mortgage.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by the Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be paid to Lender and Borrower, in the same ratio as the amount of the sums secured by this Mortgage, immediately prior to the date of taking, bears to Borrower's equity in the Property immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Mortgage and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

Any such application of proceeds to principal shall not extend or postpone the due date of the installment payments under the Note or hereunder, nor change the amount of such installments.

17. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Mortgage, Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by the Mortgage by reason of any demand made by the original Borrower nor Borrower's successors in interest.

18. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

19. Further Assurances; Estoppel Certificates. Borrower will execute and deliver to Lender upon demand, and pay the costs of preparation and recording thereof, any further documents which Lender may request to confirm or perfect the liens and security interests created or intended to be created hereby, or to confirm or perfect any evidence

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of the secured obligations. Borrower will also, within 10 days after any request by Lender, deliver to Lender a signed and acknowledged statement certifying to Lender, or to any proposed transferee of the secured obligations:

- (a) The balance of principal, interest, and other sums then outstanding under the Note, and
- (b) Whether Borrower claims to have any offsets or defenses with respect to the secured obligations and, if so, the nature of such offsets or defenses.

20. Remedies Cumulative. Each remedy provided in the Note and this Mortgage is distinct from and cumulative to all other rights or remedies under the Note and this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

21. Successors and Assigns Bound, Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to any restrictions hereunder on transfers of the Property. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in the Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

22. Notice. Except for any notice required by law to be given in another manner:

- (a) Any notice to Borrower provided for in this Mortgage shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class U.S. mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and
- (b) Any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender or (2) mailing such notice by first-class U.S. mail, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in the Mortgage shall be deemed to have been given to Borrower or Lender when given in any manner designated herein.

23. Governing Law; Severability. The Note and this Mortgage shall be governed by federal law, and to the extent applicable, the laws of Iowa. In the event that any provision or clause of this Mortgage or the Note conflicts with the law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and Note are declared to be severable.

24. Enforcement of Security Interests. This Mortgage shall be a security agreement between Borrower as the debtor and Lender as the secured party, covering the Chattels and Intangible Personality or fixtures governed by the Iowa Uniform Commercial Code (hereinafter called the "Code"), and Borrower grants to Lender a security interest in such assets. Lender may exercise all rights of a secured party under the Code with respect to the Chattels and the Intangible Personality, including but not limited to taking possession of, holding and selling the Chattels and enforcing or otherwise realizing upon any accounts and general intangibles. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Lender's giving of such notice to Borrower at least five days prior to the time of any public sale or the time after which any private sale or other intended disposition is to be made.

25. Misrepresentation or Breach of Warranty. There shall be an event of default upon Lender's determination that any statement or warranty contained in any of the Loan Documents is untrue or misleading in any material respect, or if there is any event of default under any other Loan Document beyond an applicable grace period (if any).

26. Assertion of Priority. There shall be an event of default upon the assertion (except by the owner of any encumbrance expressly excepted from Borrower's warranty of title herein) of any claim of priority over this Mortgage, by title, lien or otherwise, unless Borrower within 30 days after such assertion either causes the assertion to be withdrawn or provides Lender with such security or takes such other action pursuant to the terms hereof as Lender may require to protect Lender against all loss, damage, or expense, including attorney's fees, which Lender may incur in the event such assertion is upheld.

27. Dissolution, Insolvency, or Bankruptcy. There shall be an event of default upon the dissolution, termination or liquidation of Borrower or of any other person or entity directly liable for the secured obligations, or the making by any such person of any assignment for the benefit of creditors, or the appointment of a receiver, liquidator or trustee of the Property of any such person, or the filing of any petition for the bankruptcy, reorganization or arrangement of any such person pursuant to the United States Bankruptcy Code or any similar state or federal statute, or the adjudication of any such person as bankrupt or insolvent.

28. Acceleration; Foreclosure; Other Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, or the Note, or any other loan, note or other obligation of Borrower to Lender, or upon any default in a prior lien upon the Property (unless Borrower has exercised Borrower's rights under paragraph 6 above), at Lender's option, and following the expiration of any grace period as provided in the Note, all of the sums secured by this Mortgage shall be immediately due and payable ("Acceleration") and Lender may invoke the remedies permitted by applicable law or provided herein or in the other Loan Documents, including but not limited to foreclosure of this Mortgage. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Mortgage, including, but not limited to reasonable attorney's fees and costs of title reports.

If Lender forecloses this Instrument, Lender shall initiate such court action and give Borrower such notices as are required by Iowa laws, as amended from time to time, and shall otherwise comply with the requirements of such laws in giving notices and selling the Property under foreclosure. At any sale conducted hereunder, it shall not be necessary for Lender to have physical or constructive possession of the Property. In the event of sale, Borrower, its successors and assigns shall immediately upon the making of the sale, to the extent not prohibited by applicable law, surrender and deliver possession of the Property to the purchaser as such sale. In the event of Borrower's failure to do so, it shall thereupon from and after the date of such sale be deemed by purchaser, at its option, a trespasser or tenant at will on such Property. Purchaser, at its option, shall then be entitled to institute and maintain an action for eviction or forcible detainer of such Property, or any part thereof, is situated.

If the Property is less than ten (10) acres in size and Lender waives in any foreclosure proceeding any right to a deficiency judgment against Borrower, the period of redemption shall be reduced to six (6) months as provided in Section 628.26 of the Code of Iowa. If the court finds that the Property has been abandoned by Borrower and by those persons personally liable under this instrument at the time of the foreclosure, and if Lender waives its right to a deficiency judgment, the period of redemption shall be reduced to sixty (60) days, as provided in Section 628.27 of the Code of Iowa. Nothing in this paragraph shall constitute a waiver of or render inapplicable other provisions of the Code of Iowa which grants rights to Lender, including any applicable shorter redemption periods in Section 628.28, the alternative non-judicial voluntary foreclosure procedure of Section 654.18, and the non-judicial foreclosure procedure of Chapter 655A.

29. Borrower's Right to Cure Default. Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure plus all costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Mortgage and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

30. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents, issues, profits and income (hereinafter collectively "Rents") of the Property; however, Borrower shall, prior to Acceleration or abandonment of the Property, have the right to collect and retain such Rents as they become due and payable.

Lender shall be entitled to the appointment of a receiver for the Property after Acceleration, and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any Court of competent jurisdiction upon ex parte application and without notice - notice being hereby expressly waived.

Upon Acceleration or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the Rents of the Property including those past due. All Rents collected by Lender or the receiver shall be applied first to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those Rents actually received.

31. Release. Upon payment of all sums secured by the Mortgage, Lender shall cause this Mortgage to be released and shall produce for Borrower the Note. Borrower shall pay all costs of recordation.

32. Waivers. Borrower hereby expressly waives and releases all rights of redemption in the event of foreclosure, and all right of homestead and any statutory exemption in the Property under state or federal law presently existing or hereafter enacted. Borrower further waives all rights of appraisal of the Property and relinquishes all rights of curtesy, dower and distributive share in the Property.

33. Escrow Funds for Taxes and Insurance. This paragraph is not applicable if funds as defined below are being paid pursuant to a prior encumbrance. At Lender's option, subject to applicable law, Borrower shall pay to Lender on each day installments of principal and interest are payable under the Note, until the note is paid in full, a sum (herein referred to as "Funds") equal to N/A of the yearly taxes and assessments which may attain priority over this Mortgage, plus N/A of yearly premium installments for Property Insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof, taking into account any excess Funds not used or shortages.

The principal of the Funds shall be held in a separate account by the Lender in trust for the benefit of the Borrower and deposited in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency. Lender shall apply the Funds to pay said taxes, assessments and insurance premiums. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills. Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is given in accordance with this instrument by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Mortgage, Lender shall simultaneously refund to Borrower any Funds held by Lender. If under exercise of Lender's default remedies, the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property on its acquisition by Lender, whichever occurs first, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

34. Transfer of the Property; Assumption. The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of one (1) year, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (i) the creation of a lien or encumbrance subordinate to this Mortgage, (ii) the creation of a purchase money security interest for household appliances, or (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every Transfer:

- (a) Borrower shall, upon Lender's request, submit information required to enable Lender to evaluate the credit-worthiness of the person ("Transferee") who is, or is to be, the recipient of a Transfer, as if a new loan were being made to Transferee. If Transferee is reasonably determined by the Lender to be financially incapable of retiring the indebtedness according to its terms, based upon standards normally used by persons in the business of making loans on real estate in the same or similar circumstances, then all sums secured by the Mortgage, at Lender's option, may become immediately due and payable ("Acceleration").
- (b) If Lender exercises such option to accelerate, Lender shall give Borrower notice of Acceleration in accordance with this instrument. The notice shall inform Borrower of the right to assert in the foreclosure proceeding the nonexistence of default or any other defense of Borrower to Acceleration and sale. Such notice shall also provide a period of not less than 10 days from the date the notice is given within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any of Lender's remedies hereunder or under applicable law. Lender shall give notice of such Acceleration, within thirty (30) days after notice of any Transfer is given to Lender by Borrower or Transferee in accordance with this instrument. If Lender shall not give notice of such Acceleration within such thirty (30) days, then Lender will have no further right to such Acceleration.
- (c) If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Mortgage including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. The covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.
- (d) Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance by Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

35. No Implied Waivers. Lender shall not be deemed to have waived any provision of any Loan Document unless such waiver is in writing and is signed by Lender. Without limiting the generality of the preceding sentence, neither Lender's acceptance of any payment with knowledge of a default by Borrower, nor any failure by Lender to exercise any remedy following a default by Borrower, shall be deemed a waiver of such default, and no waiver by Lender of any particular default on the part of Borrower shall be deemed a waiver of any other default or of any similar default in the future.

36. No Third Party Rights. No person shall be a third party beneficiary of any provision of any of the Loan Documents. All provisions of the Loan Documents favoring Lender are intended solely for the benefit of Lender, and no third party shall be entitled to assume or expect that Lender will not waive or consent to modification of any such provision in Lender's sole discretion.

37. Preservation of Liability and Priority. Without affecting the liability of Borrower or of any other person (except a person expressly released in writing) for payment and performance of all of the secured obligations and without affecting the rights of Lender with respect to any security not expressly released in writing and without impairing in any way the priority of this Mortgage over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Lender may, either before or after the maturity of the Note and without notice or consent:

(a) Release any person liable for payment or performance of all or any part of the secured obligations;

(b) Exercise or refrain from exercising, or waive, any right or remedy which Lender may have under any of the Loan Documents;

(c) Accept additional security of any kind for any of the secured obligations; or

(d) Release or otherwise deal with any real or personal property securing the secured obligations.

Any person acquiring or recording evidence of any interest in the Property, the Chattels or the Intangible Personality shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Lender.

38. Subrogation of Lender. Lender shall be subrogated to the lien of any previous encumbrance discharged with funds advanced by Lender under the Loan Documents, regardless of whether such previous encumbrance has been released or record.

39. Hazardous Materials Warranty, Representations and Indemnification.

(a) Definitions. For the purpose of this Mortgage, Borrower and Lender agree that unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(1) "Governmental Authority" shall mean the United States, the state, the county, the city or any other political subdivision in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Borrower or the Property.

(2) "Governmental Requirements" shall mean all laws, ordinances, rules and regulations of any Governmental Authority applicable to Borrower or the Property.

(3) "Hazardous Materials" shall mean (i) "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. 6901, et seq.), as amended from time to time and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. 9601, et seq.), ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) underground storage tanks, whether empty, filled or partially filled with any substance; (vi) any substance the presence of which on the Property is prohibited by any Governmental Requirements; and (vii) any other substance which by any Governmental Requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment or disposal.

(4) "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Property.

(b) Borrower's Warranties. Borrower hereby represents and warrants that:

(1) No Hazardous Materials are now located on the Property, and neither Borrower nor to Borrower's knowledge, has any other person ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under or at the Property or any part thereof;

(2) No part of the Property is being used or, to the knowledge of the Borrower, has been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Materials, nor is any part of the Property affected by any Hazardous Materials Contamination;

(3) To the best of the Borrower's knowledge and belief, no property adjoining the Property is being used, or has ever been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Materials nor is any other property adjoining the Property affected by Hazardous Materials Contamination;

(4) No investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Property. The Property is not currently on, and to Borrower's knowledge, after diligent investigation and inquiry, has never been on, any federal or state "Superfund" or "Superfund" list;

(5) Neither Borrower nor any person in possession of any portion of the Property has received any notice from any Governmental Authority with respect to any violation of any Governmental Requirements;

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- (6) The use which Borrower makes and intends to make of the Property will not result in the disposal or release of any Hazardous Materials on, in or to the Property;
- (7) Borrower shall not cause any violation of any Governmental Requirements, nor permit any tenant of any portion of the Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Property.
- (c) Borrower's Covenants. Borrower shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove Hazardous Materials on, in, from or affecting any portion of the Property (i) in accordance with all Governmental Requirements, (ii) to the satisfaction of the Lender, and (iii) in accordance with the orders and directives of all Governmental Authorities.
Borrower agrees to (i) give notice to Lender immediately upon Borrower's acquiring knowledge of the presence of any Hazardous Materials on the Property or of any Hazardous Materials Contamination with a full description thereof; (ii) promptly comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Lender with satisfactory evidence of such compliance; and (iii) provide Lender, within thirty (30) days after demand by Lender, with a bond, letter of credit or similar financial assurance evidencing to Lender's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Property as a result thereof.
- (d) Site Assessments. Based upon information received by Lender which, in Lender's sole discretion, leads Lender to believe the same shall be necessary, Lender (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an event of default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any state, federal or local law, rule or regulation relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Borrower which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Borrower will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Lender shall make the results of such Site Assessments fully available to Borrower, which (prior to an event of default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Borrower upon demand of Lender and any such obligations shall be indebtedness secured by this Mortgage.
- (e) Indemnification. Regardless of whether any Site Assessments are conducted hereunder, Borrower shall defend, indemnify and hold harmless Lender from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, attorneys' fees and expenses, and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Mortgage) be paid, incurred or suffered by or asserted against Lender by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Property or the applicability of any Governmental Requirements relating to Hazardous Materials (including, without limitation, CERCLA or any federal, state or local so-called "Superfund" or "Superlien" laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Borrower or Lender. The representations, covenants, warranties and indemnification's contained in this paragraph shall survive the release of this Mortgage.
- (f) Lender's Right to Remove Hazardous Materials. Lender shall have the right but not the obligation, prior or subsequent to an event of default, without in any way limiting Lender's other rights and remedies under this Mortgage, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Property following receipt of any notice from any person or entity assessing the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Property or any party thereof which, if true, could result in an order, suit, imposition of a lien on the Property, or other action and/or which, in Lender's sole opinion, could jeopardize Lender's security under this Mortgage. All costs and expenses paid or incurred by Lender in the exercise of any such rights shall be indebtedness secured by this Mortgage and shall be payable by Borrower upon demand.



Jason D. Meredith
Notary Public

WITNESS MY HAND AND OFFICIAL SEAL.

THE FOREGOING INSTRUMENT was acknowledged before me on this 21st day of July, 1999 by:

STATE OF IOWA)
County of Polk)
ss.)

Morton E. Machir, Jr.
By: Morton E. Machir, Jr.
Monica L. Machir
By: Monica L. Machir

DATED: July 21, 1999

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.

Morton E. Machir, Jr.
By: Morton E. Machir, Jr.
Monica L. Machir
By: Monica L. Machir

DATED: July 21, 1999

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the day and year first above written.

44. Correction of Defects. Borrower, upon request of Lender, shall promptly correct any defect, error or omission that may be discovered by Lender in the content of this Mortgage or in the execution or acknowledgment hereof. In addition, Borrower shall do such further acts that may be deemed necessary by Lender or that Lender may reasonably request to carry out more effectively the purposes of this Mortgage, to subject any property to be intended to be encumbered hereby to the lien and security interest hereby, and to perfect and maintain the first lien and security interest hereof.

43. Time is of the Essence and Non-Waiver. Time is of the essence of this Mortgage. Acceptance by Lender of any sum secured hereby after its due date does not constitute a waiver by Lender of its right to require prompt payment when due of all other sums so secured or to declare default for failure to so timely pay.

42. Borrower's copy. Borrower acknowledges receipt of a copy of the Note and of this Mortgage on the Property.

41. Construction Mortgage. This Mortgage constitutes a "construction mortgage" as defined in Iowa Uniform Commercial Code and secures an obligation incurred for the construction of the improvements, including the acquisition cost of the land, and expressly covers all buildings and improvements now or hereafter erected or located on the Property.

40. Fixtures. Some of the items of the Property described herein are goods that are or are to become fixtures related to the land, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Property is situated. Information concerning the security interest created by this instrument may be obtained from Lender, as secured party, at the address of Lender stated above. The mailing address of the Borrower, as debtor, is as stated in this Mortgage.

Exhibit "A"

Parcel "A" which is the East Half (E 1/2) of the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4) of Section Fourteen (14), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa more particularly described as follows: Beginning at the North Quarter corner of Section Fourteen (14), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa; thence South $0^{\circ}19'37''$ West along the East line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section Fourteen (14), 1321.50 feet to the Southeast Corner of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section Fourteen (14); thence South $89^{\circ}37'31''$ West along the South line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section Fourteen (14), 658.43 feet; thence North $0^{\circ}27'13''$ East, 1329.85 feet to a point on the North line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section Fourteen (14); thence South $89^{\circ}38'52''$ East along the North line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section Fourteen (14), 655.44 feet to the Point of Beginning. Said parcel contains 19.992 acres, including 0.556 acres of county road right-of-way.



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