

# MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement encumbers both real and personal property and contains an after-acquired property clause and secures present and future Loans and Advances.

- If this box is checked, it also constitutes a Construction Mortgage Lien as defined in the Iowa Code.
- If this box is checked, NOTICE: this Mortgage secures credit in the amount of \$ 81,000.00 . . . Loans and Advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

This Mortgage and Security Agreement (the "Mortgage"), is made as of the 8th day of June 19 87, by and between . . . James C. Blair, Jr. and Sharon L. Blair, Husband and Wife

RELEASED 2-26-92 SEE

RECORD 196 PAGE 94 Iowa National Guard Credit Union (hereinafter called the "Mortgagor") and [redacted] of Des Moines, Iowa (hereinafter called the "Mortgagee").

### RECITALS

The Mortgagee has agreed to make a loan or loans (hereinafter called "Loans") to James C. Blair and Sharon L. Blair which Loan or Loans will be evidenced by an appropriate promissory note or notes, payable as provided therein, (hereinafter the "Notes", whether one or more in number). This Mortgage shall stand as security for such Notes, and for any and all future and additional advances made to the Mortgagor by Mortgagee all as hereinafter provided. Without limitation, this Mortgage and Security Agreement secures the following: Real estate . . . Lot 4 in Evans Rural estate plat 1. sec. 25 T. 77. R. 26 N. Locally known as RR 1 Cummins, Iowa

STATE OF IOWA, ss. Inst. No. 128 Filed for Record this 22 day of July 19 87 at 9:35 AM  
 MADISON COUNTY, Book 148 Page 518 Recording Fee 20.00 Mary E. Welty, Recorder, By *M. Welty*

Therefore, it is agreed as follows:

In consideration of the above premises and other good and valuable consideration in hand paid, and for the purpose of securing (a) the repayment of the Loans evidenced by the Notes, renewals, extensions and modifications thereof and any Notes issued in substitution therefor; (b) the payment of all other sums with interest thereon owed by Mortgagor to Mortgagee including, without limitation, such as may be advanced by Mortgagee in accordance with this Mortgage (the Loans evidenced by the Notes and all such other sums are hereinafter collectively referred to as the "Indebtedness"); and (c) the performance of all the covenants and agreements of Mortgagor herein contained, Mortgagor does hereby mortgage, grant, bargain, sell, assign, transfer and convey unto Mortgagee forever all the tracts or parcels of land (hereinafter called the "Land"), described in Exhibit A attached hereto and made a part hereof, together with (i) all of the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land; and (ii) all lighting, heating, ventilating, air conditioning, sprinkling and plumbing fixtures, water and power systems, engines and machinery, boilers, furnaces, oil burners, elevators and motors, communication systems, dynamos, transformers, electrical equipment and all other fixtures of every description located in or on, or used, or intended to be used in connection with the Land or any building now or hereafter located thereon; and (iii) all hereditaments, easements, appurtenances, riparian rights, rents, issues, profits, condemnation awards, mineral rights and water rights now or hereafter belonging or in any way pertaining to the Land or to any building now or hereafter located thereon and all the estates, rights and interests of Mortgagor in the Land; and (iv) all building materials, furniture, furnishings, maintenance equipment and all other personal property now or hereafter located in, on, or used or intended to be used in connection with the Land or any building now or hereafter located thereon; and all replacements and thereto (all of the foregoing, together with the Land, is hereinafter referred to as the "Mortgaged Property").

To have and to hold Mortgaged Property unto Mortgagee forever; provided, nevertheless, that this Mortgage is upon the express condition that if Mortgagor shall pay to Mortgagee as and when due and payable the amounts payable under the Notes and all other Indebtedness, and shall also keep and perform each and every covenant and agreement of Mortgagor herein contained or in any other agreement with Mortgagee, then, this Mortgage and the estate hereby granted shall cease and be void; otherwise this Mortgage shall be and remain in full force and effect.

Mortgagor represents, warrants and covenants to and with Mortgagee that it is lawfully seized of the Land in fee simple and has good right and full power and authority to execute this Mortgage and to mortgage the Mortgaged Property; that Mortgaged Property is free from all liens, security interests and encumbrances except for real estates not yet delinquent; that Mortgagor will warrant and defend the title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons whomsoever, whether now existing or hereafter arising and that all buildings and improvements now or hereafter located on the Land are, or will be located entirely within the boundaries of the Land. The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Land.

Mortgagor further covenants and agrees as follows:

1. **Payment of the Notes.** Mortgagor will duly and punctually pay the amounts payable under the Notes in accordance with the terms of the Notes, and all other Indebtedness, when and as due and payable. The provisions of the Notes are hereby incorporated by reference into this Mortgage as fully as if set forth at length herein.
2. **Payment of Taxes, Assessments and Other Charges.** Subject to paragraph 5 relating to contests, Mortgagor shall pay before a penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against Mortgaged Property, except that assessments may be paid in installments so long as no fine or penalty is added to any installment for the nonpayment thereof. Mortgagor shall likewise pay any and all governmental levies or assessments, maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting Mortgaged Property, which are assessed or imposed upon Mortgaged Property or any part thereof or become due and payable, and which create a lien upon Mortgaged Property, or any part thereof. Mortgagor shall likewise pay all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by, this Mortgage, or the recordation hereof, or the Indebtedness secured hereby. Mortgagor shall promptly furnish to the Mortgagee all notices received by Mortgagor of amounts due under this paragraph and in the event Mortgagor shall make payment directly, Mortgagor shall promptly furnish to Mortgagee receipts evidencing such payments.
3. **Liens.** Mortgagor shall not create, incur or suffer to exist any lien, encumbrance or charge on Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.
4. **Compliance with Laws.** Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof.
5. **Permitted Contests.** Mortgagor shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 2 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 3 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 4 hereof, so long as Mortgagor shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of its liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrance or charge so contested, (B) the sale, forfeiture or loss of Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of Mortgaged Property or any part thereof. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 5.

FILED FOR RECORD THE 2 DAY OF JULY 1987 AT 8:59 AM. BOOK 277 PAGE 304-307. RECORDING FEE \$ 20.00. TRANSFER FEE \$ .  
 STATE OF IOWA, WARREN COUNTY: Judith K. Lathrop, Recorder

**6. Insurance.**

(a) **Risks to be Insured.** Mortgagor, at its sole cost and expense, will maintain insurance of the following character:

(i) Insurance on the buildings and other improvements now existing or hereafter erected on the Land and on the fixtures included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards as Mortgagee may from time to time require such insurance to have a "Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of the Indebtedness. At Mortgagor's option, such policy may have a coinsurance clause of not less than 80% of Replacement Cost provided the policy contains an appropriate form of cost escalation endorsement. Mortgagor will at its sole cost and expense, from time to time and at any time, at the request of Mortgagee provide Mortgagee with evidence satisfactory to Mortgagee of the replacement cost of Mortgaged Property.

(b) **Policy Provisions.** All insurance policies and renewals thereof maintained by Mortgagor pursuant to this mortgage shall be written by an insurance carrier satisfactory to Mortgagee, contain a standard mortgagee clause in favor of and in form acceptable to Mortgagee, contain an agreement of the insurer that it will not amend, modify or cancel the policy except after 30 days prior written notice to Mortgagee, and be reasonably satisfactory to Mortgagee in all other respects.

(c) **Delivery of Policy or Certificate.** If requested by Mortgagee, Mortgagor will deliver to Mortgagee original policies satisfactory to Mortgagee evidencing the insurance which is required under this Mortgage, and Mortgagor shall promptly furnish to Mortgagee all renewal notices and, upon request of Mortgagee, evidence of payment thereof. At least 10 days prior to the expiration date of a required policy, Mortgagor shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee. If Mortgagor has a blanket insurance policy in force providing coverage for several properties of Mortgagor, including Mortgaged Property, Mortgagee will accept a Certificate of Insurance, together with a certified copy of such blanket insurance policy; provided the certificate sets forth the amounts of insurance and coverage, and such amounts are at least equal to the amounts required hereinabove, the original policy of insurance is written by a carrier or carriers acceptable to Mortgagee, insures Mortgaged Property against the risks set forth hereinabove, and cannot be amended, modified or cancelled without thirty (30) days prior written notice to Mortgagee.

(d) **Assignment of Policy.** If Mortgaged Property is sold at a foreclosure sale or if Mortgagee shall acquire title to Mortgaged Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies required hereunder, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to Mortgaged Property prior to such sale or acquisition.

(e) **Notice of Damage or Destruction; Adjusting Loss.** If Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagor will, within five calendar days after the occurrence of such damage or destruction, give written notice thereof to the insurance carrier and Mortgagee and will not adjust any damage or loss which is estimated by Mortgagor in good faith to exceed \$25,000 unless Mortgagee shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four-month period or at any time thereafter, Mortgagee may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagor does hereby irrevocably authorize, empower and appoint Mortgagee as attorney-in-fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagor.

(f) **Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagee, which shall, at its option, apply the same (after first deducting therefrom Mortgagee's expenses incurred in collecting the same including but not limited to reasonable attorney's fees) to the reduction of the Indebtedness or to the payment of the restoration, repair, replacement or rebuilding of Mortgaged Property that is damaged or destroyed in such manner as Mortgagee shall determine and secondly to the reduction of the Indebtedness. Any application of insurance proceeds to principal of the Notes shall not extend or postpone the due date of the installments payable under the Notes or change the amount of such installments.

(g) **Reimbursement of Mortgagee's Expenses.** Mortgagor shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorney's fees and all such expenses, shall be additional amounts secured by this Mortgage.

**7. Preservation and Maintenance of Mortgaged Property.** Mortgagor (i) shall keep the buildings and other improvements now or hereafter erected on the Land in safe and good repair and condition, ordinary depreciation excepted; (ii) shall, upon damage to or destruction of Mortgaged Property or any part thereof by fire or other casualty, restore, repair, replace or rebuild Mortgaged Property that is damaged or destroyed to the condition it was in immediately prior to such damage or destruction, whether or not any insurance proceeds are available or sufficient for such purposes; (iii) shall constantly maintain the parking and landscaped areas of Mortgaged Property; (iv) shall not commit waste or permit impairment or deterioration of Mortgaged Property; (v) shall not alter or permit the alteration of the design or structural character of any building now or hereafter erected on the Land or hereafter construct, or permit construction of, additions to existing buildings or additional buildings on the Land without the prior written consent of the Mortgagee; (vi) shall not remove from the Land any of the fixtures or equipment included in Mortgaged Property unless the same are immediately replaced with property of at least equal value and utility, and this Mortgage becomes a valid first lien on such property; (vii) if Mortgaged Property is rental income property, shall generally operate and maintain Mortgaged Property in a manner to insure maximum rentals; and (viii) shall not permit, without the prior written consent of Mortgagee, any use of Mortgaged Property for any purpose other than that for which the same are now used or intended to be used.

**8. Inspection.** Mortgagee, or its agents, shall have the right at all reasonable times, to enter upon Mortgaged Property for the purposes of inspecting Mortgaged Property or any part thereof. Mortgagee shall, however, have no duty to make such inspection. Any inspection of Mortgaged Property by Mortgagee shall be entirely for its benefit and Mortgagor shall in no way rely thereon.

**9. Protection of Mortgagee's Security.** Subject to the rights of Mortgagor under paragraph 5 hereof, if Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects Mortgaged Property or the interest of Mortgagee therein, or the title thereto, then Mortgagee, at Mortgagee's option, may perform such covenants and agreements, defend against and/or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses disbursed or incurred by Mortgagee in good faith pursuant to this paragraph 9, with interest thereon, shall become additional Indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Indebtedness or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act hereunder, and Mortgagee shall not be liable to Mortgagor for any damages or claims arising out of action taken by Mortgagee pursuant to this paragraph.

**10. Condemnation.**

(a) Mortgagor hereby irrevocably assigns to Mortgagee any award or payment which becomes payable by reason of any taking of Mortgaged Property or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings (hereinafter called "Taking"). Forthwith upon receipt by Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, Mortgagor shall give notice thereof to Mortgagee. Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Mortgagor, notwithstanding that Mortgagee may not be a party to any such proceeding, will promptly give to Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received by Mortgagor therein. Mortgagor will not enter into any agreement permitting or consenting to the Taking of Mortgaged Property or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless Mortgagee shall first have consented thereto in writing. All Taking awards shall be adjusted jointly by Mortgagor and Mortgagee. All awards payable as a result of a Taking shall be paid to Mortgagee, which may, at its option, apply them, after first deducting Mortgagee's expenses incurred in the collection thereof, to the payment of the Indebtedness, whether or not due and in such order of application as Mortgagee may determine to the repair or restoration of Mortgaged Property, in such manner as Mortgagee may determine. Any application of Taking awards to principal of the Note shall not extend or postpone the due dates of the installments payable under the Notes or change the amount of such installments.

(b) If the Taking involves a taking of any building or other improvement now or hereafter located on the Land, Mortgagor shall proceed, with reasonable diligence, to demolish and remove any ruins and complete repair or restoration of Mortgaged Property as nearly as possible to its size, type and character immediately prior to the Taking whether or not the condemnation awards are available or adequate to complete such repairs or restoration; provided, however, that if the Mortgagee shall apply the entire condemnation award to payment of the Indebtedness, Mortgagee shall have the option, in lieu of completing such repair or restoration to pay in full the Notes and all other Indebtedness without penalty. Mortgagor shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses (including reasonable attorney's fees) incurred in the collection of awards and their disbursement in accordance with this paragraph, and all such expenses shall be additional amounts secured by this Mortgage.

**11. No Secondary Financing.** Mortgagor shall not create or permit to be created or to remain any subordinate lien on the Mortgaged Property or any part thereof to secure any indebtedness for borrowed money, without obtaining the prior written consent of the Mortgagee.

**12. Security Interest.** This Mortgage shall constitute a security agreement with respect to (and the Mortgagor hereby grants the Mortgagee a security interest in) all personal property and fixtures included in the Mortgaged Property. The Mortgagor will from time to time, at the request of the Mortgagee, execute any and all financing statements covering such personal property and fixtures which the Mortgagee shall reasonably request.

**13. Fixture Filing.** From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of Mortgaged Property which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

James C. Blair Jr. and Sharon L. Blair Husband and Wife  
 7301 Fleur Dr #19  
 Des Moines, Iowa 50321

(b) Name and Address of Secured Party:

~~XXXXXXXXXXXXXXXXXXXX~~ Iowa National Guard Credit Union  
~~XXXXXXXXXXXXXXXXXXXX~~ 3111 Douglas Ave  
~~XXXXXXXXXXXXXXXXXXXX~~ Des Moines, Iowa 50311

(c) This document covers goods which are or are to become fixtures.

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

(a) Mortgagor shall fail to duly and punctually pay any amount payable under the Notes, after any required notice or period of grace with respect to default has been duly given or elapsed (as the case may be).

(b) Mortgagor shall default in the performance of or breach its agreement contained in paragraph 1 hereof.

(c) Mortgagor shall fail to duly and punctually pay when and as due any payment for taxes, assessments or insurance required by paragraph 2 to be paid or shall fail to provide the insurance coverage required by paragraph 6(a).

(d) Mortgagor shall fail duly to perform or observe any of the covenants or agreements contained in this Mortgage (other than a default in the performance, or breach, of any covenant of the Mortgagor in paragraphs 1, 2, 6(a) or 13 hereof) and such failure shall continue for 30 days.

(e) Mortgagor shall make an assignment for the benefit of its creditors, or a petition shall be filed by or against the Mortgagor under the United States Bankruptcy Code or Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within 30 days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

(f) A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against, the Mortgaged Property or any part thereof and shall not be released, vacated or fully bonded within 30 days after its entry, issue or levy.

(g) Mortgagor shall sell, transfer or convey the Mortgaged Property or any part thereof or any interest therein without obtaining in each instance the prior written consent of the Mortgagee, excluding (i) a transfer by devise, descent or by operation of law upon the death of a joint tenant, and (ii) the grant of any leasehold interest less than three years not containing any renewal options, which if exercised would result in a lease term of three years or more, and not containing any option to purchase, or if the Mortgagor is a corporation, 50% or more of the voting stock of the Mortgagor is transferred by sale, gift or in any other manner without the written consent of the Mortgagee, or if the Mortgagor is a partnership or limited partnership, any interest of a general partner of the Mortgagor is transferred by sale, gift or in any other manner without the written consent of the Mortgagee.

(h) An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

**15. Acceleration; Foreclosure.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, at its option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

(a) Mortgagee may declare immediately due and payable all unmatured indebtedness secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

(b) Mortgagee shall have and may exercise with respect to all fixtures which are part of Mortgaged Property, all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of Iowa. If notice to Mortgagor of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagor at least 10 days prior to the date of intended disposition. Mortgagor shall pay on demand all costs and expenses incurred by Mortgagee in exercising such rights and remedies, including without limitation, reasonable attorney's fees and legal expenses.

(c) Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and in connection therewith:

(1) At any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Mortgagee appoint a receiver to take immediate possession of Mortgaged Property, and of the rents and profits accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagee only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the indebtedness.

(2) In the event of foreclosure of this Mortgage and sale of the property by Sheriff's sale in said foreclosure proceeding, the period of redemption after such sale shall be reduced to six months provided Mortgagee waives in the foreclosure action any rights to a deficiency judgment against Mortgagor which might arise out of the foreclosure proceedings.

(3) The court in a decree of foreclosure may find affirmatively that Mortgaged Property has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure. Should the court so find and if Mortgagee shall waive any rights to a deficiency judgment against Mortgagor or its successors in interest in the foreclosure action, then the period of redemption after foreclosure shall be reduced to 60 days.

(4) If any indebtedness or evidence thereof or this Mortgage shall be placed in the hands of an attorney for collection, foreclosure, or other legal proceedings Mortgagor will pay a reasonable attorney's fee for any service rendered by such attorney in connection therewith, and will also pay all expenses incurred by such attorney in procuring abstracts of title for purposes of any foreclosure proceeding and all other expenses reasonably incurred by such attorney in connection with such foreclosure proceeding; and such attorney's fees and expenses shall be considered part of the indebtedness secured hereby and collectible accordingly.

**16. Forebearance Not a Waiver, Rights and Remedies Cumulative.** No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Mortgagee of any particular provisions of this Mortgage shall be deemed effective unless in writing signed by Mortgagee. All such rights and remedies provided for herein or which Mortgagee or the holder of the Notes may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. Acceleration of maturity of the Notes, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgement to that effect of Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity of the Notes. In the event that Mortgagee (a) grants

