

Return to: 310 Credit Union  
475 N.W. Hoffman Lane  
Des Moines, IA 50313

Fee \$20.00

FILED NO. 1676

515-287-0036

THIS IS A CONSUMER CREDIT TRANSACTION

BOOK 160 PAGE 762

REAL ESTATE MORTGAGE, SECURITY AGREEMENT AND  
FINANCING STATEMENT

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(SEE SEPARATE FORM FOR DISCLOSURES REQUIRED BY FEDERAL LAW)

MICHELLE UTSLER  
RECORDER  
MADISON COUNTY, IOWA

(This is a Construction Mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land).

Hundred Twenty Seven and 25/100

IN CONSIDERATION OF Thirteen Thousand Six Dollars (\$13,627.25)

the receipt of which is hereby acknowledged,  
Jay Dee Roberts and Linda C. Roberts, individually and as  
husband and wife

(jointly and severally, if more than one, and for purposes of convenience referred to in the singular person), Mortgagor-Debtor, hereinafter called "Mortgagor", hereby grants, sells and conveys unto 310 Credit Union, a corporation, Des Moines, Iowa, Mortgagee-Secured Party, hereinafter called "Mortgagee", the following described real estate situation in Madison County, Iowa, to-wit:

The South 20 rods of the East 8 rods of the Northwest Quarter (1/4) of the Northeast Quarter (1/4) of Section Seven (7) in Township Seventy-five (75) North, Range Twenty-Seven (27) West of the 5th P.M., Madison County, Iowa

together with all personal property that may integrally belong to, or be or hereafter become a integral part of said real estate, and whether attached or detached (such as light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, storm doors, screens, linoleum, water heater, water softener, automatic heating equipment and other attached fixtures), and hereby granting, conveying and mortgaging also all of the easements, servient estates appurtenant thereto, rents, issues, uses, profits and right to possession of said real estate, and all crops raised thereon from now until the debt secured hereby shall be paid in full. As to any such personal property, or fixtures, or both, a Security Interest hereby attaches thereto, as provided by the Uniform Commercial Code.

Said Mortgagor hereby covenants with Mortgagee or successor in interest, that said Mortgagor holds clear title to said personal property, and title in fee simple to said real estate; that Mortgagor has good and lawful authority to sell, convey and mortgage the same; that said premises are free and clear of all liens and encumbrances whatsoever except as may be herein stated; and said Mortgagor covenants to warrant and defend said premises and said personal property against the lawful claims of all persons whomsoever, except as may be above stated.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the above described premises and waives all rights of exemption, as to any of said property.

To the extent that this Mortgage is given to secure an obligation incurred for the construction of an improvement on the above described real estate, including the cost of acquiring said real estate, this is a Construction Mortgage as defined in Iowa Code Section 554-9313(1)(c).

To be void upon the condition that the said Mortgagor shall comply with all of the provisions of this Mortgage and shall pay, or cause to be paid, to the Mortgagee, its successors or assigns, the indebtedness evidenced by <sup>a</sup> signed Promissory Note of even date herewith in the amount <sup>seven and 25/100</sup> financed of Thirteen Thousand Six Hundred Twenty Seven and 25/100 Dollars (\$13,627.25), and bearing Finance Charge from date at the ANNUAL PERCENTAGE RATE therein specified, and being due and payable at 310 Credit Union, Des Moines, Iowa, due and payable in installments as therein provided. The payments to be applied first to the payment of finance charge and the balance on principal, the final installment being due and payable on the 7<sup>th</sup> day of January, 1998. Said note(s) are executed by the Mortgagor and are payable to the order of the said Mortgagee.

And upon the further condition that the Mortgagor shall perform each and all of the covenants and agreements herein set out.

The Mortgagor further covenants and agrees with the Mortgagee, its successors and assigns, as follows:

1. To pay the above described Note(s) according to the tenor and effect thereof and as in said Note(s) provided, and to pay any other Note or Notes that hereafter may be given in renewal or extension thereof, and this Mortgage shall be and remain security for the payment of the same.

2. To pay all other Notes that Mortgagor has heretofore, or shall hereafter, execute to the Mortgagee, and all other indebtedness that may at

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SEE PAGE 869

any time be owing by the Mortgagor to the Mortgagee during the existence of this Mortgage, and this Mortgage shall be and remain security for the payment of said other Notes. The Term "Mortgagor" refers to the Mortgagor named herein and any successor in interest.

3. To neither commit nor permit waste upon the premises; to keep all improvements now upon or hereafter placed upon said premises occupied and in good condition and repair, and not to use or allow said premises to be used for any unlawful purpose. If this Mortgage is on a condominium unit, the Mortgagor shall perform all of Mortgagor's obligations under the declaration of condominium or master deed, the by-laws and regulations of the condominium project and constituent documents.

4. To keep all taxes and assessments upon said real estate, and each installment thereof, fully paid before the same become delinquent.

5. To keep all buildings now or hereafter on the said real estate insured against loss by fire, lightning and windstorm, for their full insurable value in companies approved by the Mortgagee, and to deliver such insurance policies to the Mortgagee, said policies to be payable to the holder of this Mortgage as its interests may appear.

6. To neither make nor permit to be made any transfer or conveyance or any Contract for the transfer or conveyance of said real estate. In the event Mortgagor transfers or conveys said real estate or enters into a Contract to transfer or convey said real estate, the entire indebtedness secured by this Mortgage plus accrued interest, shall become immediately due and payable.

7. To make no lease of said real estate for a longer period than one (1) year without the written consent of the holder of this Mortgage; to assign to the Mortgagee all leases now in force or hereafter made covering the mortgaged premises or any part thereof. See Paragraph (d) below.

8. In case of any action, or in any proceedings in any court, to collect any sums payable or secured by this Mortgage, or to protect the lien or title herein of the Mortgagee, or in any other case permitted by law in which attorney fees may be collected from Mortgagor, or charged upon the above described property, Mortgagor agrees to pay reasonable attorney fees. Mortgagor also agrees to pay all costs, expenses and disbursements occasioned by any suit on this Mortgage. See Paragraph (e) below.

The Mortgagor further covenants and agrees with the Mortgagee, its successor and assigns, as follows:

(a) That if the insurance is not procured by the Mortgagor and policies delivered as herein provided, or if the taxes or assessments on said property or any expenses incurred by the Mortgagee are not paid by the Mortgagor, the Mortgagee, or the holder of the Notes secured hereby, may procure such insurance and pay the premiums thereon, pay such taxes or expenses and all money so paid by the Mortgagee or assigns shall forthwith be due Mortgagee, or the holder herefor, with finance charge thereon at the annual percentage rate provided for in the Note referred to above, and shall be added to and made a part of the indebtedness secured hereby.

(b) That the Mortgagee, or its successor or assigns, is hereby authorized to collect, adjust and compromise any losses under any insurance policies on said property, and after deducting the costs of collection, to apply the proceeds at its election, as follows: (1) as a credit on the mortgage debt, finance charge or repayment of any amount advanced by the Mortgagee under any of the covenants herein; or (2) to restoring the improvements; or (3) to deliver same to the owner of said property.

(c) That to further secure the payment of said Promissory Note(s) of even date herewith, and all other indebtedness now or hereafter owing by the Mortgagor to Mortgagee, the Mortgagor does hereby sell, transfer, and assign unto the said Mortgagee all rents from the premises herein described during the entire term of this Mortgage and until the indebtedness secured hereby is fully paid, the Mortgagor does hereby constitute and appoint said Mortgagee his attorney-in-fact for the purpose of collecting all said rents and to execute receipts therefor, hereby empowering the said Mortgagee to pay from the proceeds of said rent the unpaid taxes and insurance premiums on said premises and to apply the balance on said Mortgage indebtedness, said Mortgagor hereby ratifying and confirming all acts and things done by said Mortgagee to collect the rentals arising from said mortgaged premises at any certain time shall, under no circumstances, be construed as a waiver of the right, or an estoppel of the Mortgagee, to collect such rentals for any subsequent period.

(d) That: (i) in case of default in the payment of said principal sum of money hereby secured, or any installment thereof or of finance charges thereon; or in the performance of any of the terms, provisions, covenants, or agreements herein contained, or (ii) in case the Mortgagor becomes insolvent or the Mortgagee, or its successors or assigns, deems itself insecure, or (iii) in case the real estate is transferred or conveyed or any contract for the transfer or conveyance of the real estate is made without the written consent of the holder as required by Paragraph 6 above, or (iv) in case the property is leased for a longer period than one (1) year without the written consent of the

holder as required by Paragraph 7, above, then, or at any time thereafter, the Mortgagee, its successors or assigns, may, without notice, declare the entire debt hereby secured immediately due and payable, and thereupon the Mortgagee, its successor or assigns, shall be entitled to the immediate possession of said premises and may proceed to foreclose this Mortgage, and further, upon any such default, either before or at the commencement of an action to foreclose this Mortgage, or at any time thereafter, the Mortgagee, its successors or assigns, shall be entitled to the appointment of a receiver, and the Mortgagor hereby agrees and consents that any court of competent jurisdiction shall appoint a receiver who shall have power to take and hold possession of said premises and to rent the same, collect the rents, income and profits therefrom for the benefit of said Mortgagee, its successors or assigns, and pay all taxes and special assessments levied against said premises remaining unpaid, and keep said premises in repair, and pay insurance premiums necessary to keep the buildings on said premises insured in accordance with the provisions of this Mortgage and to pay the expense of such receivership, and any balance remaining of the proceeds of such rents, income, and profit shall be applied upon the indebtedness secured hereby, and for each and every such purpose above specified said rents, income and profits are hereby irrevocable pledged.

(e) That in the event suit is brought to foreclose this Mortgage, all expenses and disbursements paid or incurred by the Mortgagee, its successors or assigns, in connection with such foreclosure proceedings, including a reasonable attorney's fee (to the extent allowed by law) for any services rendered by the Mortgagee's attorney in connection therewith, and the cost of procuring an abstract of title to the mortgaged premises, or a continuation thereof, shall be added to and made a part of the indebtedness secured hereby and shall be included in any judgment rendered in such foreclosure proceedings, and statutory attorney's fees (to the extent allowed by law) shall be taxed in favor of plaintiff's attorney as a part of the costs in any action hereon.

(f) It is further agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by Sheriff's sale in such foreclosure proceedings, the time of one (1) year for redemption from said sale as set forth in Iowa Code Section 628.3 shall be reduced to six (6) months as provided in Iowa Code Section 628.26 provided the Mortgagee waives in such foreclosure proceedings any rights to a deficiency judgment against the Mortgagor which may arise out of the foreclosure proceedings. It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days as provided in Iowa Code Section 628.27 if all of the three following contingencies are met: (1) the mortgaged real estate herein is less than ten (10) acres in size; (2) the Court find affirmatively that said real estate has been abandoned by the owners and those persons personally liable under the Mortgage at the time of foreclosure; and (3) the Mortgagee in such action files an election to waive any deficiency judgment against the Mortgagor or Mortgagor's successors in interest in such action.

(g) That the joining in and execution of this Mortgage and/or of the Notes herein mentioned by the spouse of the holder of the title to the Mortgaged premises and the agreement of such spouse to pay the indebtedness hereby secured and to perform the agreements and conditions of this Mortgage are material considerations for the making by the Mortgagee of the loan secured hereby, and all persons joining in the execution of this Mortgage are jointly and severally obligated for the payment of all indebtedness secured hereby and for the performance of all covenants and agreements herein contained on the part of the Mortgagor.

(h) That the failure or delay of the Mortgagee, its successor, or assigns, to exercise any of its rights or privileges under the terms of the Notes hereby secured, or of this Mortgage, shall not be held a waiver of any of the terms, covenants, or conditions of said instruments, nor of any of the rights or privileges of the Mortgagee, its successor, or assigns, under the same, that any act of the Mortgagee, waiving, or which may be held to have waived, any specific default of the Mortgagor shall not be construed or held a waiver of any future defaults.

(i) If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the property, including, but not limited to, eminent domain, insolvency, code enforcement or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, upon notice to Mortgagor, may make such appearances, disburse such sums and take such action as is necessary to protect Mortgagee's interest, including, but not limited to, disbursement or reasonable attorney's fees and entry upon the property to make repairs.

Any amounts disbursed by Mortgagee pursuant to this Paragraph (i), with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof, and shall bear interest from the date of

disbursement at the rate payable from time to time on outstanding principal under the note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph (i) shall require Mortgagee to incur any expense or take any action hereunder.

(j) Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage.

(k) All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

(l) The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, and respective successor and assigns of Mortgagee and Mortgagor. All covenants and agreements of mortgagor shall be joint and several.

(m) Except for any notice required under the applicable law to be given in another manner, (a) any notice to Mortgagor provided for in this Mortgage shall be given to mailing such notice by certified mail addressed to Mortgagor at the property address or at such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given by certified mail, return receipt required, to Mortgagee's address, 475 N.W. Hoffman Lane, Des Moines, Iowa, 50333, or to such other address as Mortgagee may designate by notice to Mortgagor as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Mortgagor or Mortgagee when given in the manner designated herein.

(n) This Mortgage shall be governed by the laws of Iowa. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable 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 the Note are declared to be severable.

(o) This Mortgage is secondary and inferior to a certain Mortgage given to Farmers & Merchants State Bank, which Mortgage was dated the 2nd day of May, 19 89, in Volume 52 at Page 654, of the records of the Madison County, Iowa, Recorder.

Provided always, that when all of the aforesaid covenants and agreements are fully performed, the said premises and property shall be released from the lien thereof and this Mortgage shall then be satisfied.

IN WITNESS WHEREOF, the said party or parties herein designated as "Mortgagor" have hereunto set their hands this 8th day of January, 19 92.

NOTICE TO DEBTOR - DO NOT SIGN THIS PAPER BEFORE YOU READ IT. YOU ARE ENTITLED TO A COPY OF THIS PAPER. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY.

Jay D. Roberts  
Jay D. Roberts  
Linda C. Roberts  
Linda C. Roberts

STATE OF IOWA

COUNTY OF Polk

On this 8th day of January, 19 92, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jay D. Roberts and Linda C. Roberts

to me known to be the persons named in and who executed the foregoing instrument, and acknowledge that they executed the same as voluntary act and deed.

Sandra B. Robinson  
Notary Public in and for the State of Iowa

