

Boatmen's Bank Iowa, N.A.
P.O. Box 817
Des Moines, IA 50304-0817
"Bank"



BOATMEN'S®

THIS DOCUMENT WAS PREPARED BY:

Name: Boatmen's Bank Iowa, N.A.
Address: P.O. Box 817, Des Moines, IA 50304-0817
Telephone Number: 515-235-7111

REC \$ 30.00
AUD \$ _____
R.M.F. \$ 1.00

COMPUTER
RECORDED
COMPARED

FILED NO. 2702

BOOK 176 PAGE 246

95 APR 21 AM 10:14

MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

RELEASED 07-29-02 SEE
RECORD 2002 PAGE 3680

MORTGAGE
(HOMEQUITY/HOMEQUITY PLUS)
to
BANK
("Mortgagee")

THIS MORTGAGE (referred to herein as "this instrument"), executed as of the 12TH day of APRIL 1995, by Kim E. Harris and Marcia L. Harris, husband and wife, as joint tenants with full rights of survivorship and not as tenants in common

_____, whose address is 145 Northwest Locust, Earlham, IA 50072 ("Mortgagor"), in favor of Mortgagee, whose principal business address is P.O. Box 817, Des Moines, IA 50304-0817, Attention: Installment Credit Operations ;

WITNESSETH:

Mortgagor, for and in consideration of the loans, advances, or other financial accommodations by Mortgagee giving rise to the debt herein described and the sum of One Dollar (\$1.00), the receipt and adequacy of which are hereby acknowledged, MORTGAGES AND WARRANTS to Mortgagee the below real property, whether now owned or held or hereafter acquired by Mortgagor and whether now or hereafter existing (the "Mortgaged Property") to have and to hold the Mortgaged Property, with all rights, appurtenances, and privileges thereunto belonging, unto the Mortgagee, its successors and assigns forever.

The Mortgaged Property is the following:

- (1) all of the following described land (the "Land") situated in the County of Madison, State of Iowa: Lot One (1) and the North Half (1/2) of Lot Two (2) in Block Five (5) of the Original Town of Earlham, Madison County, Iowa

IF THIS BLOCK IS CHECKED, SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD AS OF THE DATE HEREOF.

IF THIS BLOCK IS CHECKED, SUBJECT TO THE FOLLOWING ENCUMBRANCE: MORTGAGE DATED SEPTEMBER 30, 1993 AND RECORDED IN BOOK 169, PAGE 124 OF THE COUNTY RECORDER OF THE COUNTY OF Madison, STATE OF IOWA.

IF THIS BLOCK IS CHECKED, SUBJECT TO ALL OF THE ITEMS LISTED ON EXHIBIT A ATTACHED HERETO.

- (2) all improvements and fixtures (the "Fixtures") now or hereafter existing or constructed upon the Land, including but not limited to buildings and other structures; all of the hereditaments, easements, licenses, privileges, rights-of-way, water rights, uses and other appurtenances to the Land and Fixtures; all right, title and interest, if any, of Mortgagor in and to nearby ways, roads, streets, boulevards, avenues or other public thoroughfares; and all right, title and interest of Mortgagor in and to the rents, income, issues, profits and revenues of all of the foregoing, including but not limited to rents and royalties payable with respect to oil, gas or minerals located on or under the Land;

NOTICE: This instrument secures the following described Obligations up to the maximum principal amount of \$ 23,000.00. Loans and advances up to this amount, together with interest, are senior to other creditors under subsequently recorded or filed mortgages and liens. If this is checked , the Obligations include one or more revolving credit loans.

(1) The payment of all amounts due, including but not limited to principal, interest, fees and expenses, from time to time (whether at stated maturity, by acceleration or otherwise) under the following documents, all of which are incorporated herein by reference:

(a) The HOMEQUITY/HOMEQUITY PLUS Credit Line Agreement dated APRIL 12, 1995, pursuant to which Mortgagee has agreed to advance to Mortgagor principal amounts up to an aggregate maximum of \$ 23,000.00 and any other promissory notes, guaranties, credit agreements or other instruments of indebtedness identified on their face as being secured hereby, including future advances contemplated thereunder; and

(b) this instrument and all additional security agreements, mortgages, deeds of trust, assignments or other security instruments which are executed and delivered to Mortgagee to secure obligations of Mortgagor under the documents described in clause (a) above;

(2) Any and all extensions, renewals, amendments, replacements, restatements, refinancings, refundings or modifications (including but not limited to modifications to interest rates or other payment terms) of any of the foregoing; and

(3) The observance and performance by Mortgagor of each and every term, covenant, condition and agreement required by this instrument to be observed and performed by Mortgagor.

The term "Documents" shall mean, unless otherwise specified, all of the documents referred to in clauses (1) (a) and (b) above and "Document" shall mean any one of such documents. Each Document shall be equal and without preference over another.

Mortgagor further covenants, agrees, represents, and warrants as follows:

1. Defined Terms. All capitalized terms used in this instrument shall have the meanings defined in the Sections where they are first used, or if not therein defined, the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Mortgagee" means the Mortgagee identified as such in this instrument and any subsequent holder of any of the Documents or the other Obligations.

2. Representations and Warranties. Mortgagor represents and warrants to Mortgagee that:

2.1. Title to Mortgaged Property. Mortgagor has marketable fee simple title to the Mortgaged Property free and clear of all easements, covenants, restrictions, conditions, encumbrances, liens and claims except those identified on page 1 hereof and in Exhibit A hereto.

3. Covenants. Mortgagor covenants and agrees with Mortgagee as follows:

3.1. Payment of Principal and Interest. Mortgagor will pay the indebtedness evidenced by the Documents in accordance with the terms thereof.

3.2. Payment of Lienable Charges and Claims. Mortgagor shall pay, before they become delinquent, all taxes, penalties, assessments, charges and other amounts which if not so paid will result in the imposition of a lien on any of the Mortgaged Property, and Mortgagor shall pay all claims of contractors, subcontractors, materialmen, laborers and suppliers which if not paid will entitle the claimant to impose a mechanic's or materialmen's lien upon any of the Mortgaged Property, except such of the foregoing as are being diligently contested in good faith by Mortgagor by appropriate proceedings and for which Mortgagor has obtained a bond to protect the interest of Mortgagee from a bonding company acceptable to Mortgagee or established reserves acceptable to Mortgagee; provided, however, that if in the reasonable judgement of Mortgagee, the lien or security interest created by this instrument is materially endangered or any material part of the Mortgaged Property is subject to imminent loss or diminution in value as a result of such contest, then Mortgagor shall pay the same immediately upon demand by Mortgagee. Mortgagor shall furnish to Mortgagee upon its request evidence of its compliance with this Section.

3.3. Preservation of Mortgaged Property. Mortgagor shall not commit or allow waste of the Mortgaged Property and shall repair and maintain the Mortgaged Property so as to keep it in the same condition as existed on the date hereof, ordinary wear and tear alone excepted.

3.4. Compliance with Laws. Mortgagor shall comply with all laws, rules, regulations and codes, including but not limited to environmental laws and fire and building codes of federal, state and local authorities applicable to the Mortgaged Property or the use of the Mortgaged Property, and with the requirements of every board of fire underwriters or similar body whose requirements apply to similar property in the area where any of the Mortgaged Property is located.

3.5. Alterations. Mortgagor shall not commit or allow any alteration, demolition or removal of any of the Fixtures which would impair the value of the Mortgaged Property without the prior written consent of Mortgagee.

3.6. Inspection by Mortgagee. Mortgagee may at any time upon reasonable prior notice inspect the Mortgaged Property and all books and records of Mortgagor pertaining to the Mortgaged Property. Mortgagor shall give Mortgagee access to the Mortgaged Property to exercise any of Mortgagee's rights and remedies under this instrument.

3.7. Insurance. Mortgagor shall at all times keep the Mortgaged Property insured, in insurance companies and under forms of insurance acceptable to Mortgagee, against fire, extended coverage and other perils as Mortgagee may from time to time require ("Casualty Insurance"). Mortgagor shall also at all times carry insurance, in insurance companies acceptable to Mortgagee, against liability on account of damage to persons or property ("Liability Insurance"). All policies of Liability Insurance shall name Mortgagee as an additional insured. All policies of Casualty Insurance shall reflect Mortgagee's interest therein as a mortgagee under a standard New York or Union mortgagee clause. All policies of Liability Insurance and Casualty Insurance shall contain a clause providing that such policies may not be canceled without thirty (30) days prior written notice to Mortgagee. Mortgagor shall furnish to Mortgagee upon its request at any time certificates evidencing the existence of the Casualty Insurance and Liability Insurance required herein to be maintained by Mortgagor. Such certificates shall specify the names of the insurers, the limits of coverage, the expiration dates and the types of coverage, and shall reflect that Mortgagee is an additional insured or that the proceeds thereof are payable to Mortgagor and Mortgagee as their interests may appear, as applicable. If the area where the Mortgaged Property is located is now or in the future designated as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973 (as amended), and if the community where the Mortgaged Property is located is participating in the National Flood Insurance Program, Mortgagor shall obtain and continuously maintain a National Flood Insurance Program Standard Flood Insurance Policy or equivalent covering the Mortgaged Property.

3.8. Condemnation. Mortgagor hereby assigns to Mortgagee all awards and payments, including any interest thereon, and the right to receive the same, which may be made with respect to the Mortgaged Property as a result of (i) condemnation or the exercise of the right of eminent domain by any public or quasi-public authority, (ii) the alteration of the grade of any street or (iii) any other injury to or decrease in the value of the Mortgaged Property. Mortgagor agrees to execute and deliver such further instruments as may be requested by Mortgagee to confirm this assignment and sufficient for the purpose of assigning all proceeds from such awards or payments to Mortgagee. Mortgagee is authorized, but not obligated, as the attorney-in-fact for Mortgagor, to collect, receive and give receipts for such awards and payments. This power granted Mortgagee shall be deemed coupled with an interest and shall be irrevocable. Mortgagee may, at Mortgagee's sole option, apply such awards and payments to the Obligations, and shall pay the portion not so applied to Mortgagor.

3.9. Mortgagee's Right to Cause Performance of Covenants. If Mortgagor fails to maintain and pay the premiums for Insurance, to pay all taxes, penalties, assessments, charges, and claims, or to repair and maintain any of the Mortgaged Property, all as required hereunder, or if Mortgagor fails to keep or perform any of Mortgagor's other covenants herein, Mortgagee may cause such repairs and maintenance to be made, obtain such Insurance, pay such taxes, penalties, assessments, charges, or claims, or cause such other covenants to be performed. Mortgagor shall pay to Mortgagee on demand all amounts paid by Mortgagee for the foregoing and the amount of all expenses incurred by Mortgagee in connection therewith, together with interest thereon from the date when incurred at the Default Rate. Such amounts and interest shall be secured by this instrument and shall be a lien on and security interest in the Mortgaged Property prior to any right, title, interest, lien, or claim in or upon the Mortgaged Property subordinate to the lien of this instrument. Any such payments by Mortgagee shall not be deemed a waiver of any Default. Mortgagee shall not be obligated to exercise Mortgagee's rights under this Section and shall not be liable to Mortgagor for any failure to do so.

3.10. Costs of Preserving or Enforcing This Instrument. Mortgagor shall (to the extent permitted by law) pay to Mortgagee on demand the amount of all costs and expenses, including reasonable attorneys' fees and disbursements and appraisal fees, incurred by Mortgagee in connection with (i) amendment, interpretation or enforcement of this instrument, Mortgagee's rights or remedies under this instrument, or the priority of the lien and security interest of this instrument, (ii) collection of any of the Obligations, or (iii) any title examination or title insurance commitment or policy relating to the Mortgaged Property, together with interest thereon from the date when incurred at the Default Rate. Such amounts and interest shall be secured by this instrument and shall be a lien on and security interest in the Mortgaged Property prior to any right, title, interest, lien, or claim in or upon the Mortgaged Property subordinate to the lien of this instrument.

3.11. Indemnity. Mortgagor shall (to the extent permitted by law) protect, defend, and indemnify Mortgagee, and hold Mortgagee harmless from and against, any claims, actions or proceedings against Mortgagee and any loss, cost, damage or expense, including but not limited to reasonable attorneys' fees and disbursements, incurred by Mortgagee, arising out of or in any way related to a breach of the representations, warranties, covenants or agreements of Mortgagor herein. Mortgagee shall have the right, jointly with Mortgagor, to negotiate and settle any such claims, actions or proceedings.

3.12. Defense of Title. Mortgagor shall execute and deliver to Mortgagee, at Mortgagor's sole expense, such further assurances of title to the Mortgaged Property that are necessary to evidence, preserve or protect the lien and security interest created by this instrument. Mortgagor shall, at its sole expense, warrant and defend title to the Mortgaged Property and the priority of the lien and security interest created by this instrument against all claims and demands whatsoever.

4. Default. Any one or more of the following shall constitute a "Default" under this instrument:

4.1. Payment. Nonpayment, when due, whether by acceleration or otherwise, of any principal or interest payment on the Obligations evidenced by the Documents or any fee or other amount due from Mortgagor to Mortgagee hereunder; failure to pay, when due, any of the other Obligations; or a default or event of default (other than a payment default) by Mortgagor with respect to any of the Obligations.

4.2. Representations and Warranties. Any representation or warranty made by Mortgagor herein or in any other agreement, instrument or other paper delivered to Mortgagee proves to have been untrue or misleading in any material respect at the time when made or deemed to be made.

4.3. Covenants or Agreements. A default by Mortgagor in the due observance or performance of any covenant, term or agreement contained herein (other than a breach which would constitute a Default under Sections 4.1. or 4.2. hereof, or for which another cure period is specifically provided) which continues unwaived for a period of ten (10) days.

4.4. Disposal of Mortgaged Property. After the date hereof, any conveyance, further encumbrance, exchange or other transfer or disposal, or agreement to transfer or dispose, of any of the Mortgaged Property, without Mortgagee's prior written consent.

4.5. Uninsured Loss of Mortgaged Property. Uninsured loss, theft, damage or destruction to or of the Mortgaged Property.

4.6. Default under Prior Instrument(s). Failure to pay, when due, any amount secured by, or to perform any agreement in, any security instrument whose lien is superior to the lien of this instrument.

5. Remedies Upon Default. If a Default occurs, Mortgagee shall have the right to do one or more of the following:

5.1. Mortgagee may, at its option and without notice or demand to Mortgagor except as otherwise required by applicable law, declare all of the Obligations immediately due and payable regardless of maturity.

5.2. Mortgagee may institute an action of foreclosure on this instrument or institute other proceedings according to law for foreclosure, and prosecute the same to judgment, execution and sale, for the collection of the Obligations and (to the extent permitted by law) all costs and expenses of such proceedings, including but not limited to reasonable attorneys' fees and disbursements.

6. Other Matters Relating to Enforcement of Remedies. In any sale made as contemplated herein, the Mortgagee may bid for and purchase any of the Mortgaged Property being sold, and shall be entitled, upon presentment of the relevant Documents and documents evidencing the same, to apply the amount of the Obligations held by it against the purchase price for any of the Mortgaged Property so purchased. The amount so applied shall be credited first (to the extent permitted by law) against the payment of the costs and expenses of so realizing on the Mortgaged Property (including but not limited to reasonable attorneys' fees and disbursements;) then to the portion of the Obligations that constitute interest accrued but unpaid; then to the remainder of the Obligations; then to the holders of any liens and interests on the Mortgaged Property that are junior to the lien and interest of this instrument; and the balance, if any, to Mortgagor, or its heirs, executors, administrators, personal representatives, successors or assigns, or to whosoever else may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

7. Full Release. When the Obligations are paid in full and all of Mortgagor's covenants and agreements in this instrument are fully performed, this instrument shall be released of record at the cost of Mortgagor.

8. Effect of Extensions and Modifications. Mortgagee, at its sole option, may extend the time for the payment or performance of the Obligations, or reduce the payments of principal or interest thereof, or accept a modification or renewal of the Documents or other Obligations (including such as effect an increase in the interest rate thereof), without the consent of any endorser, guarantor, or other party to the Documents or any other document evidencing any of the Obligations. Any such extension, reduction, modification or renewal shall not impair or affect the priority of the lien and security interest created by this instrument, or limit, release, discharge or affect the liability of Mortgagor, any endorser, guarantor or other party to the Documents or any other document evidencing the Obligations, except in accordance with the strict terms and tenor of any such extension, reduction, modification or renewal, and regardless of whether Mortgagor consents to any such extension, reduction, modification or renewal where a subsequent owner of the Mortgaged Property and Mortgagee are the parties to the extension, reduction, modification or renewal.

9. Mortgagee's Rights Non-Exclusive. The rights and remedies of Mortgagee under this instrument are in addition to the rights and remedies of Mortgagee at law and in equity. The exercise of any of Mortgagee's rights or remedies shall not be deemed to be an election of one right or remedy over another or to prevent Mortgagee from exercising any other of Mortgagee's rights or remedies.

10. Partial Invalidity. If any provision of this instrument is held to be invalid or unenforceable, the rest of this instrument shall remain fully valid and enforceable.

11. Waivers and Amendments. No failure by Mortgagee to insist upon the strict and timely performance of any of the provisions of this instrument shall be deemed a waiver thereof. Mortgagee, notwithstanding any such failure, shall have the right to insist upon the strict and timely performance by Mortgagor of any and all terms and provisions of this instrument to be performed by Mortgagor. No waiver by Mortgagee shall be effective unless it is in writing and signed by an authorized officer of Mortgagee. No such waiver shall operate as a waiver of any other matter or of a similar matter at a future time. This instrument may not be modified or amended except by a duly recorded writing executed by both Mortgagor and an authorized officer of Mortgagee.

12. Notices. Any communication by Mortgagee to Mortgagor shall be deemed given if in writing and when (i) personally delivered to Mortgagor, or (ii) sent to Mortgagor at Mortgagor's Notice Address by certified or registered mail, courier, or telegram, whether received by Mortgagor or not. No communication from or concerning Mortgagor shall be deemed for any purpose to have been received by Mortgagee unless it is in writing and actually received by an executive officer of Mortgagee. Whenever applicable provisions of the Uniform Commercial Code or other applicable law require that notice be reasonable, ten (10) days' notice shall be deemed reasonable. Mortgagor's "Notice Address" is the mailing address shown below Mortgagor's signature.

13. **Captions.** Section captions in this instrument are for convenience only and shall not affect the interpretation or construction of this instrument.

14. **Binding Effect.** This instrument shall bind Mortgagor and Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns, and shall inure to the benefit of Mortgagee and Mortgagee's successors and assigns.

15. **Governing Law.** This instrument and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of Iowa, without regard to choice or conflict of laws rules.

Executed APRIL 12, 1995

IN WITNESS WHEREOF, this instrument has been executed and delivered as of the day and year first above written.

X *Kim E. Harris*

Kim E. Harris

X *Marcia L. Harris*

Marcia L. Harris

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 CONTRACT, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THE CONTRACT.

I've read this Instrument and received a completed copy before signing, and I agree to all of its terms.

X *Kim E. Harris*

Kim E. Harris Date

X *Marcia L. Harris*

Marcia L. Harris Date

Mortgagor's
Notice Address: 145 Northwest Locust, Earlham, IA 50072

Telephone Number:

STATE OF IA)
)
County OF Polk)

SS:

On this 12 day of April, 1995, before me, a Notary Public in and for said County (City) and State, personally appeared Kim E. Harris and Marcia E. Harris

_____, known to me to be the person(s) who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

Shonda L Stiles
Notary Public

My Commission Expires: 3-22-98

STATE OF _____)
)
_____ OF _____)

SS:

On this _____ day of _____, _____, before me, a Notary Public in and for said County (City) and State, personally appeared _____

_____, known to me to be the person(s) who executed the foregoing instrument, and acknowledged that he executed the same as h free act and deed for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

Notary Public

My Commission Expires: