

Mortgage Record No. 96, Madison County, Iowa

JENKINS-FERGEMANN CO., WATERLOO, IOWA 49416

Hendersons Realty Co. et al and
Mahlon R. & Mary E. Henderson

#796

Filed for record on the 19 day of February
A.D. 1948, at 1:40 o'clock P.M.

TO

Fee \$4.00

BANKERS TRUST COMPANY, Trustee.

Wilma M. Wade, Recorder

Mortgage and Deed of Trust

THIS INDENTURE, made this 10th day of February, 1948 by and between Hendersons Realty Co., an Iowa Corporation having its principal place of business in the City of Winterset, Iowa, Mahlon R. Henderson and Mary E. Henderson. of the County of Madison State of Iowa hereinafter referred to as the "Grantors" and BANKERS TRUST COMPANY an, Iowa Corporation having its principal place of business in the City of Des Moines, Iowa, Trustee, hereinafter referred to as the "Trustee."

WITNESSETH WHEREAS, the Grantors are justly indebted to the holders of the promissory notes bearing even date herewith in the aggregate principal sum of Fifty Thousand and no/100 ---DOLLARS, and hereinafter referred to as the "Notes", with interest as provided therein, in amount and due as follows:

Note No. 1	in the amount of \$30,000.00 due	February 20,	1949
2	" " \$20,000.00 due	February 20,	1949

NOW, THEREFORE, for the purpose of securing payment of interest and principal of the notes according to their legal tenor and effect and for the purpose of securing the fulfillment of all covenants and conditions hereinafter contained, and in consideration of the indebtedness represented by the notes, the grantors hereby sell, convey and mortgage unto the Trustee, and its successors in Trust, the following described premises, situated in the County of Madison and State of Iowa, to-wit:

Lots Three (3) and Four (4) in Block Sixteen (16) in the Original Town of Winterset, now included in and forming a part of the City of Winterset, Iowa, and Lot Five (5) in Block Fifteen (15) of West Addition to the City of Winterset, now included in and forming a part of the City of Winterset, Iowa.

Subject to encumbrance of record.

including, so far as they now are or may hereafter belong to or be used with said real estate or buildings thereon and whether attached or detached, all elevators, all gas, steam, electric, or other heating, lighting, plumbing, ventilating, sprinkling, irrigating, water and power systems, appliances, fixtures and apparatus; all storm and screen windows and doors and all other fixtures; TOGETHER with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water sources, courses, rights, liberties, privileges, tenements, hereditaments, and appurtenances of every kind and nature thereunto appertaining or belonging, and the reversions and remainders, rents, issues and profits, thereof, and also, all the right, title, and interest and estate of the grantors, and of any one or more persona forming a component part of the grantors, in and to the premises, including those of dower, curtesy and the surviving spouse's distributive share and homestead, all of which are hereby expressly waived, relinquished and released.

TO HAVE AND TO HOLD the same unto the Trustee IN TRUST, however, for the equal benefit and security of all present and future holders of the notes.

PROVIDED, ALWAYS, and these presents are upon the express condition that if the Grantors shall well and truly pay or cause to be paid, the interest and principal of each and all the notes hereby secured, at the time and in the manner prescribed for payment thereof in the notes and shall well and truly perform and observe each and all the covenants, promises and conditions in the notes, and in these presents respectively expressed to be kept, performed or observed by or on the part of the Grantors, then this indenture shall be void, and the property hereinbefore conveyed shall forthwith, on the demand of the Grantors, and at their cost and expense, be released and satisfied of record by the Trustee; otherwise these presents shall remain in full force and effect.

For Release of Annotated Mortgage See
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THIS INDENTURE FURTHER WITNESSETH; That all covenants and stipulations herein contained shall bind the heirs, executors and assigns of the Grantors and shall inure to the benefit of and be available to the successors and assigns of the Trustee and that the Grantors have agreed and do hereby covenant and agree with the Trustee and with the respective owners from time to time of the notes as follows, to-wit:

1. NOTES The notes, herein before described, shall be executed by the Grantors and delivered to the Trustees for authentication. Only such notes as bear the authenticating certificates of the Trustee shall be secured by this Mortgage and Deed of Trust and such certificate upon any of the notes shall be conclusive evidence that the note so certified has been legally issued hereunder.
2. The Trustee shall keep proper books for the registration and transfer of the notes. Each note shall be registered. The person whose name any note shall at any time be registered shall be deemed and regarded as the owner and holder thereof for all purposes of this indenture and of the notes, including payments and interest thereon.
3. POSSESSION Until default by Grantors in the payment of the interest or principal of the notes hereby secured or in the performance of any of the provisions of this indenture, the Grantors shall be permitted to possess, manage, operate and enjoy the premises and property hereby conveyed and mortgaged, and to receive and use the earnings, income, rents, issues and profits thereof in the same manner, and with like effect as if this indenture had not been executed.
4. COVENANTS BY GRANTORS The Grantors hereby covenant and agree to and with the Trustee that they are well seized in fee simple and possessed of the premises hereby conveyed and that all said property is free from encumbrances, liens, and taxes and that they will warrant and forever defend the title to the same against the claims of all persons, except as above stated.
5. The Grantors shall promptly pay, within the time required by law, all taxes, rates, charges, levies and assessments, whether general or special, lawfully levied or imposed upon and required from all and singular the property hereby conveyed, or upon any part thereof, which shall become due and payable under any law now in force or that may at any time hereafter be enacted and whether said taxes be levied or imposed upon the interest of the Grantors or of the Trustee or of the noteholders in said property, and the Grantors shall furnish annually to the Trustee receipts or other sufficient evidence of payment of such items.
6. The Grantors shall not suffer to be created or remain outstanding any mechanics', laborers', statutory, or other liens upon the premises hereby conveyed, or any interest herein, or in any part thereof, the lien whereof may or can be held to be superior or equal to the lien of this indenture; and they shall not suffer or permit any other matter or thing whatsoever to be done, created or remain outstanding, whereby the lien of these presents may or can be impaired.
7. The Grantors shall at all times hereafter and until the principal of all of the notes and the interest thereon shall be fully paid, keep the buildings and improvements now upon said premises or which may hereafter be erected thereon, and the appurtenances situated upon said premises, insured in good and responsible insurance companies authorized to do business in the state of Iowa, and satisfactory to the Trustee, against loss or damage by fire, lightning, tornado and windstorm in a sum equal to at least the principal indebtedness at any time outstanding and unpaid, plus accrued interest thereon, or such amount as the Trustee may from time to time prescribe, and in addition thereto will secure and carry boiler insurance in an amount adequate to protect it and the property hereby conveyed from loss by reason of explosion or other damage which might be caused by boilers

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in the name of the Grantors and shall be delivered for safe-keeping to the Trustee herein and the loss, if any, shall be made payable to the Trustee for the benefit of the Grantors and of the holders of the notes, as additional security for the payment thereof. In the event of any loss covered by any policy of insurance:

a. Any appraisalment of adjustment of the loss and settlement, and payment of indemnity therefor which may be agreed upon between the Grantors and any insurance company, must be approved and accepted by the Trustee but the Trustee shall be in no way liable or responsible for the collection of any insurance in case of loss.

b. In case of such loss before the maturity of the notes, the proceeds of such insurance coming into the hands of the Trustee may be applied, at the option of the Trustee, to the repair and restoration of the buildings injured and damaged; such funds may be disbursed by the Trustee upon certification by the Grantors that work and material has been performed and supplied, and the Trustee may, but shall not be under obligation to, act upon such certification without any further evidence of the application of the money, and in no case shall the Trustee incur any liability for the misapplication of such funds.

c. If the Grantors shall not, within thirty days from the time of any loss under such policies of insurance, request the Trustee to apply the proceeds of such insurance to the repair and restoration of the property so injured or damaged, or if, after payment for the restoration and repair of such property there remains any balance of insurance money in the hands of the Trustee, then the same may be applied by the Trustee to the payment of interest and then to the payment of principal on the notes and distributed to the noteholders.

8. RIGHT TO PAY OBLIGATIONS In case the Grantors shall fail, refuse or neglect to pay the taxes or insurance as hereinbefore provided, then and in every such event the Trustee or legal holder or holders of the notes or any of them, are hereby authorized and empowered to pay such taxes, levies and assessments, and the premiums for such insurance, and such other payments necessary to discharge any lien or encumbrance against the premises hereby conveyed which might or could impair the lien hereby created, and in the event of their advancing or expending any moneys for the purposes aforesaid, to save the premises, or any part thereof, from being sold or forfeited for such taxes or assessments or other payments which may become due upon such property, or in the event of their advancing any money for the purpose of paying, removing or discharging any mechanics' or other liens on the improvements on said premises, or for defending any suit or suits in relation thereto, or in the event of their advancing any sum of money for the purpose of protecting the title to the premises, or in the event of their advancing any money for such insurance, all sums so advanced or expended shall be deemed and be taken to be a charge on the premises hereby conveyed; and all such sum or sums advanced for either or any or all of the purposes aforesaid shall be and hereby are declared to be secured by this indenture in the same manner as the principal and interest of said notes abovementioned, but in preference to the notes and interest thereon, and shall be repaid on demand by the Grantors to the party or parties so advancing the same, together with interest at the rate of seven percent (7%) per annum from the date of such advancement. Nothing contained in this Article shall require the Trustee or any of the noteholders to advance or expend any moneys for any of the purposes aforesaid.

9. RIGHTS AND REMEDIES OF NOTEHOLDERS AND TRUSTEE. In case of any default by the Grantors in the payment of any interest or principal installment or any default of the notes on this mortgage and deed of trust and if such default continues for thirty (30) days after the Trustee shall have requested the Grantors to conform or comply herewith, then and in every such event:

(a) the whole principal sum with interest thereon shall at the option of the Trustee be and become immediately due and payable, anything in this instrument to the contrary not-

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closure or other proceeding upon this mortgage or by any other legal or equitable procedure without declaration of such option and without notice; and

(b). the Grantors shall upon the demand of the Trustee surrender to such Trustee the actual possession of said premises and said Trustee, by its agents or attorneys, shall be entitled to enter into and upon and take possession of all and singular the premises and property hereby conveyed, and shall be entitled, in a court of equity having jurisdiction of the subject matter of said property, to the appointment, on ex parte application and with or without notice, of a receiver who may take possession thereof: and the Trustee, or the receiver so appointed who may be the Trustee shall have the right by its agents or attorneys to use, operate and manage the premises as a mortgagee in possession with the power to incur to the trust estate any expenses whatsoever required by prudent and reasonable management and to let the property and to collect the rents, and the net amount thereof, after provision for payment of all costs, charges and expenses, shall be applied to the payment of interest and then to the payment of principal on the notes.

10. In case of the commencement of an action for the foreclosure of this mortgage and deed of trust in any court of equity having jurisdiction of the subject matter hereof, the Trustee shall be entitled to recover and have taxed as a part of the costs in said action all its reasonable outlay and expenses in connection therewith, including a reasonable sum for its attorneys' fees; and including the cost of a complete abstract of title to the premises; and all such outlay and expense shall be an additional charge upon said premises and secured by the lien of this indenture.

11. The proceeds of any sale under foreclosure of this mortgage and deed of trust shall be applied: First--to the payment of all the costs of such foreclosure action, including reasonable attorneys' fees and trustees' fees. Second--to the payment of all moneys advanced by the Trustee or by any one or more of the noteholders for any purpose authorized in this deed of trust, with interest on such advances at the rate of seven percent (7%) per annum. Third--to the payment of the whole amount which shall then be owed or unpaid upon the notes, whether for principal or interest, but in case of the insufficiency of such proceeds to pay in full the whole amount of principal and interest remaining unpaid on said notes, first to the payment of principal and then to the payment of interest.

12. No holder of any note secured hereby shall be entitled to institute any foreclosure or other proceedings at law or in equity for the collection of the same, against the Grantors, until after the Trustee shall have been requested in writing to take such action and offered indemnity as provided in paragraph 15 hereof and it shall have refused or failed to comply with such request within thirty (30) days after the same shall have been made.

13. CONCERNING THE TRUSTEE. Payment made by the Grantors to the Trustee pursuant to this indenture are to be distributed by it to the respective noteholders pro rata according to the face amounts of the notes secured hereby as promptly as reasonably possible.

14. In addition to all other payments to be made by the grantors upon said promissory notes and in accordance with other provisions of these presents, grantors hereby covenant and agree to pay to the trustee a reasonable compensation for services rendered by the Trustee, its agents or attorneys in connection with the performance of its duties hereunder and to secure the payment of such reasonable compensation in the event of non-payment thereof, the Trustee shall have a lien upon the premises hereby conveyed and the proceeds thereof prior in right to the notes and interest hereby secured.

15. The Trustee shall not be under any obligation to take any action toward the execution or enforcement of the trusts hereby created, which, in its opinion will be likely to involve it in expense or liability, unless, as often as required by the Trustee, it shall be furnished with security and indemnity, satisfactory to it, against such expense or liability and unless requested by an instrument in writing signed by the holders of at least one-fourth in principal amount of the notes at the time outstanding, any-

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nor this provision therefor, shall affect any discretion herein given to the Trustee to determine whether or not the Trustee shall take action in respect to such default or to take action without such request.

16. The Trustee shall not be answerable for any default or miscarriage of any agent or attorney by it appointed hereunder, if such agent was selected with reasonable care, nor for any error or mistake of judgment made in good faith, nor in any case except for its own unlawful misconduct or gross negligence in the execution of said trust.

17. The Trustee may hold or own any of the notes with the same rights as it would have if not Trustee.

18. The Trustee shall not be responsible in any manner for the facts recited herein or in the notes, the same being made solely by Grantors. The Trustee shall not be responsible for the filing or recording of this deed of trust.

19. In case at any time hereafter the Trustees or any Trustee appointed shall resign, be removed, or otherwise cease, be unable or refuse to act, a successor or successors may be appointed by a majority in interest of the holders for the time being of the notes secured hereby and then outstanding, by an instrument or concurrent instruments in writing signed by such noteholders or their attorneys-in-fact duly authorized. Any new Trustee so appointed herein shall execute, acknowledge and deliver to the Grantors an instrument in writing accepting such appointment hereunder, and thereupon such new Trustee shall become invested with all the property rights, duties and trusts of the Trustee hereunder, with like effect as if originally named as Trustee herein, and without the necessity for any further act, deed or conveyance. The Trustee may resign by giving notice to Grantors and the noteholders at least thirty (30) days prior to the date such resignation is to take effect.

20. **RELEASE AND SATISFACTION** When the Grantors shall have fully paid the indebtedness hereby secured, with all interest thereon, and up to that time shall have well and truly performed all and singular the stipulations and covenants herein undertaken to be performed by them, then all the property herein conveyed shall revert to the Grantors and the estate and interest of the Trustee in respect thereof shall, therefore, cease, and the Trustee shall, upon the request of the Grantors and at their cost and expense, execute and deliver to them proper instruments acknowledging satisfaction of this mortgage and deed of trust. The holders of the notes shall thereupon surrender the notes to the Grantors.

21. The several rights, powers, options, elections, appointments and remedies in this indenture contained, provided, declared or authorized shall be construed and deemed as cumulative, and no one or more of them as exclusive of the other or any of the others or of any rights or remedies which are now or may be hereafter given or allowed by law.

22. Every person, firm or corporation signatory hereto as Grantor, shall be jointly and severally bound as such; and the words used herein in the singular, or of masculine gender, shall be considered and construed as in the plural, or of feminine or neuter gender, if necessary to give effect to the true intent and meaning of this indenture.

IN WITNESS WHEREOF, said Grantors have hereunto set their hands and the BANKERS TRUST COMPANY, Trustee, in token of its acceptance of this trust, has caused this indenture to be executed in its corporate name by two of its officers, and its corporate seal to be hereunto affixed.

(CORPORATE SEAL)

BANKERS TRUST COMPANY, Trustee
By S.C. Pidgeon Vice President

By F.S. Lockwood Secretary

(CORPORATE SEAL)

HENDERSONS REALTY CO.
By Erle W Henderson Pres.
By Mahlon Henderson Sec.
Mahlon R. Henderson
Erle W Henderson
Mary E. Henderson
GRANTORS

STATE OF IOWA, COUNTY OF MADISON, ss.

On this 18th day of February A.D., 1948, before me, a Notary Public in and for Madison County, Iowa, personally appeared Mahlon R. Henderson and Mary E. Henderson, husband

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and wife to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged the same as their voluntary act and deed.

(NOTARIAL SEAL)

Esther Cochran
Notary Public in and
for said county

STATE OF IOWA, COUNTY OF POLK, ss.

On this 18th day of February A.D. 1948, before me, a Notary Public in and for Polk County, Iowa, appeared S.C. Fidgeon and F.S. Lockwood, both to me personally known, who being by me duly sworn did severally say that they are respectively the Vice President and Secretary of Bankers Trust Company, a corporation, and that the seal affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed on behalf of the said corporation by authority of its board of directors, and the said S.C. Fidgeon and F.S. Lockwood acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

(NOTARIAL SEAL)

I.G. Abegg Notary Public
in and for Polk County, Iowa

My commission expires July 4, 1948

STATE OF IOWA, COUNTY OF MADISON, ss.

On this 18th day of February A.D. 1948, before me, a Notary Public in and for Polk County, Iowa, appeared Erle W. Henderson and Mahlon R. Henderson both to me personally known, who being by me duly sworn did severally say that they are respectively the President and Secretary of Hendersons Realty Co., a corporation, and that the seal affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed on behalf of the said corporation by authority of its board of directors, and the said Erle W. Henderson and Mahlon R. Henderson acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

NOTARIAL
SEAL

Esther Cochran Notary Public
in and for Madison County, Iowa

My commission expires July 4, 1948