

# MORTGAGE

83-002058

THIS MORTGAGE is made this 22nd day of April 1983, between the Mortgagor, William D. Raile and Elizabeth M. Raile, husband and wife (herein "Borrower"), and the Mortgagee, Banco Mortgage Company a corporation organized and existing under the laws of the state of IOWA, whose address is 3451 Hammond Ave., PO Box 780, Waterloo, Iowa 50704 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of THIRTY TWO THOUSAND THREE HUNDRED AND 00/100 (~~30,000~~ 32,300.00) Dollars, which indebtedness is evidenced by Borrower's note dated April 22, 1983 (herein "Note"), providing for monthly installments of principal and interest with the balance of the indebtedness, if not sooner paid, due and payable on May 1, 2006

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 23 hereof (herein "Future Advances"), Borrower does hereby mortgage, grant and convey to Lender, the following described property located in the County of Hall, State of Nebraska:

Lot Thirteen (13), in Bernhard Voss First Subdivision, being a part of Lot One (1) Voss Subdivision, located in the Southwest Quarter (SW 1/4) of Section Eleven (11) Township Eleven (11) North, Range Nine (9) West of the 6th P.M., Hall County, Nebraska.

THIS IS A PURCHASE MONEY MORTGAGE

which has the address of 210 North Voss Road Grand Island  
(Street) (City)  
NE 68801 (herein "Property Address");

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Borrower and Lender covenant and agree as follows:

**1. PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late payment service charges as provided in the Note, and the principal of and interest on any Future Advances secured by this Mortgage.

**2. PRIOR LIEN.** Anything herein to the contrary notwithstanding, the conveyance of the Property to Borrower, which conveyance was made by a Deed of even date herewith, was made subject to the indebtedness evidenced by that one certain promissory note (the "Prior Note") described in and secured by a Mortgage filed of record in the County Recorder's Office of ..... Hall ..... County, in Book .. Document No. 76-001641 .. Page No. .... (the "Prior Mortgage"). As long as, but only as long as, Borrower is not in default in the payment of the sums secured by this Mortgage (including without limitation the indebtedness evidenced by the Note), the Lender is obligated to pay, as and when due, each installment falling due under the Prior Note. If Lender fails to pay when due any such installment, then, so long as Borrower is neither in default in the payment of said sums secured by this Mortgage, nor in default in the performance of any other covenants of this Mortgage, Borrower shall have the right to pay any such delinquent installment and receive credit upon the Note for all sums so paid. Borrower agrees that Lender may, at any time and at Lender's option, prepay the indebtedness evidenced by the Prior Note and thereupon become subrogated to any and all rights, superior titles, liens and equities owned or claimed by the Mortgagee of the Prior Mortgage (the "Prior Lender"). The Lender shall always be deemed to have, in the event of any default under the Prior Note or Prior Mortgage, the absolute right, but not the obligation, to take such steps or advance such money as shall be necessary to cure any such default. In the event any such action is taken, Lender shall be subrogated to the rights of the holder of the Prior Note and any money so advanced shall be deemed an additional advance secured by this Mortgage.

**3. FUNDS FOR TAXES AND INSURANCE.** Subject to applicable law or to a written waiver by Lender, if any, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Mortgage, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of the yearly Prior Mortgage Insurance Premium (as that term is hereinafter defined), if any, plus any other items required to be escrowed under the terms of the Prior Note or Prior Mortgage (herein "Escrow Items"), all as reasonably estimated initially and from time to time by Lender on the basis of assessments, bills and reasonable estimates thereof.

If the terms of the Prior Note or Prior Mortgage so require, Lender shall forward the Funds, as received, to the holder of the Prior Note. If Lender retains the Funds, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said Escrow Items. In the event Lender retains the funds, Lender shall pay Borrower any interest or earnings on the Funds as may be required by law. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of the Escrow Items, shall exceed the amount required to pay the Escrow Items as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay the Escrow Items as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 19 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

**4. APPLICATION OF PAYMENTS.** So long as Borrowers shall not be in default under any of the terms and provisions of the Note secured hereby or under the terms of this Mortgage the Lender shall make payments as shown and when due under the terms of the Prior Note and the Prior Mortgage. Unless applicable law provides otherwise, any payments received by Lender under the Note shall be applied by Lender first in payment of amounts payable on the Prior Note and Prior Mortgage and any taxes, insurance premiums and any other funds required to be escrowed by the Prior Note and Prior Mortgage. The remainder of each payment shall be applied by Lender in payment of amounts payable to Lender by Borrower under paragraph 3 of this Mortgage, if any and then to interest payable on the Note, then to principal of the Note, then to interest and principal on any Future Advances. So long as Borrowers are not in default under any of the agreements referred to herein, such obligation of the Lender shall continue until such time as that portion of the principal amount of the Note advanced by Lender, along with all accrued interest, costs and attorneys fee, if any, due thereon shall have been paid in full, at which time such obligation of Lender shall cease and terminate and Borrowers shall thereafter commence to make payments directly to the holder of the Prior Note and Prior Mortgage any and all amounts then remaining due to the holder of the Prior Note and Borrowers shall punctually cause to be performed any and all obligations contained in any instrument securing said Prior Note. At such time as the Note secured hereby has been paid in full according to its terms, this Mortgage and all other instruments securing the Note shall be released both in fact and of record as provided in paragraph 25 hereof.

**5. CHARGES; LIENS.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any, in the manner provided under paragraph 3 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien (except the Prior Mortgage) which has priority over this Mortgage; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

**6. HAZARD INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require from time to time; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage.

Subject to the rights of the Prior Lender, the insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in the manner provided under paragraph 3 hereof or, if not paid in such manner because of a waiver signed by Lender, by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgagee clause in favor of, and in form acceptable to, Lender and the Prior Lender. Subject to the rights of the Prior Lender, Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Insurance proceeds shall be applied as required by the Prior Lender under the Prior Mortgage; and if the Prior Lender requires no specific application of all or part of the proceeds, then unless Lender and Borrower otherwise agree in writing, those proceeds shall be applied to restoration or repair of the Property damaged provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds for which the Prior Lender requires no specific application shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized, subject to the rights of the Prior Lender, to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 3 hereof or change the amount of such installments. If under paragraph 19 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

**7. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Mortgage, the covenants and agreement of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider were a part hereof.

**8. PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender'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 Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest,

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including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Borrower shall be required to pay to Lender an amount (the "Prior Mortgage Insurance Premium") equal to the premium for all mortgage insurance required under the Prior Note or Mortgage and not previously paid by former owners of the Property. Borrower shall pay the Prior Mortgage Insurance Premium, in the manner provided under paragraph 3 hereof. Any amounts disbursed by Lender pursuant to this paragraph 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower 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 8 shall require Lender to incur any expense or take any action hereunder.

**9. INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

**10. CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the rights of the Prior Lender.

In the event of a total taking of the Property, the proceeds, subject to the rights of the Prior Lender under the Prior Mortgage, shall be applied first to the sums secured by this Mortgage, and the remainder, if any, paid to Borrower. If there is a partial taking of the Property, the proceeds shall be applied as required by the Prior Lender under the Prior Mortgage; and, with regard to any excess of such proceeds, there shall be applied to the sums secured by this Mortgage such proportion of the excess as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the excess, if any, paid to Borrower.

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

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 3 hereof or change the amount of such installments.

**11. BORROWER NOT RELEASED.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

**12. FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender 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 Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

**13. REMEDIES CUMULATIVE.** 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.

**14. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 18 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

**15. NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**16. GOVERNING LAW; SEVERABILITY.** This Mortgage shall be governed by the law of the jurisdiction in which the Property is located. 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.

**17. BORROWER'S COPY.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

**18. TRANSFER OF THE PROPERTY; ASSUMPTION.** If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Mortgage shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 18, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under the Mortgage and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 15 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 19 hereof.

**19. ACCELERATION; REMEDIES.** Except as provided in paragraph 18 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 15 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, costs of documentary evidence, abstracts and title reports.

**20. BORROWER'S RIGHT TO REINSTATE.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, the Note and notes securing Future Advances, if any had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in paragraph 19 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**21. COVENANTS OF BORROWERS.** Borrowers hereby covenant and agree with, and solely for the benefit of Lender, that: (a) Borrowers will timely perform and observe the covenants and agreement on the part of the "Borrower" to be performed and/or observed under the terms of the Prior Note and the Prior Mortgage except for the payment of principal and interest under the Prior Note during those periods when that is the obligation of the Lender as provided herein, hereby acknowledging that the occurrence of any event which with notice or the passage of time or both constitutes a default thereunder shall be and constitute a default hereunder; (b) Borrowers will deliver to Lender copies of any and all notices, documents and instruments required to be delivered to, or which are received from, the holder of the Prior Note under the terms thereof or of the Prior Mortgage; (c) Borrowers will not alter, amend or otherwise modify the terms and provisions of the Prior Note or the Prior Mortgage, nor prepay sums due pursuant to the terms of the Prior Note except in the manner provided for in the Note.

**22. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 19 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 19 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of



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including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Borrower shall be required to pay to Lender an amount (the "Prior Mortgage Insurance Premium") equal to the premium for all mortgage insurance required under the Prior Note or Mortgage and not previously paid by former owners of the Property. Borrower shall pay the Prior Mortgage Insurance Premium, in the manner provided under paragraph 3 hereof. Any amounts disbursed by Lender pursuant to this paragraph 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower 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 8 shall require Lender to incur any expense or take any action hereunder.

**9. INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

**10. CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the rights of the Prior Lender.

In the event of a total taking of the Property, the proceeds, subject to the rights of the Prior Lender under the Prior Mortgage, shall be applied first to the sums secured by this Mortgage, and the remainder, if any, paid to Borrower. If there is a partial taking of the Property, the proceeds shall be applied as required by the Prior Lender under the Prior Mortgage; and, with regard to any excess of such proceeds, there shall be applied to the sums secured by this Mortgage such proportion of the excess as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the excess, if any, paid to Borrower.

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

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 3 hereof or change the amount of such installments.

**11. BORROWER NOT RELEASED.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

**12. FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender 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 Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

**13. REMEDIES CUMULATIVE.** 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.

**14. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 18 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

**15. NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**16. GOVERNING LAW; SEVERABILITY.** This Mortgage shall be governed by the law of the jurisdiction in which the Property is located. 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.

**17. BORROWER'S COPY.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

**18. TRANSFER OF THE PROPERTY; ASSUMPTION.** If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Mortgage shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 18, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under the Mortgage and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 15 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 19 hereof.

**19. ACCELERATION; REMEDIES.** Except as provided in paragraph 18 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 15 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, costs of documentary evidence, abstracts and title reports.

**20. BORROWER'S RIGHT TO REINSTATE.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, the Note and notes securing Future Advances, if any had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in paragraph 19 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**21. COVENANTS OF BORROWERS.** Borrowers hereby covenant and agree with, and solely for the benefit of Lender, that: (a) Borrowers will timely perform and observe the covenants and agreement on the part of the "Borrower" to be performed and/or observed under the terms of the Prior Note and the Prior Mortgage except for the payment of principal and interest under the Prior Note during those periods when that is the obligation of the Lender as provided herein, hereby acknowledging that the occurrence of any event which with notice or the passage of time or both constitutes a default thereunder shall be and constitute a default hereunder; (b) Borrowers will deliver to Lender copies of any and all notices, documents and instruments required to be delivered to, or which are received from, the holder of the Prior Note under the terms thereof or of the Prior Mortgage; (c) Borrowers will not alter, amend or otherwise modify the terms and provisions of the Prior Note or the Prior Mortgage, nor prepay sums due pursuant to the terms of the Prior Note except in the manner provided for in the Note.

**22. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 19 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 19 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of

rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

23. FUTURE ADVANCES. Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus US \$ None.

24. SUBROGATION. Any of the proceeds of the Note utilized to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, however remote, regardless of whether said liens or debts are acquired by Lender by assignment or are leased by the holder thereof upon payment.

25. RELEASE. Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage without charge to Borrower. Borrower shall pay all cost of recordation, if any.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.  
Witnesses:

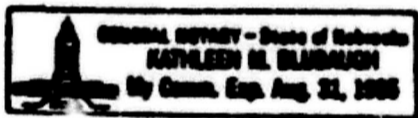
*William D. Raile*  
William D. Raile — Borrower

*Elizabeth M. Raile*  
Elizabeth M. Raile — Borrower

STATE OF NEBRASKA, Hall County ss:

On this 22nd day of April, 1983, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came William D. Raile and Elizabeth M. Raile, husband and wife to me known to be the identical person(s) whose name(s) are subscribed to the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal at Grand Island, Nebraska in said county, the date aforesaid.



My Commission expires:

*Kathleen M. Blubaugh*  
Notary Public

Entered as Document No.

83-002058

Grantor [Signature]  
Grantee [Signature]  
Notarical [Signature]

STATE OF NEBRASKA )  
COUNTY OF HALL ) SS

'83 APR 27 PM 12 47

*[Signature]*  
REG. OF DEEDS

G. I. ABSTRACT