DELAWARE COUNTY IOWA
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RECORDER
DELAWARE CO. IOWA
31.00

Prepared by: BRETT W. NAGEL FOR COMMUNITY SAVINGS BANK
101 EAST UNION, PO BOX 77, EDGEWOOD, IA 52042 (563)928-6425

[Space Above This Line for Recording Data]

# COMMERCIAL REAL ESTATE MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

| NAME(S)/ADDRESS(ES) OF MORTGAGOR(S) ("Mortgagor") | NAME / ADDRESS OF LENDER ("Lender") |
|---|---|
| Thomas M. Bergan<br>Eileen K. Bergan<br>104 S Locust<br>PO Box 291<br>Edgewood ,IA 52042 | COMMUNITY SAVINGS BANK<br>101 EAST UNION<br>PO BOX 77<br><br>EDGEWOOD, IA 52042-0077 |

| DATE OF MORTGAGE | |
|---|---|
| 12/13/2002 | |

PRINCIPAL AMOUNT: $ 53,000.00
FIFTY THREE THOUSAND DOLLARS AND 00/100

[X] NOTICE: This is a purchase Money Mortgage as defined by Iowa statutes 654.12B. Which states "a recorded purchase money mortgage takes priority over other liens that exist against the purchaser."

[X] NOTICE: This mortgage secures credit in the amount of $ 70,000.00 . Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens. (only applicable if box is marked)

PROPERTY DESCRIPTION (Include legal description, street address and sidwell/tax item number):

SEE ATTACHED EXHIBIT "A".

PROPERTY LOCATED AT: 106 WEST UNION, EDGEWOOD, IA 52042

This mortgage is made on this date between the parties listed above. The Mortgagor in consideration of the principal amount shown above and for other valuable consideration, the receipt of which is acknowledged, hereby mortgages and warrants to the Lender, its successors and assigns, forever, the land and property described above, together with the privileges, improvements, rents and profits, easements, hereditaments, appurtenances, equipment, and other personal goods of whatsoever description which may now or hereafter be located, situated or affixed on and used in connection therewith (hereinafter called the Property). Mortgagor covenants that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property (and, if this mortgage is on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), that the Property is unencumbered, and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

## SIGNATURE(S)

By signing this mortgage, each Mortgagor acknowledges that all provisions have been read and understood, including those on pages two, three, and four. Signed and sealed by Mortgagor:

X Thomas M. Bergan (Seal) 12-13-02 Date — Thomas M. Bergan

X Eileen K. Bergan (Seal) 12/13/02 Date — Eileen K. Bergan

X _____ (Seal) Date

X _____ (Seal) Date

## WITNESSED BY

X _____

X _____

X _____

X _____

WHEN RECORDED RETURN TO:
COMMUNITY SAVINGS BANK
101 EAST UNION
PO BOX 77
EDGEWOOD, IA 52042

2002-4777

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**The Mortgagor Covenants and Agrees With the Lender as Follows:**

1. This mortgage secures the principal amount shown on page one as may be evidenced by a promissory note or notes of even, prior or subsequent date hereto, including future advances, and every other Indebtedness of any and every kind now or hereafter owing from Mortgagor to Lender howsoever created or arising, whether primary, secondary or contingent, together with any interest or charges provided ino r arising out of such Indebtedness, as well as the agreements and covenants of this mortgage, any promissory note or of any other mortgage, assignment of leases or rents, security agreement, loan agreement, or any other agreement of whatsoever nature, whether written or oral, now existing or hereafter arising between the Mortgagor and the Lender (hereinafter all referred to as the Indebtedness).

2. The Mortgagor promises to pay the Indebtedness in accordance with the terms thereof and to perform all of the terms and conditions from which the Indebtedness may arise.

3. Lender may apply all payments received from the Mortgagor in any order Lender deems appropriate.

4. The Mortgagor promises at all times to preserve and to maintain the Property and every part thereof in good repair, working order, and condition, and will from time to time, make all needful and proper repairs so that the value of the Property shall not in any way be impaired. Mortgagor certifies that as to any real estate which has been, is now, or will be in the future owned or occupied by Mortgagor, that such real estate has not in the past, nor will now or in the future be allowed in any manner to be exposed to or contain hazardous or environmentally harmful substances as may be defined or regulated by any state or federal law or regulation which impacts, in any way, such substances, except to the extent the existence of such substances has been presently disclosed in writing to Lender, and Mortgagor will immediately notify Lender in writing of any assertion made by any party to the contrary. Mortgagor indemnifies and holds Lender and Lender's directors, officers, employees, and agents harmless from any liability or expense of whatsoever nature, including reasonable attorney fees, incurred directly or indirectly as a result of Mortgagor's involvement with hazardous or environmentally harmful substances as may be defined or regulated as such under any state or federal law or regulation. The Mortgagor certifies that the Property is and will be used and maintained in a manner that complies with all aspects of the Federal Americans with Disabilities Act. The Lender shall have the right and access to inspect the Property at all reasonable times and if the Property, or any part thereof, shall require inspection, repair, or maintenance which the Mortgagor has failed to provide, the Lender, after reasonable notice, may enter upon the Property to effect such obligation; and the cost thereof shall be added to the Indebtedness and paid on the Lender's demand by the Mortgagor.

5. The Mortgagor promises to pay and to discharge liens, encumbrances, taxes, assessments, and governmental charges at any time levied or assessed against the Mortgagor or the Property, and the Mortgagor will not do or permit to be done any act of whatsoever nature which would impair the lien of this mortgage; provided, however, that the Mortgagor shall not be required to pay any tax, assessment, or governmental charge so long as the Mortgagor in good faith disputes the validity thereof and provides for payment in a manner satisfactory to Lender in the event the Mortgagor fails in the dispute.

6. The Mortgagor promises to keep the Property insured against such risks, in such form and with such carriers as may within the sole discretion of the Lender be acceptable, causing the Lender to be named as loss payee or alternatively if requested by Lender, Mortgagee, in such form and manner as prescribed by the Lender. The Mortgagor hereby directs each and every insurer of the Property to make payment of loss to the Lender with the proceeds to be applied, only att he Lender's option, to the repair and replacement of the damage or loss or to be applied to the Indebtedness with the surplus, if any, to be paid by the Lender to the Mortgagor.

7. The Mortgagor hereby assigns to the Lender all judgments, decrees, and awards for injury, damage, or condemnation of or to the Property and authorizes the Lender, at its sole option, to apply the proceeds thereof to the payment of the Indebtedness in such manner as the Lender may elect.

8. The Mortgagor promises to abstain from the commission of any waste on the Property and to comply with all present and future statutes, regulations, and rules of any governmental authority governing the Property or in any way concerning the use and occupancy thereof.

9. The Mortgagor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business, nor to sell, further encumber, or otherwise dispose of, except as herein provided, any or all of its interest in any part of or all of the Property without first obtaining the written consent of the Lender.

10. At any time, upon ar equest of the Lender, the Mortgagor will execute and deliver to the Lender, and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing statements, or such other document as the Lender may be required, in the Lender's sole discretion, to effectuate, complete, and to perfect as well as to continue to preserve the Indebtedness, or the lien or security interest created by this mortgage. In the event the Mortgagor shall fail or refuse to execute and deliver any such document to the Lender, the Mortgagor hereby irrevocably constitutes and appoints the Lender, ora ny ofi ts officers or employees, as the Mortgagor's true and lawful attorney-in-fact to do so, and the expenses thereof shall be added to the Indebtedness and paid by the Mortgagor upon demand by the Lender. This power of attorney shall not be affected by the disability of Mortgagor.

11. The Mortgagor agrees to supply the Lender such financial and other information concerning its affairs and the status of any of its assets as the Lender, from time to time, may reasonably request. The



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Mortgagor further agrees to permit the Lender, its employees and agents, to have access to the Property for the purpose of inspecting it, together with all of the Mortgagor's other physical assets, if any, and to permit the Lender, from time to time, to verify accounts as well as to inspect, copy and to examine the books, records and files of the Mortgagor.

12. At Lender's request, Mortgagor will supply Lender with an acknowledged estoppel certificate which shall reflect the Indebtedness and any and all rights of setoff, counterclaims or defenses which exist against the Indebtedness.

13. Mortgagor will comply with the provisions of any Construction Loan Agreement, which if one exists, is incorporated by reference and shall become a part of this mortgage.

Any advances or disbursements made by Lender under such Construction Loan Agreement shall become a part of the Indebtedness hereunder and shall bear interest at the rate stated in the Note from the date of advance or disbursement, provided such calculation of interest shall not be in conflict with applicable law, in which case, Lender shall calculate interest at the highest allowable rate.

Any default under the terms of the Construction Loan Agreement will constitute a default under the provisions of this mortgage and Lender shall be entitled to the rights and remedies as herein provided, and/or as may be provided by law.

14. Mortgagor agrees to comply with the provisions of any ground lease related to the Property and will give Lender notice of any default on the part of the Lessor. Ifa n option to renew or extend the ground lease occurs during the duration of this Indebtedness, Mortgagor agrees to exercise such option and to submit evidence of same to Lender. Mortgagor hereby assigns its rights in any such ground lease to Lender; however, Lender shall not be liable or responsible for any of the covenants or promises stated therein.

Mortgagor promises not to alter or amend any such ground lease nor to cancel, terminate or surrender its interest in such ground lease without first obtaining the written consent of the Lender.

15. As additional security for the Indebtedness and the performance of all of the Mortgagor's covenants hereunder, the Mortgagor:

(a) hereby grants to the Lender a security interest in any personal property or fixtures which may now or hereafter constitute any part of the Property, in all personal property in possession of the Lender but belonging to the Mortgagor, and in any balance of deposit account with the Lender which may be applied by the Lender upon the Indebtedness in the event of default hereunder; and (b) hereby (pursuant to any statute now or hereafter existing and applicable) sells, assigns, transfers and sets over to the Lender all of the rents, profits, and income under any lease or leases of the Property, including any extensions, amendments, or renewals thereof, whether due or to become due, including all such leases in existence or coming into existence during the period this mortgage is in effect. This assignment of rents shall run with the land and be good and valid as against the Mortgagor or those claiming by, under, or through the Mortgagor, from the date of the recording of this instrument. This assignment shall continue to be operative during the period of any foreclosure or other action to enforce this mortgage, during any receivership created hereunder, and during the period of redemption, including the period of deficiency in the repayment of the Indebtedness. The Mortgagor acknowledges that this assignment is given as collateral security only and shall not be construed as obligating the Lender to perform any of the covenants or undertakings required to be performed by the Mortgagor contained in any such assigned leases. In the event of surrender or the taking of possession of the Property by the Lender upon the Mortgagor's default, the Lender may thereafter collect the rents and income therefrom, rent or lease the Property or any portion thereof upon such terms as the Lender may deem, in its sole discretion, advisable, and apply allp roceeds derived therefrom to (i) preservation of the Property; (ii) payment of taxes; (iii) payment of insurance premiums; (iv) payment of interest or principal due on the Indebtedness

16. The following shall constitute default of this mortgage and any note or other agreement it secures:

(a) the failure to pay either the interest or principal upon the Indebtedness when due;

(b) the failure to perform or keep any of the covenants of this mortgage or any agreement, oral or written, out of which the Indebtedness arises or which governs any of the terms of the Indebtedness;

(c) the insolvency of the Mortgagor;

(d) the filing by or against the Mortgagor of any insolvency, bankruptcy or receivership proceeding;

(e) the institution of any assignment by the Mortgagor for the benefit of the Mortgagor's creditors;

(f) the insolvency or death of any guarantor of this Indebtedness;

(g) the death of the Mortgagor, if a natural person, or of any partner or member if the Mortgagor is a partnership or limited liability company;

(h) the dissolution, merger and consolidation or transfer of a substantial part of the ownership of the Mortgagor or any guarantor of the Indebtedness if the Mortgagor or such guarantor is a corporation or limited liability company;

(i) the non-payment of any taxes or insurance when due, which shall constitute waste and entitle the Lender to the appointment of a receiver under applicable law;

(j) the sale or transfer by Mortgagor of any interest in the Property, whether by deed, land contract, contract of sale, or the like;



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(k) the Lender deems itself insecure for any reason whatsoever.

17. In the event of default, the Lender may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by the Mortgagor, effect any insurance provided for herein, make such repairs, cause the abstracts of title or title insurance policy and tax histories of said premises to be certified to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it, and procure title reports covering said premises, including surveys. The sums paid for any such purposes shall be added to the Indebtedness and shall bear interest at the rate of interest otherwise accruing on the Indebtedness secured hereby until paid. In the event of foreclosure, the abstracts of title or title insurance shall become the property of the Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the Indebtedness shall remain in the Lender's possession until the Indebtedness is paid in full.

18. In the event of default, the Lender may, without notice, and at its option, declare the entire Indebtedness due and payable, as it may elect, regardless of the date or dates of maturity thereof. Lender, at its option and without further demand, may thereafter foreclose this mortgage by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to reasonable attorney's fees and costs of title evidence all of which shall be additional sums secured by this mortgage. In the event of default or the commission of waste, the Lender shall forthwith be entitled to the appointment of a receiver of the Property and of the earnings, income, issue, and profits hereof, with such powers as the court making such appointments shall confer. The Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor.

19. If the Property is less than ten acres in size and if Lender waives in any foreclosure proceeding any right to a deficiency judgment against Borrower, then the period of redemption from judicial sale shall be reduced to six months. If the court finds that the Property has been abandoned by Borrower and if Lender waives any right to a deficiency judgment against Borrower, then the period of redemption from judicial sale shall be reduced to sixty days. The provisions of this paragraph 19 shall be construed to conform to the provisions of Sections 628.26 and 628.27 of the Code of Iowa.

20. Lender shall have the exclusive right to determine the order in which the Property securing this mortgage shall be sold and the proceeds applied to the Indebtedness in the event Lender exercises the remedies provided it in this mortgage.

21. The Mortgagor expressly acknowledges that it is the intent of both itself and the Lender to have a default of any of the provisions of this mortgage constitute a default of any other agreement which may now exist or hereafter arise between them and that, likewise, a breach of any such agreement shall constitute a breach and default of this mortgage. It is the expressed intent of the Mortgagor to cross collateralize all of its Indebtedness and obligations to the Lender howsoever arising and whensoever incurred.

22. Mortgagor warrants that no provision, warranty or promise made by the Mortgagor in any document related to this transaction causes any conflict whatsoever with the terms of any document related to any other transaction Mortgagor may be involved with, with any other person or entity.

23. It is further agreed that:

(a) no forbearance on the part of the Lender and no extension of the time payment of any of the Indebtedness given by the Lender shall operate to release, discharge, modify, or change or affect the original liability of the Mortgagor herein or of its continued performance of the covenants herein contained or in the covenants and terms of any portion of the liabilities;

(b) any reference to the Lender herein shall also include the Lender's successors and assigns;

(c) the covenants and conditions hereof shall bind and the benefits and advantages hereof shall inure to the respective heirs, executors, administrators, assigns and successors of the parties hereto;

(d) the Mortgagor agrees to pay the Lender, in addition to payment of the Indebtedness, a pro rata portion of the taxes, assessments, mortgage guarantee insurance premiums (so long as this mortgage is insured by a mortgage guarantee insurance policy), hazard insurance premiums next to become due, as estimated by the Lender so the Lender will have sufficient funds on hand to pay taxes, assessments and insurance premiums within thirty (30) days before the due date thereof, and to pay the Lender, immediately, any deficit thereon, the monies so held not to bear any interest and, upon default, to be applied by the Lender on account of the Indebtedness;

(e) all rights and remedies granted to the Lender hereunder shall be cumulative and not exclusive of one or the other or of any other remedy provided for by law or agreement, and may be exercised either successively or concurrently; and that

(f) if any provision of this mortgage shall be prohibited by state law, such prohibitions shall apply only to that provision and all other provisions of the mortgage shall remain in full force and effect.

**24. 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 this contract.**

Thomas M. Bg 12-13-02

**Borrower** **Date**

Ellen Seiger 12-13-02

**Borrower** **Date**

By initialing, Ia cknowledge this is page 4 of 5 of the
Commercial Real Estate Mortgage and Assignment of Leases and Rents

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ADDITIONAL PROVISIONS

## NOTARIZATION

### CORPORATE ACKNOWLEDGMENT

STATE OF County ss:

On this day of , before me, a Notary Public in the State of Iowa, personally appeared , to me personally known, who being duly sworn did say that he is

of , a corporation, that ☐ (the seal affixed to said instrument is the seal of said) ☐ (no seal has been procured by said) corporation, and that the foregoing instrument was signed ☐ (and sealed) on behalf of said corporation by authority of its Board of Directors, and the said acknowledged the execution of said instrument to be the voluntary act and deed of said corporation.

My Commission expires:

Notary Public in the State of Iowa

### INDIVIDUAL ACKNOWLEDGMENT

STATE OF IOWA DELAWARE County ss:

On this 13TH day of DECEMBER, 2002 , before me, a Notary Public in the State of Iowa, personally appeared THOMAS M. BERGAN AND EILEEN K. BERGAN , to me personally known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that THOMAS M. BERGAN AND EILEEN K. BERGAN executed the same as THEIR voluntary act and deed.

My Commission expires:

NOTARIAL SEAL IOWA
BRETT W. NAGEL
Commission Number 146637
My Comm. Exp. 1-31-03

Notary Public in the State of Iowa

### PARTNERSHIP ACKNOWLEDGMENT

STATE OF County ss:

On this day of , before me, a Notary Public in the State of Iowa, personally appeared , to me personally known , who being duly sworn did say that

general partner(s) of , and that executed the foregoing instrument on behalf of said partnership, and the said

acknowledged the execution of said instrument to be the voluntary act and deed of said partnership.

My Commission expires:

Notary Public in the State of Iowa

By initialing, I acknowledge this is page 5 of 5 of the Commercial Real Estate Mortgage and Assignment of Leases and Rents

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Thomas M. Bergan
Eileen K. Bergan
104 South Locust PO Box 291
Edgewood, IA 52042

Exhibit "A"
Mortgage dated December 13, 2002

The South sixty five (65) feet of Lot Fourteen (14), except the West twenty eight (28) feet of the North eight (8) feet thereof, and the South sixty five (65) feet of the West one-half (W½) of Lot Fifteen (15) and the East one-half (E½) of Lot Fifteen (15), and all of Lot Sixteen (16) of Peter's Addition to Edgewood, Iowa, according to plat recorded in Book 1 Plats, Page 137½; also that part of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of Section Two (2), Township Ninety (90) North, Range Five (5), West of the Fifth P.M. described as commencing at a point one hundred thirty three (133) feet West of the Northeast corner of the West one-half (W½) of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of said Section Two (2), and running thence West thirty two (32) feet, thence South one hundred thirty three (133) feet, thence East thirty two (32) feet, thence North one hundred thirty three (133) feet to the point of beginning,

TB

EB