Book 2005 Page 3759

Document 2005 3759 Type 04 001 Pages 7
Date 10/18/2005 Time 9:41 AM
Rec Amt $37.00

DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

DOCUMENT PREPARED BY: Kim Snyder, Hills Bank and Trust Company
131 Main Street
Hills, IA 52235
(319)679-2291

P.O. Box 70

TAXPAYER: Michael A Bany

16360 189th Street
Manchester, IA 52057

AFTER RECORDATION RETURN TO:
131 Main Street
Hills, IA 52235

2002-1447/2003-2405

CONSUMER MORTGAGE

(This is a Consumer Credit Transaction)

BORROWER
Michael A. Bany
ADDRESS
16360 189th Street Manchester, IA 52057
TELEPHONE NO. **IDENTIFICATION NO.**

MORTGAGOR/GRANTOR
Michael A. Bany, a single person
ADDRESS
16360 189th Street Manchester, IA 52057
TELEPHONE NO. **IDENTIFICATION NO.**

GRANTEE (LENDER): Hills Bank and Trust Company
131 Main Street
Hills, IA 52235

REAL PROPERTY ADDRESS: 16360 189th Street
Manchester, IA 52057

LEGAL DESCRIPTION OF REAL PROPERTY: See Schedule A on Page 7

PARCEL IDENTIFICATION NUMBER: 000140180300500

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF $ 92,000.00 . 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.

Mortgagor hereby mortgages, grants, assigns and conveys to Lender, the real property described in Schedule A, which is attached to this Mortgage and incorporated herein, together with all future and present improvements and fixtures; privileges, hereditaments, and appurtenances; leases, licenses and other agreements; rents, issues and profits; water, well, ditch, reservoir and mineral rights and stock, and standing timber and crops pertaining to the real property (cumulatively "Property").

Moreover, in further consideration, Mortgagor does, for Mortgagor and Mortgagor's heirs, representatives and assigns, hereby expressly warrant, covenant, and agree with Lender its successors and assigns as follows:

1. OBLIGATIONS. This Mortgage shall secure the payment and performance of all present and future indebtedness, liabilities, obligations and covenants of Borrower or Mortgagor (cumulatively "Obligations") to Lender pursuant to:

(a) this Mortgage and the following promissory notes and other agreements:

INTEREST RATE	PRINCIPAL AMOUNT/ CREDIT LIMIT	FUNDING/ AGRMT DATE	MATURITY DATE	CUSTOMER NUMBER	LOAN NUMBER
Fixed	$92,000.00	10/14/05	04/14/06		80171699-01

(b) all other present or future written agreements with Lender which refer specifically to this Mortgage **(whether executed for the same or different purposes than the foregoing)**;

(c) any guaranty of obligations of other parties given to Lender now or hereafter executed which refers to this Mortgage;

(d) future advances, whether obligatory or optional, to the same extent as if made contemporaneously with the execution of this Mortgage, made or extended to or on behalf of Mortgagor or Borrower. Mortgagor agrees that if one of the Obligations is a line of credit, the lien created by this Mortgage shall continue until payment in full of all debt due under the line notwithstanding the fact that from time to time (but before termination of the line) no balance may be outstanding. At no time shall the lien of this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed $ 92,000.00 ; and

(e) all amendments, extensions, renewals, modifications, replacements or substitutions to any of the foregoing.

For purposes of Iowa Code § 614.21, the date of maturity of the indebtedness shall be April 14, 2006 . As used in this Paragraph 1, the terms Mortgagor and Borrower shall include and also mean any Mortgagor or Borrower if more than one.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS. Mortgagor represents, warrants and covenants to Lender that:

(a) Mortgagor has fee simple marketable title to the Property and shall maintain the Property free of all liens, security interests, encumbrances and claims except for this Mortgage and those described in Schedule B which is attached to this Mortgage and incorporated herein by reference, which Mortgagor agrees to pay and perform in a timely manner;

(b) Mortgagor is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to "Hazardous Materials", as defined herein, and other environmental matters (the "Environmental Laws"), and neither the federal government nor the state where the Property is located nor any other governmental or quasi governmental entity has filed a lien on the Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Mortgagor's knowledge, threatened, which involve the Property. Neither Mortgagor nor, to the best of Mortgagor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any Hazardous Materials, in connection with the Property or transported any Hazardous Materials to or from the Property. Mortgagor shall not commit or permit such actions to be taken in the future. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to: (i) petroleum; (ii) friable or nonfriable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; and (vi) those substances, materials or wastes defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute or any other similar state or federal statute, rule, regulation or ordinance now or hereafter in effect. Mortgagor shall not lease or permit the sublease of the Property to a tenant or subtenant whose operations may result in contamination of the Property with Hazardous Materials or toxic substances;

(c) All applicable laws and regulations including, without limitation, the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. (and all regulations promulgated thereunder) and all zoning and building laws and regulations relating to the Property by virtue of any federal, state or municipal authority with jurisdiction over the Property, presently are and shall be observed and complied with in all material respects, and all rights, licenses, permits, and certificates of occupancy (including but not limited to zoning variances, special exceptions for nonconforming uses, and final inspection approvals), whether temporary or permanent, which are material to the use and occupancy of the Property, presently are and shall be obtained, preserved and, where necessary, renewed;

(d) Mortgagor has the right and is duly authorized to execute and perform its Obligations under this Mortgage and these actions do not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may be binding on Mortgagor at any time;

(e) No action or proceeding is or shall be pending or threatened which might materially affect the Property;

(f) Mortgagor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement (including, but not limited to, those governing Hazardous Materials) which might materially affect the Property or Lender's rights or interest in the Property pursuant to this Mortgage; and

(g) No loan broker as defined by Iowa Code Chapter 535C has been involved in this mortgage transaction.

3. PRIOR MORTGAGES. Mortgagor represents and warrants that there are no prior mortgages affecting any part of the Property except as set forth on Schedule B attached to this Mortgage which Mortgagor agrees to pay and perform in a timely manner. If there are any prior mortgages then Mortgagor agrees to pay all amounts owed, and perform all Obligations required, under such mortgages and the indebtedness secured thereby and further agrees that a default under any prior mortgage shall be a default under this Mortgage and shall entitle Lender to all rights and remedies contained herein or in the Obligations to which Lender would be entitled in the event of any other default.

4. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGORS OR BORROWERS. In the event of a sale, conveyance, lease, contract for deed or transfer to any person of all or any part of the real property described in Schedule A, or any interest therein, Lender may, at its option, declare the outstanding principal balance of the Obligations plus accrued interest thereon immediately due and payable, and Lender may invoke any remedies permitted by the promissory note(s) or other agreement(s), evidencing the Obligations, or by this Mortgage, unless otherwise prohibited by federal law.

5. LEASES AND OTHER AGREEMENTS. Mortgagor shall not take or fail to take any action which may cause or permit the termination or the withholding of any payment in connection with any Lease pertaining to the Property. In addition, Mortgagor, without Lender's prior written consent, shall not: (a) collect any monies payable under any Lease more than one month in advance; (b) modify any Lease; (c) assign or allow a lien, security interest or other encumbrance to be placed upon Mortgagor's rights, title and interest in and to any Lease or the amounts payable thereunder; or (d) terminate or cancel any Lease except for the nonpayment of any sum or other material breach by the other party thereto. If Mortgagor receives at any time any written communication asserting a default by Mortgagor under a Lease or purporting to terminate or cancel any Lease, Mortgagor shall promptly forward a copy of such communication (and any subsequent communications relating thereto) to Lender. All such Leases and the amounts due to Mortgagor thereunder are hereby assigned to Lender as additional security for the Obligations.

6. COLLECTION OF INDEBTEDNESS FROM THIRD PARTY. Lender shall be entitled to notify or require Mortgagor to notify any third party (including, but not limited to, lessees, licensees, governmental authorities and insurance companies) to pay Lender any indebtedness or obligation owing to Mortgagor with respect to the Property (cumulatively "Indebtedness") whether or not a default exists under this Mortgage. Mortgagor shall diligently collect the Indebtedness owing to Mortgagor from these third parties until the giving of such notification. In the event that Mortgagor possesses or receives possession of any instruments or other remittances with respect to the Indebtedness following the giving of such notification or if the instruments or other remittances constitute the prepayment of any Indebtedness or the payment of any insurance or condemnation proceeds, Mortgagor shall hold such instruments and other remittances in trust for Lender apart from its other property, endorse the instruments and other remittances to Lender, and immediately provide Lender with possession of the instruments and other remittances. Lender shall be entitled, but not required, to collect (by legal proceedings or otherwise), extend the time for payment, compromise, exchange or release any obligor or collateral, or otherwise settle any of the Indebtedness whether or not an Event of Default exists under this Mortgage. Lender shall not be liable to Mortgagor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Notwithstanding the foregoing, nothing herein shall cause Lender to be deemed a mortgagee-in-possession.

7. USE AND MAINTENANCE OF PROPERTY. Mortgagor shall take all actions and make any repairs needed to maintain the Property in good condition. Mortgagor shall not commit or permit any waste to be committed with respect to the Property. Mortgagor shall use the Property solely in compliance with applicable law and insurance policies. Mortgagor shall not make any alterations, additions or improvements to the Property without Lender's prior written consent. Without limiting the foregoing, all alterations, additions and improvements made to the Property shall be subject to the beneficial interest belonging to Lender, shall not be removed without Lender's prior written consent, and shall be made at Mortgagor's sole expense.

MB

8. LOSS OR DAMAGE. Mortgagor shall bear the entire risk of any loss, theft, destruction or damage (cumulatively "Loss or Damage") to the Property or any portion thereof from any cause whatsoever. In the event of any Loss or Damage, Mortgagor shall, at the option of Lender, repair the affected Property to its previous condition or pay or cause to be paid to Lender the decrease in the fair market value of the affected Property.

9. INSURANCE. The Property will be kept insured for its full insurable value (replacement cost) against all hazards including loss or damage caused by flood, earthquake, tornado and fire, theft or other casualty to the extent required by Lender. Mortgagor may obtain insurance on the Property from such companies as are acceptable to Lender in its sole discretion. The insurance policies shall require the insurance company to provide Lender with at least 7 days' written notice before such policies are altered or cancelled in any manner. The insurance policies shall name Lender as a loss payee and provide that no act or omission of Mortgagor or any other person shall affect the right of Lender to be paid the insurance proceeds pertaining to the loss or damage of the Property. In the event Mortgagor fails to acquire or maintain insurance, Lender (after providing notice as may be required by law) may in its discretion procure appropriate insurance coverage upon the Property and the insurance cost shall be an advance payable and bearing interest as described in Paragraph 21 and secured hereby. Mortgagor shall furnish Lender with evidence of insurance indicating the required coverage. Lender may act as attorney-in-fact for Mortgagor in making and settling claims under insurance policies, cancelling any policy or endorsing Mortgagor's name on any draft or negotiable instrument drawn by any insurer. All such insurance policies shall be immediately assigned, pledged and delivered to Lender as further security for the Obligations. In the event of loss, Mortgagor shall immediately give Lender written notice and Lender is authorized to make proof of loss. Each insurance company is directed to make payments directly to Lender instead of to Lender and Mortgagor. Lender shall have the right, at its sole option, to apply such monies toward the Obligations or toward the cost of rebuilding and restoring the Property. Any amounts may at Lender's option be applied in the inverse order of the due dates thereof.

10. ZONING AND PRIVATE COVENANTS. Mortgagor shall not initiate or consent to any change in the zoning provisions or private covenants affecting the use of the Property without Lender's prior written consent. If Mortgagor's use of the Property is or becomes a nonconforming use under any zoning provision, Mortgagor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Mortgagor will immediately provide Lender with written notice of any proposed changes to the zoning provisions or private covenants affecting the Property.

11. CONDEMNATION. Mortgagor shall immediately provide Lender with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Property. All monies payable to Mortgagor from such condemnation or taking are hereby assigned to Lender and shall be applied first to the payment of Lender's attorneys' fees, legal expenses and other costs (including appraisal fees) in connection with the condemnation or eminent domain proceedings and then, at the option of Lender, to the payment of the Obligations or the restoration or repair of the Property.

12. LENDER'S RIGHT TO COMMENCE OR DEFEND LEGAL ACTIONS. Mortgagor shall immediately provide Lender with written notice of any actual or threatened action, suit, or other proceeding affecting the Property. Mortgagor hereby appoints Lender as its attorney-in-fact to commence, intervene in, and defend such actions, suits, or other legal proceedings and to compromise or settle any claim or controversy pertaining thereto. Lender shall not be liable to Mortgagor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Nothing contained herein will prevent Lender from taking the actions described in this paragraph in its own name.

13. INDEMNIFICATION. Lender shall not assume or be responsible for the performance of any of Mortgagor's obligations with respect to the Property under any circumstances. Mortgagor shall immediately provide Lender with written notice of and indemnify and hold Lender and its shareholders, directors, officers, employees and agents harmless from all claims, damages, liabilities (including attorneys' fees and legal expenses), causes of action, actions, suits and other legal proceedings (cumulatively "Claims") pertaining to the Property (including, but not limited to, those involving Hazardous Materials). Mortgagor, upon the request of Lender, shall hire legal counsel to defend Lender from such Claims, and pay the attorneys' fees, legal expenses and other costs incurred in connection therewith. In the alternative, Lender shall be entitled to employ its own legal counsel to defend such Claims at Mortgagor's cost. Mortgagor's obligation to indemnify Lender under this paragraph shall survive the termination, release or foreclosure of this Mortgage.

14. TAXES AND ASSESSMENTS. Mortgagor shall pay all taxes and assessments relating to the Property when due and immediately provide Lender evidence of payment of same. Upon the request of Lender, Mortgagor shall deposit with Lender each month one-twelfth (1/12) of the estimated annual insurance premium, taxes and assessments pertaining to the Property. So long as there is no default, these amounts shall be applied to the payment of taxes, assessments and insurance as required on the Property. In the event of default, Lender shall have the right, at its sole option, to apply the funds so held to pay any taxes or against the Obligations. Any funds applied may, at Lender's option, be applied in reverse order of the due date thereof.

15. INSPECTION OF PROPERTY, BOOKS, RECORDS AND REPORTS. Mortgagor shall allow Lender or its agents to examine and inspect the Property and examine, inspect and make copies of Mortgagor's books and records pertaining to the Property from time to time. Mortgagor shall provide any assistance required by Lender for these purposes. All of the signatures and information contained in Mortgagor's books and records shall be genuine, true, accurate and complete in all respects. Mortgagor shall note the existence of Lender's beneficial interest in its books and records pertaining to the Property. Additionally, Mortgagor shall report, in a form satisfactory to Lender, such information as Lender may request regarding Mortgagor's financial condition or the Property. The information shall be for such periods, shall reflect Mortgagor's records at such time, and shall be rendered with such frequency as Lender may designate. All information furnished by Mortgagor to Lender shall be true, accurate and complete in all respects, and signed by Mortgagor if Lender requests.

16. ESTOPPEL CERTIFICATES. Within ten (10) days after any request by Lender, Mortgagor shall deliver to Lender, or any intended transferee of Lender's rights with respect to the Obligations, a signed and acknowledged statement specifying: (a) the outstanding balance on the Obligations; and (b) whether Mortgagor possesses any claims, defenses, set-offs or counterclaims with respect to the Obligations and, if so, the nature of such claims, defenses, set-offs or counterclaims. Mortgagor will be conclusively bound by any representation that Lender may make to the intended transferee with respect to these matters in the event that Mortgagor fails to provide the requested statement in a timely manner.

17. EVENTS OF DEFAULT. An Event of Default will occur under this Mortgage in the event that Mortgagor, Borrower or any guarantor of the Obligation:

(a) fails to pay any Obligation to Lender when due;
(b) fails to perform any Obligation or breaches any warranty or covenant to Lender contained in this Mortgage or any other present or future written agreement;
(c) allows the Property to be damaged, destroyed, lost or stolen in any material respect;
(d) seeks to revoke, terminate or otherwise limit its liability under any guaranty to Lender;
(e) allows the Property to be used by anyone to transport or store goods the possession, transportation, or use of which, is illegal; or
(f) causes Lender, in good faith, to believe the prospect of payment or performance is impaired.

Any of the foregoing shall constitute a default that materially impairs the condition, value, or the Lender's right in the Property, and shall evidence a material impairment of the Borrower's prospect of paying the Obligations. If a court should determine that one or more of the above do not constitute a default under the Iowa Consumer Credit Code, Mortgagor agrees that reinstatement of the Obligations shall be Mortgagor's sole remedy and Mortgagor shall not be entitled to any damages by reason of Lender's exercise of any of its remedies herein.

18. RIGHTS OF LENDER ON EVENT OF DEFAULT. Upon the occurrence of an Event of Default under this Mortgage, Lender shall be entitled to exercise one or more of the following remedies without notice or demand (except as required by law):

(a) to declare the Obligations immediately due and payable in full, such acceleration shall be automatic and immediate if the Event of Default is a filing under the Bankruptcy Code;
(b) to collect the outstanding Obligations with or without resorting to judicial process;
(c) to require Mortgagor to deliver and make available to Lender any personal property or Chattels constituting the Property at a place reasonably convenient to Mortgagor and Lender;
(d) to enter upon and take possession of the Property without applying for or obtaining the appointment of a receiver and, at Lender's option, to appoint a receiver without bond, without first bringing suit on the Obligations and without otherwise meeting any statutory conditions regarding receivers, it being intended that Lender shall have this contractual right to appoint a receiver;
(e) to employ a managing agent of the Property and let the same, in the name of Lender or in the name of Mortgagor, and receive the rents, incomes, issues and profits of the Property and apply the same, after payment of all necessary charges and expenses, on account of the Obligations;
(f) to pay any sums in any form or manner deemed expedient by Lender to protect the security of this Mortgage or to cure any default other than payment of interest or principal on the Obligations;
(g) to foreclose this Mortgage;
(h) to set-off Mortgagor's Obligations against any amounts owed Mortgagor by Lender including, but not limited to, monies, instruments, and deposit accounts maintained with Lender or any currently existing or future affiliate of Lender; and
(i) to exercise all other rights available to Lender under any other written agreement or applicable law.

Lender's rights are cumulative and may be exercised together, separately, and in any order. In the event that Lender institutes an action seeking the recovery of any of the Property by way of a prejudgment remedy in an action against Mortgagor, Mortgagor waives the posting of any bond which might otherwise be required. Lender or Lender's designee may purchase the Property at any sale. The Property or any part thereof may be sold in one parcel, or in such parcels, manner or order as Lender in its sole discretion may elect, and one or more exercises of the power herein granted shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations are paid in full.

19. REDEMPTION PERIOD. Mortgagor hereby agrees that in the event of judicial foreclosure of this Mortgage, Lender may, at its sole option, elect:

(a) pursuant to Iowa Code § 628.26 as now enacted or hereafter modified, amended or replaced, to reduce the period of redemption after sale on foreclosure to six months, or
(b) pursuant to Iowa Code § 628.27 as now enacted or hereafter modified, amended or replaced, to reduce the period of redemption after sale on foreclosure to sixty days, or
(c) pursuant to Iowa Code § 628.28 as now enacted or hereafter modified, amended or replaced, or any other Iowa Code Section, to reduce the period of redemption after sale on foreclosure to such time as may be then applicable and provided by law, or
(d) pursuant to Iowa Code § 654.20 as now enacted or hereafter modified, amended or replaced, to foreclose without redemption.

20. SECURITY INTEREST UNDER THE UNIFORM COMMERCIAL CODE. This Mortgage shall be considered a financing statement and a fixture filing pursuant to the provisions of the Uniform Commercial Code (as adopted by the state where the Property is located) covering fixtures, chattels, and articles of personal property now owned or hereafter attached to or to be used in connection with the Property together with any and all replacements thereof and additions thereto (the "Chattels"), and Mortgagor hereby grants Lender a security interest in such Chattels. The debtor is the Mortgagor described above. The secured party is the Lender described above. Upon demand, Mortgagor shall make, execute and deliver such security agreements (as such term is defined in said Uniform Commercial Code) as Lender at any time may deem necessary or proper or require to grant to Lender a perfected security interest in the Chattels, and upon Mortgagor's failure to do so, Lender is authorized to sign any such agreement as the agent of Mortgagor. Mortgagor hereby authorizes Lender to file financing statements (as such term is defined in said Uniform Commercial Code) with respect to the Chattels, at any time, without the signature of Mortgagor. Mortgagor will, however, at any time upon request of Lender, sign such financing statements. Mortgagor will pay all filing fees for the filing of such financing statements and for the refiling thereof at the times required, in the opinion of Lender, by said Uniform Commercial Code. If the lien of this Mortgage is subject to any security agreement covering the Chattels, then in the event of any default under this Mortgage, all the right, title and interest of Mortgagor in and to any and all of the Chattels is hereby assigned to Lender, together with the benefit of any deposits or payments now or hereafter made thereof by Mortgagor or the predecessors or successors in title of Mortgagor in the Property.

21. REIMBURSEMENT OF AMOUNTS EXPENDED BY LENDER. Lender, at Lender's option, may expend funds to perform any act required to be taken by Mortgagor or to exercise any right or remedy of Lender under this Mortgage. Upon demand, Mortgagor shall immediately reimburse Lender for all such amounts expended by Lender (except attorneys' fees and legal expenses) together with interest thereon at the lower of the highest rate described in any Obligation or the highest rate allowed by law from the date of payment until the date of reimbursement. These sums shall be included in the definition of Obligations herein and shall be secured by the beneficial interest granted herein.

22. APPLICATION OF PAYMENTS. All payments made by or on behalf of Mortgagor may be applied against the amounts paid by Lender (except attorneys' fees and legal expenses) in connection with the exercise of its rights or remedies described in this Mortgage and then to the payment of the remaining Obligations in whatever order Lender chooses.

23. POWER OF ATTORNEY. Mortgagor hereby appoints Lender as its attorney-in-fact to endorse Mortgagor's name on all instruments and other documents pertaining to the Obligations or the Mortgage. In addition, Lender shall be entitled, but not required, to perform any action or execute any document required to be taken or executed by Mortgagor under this Mortgage. Lender's performance of such action or execution of such documents shall not relieve Mortgagor from any Obligation or cure any default under this Mortgage. All powers of attorney described in this Mortgage are coupled with an interest and are irrevocable. Notwithstanding the foregoing, Lender is not entitled to confess judgment on any claim on behalf of Mortgagor.

24. SUBROGATION OF LENDER. Lender shall be subrogated to the rights of the holder of any previous lien, security interest or encumbrance discharged with funds advanced by Lender regardless of whether these liens, security interests or other encumbrances have been released of record.

25. COLLECTION COSTS. If Lender hires an attorney to assist in collecting any amount due or enforcing any right or remedy under this Mortgage, Mortgagor agrees to pay Lender's collection costs, other than attorneys' fees.

26. PARTIAL RELEASE. Lender may release its interest in a portion of the Property by executing and recording one or more partial releases without affecting its interest in the remaining portion of the Property. Nothing herein shall be deemed to obligate Lender to release any of its interest in the Property(except as required under Paragraph 34), nor shall Lender be obligated to release any part of the Property if Mortgagor is in default under this Mortgage.

27. MODIFICATION AND WAIVER. The modification or waiver of any of Mortgagor's Obligations or Lender's rights under this Mortgage must be contained in a writing signed by Lender. Lender may perform any of Borrower's or Mortgagor's Obligations, delay or fail to exercise any of its rights or accept payments from Mortgagor or anyone other than Mortgagor without causing a waiver of those Obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Mortgagor's Obligations under this Mortgage shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the Obligations belonging to any Mortgagor, Borrower or third party or any of its rights against any Mortgagor, Borrower or third party or any of the Property. Lender's failure to insist upon strict performance of any of the Obligations shall not be deemed a waiver, and Lender shall have the right at any time thereafter to insist upon strict performance.

28. SUCCESSORS AND ASSIGNS. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees and devisees.

29. NOTICES. Except as otherwise required by law, any notice or other communication to be provided under this Mortgage shall be in writing and sent to the parties at the addresses described in this Mortgage or such other address as the parties may designate in writing from time to time. Any such notice so given and sent by first class mail, postage prepaid, shall be deemed given the earlier of three (3) days after such notice is sent or when received by the person to whom such notice is being given.

30. SEVERABILITY. Whenever possible, each provision of this Mortgage shall be interpreted so as to be effective and valid under applicable state law. If any provision of this Mortgage violates the law or is unenforceable, the rest of this Mortgage shall continue to be valid and enforceable.

31. APPLICABLE LAW. This Mortgage shall be governed by the laws of the state of Iowa.

32. NO THIRD-PARTY RIGHTS. No person is or shall be a third-party beneficiary of any provision of the Mortgage. All provisions of the Mortgage in favor of Lender are intended solely for the benefit of Lender, and no third party shall be entitled to assume or expect that Lender will waive or consent to the modification of any provision of the Mortgage, in Lender's sole discretion.

33. PRESERVATION OF LIABILITY AND PRIORITY. Without affecting the liability of Borrower, Mortgagor, or any guarantor of the Obligations, or any other person (except a person expressly released in writing) for the payment and performance of the Obligations, and without affecting the rights of Lender with respect to any Property not expressly released in writing, and without impairing in any way the priority of this Mortgage over the interest of any person acquired or first evidenced by recording subsequent to the recording of this Mortgage, Lender may, either before or after the maturity of the Obligations, and without notice or consent: release any person liable for payment or performance of all or any part of the Obligations; make any agreement altering the terms of payment or performance of all or any part of the Obligations; exercise or refrain from exercising or waive any right or remedy that Lender may have under this Mortgage; accept additional security of any kind for any of the Obligations; or release or otherwise deal with any real or personal property securing the Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property shall be deemed, by acquiring such interest or recording any evidence thereof, to have consented to all or any such actions by Lender.

34. DEFEASANCE. Upon the payment and performance in full of all of the Obligations, Lender will execute and deliver to Mortgagor those documents that may be required to release this Mortgage of record. Mortgagor shall be responsible to pay any costs of recordation.

35. CONSTRUCTION LOAN. ☐ If checked, this Mortgage secures an obligation incurred for the construction of an improvement on land, and is a "construction mortgage" within the meaning of Section 554.9313 of the Iowa Uniform Commercial Code. This Mortgage also secures loans or advancements made to directly finance work or improvements upon the real estate described herein, and is a "construction mortgage lien" within the meaning of Section 572.18 of the Iowa Code.

36. PURCHASE MONEY. ☐ If checked, this Mortgage is a purchase money mortgage.

37. WAIVER OF HOMESTEAD AND OTHER EXEMPTIONS. Mortgagor hereby waives all homestead exemptions in the Property to which Mortgagor would otherwise be entitled under any applicable law and waives all rights of dower and distributive share in the Property.

38. MISCELLANEOUS. Mortgagor and Lender agree that time is of the essence. Mortgagor waives presentment, demand for payment, notice of dishonor and protest except as required by law. All references to Mortgagor in this Mortgage shall include all persons signing below. If there is more than one Mortgagor, their Obligations shall be joint and several. This Mortgage represents the complete integrated understanding between Mortgagor and Lender pertaining to the terms and conditions hereof.

39. ADDITIONAL TERMS:

NOTICE TO CONSUMER: 1. DO NOT SIGN THIS PAPER BEFORE YOU READ IT. 2. YOU ARE ENTITLED TO A COPY OF THIS PAPER. 3. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY, OTHER THAN THE PREPAYMENT PENALTY DESCRIBED IN THE PROMISSORY NOTE, AND MAY BE ENTITLED TO RECEIVE A REFUND OF UNEARNED CHARGES IN ACCORDANCE WITH LAW. 4. IF YOU PREPAY THE UNPAID BALANCE, YOU MAY HAVE TO PAY A MINIMUM CHARGE NOT GREATER THAN SEVEN DOLLARS AND FIFTY CENTS ($7.50).

Mortgagor acknowledges that Mortgagor has read, understands, and agrees to the terms and conditions of this Mortgage, and acknowledges receipt of an exact copy of same.

Dated this 10th day of October, 2005.

MORTGAGOR: Michael A. Bany

Michael A. Bany

MORTGAGOR: _____

MORTGAGOR: _____

MORTGAGOR: _____

MORTGAGOR: _____

MORTGAGOR: _____

MORTGAGOR: _____

MORTGAGOR: _____

MORTGAGOR: _____

☒ **AGRICULTURAL HOMESTEAD DISCLOSURE: MORTGAGOR UNDERSTANDS THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS CONTRACT, MORTGAGOR VOLUNTARILY GIVES UP MORTGAGOR'S RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT.**

Dated this 10th day of October, 2005.

MORTGAGOR: Michael A. Bany

Michael A. Bany

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

STATE OF IOWA)
) SS:
COUNTY OF LINN)

On this 10TH day of OCTOBER, 2005, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Michael A. Bany,
to me personally known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he [she] executed the same as his [her] voluntary act and deed.

Todd W Hilmer

TODD W. HILMER, Notary Public in and for said County and State

NOTARIAL SEAL IOWA
TODD W HILMER
Commission Number 719531
My Commission Expires
11-13-08

STATE OF)
) SS:
COUNTY OF)

On this day of , , before me, the undersigned, a Notary Public in and for said county and state, personally appeared ,
to me personally known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he [she] executed the same as his [her] voluntary act and deed.

, Notary Public in and for said County and State

SCHEDULE A

The street address of the Property (if applicable) is: 16360 189th Street
Manchester, IA 52057

The permanent tax identification number of the Property is: 000140180300500

The following described real property located in the County of Delaware
State of Iowa:

Lot Five (5) of North Ridge Subdivision in the Southeast Quarter of the Southwest Quarter of Section 18, Township 89 North, Range 5 West of the 5th Principal Meridian, according to the Plat recorded in Book 7 Plats, Page 65, of the Delaware County Records

SCHEDULE B