

Real Estate Mortgage (Guaranty)

M O R T G A G E

This Mortgage, made this 6th day of March, 19 89, between

Robert D. Bass and Susan K. Bass, husband and wife,

of the City of Winterset, State of Iowa (hereinafter jointly and severally called "Mortgagor"), and

West Des Moines State Bank

City of West Des Moines, State of Iowa, its successors or assigns (hereinafter called the "Mortgagee"),

Witnesseth That:

Whereas, Bass Chickering Corporation (an Iowa Corporation) (hereinafter called "Debtor") has executed and delivered to Mortgagee its promissory note (hereinafter called "Note") in the principal amount of Six Hundred Fifty Six Thousand Four Hundred and no/100-(\$656,400.00)-Dollars, with interest at the rate of Eleven and One half percent (11.50%) per annum, dated the 6th day of March, 19 90, and

Whereas, as evidence of the indebtedness secured hereby, Mortgagor has executed and delivered to Mortgagee its unconditional guaranty (hereinafter called the "Guaranty") with respect to the payment of either all or a portion of the Note described above,

Now Therefore, in order to secure the performance and observance by Mortgagor of all of the covenants and conditions contained in the Guaranty, and in this mortgage, and for a valuable consideration, the Mortgagor does hereby grant, bargain, sell, assign, alien, release, remise, transfer, convey, warrant, mortgage and pledge unto Mortgagee, its successors and assigns, the following described property (hereinafter sometimes called the "Mortgaged Property") to wit:

All of the following described real estate located in the County of Madison, State of Iowa:

RO VII 631 (08/86)

see attached Exhibit "A" for legal description. FILED NO. 1797

COMPUTER

BOOK 154 PAGE 759

90 MAR -9 PM 2:53

Compared

Fee \$45.00

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

EXHIBIT "A"

Commencing at the South $\frac{1}{2}$ corner of Section 19, Township 76 North, Range 27 West of the 5th P.M., thence Easterly along the South line of the SE $\frac{1}{4}$ of Section 19, Township 76 North, Range 27 West of the 5th P.M. 654.4 feet to the centerline of the existing county road; then N 0°37'00" W. along the centerline of said county road 520.0 feet; thence westerly along a line parallel to the South line of the said SE $\frac{1}{4}$ of Section 19, 33.0 feet to the West right-of-way line of said county road, the point of beginning; thence continuing Westerly along a line parallel to the South line of said SE $\frac{1}{4}$ of Section 19, 224.5 feet to a point; thence N 0°37'00" W. 210.0 feet to a point; thence Easterly along a line parallel to the South line of said SE $\frac{1}{4}$ of Section 19, 224.5 feet to a point on the West right-of-way line of said county road; thence S 0°37'00" E., along said West right-of-way line of said road 210.0 feet to the point of beginning; said parcel containing 1.08 acres, more or less; Also described as: a tract of land commencing at a point 621.4 feet East and 520' North of the Southwest corner of the Southwest Quarter of the Southeast Quarter of Section 19, Township 76 North, Range 27 West of the 5th P.M., Madison County, Iowa, thence West along a line parallel to the South line of said Southeast Quarter 224.5', thence North 0°37'00" West 210', thence East 224.5', thence South 0°37'00" East, 210' to the point of beginning, containing 1.08 acres, more or less

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Together with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining to said Mortgaged Property;

All buildings, plants, improvements, structures, trade fixtures, machinery and equipment, whether now or hereafter placed on the Mortgaged Property or any part thereof, together with all roads, streets, ways, alleys, waters, water courses, switch track facilities, easements, rights, liberties and privileges whatsoever to any of the Mortgaged Property belonging or appertaining, and the reversions and remainders thereof.

All the rents, issues, income and profits of the property above described.

To Have And To Hold the above described Mortgaged Property unto Mortgagee, forever, for the uses and purposes herein set forth, free from dower and all rights and benefits under and by virtue of the homestead exemption laws, which said rights and benefits Mortgagor does hereby expressly release and waive.

Provided, however, that if either Debtor or Mortgagor shall pay or cause to be paid the indebtedness which is evidenced by said Note and guaranteed by Mortgagor then the estate hereby granted shall cease and this mortgage become null and void and be released at the expense of the Mortgagor.

Mortgagor hereby covenants and agrees:

1. That in case the Debtor shall fail to pay all or any part of the "Liabilities" (as more particularly described in said Guaranty) when due, whether by acceleration or otherwise, according to the terms of said Note, the Mortgagor immediately upon the written demand of Mortgagee, will pay to Mortgagee the amount due and unpaid by the Debtor as aforesaid, in like manner as if such amount constituted the direct and primary obligation of the Mortgagor. Mortgagee shall not be required, prior to any such demand on, or payment by, the Mortgagor, to make any demand upon or pursue or exhaust any of its rights or remedies against the Debtor or others with respect to the payments of any of the said "Liabilities", or to pursue or exhaust any of its rights or remedies with respect to any part of the collateral.
2. That Mortgagor will perform or cause to be performed, all covenants, conditions, obligations and provisions of the Guaranty, and the Mortgagor will perform or cause to be performed all agreements however evidenced heretofore or hereafter entered into between Mortgagor and Mortgagee, connected in any manner whatsoever with the Guaranty as hereby secured.
3. That Mortgagor is lawfully seized of the Mortgaged Property and has good right to grant, sell, bargain, alien, release, convey, assign, warrant, transfer, mortgage and pledge the same; that Mortgagor has and will preserve good and indefeasible title to the Mortgaged Property; that the Mortgaged Property is free and clear of all encumbrances unless otherwise expressly stated above and that Mortgagor will warrant and forever defend the same against the claims of all persons whomsoever.

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4. That Mortgagor will keep the Mortgaged Property in good repair and operating condition, and will pay all taxes and assessments, special or otherwise, levied or assessed upon the Mortgaged Property or any part thereof, or levied or assessed against Mortgagor (including but not limited to personal property taxes, sales taxes, income taxes, processing taxes, excise taxes and license fees) promptly as and when the same become due and before penalties accrue, and will not permit any part of the Mortgaged Property or any other property of Mortgagor, or any interest therein, to be sold or forfeited for any tax or assessment whatsoever, but it is understood and agreed that Mortgagor, may, at the option of Mortgagor and in good faith and with reasonable diligence, contest the validity or amount of any such tax or assessment, provided Mortgagor shall first secure the consent in writing of Mortgagee, and deposit with Mortgagee, an amount sufficient, in the opinion of Mortgagee, to pay in full such contested tax or assessment, including all penalties, interest or costs that may be due or accrue thereon.
5. That Mortgagor will not permit any lien of mechanics or material men to attach to the Mortgaged Property.
6. That, until payment in full of the principal of and interest on the Note (or any note given in renewal or extension thereof), Mortgagor will keep Mortgagor and all the Mortgaged Property insured against the loss or damage by fire and against all other risks against which Mortgagee, may require Mortgagor to insure, in such companies, in such amounts and by policies in such form, as shall be satisfactory to Mortgagee, and make all sums recoverable upon all such policies insuring the Mortgaged Property payable to the parties interested in the Mortgaged Property (including Mortgagee) as their interest may appear, by agreements, in form satisfactory to Mortgagee, to be attached to such policies, and shall deliver all policies insuring the Mortgaged Property to Mortgagee.
7. That Mortgagor will comply with all acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body or official applicable to the Mortgaged Property, or any part hereof, or to Mortgagor; provided, however, that Mortgagor may contest any acts, rules, regulations, orders and directions of the bodies or officials referred to in this paragraph in any reasonable manner which will not, in the opinion of the Mortgagee, adversely affect their rights.
8. That the Mortgagor will not sell, assign, lease, transfer, mortgage or pledge, or attempt to sell, assign, lease, transfer, mortgage or pledge Mortgagor's interest or any part thereof, in the Mortgaged Property or in any other property securing the Guaranty above described, except with the written agreement in form and substance satisfactory to the Mortgagee, between the purchaser, assignee, lessee, transferee, mortgagee or pledgee and the Mortgagee, protecting the rights and powers of the Mortgagee, in respect to the Mortgaged Property.

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This mortgage may be executed, acknowledged and delivered in any number of counterparts, each of which is and shall be taken, accepted and received by the parties named herein and by all public officers for recording deeds and other instruments and by all other persons whomsoever in any proceeding whatever, legal or otherwise, based hereon or transacted in connection herewith as an original and all of which counterparts shall together evidence but one and the same undertaking.

The invalidity or unenforceability of any one or more phrases, clauses, sentences, provisions and/or paragraphs of this mortgage shall not affect the remaining parts of this mortgage or any part thereof, all of the phrases, clauses, sentences, provisions and/or paragraphs of this mortgage being inserted conditional in their being held valid in law and in the event that any one or more phrases, clauses, sentences, provisions and/or paragraphs is held invalid the remaining parts of the mortgage or any part thereof shall be construed as if such phrases, clauses, sentences, provisions and/or paragraphs had not been inserted.

Whenever the context hereof requires, reference herein made to the singular number shall be understood as including the plural, and likewise the plural shall be understood as denoting the singular and specific enumeration shall not exclude the general but shall be considered as cumulative.

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9. That Mortgagor will not do or permit to be done anything that may impair the value of the mortgaged Property or the security intended to be effected by this mortgage.
10. That Mortgagor will make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further deeds, mortgages, assignments, pledges, instruments, transfers and assurances as shall be required by the Mortgagee, for the better conveying, mortgaging, assigning, pledging, transferring, assuring and confirming unto the Mortgagee the Mortgaged Property hereby conveyed or intended so to be, and upon request by the Mortgagee, Mortgagor will, at any time, and from time to time, forthwith execute, acknowledge and deliver such deeds, mortgages, assignments, pledges, instruments, transfers and/or assurances and do or cause to be done all such acts as shall be required by the Mortgagee, for effectually carrying out the intent hereof.

In the case of the failure of Mortgagor, as above provided, to keep the Mortgaged Property in good repair, to pay all taxes and assessments, to keep the Mortgaged Property free from liens of mechanics or material men or to keep Mortgagor and the Mortgaged Property insured as above covenanted, then the Mortgagee, may, at its option, place the Mortgaged Property or cause it to be placed in good repair, pay or settle such taxes or assessments, including accrued penalties, if any, at any time after said taxes or assessments shall have become due and payable, contest any and all taxes and assessments, whenever in the opinion of the Mortgagee, such contest is necessary, redeem the Mortgaged Property or any part thereof from any sale or forfeiture for any tax or assessment or purchase any tax title obtained or that shall be obtained thereof, pay any judgments based upon such tax levies, pay, settle or contest any lien or claim or lien of mechanics or imposed against the Mortgaged Property, and procure such insurance as is above described. And all moneys paid for any such purpose and any other moneys disbursed by the Mortgagee, to protect the lien of this mortgage with interest thereon from the date of payment at the same rate per annum as is borne by the Note, shall become so much additional indebtedness guaranteed and secured by this mortgage and be included in any judgment or decree foreclosing the same, and be paid out of the rents, issues, income and profits, or out of the proceeds of the sale of the Mortgaged Property, if not otherwise paid by the Mortgagor, and it shall not be obligatory to inquire into the necessity of such repairs in advancing moneys in that behalf as above authorized, or to inquire into the validity of such tax title, taxes or assessments, or of sale therefor, or judgments thereon, or of liens of mechanics or material men or into the necessity for such insurance, but nothing herein contained shall be construed to require Mortgagee, to advance or expend any money for such repairs, taxes, assessments, tax titles, judgments, liens of mechanics or material men, insurance or for any other purposes.

7.

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If default shall be made in the observance or performance of any of the covenants, conditions or obligations expressed in this mortgage, or in the Note by Debtor, or in the Guaranty by Mortgagor, or if there shall be discovered by Mortgagee, any failure of Debtor or Mortgagor to disclose any fact deemed by Mortgagee, to be material to the Mortgagee, and/or any misrepresentation by, on behalf of, or for the benefit of Debtor or Mortgagor in any agreement, affidavit, certificate, exhibit, or instrument executed and delivered to Mortgagee, in connection therewith, or if Debtor or Mortgagor shall become a party to any attempt to extend, adjust or compromise any liability of Debtor or Mortgagor under the bankruptcy laws of the United States, or otherwise, or if a petition in bankruptcy be filed either by or against Debtor or Mortgagor pursuant to the bankruptcy laws of the United States, or upon the making by the Debtor or Mortgagor of an assignment for the benefit of each of their respective creditors, or if final judgment, order or decree for the payment of money shall be rendered against Debtor or Mortgagor and Debtor or Mortgagor shall not discharge the same or cause it to be discharged within ten (10) days of the rendition thereof, or shall not appeal therefrom in such manner as to preclude or conclusively set aside the execution of or levy under said judgment, order or decree, then in any such case, the whole of the indebtedness as guaranteed and hereby secured shall at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor, notice of such option being hereby expressly waived, and Mortgagee, shall have the right to possession of the Mortgaged Property and shall have the right immediately to foreclose this mortgage.

Upon the filing of any action for the foreclosure of this mortgage, or at any time thereafter, whether prior to foreclosure sale or after sale, at any time the purchaser thereof shall secure possession of the Mortgaged Property with the right to collect the rents, issues, income and profits thereof, the court in which such action is filed may appoint a receiver of the Mortgaged Property, without notice to Mortgagor, or any party claiming under Mortgagor, and without regard to the solvency or insolvency of Mortgagor, the person or persons liable for the payment of the indebtedness as guaranteed and secured hereby, and without regard to the then value of the Mortgaged Property, with power to take possession thereof and collect the rents, income and profits thereof during the pendency of the action and until the purchaser at foreclosure sale shall secure possession of the Mortgaged Property with the right to collect the rents, issues, income and profits thereof, and the court in which such action is filed may, from time to time authorize said receiver to apply the net amounts in his hands in payment, in whole or in part, of any or all of the items following: (1) amount due upon the indebtedness guaranteed, as secured hereby, (2) amount due upon judgment or decree entered in any suit foreclosing this mortgage, (3) insurance or the improvements upon said premises, (4) taxes, special assessments or any other lien or charge upon the Mortgaged Property that may be or become superior to the lien of this mortgage of any judgment or decree foreclosing the same, (5) all moneys advanced by Mortgagee, for any purpose authorized in this mortgage, or in the Note with interest on such advance, at the same rate per annum as is borne by the Note.

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In case of the foreclosure of this mortgage by Mortgagee, in any court of law or equity, a reasonable sum shall be allowed for the solicitors' or attorneys' and stenographers' fees of the plaintiff in such proceedings, and also, for all outlays for documentary evidence and the cost of a complete abstract of title to the Mortgaged Property, and for an examination or opinion of title for the purpose of such foreclosure; and in case of any other suit or legal proceeding wherein Mortgagee, shall be made a party thereto, by reason of this mortgage, their costs and expenses and the reasonable fees and charges of their attorneys or solicitors for services in such suit or proceedings, shall be a further lien and charge upon the Mortgaged Property under this mortgage, and all such attorneys', solicitors' and stenographers' fees, costs, expenses and other charges, shall become so much additional indebtedness as guaranteed and secured hereby and be allowed in any judgment or decree foreclosing this mortgage. And there shall be included in any judgment or decree foreclosing this mortgage and paid out of the rents, issues, income and profits of the Mortgaged Property and the proceeds of any sale made in pursuance of any such judgement or decree: (1) all the costs of such suit or suits, advertising, sale, and conveyance, including attorneys', solicitors' and stenographers' fees, outlays for documentary evidence, and costs of such abstract and examination of title, (2) all moneys advanced by Mortgagee, for any purpose authorized by this mortgage, with interest on such advance from the date of payment at the same rate per annum as is borne by the Note, (3) all the accrued interest remaining unpaid on the indebtedness guaranteed and hereby secured, (4) all of the said indebtedness guaranteed as hereby secured remaining unpaid. The overplus, if any, shall then be paid to Mortgagor.

This mortgage shall be a lien on the Mortgaged Property as security for the full amount of said indebtedness as guaranteed, whether the principal amount of the Note, or any part thereof, is disbursed to said Debtor by the Mortgagee simultaneously with the execution of this mortgage or subsequent thereto, in installments or otherwise.

All the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of Mortgagor shall bind their respective heirs, executors, administrators, successors, or assigns whether so expressed or not.

No remedy herein contained conferred upon Mortgagee, is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

No delay or omission of Mortgagee, to exercise any right or power accruing upon any default as aforesaid shall impair any such right or power or be construed as a waiver of any such default or acquiescence therein and every power and remedy given by this mortgage to Mortgagee, may be exercised from time to time as often as may be deemed expedient by Mortgagee.

9.

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In Witness Whereof,

Robert D. Bass and Susan K. Bass AKA S. KAY BASS

have hereunto set their hands seal on the day and year first above written.

Robert D. Bass
Robert D. Bass

S. Kay Bass
Susan K. Bass

Signed and Sealed in the presence of:

State of Iowa

SS

County of Polk

I, Kathleen McNamara, a Notary Public in and for said

County in the State aforesaid, do hereby certify that on this day personally

appeared before me Robert D. Bass

personally known to me to be the same person whose name subscribed to the foregoing instrument, and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6 day of March, A.D. 1990.



Kathleen McNamara
Notary Public

FOR THE LEGAL EFFECT OF THE USE OF THIS FORM, CONSULT YOUR LAWYER

STATE OF IOWA, Madison COUNTY, ss:

On this 6 day of March, A. D. 1990, before me, the undersigned, a Notary Public in and for said County and State, personally appeared S. KAY BASS AKA Susan K. Bass

to me known to be the identical persons named in and who executed the within and foregoing instrument, to which this is attached, and acknowledged that they executed the same as their voluntary act and deed.



Chet R. Chickering
Notary Public in and for said County and State

