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STATE OF IOWA, Pottawattamie County  
Filed for record the 10 day of Sept  
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Fee 110<sup>00</sup> x  
3306 ✓

## FIRST MORTGAGE

*John Scirtino*  
*George Aronoff*  
Recorder

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter called the "Mortgage") made this 10 day of Sept, 1986, by and between Vacanti & Randazzo Construction Company, a Nebraska corporation, with its principal office located at 4201 South 87th Street, Omaha, Nebraska 68127 (hereinafter called "Vacanti") and Bankers Life Insurance Company of Nebraska, a Nebraska corporation, with its principal office at 5900 "O" Street, P.O. Box 81889, Lincoln, Nebraska 68501 (hereinafter called "Bankers").

### W I T N E S S E T H

WHEREAS, Vacanti has borrowed from Bankers and Bankers has loaned to Vacanti the sum of Eight Hundred Thousand Dollars (\$800,000.00) for the purpose of refinance of loans.

WHEREAS, said indebtedness is evidenced by a Promissory Note of even date herewith in the principal sum of Eight Hundred Thousand Dollars (\$800,000.00) (herein called the "Note") executed by Vacanti and payable to Bankers at its office in Lincoln, or at such other place as Bankers may designate in writing with interest as therein provided, both principal and interest to be payable periodically in accordance with the terms of the Note and finally maturing as set forth in the Note.

NOW, THEREFORE, Vacanti, for the purpose of securing the payment of all amounts now or hereafter owing under the Note and this Mortgage and the faithful performance of all covenants, conditions, stipulations and agreements therein and herein contained and contained in every other document and agreement given in connection with Bankers' loan transaction (collectively with Note and Mortgage, "Loan Documents"); in consideration of these premises and the sum of TEN DOLLARS (\$10.00) to it paid by Bankers, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, sells, conveys, transfers, assigns, sets over, mortgages, grants a security in and warrants to Bankers, its successors and assigns forever:

A. All of the real property (hereinafter called the "Land"), situated and being in the County of Pottawattamie and State of Iowa, and more particularly described on Exhibit "A" attached hereto and made a part hereof.

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B. All and singular, the buildings and improvements, situated, constructed or placed thereon, and all right, title and interest of Vacanti in and to all streets, boulevards, avenues or other public thoroughfares in front of and adjoining the Land, including all easements, licenses and rights of way, thereunto attached or belonging, and also all right, title and interest of Vacanti in and to all strips and gores of land adjacent to the Land;

C. Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Land or any buildings or improvements belonging or in anywise appertaining thereto, or any part thereof;

D. All the rents, issues, uses, profits, insurance proceeds, and condemnation awards now or hereafter belonging or in any way pertaining to: (1) the Land; and (2) each and every building and improvement and all of the properties included within the provisions of the foregoing paragraph B; and (3) each and every lease, sublease and agreement described in the foregoing paragraph C and each and every right, title and interest thereunder, from the date of this Mortgage until the terms hereof are complied with and fulfilled; and

E. All machinery, apparatus, equipment, fixtures, furnishings and articles of personal property of every kind and nature now or hereafter located upon or within the buildings and improvements or in any other way appertaining to or located on the Land (hereinafter called the "Furnishings and Equipment") and now owned or hereafter acquired by Vacanti, including, but without limiting the generality of the foregoing, any and all equipment, furniture, furnishings (including lounge and restaurant equipment, furniture and furnishings), partitions, carpeting, drapes, dynamos, screens, awnings, storm windows, floor coverings, dishes, pots, pans, silverware, tables, chairs, linen, stoves, refrigerators, dishwashers, disposal units, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, maintenance equipment, telephone equipment, and all heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and air-cooling equipment, gas and electric machinery and equipment and all additions, accessions, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds of all of the foregoing, all of which shall be construed as fixtures and will conclusively be construed, intended and presumed to be a part of the Land.

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It is understood and agreed that all Furnishings and Equipment now owned or hereafter acquired by Vacanti, whether or not permanently affixed to the Land and the buildings and improvements thereon, shall for the purpose of this Mortgage be deemed conclusively to be conveyed hereby and, as to all such Furnishings and Equipment, whether personal property or fixtures, or both, a security interest is hereby granted by Vacanti and hereby attached thereto, all as provided by the Uniform Commercial Code.

TOGETHER with all and singular other tenements, hereditaments and appurtenances belonging to the aforesaid properties, or any part thereof with the reversions, remainders and benefits and all other revenues, rents, earnings, issues and income and profits arising or to arise out to be received or had of and from the properties hereby mortgaged or intended so to be or any part thereof and all the estate, right, title, interest and claims, at law or in equity which Vacanti now or may hereafter acquire or be or become entitled to in and to the aforesaid properties and any and every part thereof. The above described Land, buildings, improvements, appurtenances and Furnishings and Equipment are hereinafter collectively called the "Mortgaged Premises" and ~~are~~ hereby declared to be subject to the lien of this Mortgage as security for the payment of the aforementioned indebtedness.

Vacanti covenants and agrees with Bankers as follows:

1. Vacanti warrants that it has a valid and binding fee simple interest in the Mortgaged Premises and has the right and lawful authority to mortgage, assign and pledge the same and that the same is free and clear of all liens and encumbrances of whatsoever kind and nature; subject, however, only to such defects, irregularities, easements and encumbrances as specifically approved by Bankers (hereinafter called "Permitted Encumbrances"). Vacanti covenants to Warrant and Defend the Mortgaged premises against the lawful claims of all persons whomsoever.

3. The lien created by this Mortgage is a first and prior lien on the above described Mortgaged Premises and Vacanti will keep said Mortgaged Premises and the rights, privileges and appurtenances thereto free from all lien claims of every kind whether superior, equal, or inferior to the lien of this Mortgage subject only to Permitted Encumbrances and if any such lien be filed, Vacanti, within forty-five (45) days after such filing shall cause same to

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be discharged by payment, bonding or otherwise to the satisfaction of Bankers. Vacanti further agrees to protect and defend the title and possession of said Mortgaged Premises so that this Mortgage shall be and remain a first lien thereon until said debt be fully paid, or if foreclosure sale be had hereunder so that the purchaser at said sale shall acquire good title in fee simple to said Mortgaged Premises free and clear of all liens and encumbrances.

4. Vacanti covenants and agrees to make, execute, acknowledge and deliver to Bankers upon its request one or more mortgages supplemental hereto as it may at any time hereafter be reasonably desired or required by Bankers to more fully protect the lien of this Mortgage, or for more particularly identifying and describing the Mortgaged Premises, or for the purpose of continuing the lien hereof, or of any mortgage supplemental hereto, and the priority of such lien, and generally to do and perform such other acts and things and to execute and deliver such other instruments and documents as may reasonably be deemed necessary or advisable by Bankers to carry out the intentions of this Mortgage.

5. Vacanti shall not commit or permit waste and shall maintain, preserve and keep the Mortgaged Premises and every part thereof in good condition, repair and working order and will from time to time make all needful and proper repairs, replacements, additions, betterments and improvements thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved.

6. Vacanti shall promptly pay, as the same become due and payable, all taxes, liabilities, charges and assessments at any time levied or assessed upon or against the Mortgaged Premises and shall pay all claims which might or could become a lien on said Mortgaged Premises prior, equal, or inferior to the lien of this Mortgage so that the priority of this Mortgage may be duly preserved; but no such tax, liability, charge or assessment need be paid so long as the validity thereof shall be contested in good faith and adequate reserves are maintained by Vacanti with Bankers in escrow; and Vacanti will not at any time create, allow to arise or exist, any lien of whatsoever kind or nature prior, equal, or inferior to the lien of this Mortgage upon the Mortgaged Premises, or any part thereof, save and except liens for taxes and assessments which are not due and payable or which, as herein provided, are permitted to remain unpaid. Vacanti agrees to exhibit to Bankers, at least annually and at any time upon request, official



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receipts showing payment of all taxes, assessments and charges which Vacanti is required or elects to pay hereunder ten (10) days prior to the respective due and payable dates.

7. Vacanti shall pay to Bankers, together with and in addition to the monthly payments of principal and interest provided for in the Note, one-twelfth (1/12th) of the estimated annual real estate taxes and assessments (including other charges against the Mortgaged Premises by governmental or quasi-governmental bodies) and one-twelfth (1/12th) of the annual premiums on insurance required in paragraph 8 hereof, to be held by Bankers and used to pay said taxes and insurance premiums when same shall fall due. If at the time that payments are to be made, the funds set aside for payment of either taxes or insurance premiums are insufficient, Vacanti shall upon demand pay such additional sums as Bankers shall determine to be necessary to cover the required payment. No interest shall accrue to Vacanti upon any such payments.

8. Vacanti shall keep all buildings and improvements now or hereafter located on the Land and any Furnishings and Equipment insured against loss or damage resulting from fire, lightning, windstorm, hail, explosion, riot, aircraft, smoke, vandalism, malicious mischief, vehicle damage and other hazards, including risks customarily covered by extended coverage and against such other hazards and in such amounts as may be required from time to time by Bankers, but in any case for an amount equal to the loan balance or for not less than ninety percent (90%) of the insurable replacement cost of the improvements, whichever is greater, as agreed to by competent insurance appraisers selected by Bankers, and will keep all such policies of insurance of whatever nature constantly assigned, pledged and delivered to Bankers with the premiums thereon fully paid. In the event of foreclosure hereunder, all right, title and interest of Vacanti in and to said insurance policies shall pass to the purchaser at said foreclosure sale.

Vacanti shall maintain comprehensive public liability and property damage liability insurance protecting Vacanti against claims (including all costs and expenses of defending the same) for bodily injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of use thereof) occurring in, on or about the Mortgaged Premises in an amount of not less than \$500,000.00 for any one person or \$500,000.00 for any single accident or occurrence, and will furnish to Bankers such evidence of such insurance as Bankers may require. Bankers

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shall be named an additional insured in such liability policies. In no event shall the amount of such liability policies equal less than the amount required to be maintained by Vacanti under the terms of any lease covering the Mortgaged Premises.

Vacanti shall maintain rent insurance in an amount equal to six (6) months rent.

All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Bankers, with standard mortgage clauses attached to all policies in favor of and in form satisfactory to Bankers, including a provision requiring that the coverage evidenced thereby shall not be cancelled, reduced or amended without ten (10) days' prior written notice to Bankers. Vacanti shall deliver the originals of all policies, including additional and renewal policies, to Bankers, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

9. In case of the failure of Vacanti to (i) keep the Mortgaged Premises in good condition, repair and working order or (ii) pay, as the same become due and payable, all taxes, liabilities, charges and assessments, or (iii) keep the Mortgaged Premises free from any liens prior, equal, or inferior to the lien of this Mortgage, or (iv) keep the Mortgaged Premises insured as provided in paragraph 8 hereof; then, Bankers may, at its option, place or cause the Mortgaged Premises to be placed in good condition, repair and working order; pay, settle or contest any such taxes, liabilities, charges and assessments; redeem the Mortgaged Premises from any sale or forfeiture for any tax or assessment; purchase any tax title obtained or that shall be obtained thereon; pay any judgments based on such tax or assessment; pay, settle or contest any lien prior, equal, or inferior to this Mortgage and procure such insurance as may be necessary to comply with the provisions of this Mortgage.

Any and all monies paid for any of the above purposes or for any purpose to protect the Mortgaged Premises and lien hereof together with all reasonable attorney's fees incurred by Bankers for any such purpose will be repaid by Vacanti to Bankers, with interest thereon from the date of the payment thereof at the Default Rate provided in Note and such payment or payments together with such interest shall (to the extent permitted by law) be liens upon the Mortgaged Premises, shall be so much additional indebtedness secured by this Mortgage whether or not the resulting

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indebtedness exceeds the amount of the Note and shall (to the extent permitted by law) be included in any judgment or decree foreclosing this Mortgage and be paid out of the rents, issues, income and profits or from the proceeds of the sale of the Mortgaged Premises, if not otherwise paid by Vacanti. Bankers shall not be obliged to inquire into the necessity for such repairs, the validity of any such tax title, taxes, charges, liabilities or assessments or sales, therefore or judgments thereon or of any liens prior, equal, or inferior to the lien hereof, or the necessity for such insurance. Nothing herein contained shall be construed to require Bankers to advance or expend any money for any of the purposes hereinabove specified. No such advance or expenditure shall be deemed to constitute a waiver of any default by Vacanti hereunder or the consequences thereof.

10. If the Mortgaged Premises or any part thereof shall be destroyed or damaged by fire or any other cause, whether insured or uninsured, all proceeds of insurance (which are hereby assigned to Bankers), if any, maintained pursuant to paragraph 8 hereof shall be paid over to Bankers and held by Bankers pending disbursement pursuant hereto, and used and applied by Bankers as follows:

(a) The proceeds of such insurance, after deducting therefrom any expenses incurred in the collection thereof, shall be applied by Bankers first against charges, if any, due under the Loan Documents, then to accrued interest and then as set forth in subparagraph (b).

(b) In the event of loss during the last year of the loan, or if Vacanti is in default, or if the costs of repairs or restoration exceed seventy-five percent (75%) of the loan balance, any insurance proceeds payable by reason of such loss shall be held in escrow by Bankers to be applied at Bankers' option, to reduce the indebtedness hereby secured, whether then matured or to mature in the future, and in such a manner as Bankers may elect, or Bankers may permit Vacanti to use said proceeds to repair or replace all improvements damaged or destroyed and covered by said policy, in which case Vacanti agrees to repair and rebuild said premises without undue delay, holding Bankers harmless from any claims or liens, and Bankers agrees to disburse said proceeds to Vacanti as herein provided. In the event of loss occurring prior to the last year of the loan and while Vacanti is not in default and the costs of repairs or restoration do not exceed seventy-five percent (75%) of the loan balance, then the insurance proceeds shall be used to reimburse Vacanti for the costs of repairs or replacement as herein provided. The loan proceeds shall be

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held in escrow by Bankers and distributed as set forth herein.

(c) If any damage to the Mortgaged Premises is repaired as aforesaid, any insurance proceeds remaining after paying for such repairs shall be applied to pay and retire the indebtedness in the order described in (a) above.

(d) All insurance proceeds used to retire the Note indebtedness secured hereby shall be applied against the installments under the Note in the inverse order of maturity with no reduction in the amount of each installment required under the Note.

(e) In the event Vacanti is to be reimbursed out of insurance proceeds, such proceeds shall be made available, from time to time, upon Bankers being furnished with satisfactory evidence by an acceptable architect of the estimated cost of completion of the repair or restoration of the Mortgaged Premises and with such architect's certificates, waivers of lien (for labor and material furnished to date), and Vacanti's agreement to hold Bankers harmless from any claims or liens as Bankers may request. No payments made prior to the final completion of the work shall exceed, in total, ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds, plus additional funds deposited by Vacanti remaining in the hands of Bankers shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

11. If the Mortgaged Premises or any part thereof shall be taken under power of eminent domain or condemnation, all proceeds of the award (which are hereby assigned to Bankers), if any, shall be paid over to Bankers and held by Bankers pending disbursement pursuant hereto, and used and applied by Bankers as follows:

(a) The proceeds of such award, after deducting therefrom any expenses incurred in the collection thereof, shall be applied by Bankers first against charges, if any, due under the Loan Documents, then to accrued interest and then as set forth in subparagraph (b).

(b) In the event the taking occurs during the last year of the loan, or at a time when Vacanti is in default or the costs of repairs or restoration of the Mortgaged Premises after the taking exceeds seventy-five percent (75%) of the loan balance, then the award shall be used to retire the principal indebtedness hereby secured.

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In the event the taking occurs prior to the last year of the loan, and at a time when Vacanti is not in default, and the costs of repairs or restoration of the Mortgaged Premises after the taking do not exceed seventy-five percent (75%) of the loan balance, then the award proceeds shall be used to reimburse Vacanti for the costs of repair or restoration as herein provided.

(c) If any damage to the Mortgaged Premises is repaired as aforesaid, any award proceeds remaining after paying for such repairs shall be applied to pay and retire the indebtedness in the order described in (a) above.

(d) All award proceeds used to retire the Note indebtedness secured hereby shall be applied against the installments under the Note in the inverse order of maturity with no reduction in the amount of each installment required under the Note.

In the event Vacanti is to be reimbursed out of award proceeds, such proceeds shall be made available, from time to time, upon Bankers being furnished with satisfactory evidence by an acceptable architect of the estimated cost of completion of the repair or restoration of the Mortgaged Premises and with architect's certificates, waivers of lien (for labor and material furnished to date), and Vacanti's agreement to hold Bankers harmless from any claims or liens, as Bankers may request. No payments made prior to the final completion of the work shall exceed, in total, ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds, plus additional funds deposited by Vacanti remaining in the hands of Bankers shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

Vacanti shall be permitted to negotiate a settlement with the condemning authority in connection with the amount of such award to be paid by reason of the taking by power of eminent domain or by condemnation of the Mortgaged Premises or any part thereof, provided, however, that no agreement as to the amount of such award shall become final or binding upon Bankers until consented to in writing by Bankers, and provided further that any award, whether paid as the result of a negotiated settlement or judgment, shall be paid to Bankers, and Bankers is hereby appointed attorney-in-fact for this purpose and as such is fully authorized and empowered to receive, receipt for, discharge and satisfy any such award and judgment on behalf of Vacanti and such receipt, discharge and satisfaction shall be as



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legally effective and binding as if given directly by Vacanti or its successors in interest.

12. It any state, federal or municipal government or any of its subdivisions having jurisdiction shall levy, assess or charge any tax, assessment or imposition upon this Mortgage or the indebtedness secured hereby or any other Loan Document or the interest of Bankers in the Mortgaged Premises or upon Bankers by reason of or as holder of any of the foregoing (excepting therefrom any income tax on interest payments on the principal portion of the indebtedness secured hereby) then, unless all such taxes are paid by Vacanti as they become due and payable, all sums hereby secured shall become immediately due and payable, at the option of Bankers upon ten (10) days' notice to Vacanti, notwithstanding anything contained herein or in any law heretofore or hereafter enacted.

13. If the United States Government or the State of Iowa or any department or bureau thereof shall at any time require revenue stamps to be affixed to the Note or this Mortgage, Vacanti will upon demand pay for stamps in the required amount and deliver them to Bankers, and Vacanti agrees to indemnify Bankers from and against any liability which Bankers may incur on account of such revenue stamps, whether such liability arises before or after payment of the Note and whether or not the lien of this Mortgage shall have been released.

14. Vacanti shall comply with all restrictions affecting the Mortgaged Premises and with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer (whether federal, state or local) exercising any power of regulation or supervision over Vacanti, or any part of the Mortgaged Premises, whether the same be directed to the erection, repair, manner of use or structural alteration of buildings or otherwise. Vacanti represents that all buildings and improvements located on Mortgaged Premises have been constructed in compliance with all applicable zoning and building regulations.

15. Vacanti shall furnish Bankers (i) within ninety (90) days after the close of each fiscal year of Vacanti, an annual operating statement of the operation of the Mortgaged Premises, all in form and detail satisfactory to Bankers, prepared in conformity with generally accepted accounting principles applied on the basis consistent with that of the preceding fiscal year; and (ii) from time to time such other information in the possession of Vacanti or

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subject to its control, in such detail as Bankers may require as will enable Bankers to determine whether Vacanti is in compliance with the provisions of the Loan Documents; and (iii) Bankers shall have the further right, exercisable only one time if the loan is not in default, to require that the annual statement be prepared in audited form by an independent auditor satisfactory to Bankers. If the loan is in default and not timely cured, Bankers may require audited annual statements at Bankers' discretion.

16. Vacanti shall not (i) obtain additional financing on, sell, convey, transfer (including sale by land contract), or permit the transfer of any interest in or any part of the Mortgaged Premises, or (ii) (if Vacanti is a corporation, partnership or other organization of entities) encumber, sell, convey, transfer or permit the transfer of a controlling interest of Vacanti to any person or persons who are not present stockholders of Vacanti or their family members or their spouses, without the prior written consent of Bankers having been obtained. Bankers' prior written consent may be subject to a change in the interest rate or the payment of a fee. Any such sale, conveyance or transfer made without Bankers' prior written consent shall be null and void. Any violation of this paragraph 16 shall be an event of default as described in paragraph 20 of this Mortgage and shall entitle Bankers to exercise any and all remedies provided in this Mortgage, or in any other Loan Document, including, but not limited to, an acceleration of the indebtedness secured hereby and all other sums owed by Vacanti in connection with Vacanti's loan transaction.

17. Vacanti shall indemnify Bankers from all loss, damage and expense, including reasonable attorney's fees, incurred in connection with any suit or proceeding in or to which Bankers may be made a party by reason of this Mortgage or to which Bankers may become a party for the purpose of protecting the lien of this Mortgage or enforcing its rights hereunder; all such amounts shall be so much additional indebtedness hereby secured, and Vacanti shall reimburse Bankers therefore on demand, together with interest at the default rate of Note from the date of demand to the date of payment.

18. Vacanti may also issue additional notes (the "Additional Notes") from time to time in order to evidence additional indebtedness of Vacanti to Bankers. The Additional Notes shall be equally and proportionately secured by the lien of this Mortgage with the Note, without preference, priority or distinction as to lien or otherwise, notwithstanding the date of issuance thereof. The Additional Notes shall bear interest at the rate set forth in, and shall be

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payable in the manner provided in, a supplement to this Mortgage to be entered into by Vacanti and Bankers on the date of the issuance of the Additional Notes and duly acknowledged and recorded. From and after the issuance of any Additional Notes, the term of this Note shall be deemed to include the Additional Notes in respect to all matters of benefits and security under and in the enforcement of this Mortgage.

19. Any failure by Bankers to insist upon the strict performance by Vacanti of any of the terms and provisions of the Note, this Mortgage or any other Loan Documents shall not be deemed to be a waiver of any of the terms and provisions hereof, and Bankers, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Vacanti of any and all of the terms and provisions of this Mortgage and the other Loan Documents to be performed by Vacanti.

Neither Vacanti nor any other person now or hereafter obligated for the payment of the whole or any part of the indebtedness now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Bankers to comply with any request of Vacanti or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and Bankers extending the time of payment or modifying the terms of the Note, this Mortgage or any other Loan Documents without first having obtained the consent of Vacanti or such other person, and in the latter event, Vacanti and all such other persons, shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Bankers.

Regardless of the consideration therefore, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, Bankers may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the Mortgaged Premises held for the indebtedness secured by this Mortgage and may extend the time for payment or otherwise modify the terms of the Note, this Mortgage and/or any other Loan Documents without, as to the remainder of the security, in anywise impairing or affecting

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the lien of this Mortgage or the priority of such lien over any subordinate lien. Bankers may resort for the payment of the indebtedness secured hereby to any security therefore held by Bankers in such order or manner as Bankers may elect.

20. The following shall be "events of default" under this Mortgage and the terms "events of default" or "default" shall mean, wherever they are used in this Mortgage, any one or more of the following events:

(a) failure by Vacanti to pay any amounts required to be paid under the Note at the times specified therein; or

(b) failure by Vacanti to observe and perform any covenant, condition or agreement on its part to be observed or performed in any Loan Documents other than as referred to in (a) above, for a period of ten (10) days after written notice, specifying such failure and requesting that it be remedied, given to Vacanti by Bankers unless Bankers shall agree in writing to an extension of such time prior to its expiration; or

(c) if any representation or warranty made in writing by or on behalf of Vacanti in this Mortgage, any financial statement, certificate, or report furnished in order to induce Bankers to make the loan secured by this Mortgage, shall prove to have been false or incorrect in any material respect, or materially misleading as of the time such representation or warranty was made or later becomes false or misleading; or

(d) if Vacanti shall:

(i) admit in writing its inability to pay its debts generally as they become due; or

(ii) file a petition in bankruptcy to be adjudicated a voluntary bankrupt or file a similar petition under any insolvency act, or

(iii) make an assignment for the benefit of its creditors, or

(iv) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

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(e) if Vacanti shall file a petition or answer seeking reorganization or arrangement of Vacanti under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(f) if Vacanti shall, on a petition in bankruptcy filed against it, be adjudicated a bankrupt or if a court of competent jurisdiction shall enter an order or decree appointing without the consent of Vacanti a receiver or trustee of Vacanti or of the whole or substantially all of its property, or approving a petition filed against it seeking reorganization or arrangement of Vacanti under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such adjudication, order or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof.

21. If an event of default shall occur, then the following provisions apply:

(a) All sums secured hereby shall, at the option of Bankers, become immediately due and payable without notice, with interest thereon, from the date of the first of any such defaults, at the Default Rate of Note.

(b) Bankers may immediately foreclose this Mortgage by judicial proceeding or sell said Land at public auction and convey the Land to the purchaser in accordance with the statute or take any other action as provided in paragraph 26 of this First Mortgage. The court in which any proceeding is pending for that purpose may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the indebtedness secured hereby, and without regard to the then value of the Mortgaged Premises, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan hereby secured is made) for the benefit of Bankers, with power to collect the rents, issues and profits of the Mortgaged Premises, due and to become due, during the pendency of such foreclosure suit and in the case of a sale and deficiency, during the full statutory period of redemption whether there be redemption or not, as well as during any future times when Vacanti, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits and shall have all other powers which may be necessary or are usual in such cases for the protection,



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possession, control, management and operation of the Mortgaged Premises during the whole of said period.

The receiver, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the Mortgaged Premises, prior, coordinate, and inferior liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to said premises, and may pay all or any part of the indebtedness secured hereby or any deficiency decree entered in such foreclosure proceedings.

(c) Bankers shall, at its option, have the right, acting through its agent or attorneys, either with or without process of law, forcibly or otherwise, to enter upon and take possession of the Mortgaged Premises, to expel and remove any persons, goods or chattels occupying or upon the same, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same or any part thereof from time to time, and after deducting all reasonable and necessary attorneys' fees and expenses incurred in the protection, care, maintenance, management and operation of said premises, Bankers shall have the right to apply the remaining net income upon the indebtedness secured hereby or upon any deficiency decree entered in any foreclosure proceedings.

22. In any suit to foreclose the lien of this Mortgage there shall be allowed and included in any foreclosure sale, to be paid out of the rents or the proceeds of such sale:

(a) all principal and interest remaining unpaid on the Note and secured hereby with interest at the Default Rate of Note from the date due until paid;

(b) all late charges, if any, and all other items advanced or paid by Bankers pursuant to this Mortgage, with date of advancement until paid; and

(c) all court costs, attorneys' fees, appraiser's fees, recording fees, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantee policies, Torrens certificates and similar data with respect to title which Bankers may deem necessary. All such expenses shall become so much additional indebtedness secured

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hereby and immediately due and payable, with interest at the Default Rate of Note when paid or incurred by Bankers in connection with any proceeding, including probate and bankruptcy proceedings, to which Bankers shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose, whether or not actually commenced.

The proceeds of any foreclosure sale shall be distributed and applied to the items described in (a), (b) and (c) of this section, inversely to the order of their listing.

23. It is further agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided Bankers, in such action files an election to waive any deficiency judgment against Vacanti which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628, Code of Iowa. It is further agreed that the period of redemption after a foreclosure of this mortgage shall be reduced to 60 days if all of the three following contingencies develop: (1) The mortgaged real estate herein is less than ten (10) acres in size; (2) the Court finds affirmatively that said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Bankers in such action files an election to waive any deficiency judgment against Vacanti or their successor in interest in such action. If the redemption period is so reduced, Vacanti or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in §§628.5, 628.15 and 628.16 of the Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Vacanti shall be a presumption that the property is not abandoned. Any such short redemptive period shall be consistent with all of the provisions of Chapter 408, 62nd G. A., amending Chapter 628, Code of Iowa.

It is further agreed that pursuant to §628.28 of the Iowa Code, as amended, if the real property is not used for agricultural purposes, as defined in §535.13 of the Iowa Code, and is not the residence of Vacanti, the period of

## COMPARED

redemption after foreclosure is one hundred eighty (180) days, or if a deficiency judgment has been waived the period of redemption is reduced to ninety (90) days, and redemption is exclusively the right of Vacanti.

24. To the full extent that it may lawfully so agree, that in the case of a default on its part in the performance of the obligations imposed upon it by the terms of this Mortgage and the Note secured hereby, neither Vacanti or anyone claiming through or under it shall or will set up, claim or seek to take advantage of any stay, extension or redemption laws or redemption periods or grace periods now or hereafter in force and affecting the Mortgaged Premises in order to prevent or hinder enforcement, foreclosure, sale, confirmation of sale, or conveyance of said premises upon foreclosure or the final or absolute putting in possession thereof immediately after any such sale of the purchaser or purchasers thereat, and Vacanti, to the full extent that it may lawfully do so for itself, and all who may claim through or under it hereby waive the benefit of all such laws.

25. Upon the acceleration of the maturity of the indebtedness as herein provided, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale by Vacanti shall constitute an evasion of the prepayment terms of said Note and be deemed to be a voluntary prepayment thereunder and any such payment, to the extent permitted by law, will therefore include the additional payment required under the prepayment privilege contained in said Note, except that the formula contained in the prepayment privilege in the Note shall be applied even if tender of payment occurs in the first loan year.

26. The rights and remedies granted to Bankers hereunder are cumulative and are not in lieu of but are in addition to, and shall not be affected by the exercise of any other remedy or right now or hereafter existing at law or in equity or under any Loan Document. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Bankers.

## COMPARED

27. Vacanti agrees to permit Bankers and its agents, at all reasonable times, to inspect the Mortgaged Premises for the purpose of determining whether Vacanti is in compliance with the provisions of this Mortgage.

28. Upon full payment of all sums secured hereby at the time and in the manner provided a release of the Mortgaged Premises shall be made by Bankers to Vacanti.

29. Vacanti hereby represents and warrants to Bankers that:

(a) Bankers (i) is a corporation organized, validly existing and in good standing under the laws of the State of Nebraska; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary, and (iv) is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to it.

(b) The execution, delivery and performance by Vacanti of this Mortgage, the Note, and all other Loan Documents, and the borrowing evidenced by this Note: (i) are within the powers of Vacanti, (ii) have been duly authorized by all requisite action, (iii) have received all necessary governmental approval, and (iv) will not violate any provision of law, any order of any court or other agency or government, or the Articles of Incorporation or Bylaws of Vacanti.

(c) This Mortgage, the Note, and all other Loan Documents constitute the legal, valid and binding obligations of Vacanti and other obligors named therein, if any, in accordance with their respective terms.

(d) Neither the execution and delivery of this Mortgage, the Note, or other Loan Documents, the consummation of the transactions contemplated hereby, or thereby, nor the fulfillment of or compliance with the terms and conditions of this Mortgage, the Note, or other Loan Documents, conflicts with or results in a breach of any of the terms, conditions or provisions of any restrictive or any agreement or instrument to which Vacanti is now a party or by which it is bound.

30. All provisions hereof shall inure to and bind the respective successors, and assigns of the parties hereto. The word Vacanti shall include all persons claiming



## COMPARED

under or through Vacanti and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note, this Mortgage or the other Loan Documents. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

31. All notices, demands, consents or requests which are either required or desired to be given or furnished hereunder shall be in writing and shall be deemed to have been properly given if either delivered personally or sent by United States registered or certified mail, postage prepaid, to the address of the parties hereinabove set out. By notice complying with this section, each party may from time to time change the address to be subsequently applicable to it for the purpose of this section.

32. If any provision of this Mortgage shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or render the same invalid, inoperative, or unenforceable to any extent whatever.

33. This Mortgage, the Note secured hereby and the other Loan Documents are to be construed and enforced according to and governed by the laws of the State of Iowa, except only to the extent that the laws of the state in which the Mortgaged Premises is located (if different than Iowa) must by law, govern.

34. NOTICE: This Mortgage secures credit in the amount of Eight Hundred Thousand (\$800,000.00). 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. This paragraph shall not constitute a commitment to make additional loans in any amount.

35. The undersigned Vacanti hereby relinquishes all rights of dower, homestead and distributive share in and to the above-described premises, and waives any rights of exemption, as to any of said property.

NOTICE: 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.



# COMPARED

VACANTI & RANDASSO CONSTRUCTION COMPANY

BY: Milo P. Vacanti BY: Alfred J. Vacanti  
MILO P. VACANTI ALFRED J. VACANTI

DATED this 10 day of September, 1986.

36. It is the intent of the parties to this loan transaction that as part of the consideration for the making of this loan, the representations made by Vacanti, or on behalf of Vacanti by its agents, mortgage banker or mortgage brokers, to Lender, shall survive the making of the loan. Said representations were an important factor in determining the ability of the property to support the debt service of this loan through its income-producing capacity. As no additional financing was contemplated in said representations, it is agreed that borrower will not incur or create additional financing during the term of this loan, or cause such to be incurred or created, without the prior written approval of Bankers.

37. Vacanti hereby acknowledges receipt of a copy of this Mortgage together with all exhibits.

38. The address of Bankers is 5900 "O" Street, P.O. Box 81889, Lincoln, Nebraska 68501.

IN WITNESS WHEREOF, Vacanti has caused this First Mortgage to be duly executed the day and year first above written.

VACANTI & RANDASSO CONSTRUCTION COMPANY

BY: Milo P. Vacanti  
MILO P. VACANTI

Title: President

BY: Alfred J. Vacanti  
ALFRED J. VACANTI

Title: Secretary



# COMPARED

STATE OF IOWA-NEBRASKA )  
                                  DOUGLAS ) ss.  
COUNTY OF POTTAWATTAMIE- )

On this 10 day of SEPTEMBER, 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared Milo P. Vacanti and Alfred J. Vacanti to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of said corporation executing the within and foregoing instrument; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Milo P. Vacanti and Alfred J. Vacanti as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.



*James H. Prueck*  
NOTARY PUBLIC IN AND FOR SAID STATE

COMPARED

EXHIBIT "A"

LEGAL DESCRIPTION

A part of the W $\frac{1}{2}$  of the NW $\frac{1}{2}$  of Section 3 and a part of the E $\frac{1}{2}$  of the NE $\frac{1}{2}$  of Section 4, all in Township 74 North, Range 44 West of the 5th P.M., Pottawattamie County, in the City of Council Bluffs, Iowa, which is more particularly described as follows:

Commencing at the West  $\frac{1}{2}$  corner of said Section 3; thence West, 346.40 feet; thence North 1154.61 feet to the point of beginning; thence N 53°12'15" E, 465.32 feet; thence S 89°37'00" E, 12.55 feet; thence S 00°23'00" W, 70.05 feet; thence S 36°47'45" E, 286.24 feet; thence southwesterly, 55.19 feet along a 316.48 foot radius curve to the left; thence S 53°12'15" W, 319.85 feet; thence S 74°37'40" W, 41.07 feet; thence N 81°47'43" W, 21.21 feet; thence N 44°14'50" W, 38.56 feet; thence along the northeasterly right-of-way line of 35th Street Diagonal N 36°47'45" W, 276.62 feet to the point of beginning.

Vacanti & Randazzo Construction Company agree that a joint check in the name of Bankers Life Insurance Company of Nebraska and Vacanti & Randazzo Construction Company or their assigns or successors may be required to be issued by the buyer for payment or partial payment of a good subject to these security interests and documents.

DATED this 10 day of September, 1986.

VACANTI & RANDAZZO CONSTRUCTION COMPANY

BY:

Milo P. Vacanti  
MILO P. VACANTI, President

BY:

Alfred J. Vacanti  
ALFRED J. VACANTI, Secretary

