

20/3  
10/2/87

25710723

2400-

DEED OF TRUST AND SECURITY AGREEMENT

THIS INDENTURE, made this 14th day of November, 1980, by and between ALLAN R. HOFFMAN and EVELINE HOFFMAN, his wife, and ROBERT KAPLAN and LOIS KAPLAN, his wife, individuals each residing in the State of Missouri (Allan R. Hoffman and Robert Kaplan are hereinafter sometimes collectively called First Party), HENRY N. SCHWEPPE, JR., of the County of Madison, Illinois, as Trustee (hereinafter sometimes called Trustee or Second Party), and MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION, a national banking association with its principal office in the City of St. Louis, Missouri, as beneficiary (hereinafter sometimes called Third Party),

WITNESSETH:

WHEREAS, First Party has this day borrowed from and is justly indebted to Mercantile Trust Company National Association in the principal sum of Two Hundred Thirty Thousand Dollars (\$230,000.00) evidenced by that certain promissory note of even date herewith, payable to the order of Mercantile Trust Company National Association, which said note is in the following form:

PROMISSORY NOTE

\$230,000.00

St. Louis, Missouri  
November 14, 1980

FOR VALUE RECEIVED, the undersigned, ALLAN R. HOFFMAN and ROBERT KAPLAN, individuals residing in the State of Missouri, promise to pay to the order of MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION (hereafter called "Bank"), a national banking association, at its banking office at 721 Locust Street, St. Louis, Missouri 63101, or at such other place as the holder may designate, the principal amount of Two Hundred Thirty Thousand Dollars (\$230,000.00) or so much thereof as shall have been disbursed, one year after the date of this note, with interest from the date hereof until maturity on the principal balance outstanding from time to time at the rate of two per cent (2%) per annum in excess of the rate charged by Bank on 90-day commercial loans to its most responsible corporate borrowers (the "Prime Rate"). Said interest rate shall change as and when said Prime Rate changes. Interest shall be payable monthly on the first day of each month commencing December 1, 1980, and on the first day of each month thereafter until maturity. Interest shall be payable after maturity, whether by reason of acceleration or otherwise, at the rate of four per cent (4%) per annum in excess of the Prime Rate. The amount of interest accruing hereunder shall be computed on an actual day, 360-day year basis. Under no circumstances shall the interest rate charged hereunder exceed that permitted by law.

This Note is described in and secured by a certain Deed of Trust and Security Agreement of even date herewith executed and delivered by the undersigned, to Henry N. Schweppe, Jr. as Trustee for Mercantile Trust Company National Association, covering certain property located in the County of Cook,

EA# 374672

EA# 67-50-065

COOK COUNTY CLERK'S  
FILED IN BOOK 18  
NOV 18 PM 2:25  
25710723  
Henry N. Schweppe, Jr.  
TRUSTEE FOR COOK COUNTY

BOX 533

# UNOFFICIAL COPY

State of Illinois, in which County said Deed of Trust and Security Agreement has been duly recorded, and to which said Deed of Trust and Security Agreement reference is hereby made for a description of the security and a statement of the terms and conditions upon which this Note is secured. This Note is also described in a certain Loan Agreement dated November 14, 1980, executed by the makers hereof and Mercantile Trust Company National Association. In the event of default as defined in said Deed of Trust and Security Agreement or said Loan Agreement, the principal of this Note and all interest thereon may be declared immediately due and payable in the manner and with the effect as provided in said Deed of Trust and Security Agreement or in said Loan Agreement.

The undersigned shall be privileged to prepay all at any time or any part from time to time, of the principal of this Note before maturity, without premium, provided that on each such prepayment the undersigned shall pay accrued interest on the principal so prepaid to date of such prepayment. A mandatory prepayment shall be due upon the disbursement of any permanent loan relating to the property described in the Deed of Trust and Security Agreement.

If this Note or any interest hereon is not paid when due, by reason of acceleration or otherwise, and this Note is placed in the hands of an attorney or attorneys for collection or foreclosure of the Deed of Trust and Security Agreement securing payment hereof, the undersigned promise to pay, in addition to the amount due hereon, the reasonable costs and expenses of foreclosure and collection hereof, including reasonable attorney's fees. All parties hereto severally waive presentment, demand for payment, notice of dishonor and notice of protest.

This Note shall be construed in accordance with and governed by the laws of the State of Missouri.

\_\_\_\_\_  
ALLAN R. HOFFMAN

\_\_\_\_\_  
ROBERT KAPLAN

NOW, THEREFORE, in order to secure the payment and performance of all liabilities of First Party to Third Party including the payment of the principal of and the interest on said note according to the tenor, purport and effect thereof, and to secure the performance and observance by First Party of every covenant and condition therein and herein contained, and for and in consideration of the premises and of the debt above described, and the sum of One Dollar (\$1.00) duly paid by Trustee on or before the execution of this indenture, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by First Party, the said First Party, by these presents does hereby grant, bargain, sell, mortgage, warrant, convey and confirm, assign, transfer and set over unto said Trustee, and upon his successors and assigns, IN TRUST, forever, the following described real

25710723

# UNOFFICIAL COPY

estate, chattels, real, personal property and other properties, interests and rights (hereinafter collectively sometimes referred to as the "mortgaged property"), situated in the County of Cook, State of Illinois, to-wit:

The North 243.00 feet of Lots 80 and 81, in Hill Top, being a subdivision of Sections 22 and 23, Township 41 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded February 13, 1963, as Document Number 18718416.

Subject to Lease Indenture dated August 15, 1980, between First Party as Lessor and Kinder Care Learning Centers, Inc. as Lessee.

TOGETHER with (1) all buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon; (2) all rights, privileges, easements, hereditaments, appendages and appurtenances thereunto belonging or in anywise appertaining; (3) all right, title, interest and estate of First Party in and to streets, roads, ways, sidewalks, curbs, alleys and areas adjoining said real estate and portions thereof, and whether vacated by law or ordinance (conditionally or otherwise) provided however, notwithstanding anything herein contained to the contrary; (4) all rents, revenues, income, issues and profits which are hereby specifically assigned, transferred and pledged primarily and on a parity with said real estate; and (5) all fixtures, fixed assets and personalty now or at any time hereafter annexed, affixed or attached to said real estate and/or said buildings, improvements, or structures thereon and all other personal property owned by First Party and used or intended to be used in the possession, occupation or enjoyment thereof and specifically but not by way of limitation all shades and awnings, screens and carpets, shrubbery, gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, sinks, water-closets, basins, pipes, faucets and other plumbing and heating fixtures, mirrors, mantels, refrigerating plants, ice-boxes, electric refrigerators, air conditioning apparatus, cooking apparatus and appurtenances, and all replacements, additions and substitution thereof or thereto.

TO HAVE AND TO HOLD the said mortgaged property with the appurtenances and fixtures thereto appurtenant or belonging and every part thereto unto said Trustee, and unto his successors and assigns, forever, IN TRUST, nevertheless, to secure the payment of the Note and debt above described and the performance of the covenants and agreements herein undertaken to be performed by First Party.

First Party represents and warrants: (i) that they are lawfully seized and possessed of a good and indefeasible title and estate in fee simple to the mortgaged property, and First Party has full right and power to convey the mortgage and mortgaged property and covenants and agrees to execute and deliver or cause to be executed and delivered all further assurances of title necessary or by the Third Party deemed advisable to effectuate the first lien of this deed of trust hereby

25710723

# UNOFFICIAL COPY

given and First Party will forever warrant and defend the title to said mortgaged property and every part thereof unto Trustee against the claims and demands of all persons whomsoever; and (ii) that the mortgaged property and every part thereof is free and clear of all liens, encumbrances and charges of every kind and character, including liens of general and special taxes and assessments, excepting taxes for the current year which are not yet due, and excepting the lien of this indenture.

First Party hereby expressly covenants and agrees with Trustee and Third Party that:

- (1) First Party will duly pay said note above described and interest thereon, punctually as and when the same shall become due and payable, according to the true intent and purport thereof;
- (2) First Party will not, without the prior written consent of Third Party, transfer, convey or otherwise part with title to the mortgaged property, or create or permit or allow to exist or to be created any mortgage, deed of trust, pledge or other lien or encumbrance of any of said mortgaged property, other than this Deed of Trust and Security Agreement.
- (3) First Party will not suffer or permit any mechanic's or materialmen's liens or any other liens not permitted by paragraph 2 hereof, to attach to any of said mortgaged property or to remain outstanding against the same or any part thereof.
- (4) The First Party further agrees to keep all buildings, improvements and fixtures, constituting part of the mortgaged premises, until the indebtedness secured hereby is fully repaid, insured against loss or damage, by fire, lightning, tornado, or other casualty for such amounts and in such insurance company or companies as may be satisfactory to Third Party, and it is hereby expressly agreed that the Trustee or Third Party shall not be liable for any failure to insure or for the insolvency or irresponsibilities of any such insurance company or companies. All sums recoverable on any such insurance policy shall be made payable to the Third Party, by a mortgage clause, satisfactory to the Third Party, to be attached to such policies, except in case of sale pursuant to a foreclosure of this Deed of Trust and Security Agreement from which time and until the period of redemption if any shall expire, said insurance policy or policies shall be made payable to the holder of the certificate of sale. All such policies shall be retained by the Third Party as additional security for the indebtedness secured by this Deed of Trust and Security Agreement and by the holder of the master's certificate for the amount secured by any certificate of sale or decree of foreclosure; and in the event any such insurance policy shall expire during the life of this Deed of Trust and Security Agreement, or any extension thereof, First Party hereby agrees to procure and pay for insurance

25710723

policies complying with the above qualifications replacing said expired policies and deposit same with the Third Party together with receipts (showing the premiums therefor have been paid in full) ten (10) days prior to said expiration date. In case of loss the Third Party or the holder of any certificate of sale, or the holder of the decree of sale, is hereby authorized to settle and adjust any claims under such policies or to allow said First Party to settle with the insurance company or companies the amount to be paid upon the loss; and in either case such holder of the policy is authorized to collect and receipt for any such insurance money and apply it, at the option of the Third Party, in reduction of the principal or any other indebtedness hereby secured, whether due or not, or may allow the First Party to use said insurance money, or any part thereof, in repairing the damage or restoring the improvements, without affecting the lien hereof for full amount secured hereby, and during the time said insurance money may be retained by Third Party, Third Party shall not be liable for any interest thereon; that in case of a loss after foreclosure proceedings have been instituted, the proceeds of any such insurance, if not applied as aforesaid in repairing damage or restoring improvements, shall be used to pay the amount due in accordance with the decree of foreclosure and any other indebtedness secured hereby, and the balance, if any, shall be paid to the owner of the equity of redemption on reasonable request or as the court may direct. Notwithstanding any of the foregoing provisions to the contrary, Third Party shall prior to the institution of foreclosure proceedings and provided First Party is not then in default under any of the terms or provisions of this Deed of Trust and Security Agreement, allow the First Party to use any insurance proceeds in repairing the damage or restoring the improvements subject to such terms and conditions as Third Party may reasonably impose as to disbursement of such proceeds.

- (5) First Party will protect, save harmless and indemnify Trustee and Third Party from and against any and all claims, liabilities, costs and expenses, of whatever nature, which may arise or result, directly or indirectly, by reason of the use or occupation of the mortgaged property or any part thereof;
- (6) First Party will not use or permit to be used the mortgaged property or any part thereof in any manner inconsistent with the rights of Second Party, or Third Party hereunder, or in violation of the provisions of any insurance policy or any rules or regulations of insurance underwriters, and in the use of said mortgaged property will comply with, or cause to be complied with, all valid laws, ordinances, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body, officer or department applicable to the mortgaged property or to the uses and purposes thereof, and will maintain and

# UNOFFICIAL COPY

use the mortgaged property in full compliance therewith and in condition requisite thereunto;

- (7) In the event the mortgaged property, or any part thereof, be taken through condemnation proceedings or by virtue of the exercise of the right of eminent domain or pursuant to governmental action, any and all amounts awarded in any such condemnation proceeding for the taking of the mortgaged property, or any part thereof, are hereby assigned to and shall be paid to Trustee, and when received by Trustee, after deducting all reasonable charges in connection with the collection thereof, the same may be applied on the indebtedness secured hereby, in such manner as Third Party may elect or, at the option of Third Party, the same may be applied in whole or in part to the replacement of that part of the mortgaged property so taken, or to the repair or restoration of that part of the mortgaged property not so taken;
- (8) In the event any part of the mortgaged property or any additions, betterments, substitutions or replacements shall be destroyed or damaged by any party or from any cause whereby First Party becomes entitled to indemnity therefor from any third person or persons, First Party, for the considerations named, does hereby sell, assign and transfer to Trustee all of such sum or sums so due from any such third person or persons, and Trustee is hereby authorized to receive, collect and sue for the same and First Party hereby authorizes and directs that such sum or sums be paid to Trustee upon presentation of a duly certified copy hereof. Any and all sums received by Trustee hereunder, after deducting therefrom the reasonable charge or expenses paid or incurred in connection with the collection and disbursement of said moneys, may be used and applied at the option of Third Party either for the purpose of paying the cost of repair, restoration or replacement of the mortgaged property damaged or destroyed, or applied to the prepayment, or partial prepayment, of the note secured hereby;
- (9) In the event the First Party shall fail to keep and perform any of the foregoing covenants and agreements then Trustee or Third Party shall, at its option, (1) pay any delinquent taxes or assessments or redeem such premises from any tax sale or forfeiture or purchase any tax title obtained or that shall be obtained thereon; (2) pay or compromise any and all suits or claims for liens by mechanics or materialmen or any other claims that may be made against said premises; (3) make repairs upon said premises; or (4) pay insurance premiums on policies covering said premises; and the said First Party further covenants and agrees to repay forthwith, without demand, all moneys paid for any such purpose and any other moneys advanced by the Trustee or Third Party to protect the lien of said Mortgage, with interest thereon from the date of the payment at the rate of ten per cent (10%) per annum, and all such moneys shall, if not otherwise repaid,

# UNOFFICIAL COPY

become so much additional indebtedness secured by this Deed of Trust and Security Agreement and be included in any decree foreclosing this Deed of Trust and Security Agreement and be paid out of the rents, issues and profits of the premises hereinbefore described, or out of the proceeds of sale of said premises; and it shall not be obligatory upon the Trustee or Third Party to inquire into the validity of (1) any such tax deed, taxes or assessments or of sale or of forfeitures therefor, or (2) claims of liens of mechanics or material men or other liens or claims affecting said premises before advancing money in that behalf, as herein authorized, but nothing herein contained shall be construed as requiring the Trustee or Third Party to advance or expend any moneys for any purpose aforesaid nor shall any such payments or advancements be construed so as to in any way limit or impair the right of the Trustee or Third Party to avail themselves of such default by taking such action at law or in equity as it may deem necessary or advisable to enforce the security hereby given it.

- (10) Any part of the security herein described may be released by the Trustee or Third Party without affecting the lien hereof on the remainder. The liability of the First Party on said principal note shall continue in its original force and effect until such note and interest thereon are paid in full; Third Party may by written and signed agreement with the then record owner of said premises, or with the heirs, executors, administrators, devisees, successors or assigns of such record owner, or with any one or more persons liable, whether primarily or secondarily, for the payment of any indebtedness secured hereby, without notice of any other of said persons, extend the time of payment of said indebtedness, or any part hereof, without thereby modifying or affecting the lien of its Deed of Trust and Security Agreement or releasing any such person from any liability for such indebtedness, and this Deed of Trust and Security Agreement shall be security for all additional interest under such extension agreement; and the granting of any extension or extensions of time of payment of the principal note or interest thereon either to the maker or to any other person, or to the releasing of a portion of the security hereof, or taking other or additional security for payment of said indebtedness, or waiver of or failure to exercise any right to mature or enforce the whole debt under any covenant of stipulation herein contained, or extending the time of payment of any other indebtedness or liability secured hereby, shall not in anywise affect this Deed of Trust and Security Agreement or the rights of the Third Party hereunder, or operate as a release from any liability upon said nor or said indebtedness under any covenant or stipulation herein contained.

a. In case of default in the payment of any installment of principal or of interest when due, or in case of default in the payment of any tax, insurance

25710723

# UNOFFICIAL COPY

premium, water rate or assessment for thirty (30) days after the due date therefor, or upon failure or default in the performance of any of the covenants contained in this Deed of Trust and Security Agreement continuing for a period of thirty (30) days after written notice thereof from Third Party (provided, if any such failure or default in performance cannot be cured within such 30-day period, the First Party shall not be in default so long as First Party commences to cure the default within the applicable time and diligently pursues the curing thereof), or in the event that any proceeding shall be begun to enforce or collect any junior lien, or if said premises shall come into the possession or control of any court, or in case of threatened removal or demolition of any improvements or portion thereof, then, at the option of the Third Party, the entire amount of said principal note, together with accrued interest thereon at such time remaining unpaid, and together with all advancements made by the Third Party, shall become immediately due and payable without notice to the First Party or any one claiming by through or under it.

b. The First Party agrees that upon any default by the First Party in any covenant, agreement or undertaking contained herein, the Trustee or Third Party shall have the right immediately to foreclose this Deed of Trust and Security Agreement. In any foreclosure proceeding the court shall, upon application, at once, and without notice to the said First Party, or any party claiming under said First Party, and without giving bond on such application (such notice and bond being hereby expressly waived) and also without reference to the then value of said premises, to the use of said premises as a homestead, or to the solvency or insolvency of any person liable for any said indebtedness, appoint a receiver for the benefit of the legal holder of the indebtedness secured hereby, to take possession of the within described premises, with power to collect rents, issues and profits of the said premises, then due or to become due, during the pendency of such foreclosure suit, and until the time to redeem the same shall expire (such rents, issues and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by this Deed of Trust and Security Agreement); this provision for appointment of a receiver being expressly a condition upon which the loan hereby secured was made; and the First Party hereby further consents that said receiver may, out of the said rents, pay prior or coordinate liens, the taxes, assessments, water rates and insurance on said premises, then due or unpaid or accruing whether before or after the filing of such bill, and for any necessary repairs thereon, and management and rental fees and any other proper charges, and the amount of any deficiency decree; provided that, in case of any default or breach, as aforesaid, as a concurrent (and not alternative or exclusive) remedy and measure for making effective the terms provisions and purposes

25710723



# UNOFFICIAL COPY

hereof, it shall be lawful for the Trustee or Third Party, its agent or attorney forthwith (either with or without process of law, forcibly or otherwise) to enter upon and take possession of said mortgaged premises and property and to expel and remove any person, goods or chattels, occupying or upon the same, to collect and to receive all the rents, issues and profits therefrom, from time to time, to manage and control the same and make all necessary repairs, and lease the same or any part thereof at such rentals as in its sole discretion it may deem just and reasonable, and after deducting all reasonable attorneys' fees and all expenses incurred in the protection, care, repair and management of said premises, apply the remaining income upon the indebtedness hereby secured in the same manner as is hereafter provided upon the sale of said premises under foreclosure; and the said First Party hereby expressly releases and waives any and all right to possession, control or management of the said mortgaged property, or to the rents, issues and profits therefrom, after any default or breach of the terms of provisions of this Deed of Trust and Security Agreement and the said First Party hereby further expressly releases and waives any and all damages and claims for damages occasioned by such expulsion.

c. In the case of foreclosure of the lien of this Deed of Trust and Security Agreement by the Trustee or Third Party, in any court of law or equity, there shall be allowed all courts costs and expenses incurred by the Trustee or Third Party, including reasonable attorneys' fees, stenographers' charges, cost or procuring a complete abstract of title to said mortgaged property and continuations thereof, opinions of title or title guaranty policies and continuations thereof covering said foreclosure proceedings, cost of procuring testimony and evidence and all costs and expenses incurred by the Trustee or Third Party in and about any such suit or proceeding, or in the preparation therefor; and in case the Trustee or Third Party shall be made party to any suit or legal proceedings by reason of this Deed of Trust and Security Agreement, its costs, expenses and reasonable attorneys' fees in such suit or proceedings shall be paid by the First Party and if not paid shall become so much additional indebtedness hereunder and shall be a further lien or charge upon said mortgaged property.

d. All fees and expenses allowable pursuant to the provisions hereof shall be additional indebtedness secured hereby and shall be a charge upon said mortgaged property and shall constitute a lien thereon prior and paramount to the principal note and interest secured hereby, and whenever possible shall be provided for in any judgment or decree entered in any such proceedings. There shall be included in any decree foreclosing the lien of this Deed of Trust and Security Agreement and be paid out of the rents or proceeds of any sale made in pursuance of any such decree in the following order: (1) all costs of such

25710723

# UNOFFICIAL COPY

suit or suits, advertising, sale and conveyance, reasonable attorneys' fees of attorneys for the Trustee or Third Party, stenographers' fees, outlays for documentary evidence and costs of abstract and examination of title, title opinions and title guaranty policies; (2) all moneys advanced by the Third Party for any purpose authorized in the Deed of Trust and Security Agreement, with interest on such advances at the rate of ten per cent (10%) per annum; (3) all the accrued interest remaining unpaid on the indebtedness hereby secured; (4) all of the principal note at such times remaining unpaid. The overplus of the proceeds of the sale, if any, shall then be paid to the First Party. In case, after legal proceedings are instituted to foreclose the lien of this indenture, tender is made of the entire indebtedness due hereunder, the Third Party shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this indenture, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses and charges shall have been paid in full.

e. No lien provided for by the Statutes of Illinois, in force at any time while the lien hereof exists, in favor of any person furnished labor or materials in the erection or repair of any building now or hereafter on said land, shall attach to said land or building, except as subject and subordinate to the lien of this instrument and any person dealing with said premises after the recording of this instrument is hereby charged with notice of and consent to this stipulation, and with a waiver of any lien except as subject and subordinate hereto.

f. In the event of the passage, after the date of this mortgage, of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon or changing in any way for the laws now in force for the taxation of mortgages or deeds of trust for State or local purposes or the manner of collection of such tax so as to make it obligatory upon the Trustee or Third Party to pay such tax, or if any such tax is imposed under any existing law then the whole of the principal sum secured hereby, together with accrued interest thereon shall, at the option of the Trustee or Third Party, after thirty (30) days notice to the First Party, become due and payable, and the said Trustee or Third Party shall have the right to foreclose immediately this Deed of Trust and Security Agreement, unless said First Party shall pay such tax or charge forthwith upon demand or unless adequate title insurance over any such lien is provided to Third Party; provided, however, that should the payment of such tax or charge result in usury, then only such portion of such tax or charge shall be paid by the First Party as will not amount to an exaction of interest in excess of the highest rate permitted by law.

# UNOFFICIAL COPY

g. All rights and remedies given to the Third Party by the covenants, undertakings and provisions of this Deed of Trust and Security Agreement, are deemed to be cumulative and not in any way in derogation to the rights of the Third Party under the applicable state law and the invalidity of any one or more covenants, phrases, sentences, clauses or paragraphs of this Deed of Trust and Security Agreement shall not affect the remaining portions of this indenture, or any part hereof; and the failure on the part of the Third Party to exercise any option or privilege granted under the note or Deed of Trust and Security Agreement shall not be deemed a waiver of any such option of privilege nor estop the Third Party from at any time in the future exercising such option or privilege.

h. Every covenant and agreement, condition, promise and undertaking herein, of said First Party, shall run with the land, is a condition upon which the loan secured was made, and is of the essence of this instrument, and breach of any thereof shall be deemed a material breach going to the substance hereof and shall extend to and be binding upon the First Party and any and all persons claiming by, through or under the First Party to the same effect as if they were in every case named and expressed and all of the covenants hereof shall bind them and each of them, both jointly and severally and shall inure to the benefit of the Third Party, its successors and assigns; any notice to be given hereunder may be given by first-class mail, the date of mailing to be taken as the date of giving such notice and without respect to the actual receipt thereof.

i. If the First Party or either of said individuals (herein individually and collectively called "principal party") shall make an assignment for the benefit of creditors, or if a receiver be appointed for a principal party or for any part of the mortgaged property, or if a principal party filed a petition in bankruptcy, or is adjudicated a bankrupt or files any petition or institutes any proceedings under the Federal Bankruptcy laws of the United States, then on the happening of any one or more of these events, the whole indebtedness secured hereby shall immediately become due and payable, at the option of the Third Party, and this Deed of Trust and Security Agreement may thereupon be foreclosed for the whole of said principal, interest and costs.

j. The First Party promises to pay all costs, expenses and reasonable attorneys' fees incurred by the Trustee or Third Party in collecting the debt secured hereby whether by foreclosure, suit or otherwise, in protecting or sustaining the lien of this Deed of Trust and Security Agreement or in any litigation or controversy arising from or in connection with said Note or this Deed of Trust and Security Agreement, together with interest thereon, from the date of

25710723

payment at the rate of ten per cent (10%), the First Party agrees that any such sums and the interest thereon shall be a lien on said premises and property and shall be secured by this Deed of Trust and Security Agreement.

k. The Note secured by this Deed of Trust and Security Agreement evidences an indebtedness created by multiple disbursements made by Mercantile Trust Company National Association (hereinafter in this paragraph k. called "Mercantile") for the financing of the cost of construction of certain improvements, and the equipping thereof, on the real estate above described, all in accordance with the terms and provisions of a Loan Agreement, bearing even date herewith, between Mercantile and First Party, which said Loan Agreement, as the same hereafter from time to time may be amended, supplemented or modified, is incorporated herein by reference.

All advances and indebtedness, from time to time arising and accruing under the Loan Agreement, shall be secured hereby to the same extent as though the Loan Agreement were fully incorporated in this Deed of Trust and Security Agreement and the occurrence of any "Event of Default" under the Loan Agreement, as said term is therein defined, shall constitute a default under this Deed of Trust and Security Agreement, entitling Mercantile to all of the rights and remedies conferred upon Mercantile by the terms of the Loan Agreement or by the terms of this Deed of Trust and Security Agreement or by law or by equity, as in the case of any other default hereunder. In the event of conflict of any of the terms and provisions contained in the Loan Agreement with any of the terms and provisions contained herein, Mercantile shall have the option as to which terms and provisions shall prevail.

l. ALL OF THE COVENANTS herein contained of First Party shall bind First Party, its successors and assigns, and the benefits and advantages thereof shall inure to the benefit of, the Third Party, its successors and assigns. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

m. whenever the consent or approval of Trustee or Third Party is required hereunder, such consent or approval shall not be unreasonably withheld.

n. All sums payable pursuant to the Note or hereunder shall be without relief from valuation and appraisal laws and with reasonable attorney's fees.

o. This Deed of Trust and Security Agreement secures a business loan as set forth in Chap. 74, Par. 4(c), Ill. Rev. Stat. (1975).

p. The loan secured by this Deed of Trust and Security Agreement is a construction loan and this

25710723

# UNOFFICIAL COPY

mortgage is a construction mortgage pursuant to Chap. 26 §9-313(6), Ill. Rev. Stat. (1975).

The Trustee may resign at any time by written instrument to that effect delivered to Third Party. Third Party shall be entitled to remove, at any time or from time to time, the Trustee and to select a successor in trust to Trustee. In case of the death, removal, resignation, refusal to act, or otherwise being unable to act of Trustee, Third Party shall be entitled to select and appoint a successor Trustee hereunder by an instrument duly executed, acknowledged and recorded in the manner and form for conveyances of real estate in the State of Illinois, and any such successor Trustee shall thereupon succeed to Second Party as Trustee hereunder and to all of the rights, powers, duties, obligations, and estate of said Trustee as if specifically named herein, provided no defect or irregularity in the resignation or removal of said Trustee or in the appointment of a successor Trustee or in the execution and recording of such instruments shall affect the validity of said resignation, removal or appointment or any act or thing done by such successor Trustee pursuant thereto.

It is agreed that Trustee shall not be disqualified from acting as Trustee hereunder or from performing any of the duties of Trustee, or from exercising the rights, powers and remedies herein granted, by reason of the fact that Trustee is an officer, employee or stockholder of Third Party, or is interested, directly or indirectly, as the holder of the note hereby secured, First Party hereby expressly consenting to Trustee acting as Trustee irrespective of the fact that Trustee might be otherwise disqualified for any of the foregoing reasons, and that any interest Trustee or any successor shall have or may acquire in the debt hereby secured, or the premises and property hereby conveyed, shall neither interfere with nor prevent his acting as Trustee or from purchasing said property at said sale or sales, and all parties waive any objection to Trustee having or acquiring any such interest in the debt or property aforesaid and continuing to act as Trustee.

Trustee covenants faithfully to perform and fulfill the trust herein created, being liable, however, only for willful negligence or misconduct.

No remedy herein conferred upon or reserved to Trustee or Third Party is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, or by statute; and every power and remedy given by this indenture to Trustee or to Third Party may be exercised from time to time and as often as may be deemed expedient. No delay or omission by Trustee or by Third Party to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any default or an acquiescence therein. In case a Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely, then, and in such and every such case,

25710723

# UNOFFICIAL COPY

First Party and Trustee shall severally and respectively be restored to their former positions and rights hereunder in respect of the mortgaged property, and all rights, remedies and powers of Trustee shall continue as though no such proceedings have been taken.

If any additional sum or sums shall become due and owing by First Party to Third Party, pursuant to the provisions hereof, the affidavit of Third Party shall be sufficient evidence of the fact that such additional sums are secured hereby in the amount set forth in such affidavit.

Should the Trustee appointed herein, or his successor, or the said Mercantile Trust Company National Association, or its successors or assigns be made defendant in any suit involving the title to any of the properties hereby conveyed, or involving the validity or priority of the lien of this Deed of Trust and Security Agreement, then it is agreed that in every such case an attorney's fee in a reasonable amount shall be fixed by the court in which said suit may be pending, and may be adjudged in favor of the attorney or attorneys of record representing the said parties, or any of them, therein, which fee shall be adjudged against the First Party, on motion made therein therefor as a part of the costs of such proceedings, and that such reasonable costs and expenses of said parties, or any of them, shall also be fixed and adjudged as costs therein by the court, and it is agreed that all such fees, costs and expenses of every such proceeding shall be adjudged against said First Party, and when so adjudged shall be secured by this Deed of Trust and Security Agreement.

This indenture and all provisions hereof shall extend to and be binding upon First Party and all parties claiming by, through or under First Party. The term "Third Party" shall be deemed to mean and include the endorsee(s), transferee(s) of the holders at any time of the note hereinabove described, and the successor or successors and assigns of said Mercantile Trust Company National Association, and the terms "Trustee" and "Second Party" shall be deemed to mean and include any successor or successors of the Trustee in the trust hereby created; and the covenants and agreements shall bind and inure to the benefit of the successors and assigns of First Party and the successor in trust of the Trustee and the endorsee(s), transferee(s), assignee(s) and successors of Third Party.

In the event any part, portion or provision of this Deed of Trust and Security Agreement or said note shall for any reason be illegal, invalid or unenforceable with respect to the real property or with respect to the personal property hereby mortgaged, then such part, portion or provision thereof shall be held to apply only to such property as to which it is legal, valid and enforceable, and in the event any part, portion or provision of this Deed of Trust and Security Agreement or said note shall for any reason be illegal, invalid or unenforceable with respect to both the real property and personal property hereby mortgaged, then such part, portion or provision thereof shall be deemed separate and severable from the remaining portion thereof, and such remaining portion thereof shall remain in full force and effect, the same as if such part, portion or provision thereof declared illegal, invalid or unenforceable had not been a part thereof.

25710723

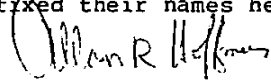
# UNOFFICIAL COPY

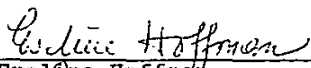
The Parties agree that all notices, demand or documents which are required or permitted to be given or served hereunder shall be in writing and shall be deemed given when sent by registered or certified mail addressed to the First Party, Allan R. Hoffman, 2786 North Highway 67, Florissant, Missouri 63033; to Trustee at #4 Monterey Place, Alton, Illinois 62002, and to Third Party at Mercantile Trust Company National Association, 721 Locust Street, St. Louis, Missouri 63101, Attn: Peter C. Malecek, and that such addresses may be changed from time to time by any party by serving notice as herein provided.

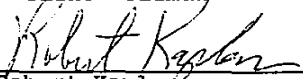
Until an event of default as herein defined shall occur, First Party shall be entitled to remain in possession of the mortgaged property, and if First Party shall well and truly pay or cause to be paid to Third Party the said Note with interest thereon, and the other obligations hereby secured as and when the same shall become due and payable under the terms of said Note and hereof, then this trust shall cease and be void and the mortgaged property hereinafter conveyed shall be released at the cost of First Party.

Eveline Hoffman, wife of Allan R. Hoffman, and Lois Kaplan, wife of Robert Kaplan, join in the execution of this Deed of Trust solely for the purpose of releasing and waiving all of their right, title and interest, if any, in the mortgaged premises pursuant to Illinois homestead law, or Illinois law pertaining to dower or marital rights, and any other right, title or interest they, or either of them, may have or acquire in the mortgaged premises under any law of the States of Illinois or Missouri now or hereafter in effect pertaining to rights in property arising because of marriage or the dissolution thereof.

IN WITNESS WHEREOF, Allan R. Hoffman, Eveline Hoffman, Robert Kaplan and Lois Kaplan have affixed their names hereto the day and year first above written.

  
\_\_\_\_\_  
Allan R. Hoffman

  
\_\_\_\_\_  
Eveline Hoffman

  
\_\_\_\_\_  
Robert Kaplan

  
\_\_\_\_\_  
Lois Kaplan

ACCEPTED:

\_\_\_\_\_  
Henry N. Schweppe, Jr., Trustee

25710723

# UNOFFICIAL COPY

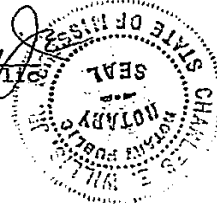
STATE OF MISSOURI )  
 ) SS.  
COUNTY OF ST. LOUIS )

On this 14th day of November, 1980, before me personally appeared Allan R. Hoffman and Eveline Hoffman, his wife, and Robert Kaplan and Lois Kaplan, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the State aforesaid, the day and year first above written.

Charles E. Willis Jr.  
Charles E. Willis Jr., Notary Public

My term expires: November 1, 1981



STATE OF MISSOURI )  
 ) SS.  
CITY OF ST. LOUIS )

On this \_\_\_ day of November, 1980, before me personally appeared Henry N. Schweppe, Jr., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year last above written.

\_\_\_\_\_  
, Notary Public

My term expires: \_\_\_\_\_

MAIL TO: MERCANTILE BANK  
MERCANTILE TOWER  
P.O. BOX 524  
ST. LOUIS, MO. 63166  
ATTN: MS. MARY L. HELLERICH

25710723

**END OF RECORDED DOCUMENT**