

# UNOFFICIAL COPY

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This instrument prepared by:  
Dennis D. Ballard  
Bankers Life Company  
711 High Street  
Des Moines, Iowa 50307

1986 JAN 21 AM 10:50

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Record and return to:

Bankers Life Company  
711 High Street  
Des Moines, IA 50307  
ATTN: Dennis D. Ballard

**BOX 333 - HV**

## DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

3/00

THIS DEED OF TRUST, made as of January 17, 1986, between American National Bank and Trust Company of Chicago, A National Banking Association as Trustee under Trust Agreement dated October 23, 1979 and known as Trust Number 48032, having a post office address at 33 North LaSalle Street, Chicago, Illinois 60690, as Trustor, H. A. HECHT of 711 High Street, Des Moines, Iowa 50309, as Trustee, and BANKERS LIFE COMPANY, having its principal place of business and post office address at 711 High Street, Des Moines, Iowa 50307, as Beneficiary,

### WITNESSETH:

THAT Trustor is justly indebted to Beneficiary for money borrowed in the principal sum of Eight Million Dollars (\$8,000,000.00), evidenced by Trustor's promissory note (herein called the Note) of even date herewith, made payable and delivered to Beneficiary, a copy of which Note is attached hereto as Exhibit C and incorporated herein by reference, in which Note Trustor promises to pay to Beneficiary the said principal sum or so much thereof as may be advanced from time to time by Beneficiary, together with interest at the rate, at the times, and in installments as in the Note provided, until the entire principal and accrued interest have been paid, but in any event, the principal balance (if any) remaining due on the Note shall be due and payable on the first day of January, 1992.

THAT, as a condition to the incurring of said indebtedness, Trustor agreed to execute and deliver this Deed of Trust to secure payment of the Note (interest thereunder and all other sums payable thereunder) and all other sums payable hereunder and the performance of the covenants and conditions of this Deed of Trust and any extension, renewal or modification of the Note and this Deed of Trust.

NOW, THEREFORE, to secure the payment of the said indebtedness in accordance with the terms and conditions hereof and of the Note and the performance of the covenants and agreements contained herein, and in consideration of ten Dollars in hand paid, receipt of which is hereby acknowledged, Trustor does by these presents irrevocably grant, bargain, sell, transfer, assign, convey and confirm unto Trustor, his successors and assigns forever, that certain real estate and all of Trustor's estate, right, title and interest therein, located in the County of Cook, State of Illinois, more particularly described in Exhibit A attached hereto and made a part hereof, which real estate, together with the following described property, rights and interests, is collectively referred to herein as the "premises."

Together with Trustor's interest as lessor in and to all leases of the said premises, or any part thereof, heretofore or hereafter made and entered into by Trustor during the life of this Deed of Trust or any extension or renewal hereof and all rents, issues, proceeds and profits accruing or to accrue from the premises (which are pledged primarily and on a parity with the real estate and not secondarily).

Together with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof.

Together with all right, title and interest of Trustor in any and all buildings and improvements of every kind and description now or hereafter erected or placed on the said real estate and all materials intended for construction, reconstruction, alteration and repairs of such buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures now or

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hereafter owned by Trustor and attached to or contained in and used in connection with the premises including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by Trustor used or useful in the operation of the premises; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by Trustor and placed by it on the real estate or used in connection with the operation or maintenance of the premises shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Deed of Trust to be real estate and covered by this Deed of Trust, and as to any of the property aforesaid which does not form a part and parcel of the real estate and does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois) this Deed of Trust is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property which Trustor hereby grants to Beneficiary as Secured Party.

Together with all right, title and interest of Trustor, now or hereafter acquired, in and to any and all strips and gores of land adjacent to and used in connection with the premises and all right, title and interest of Trustor, now owned or hereafter acquired, in, to, over and under the ways, streets, sidewalks and alleys adjoining the premises.

TO HAVE AND TO HOLD the same unto Trustee, Trustee's successors and assigns, upon the trusts, covenants and agreements herein expressed.

Trustor covenants and represents that it is the absolute owner in fee simple of the premises described in Exhibit A, which premises are free and clear of any liens or encumbrances except as set out in Exhibit P attached hereto, and except for taxes which are not yet due or delinquent. Trustor shall forever warrant and defend the title to the premises against all claims and demands of all persons whomsoever and will on demand execute any additional instrument which may be required to give Trustee a valid first lien on all of the premises, except as stated in Exhibit B.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS, REPRESENTS AND AGREES AS FOLLOWS:

1. Trustor shall

- (a) pay each item of indebtedness secured by this Deed of Trust when due according to the terms hereof and of the Note;
- (b) upon written request, pay a late charge equal to four percent (4%) of any installment of interest and principal which is not paid within five (5) days following the due date thereof to cover the expense involved in handling such late payment;
- (c) pay on or before the due date thereof any indebtedness which may be secured by a lien or charge on the premises equal to or superior to the lien hereof, and upon request of Beneficiary exhibit satisfactory evidence of the discharge thereof;
- (d) complete within a reasonable time the construction of any building now or at any time in process of erection upon the real estate;
- (e) make no material alteration to the premises without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed, except such as are required by law or ordinance; notwithstanding the provisions of this subparagraph (e), Trustor may make normal and customary alterations to tenant space of not more than 1,000 square feet per tenant and 25,000 square feet in the aggregate;
- (f) remove or demolish no building or other improvement at any time a part of the premises, and shall keep the premises, including the buildings and improvements, in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for liens and encumbrances not expressly subordinated to the lien hereof;
- (g) comply, and shall cause each lessee or other user of the premises to comply, with all requirements of law and ordinance, and with all rules

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and regulations of authorities having jurisdiction of the premises and the use thereof, all orders and directions of the Board of Fire Underwriters or similar body, and all restrictions of record pertaining to the premises, including the building and improvements, and the use thereof;

- (h) cause or permit no change to be made in the general nature of the occupancy of the premises without Beneficiary's prior written consent, which consent shall not be unreasonably withheld or delayed;
- (i) initiate or acquiesce in no zoning reclassification or material change in zoning without Beneficiary's prior written consent;
- (j) make or permit no use of the premises that could with the passage of time result in the creation of any right of user, or any claim of adverse possession or easement on, to or against any part of the premises in favor of any person or the public;
- (k) promptly repair, restore or rebuild any buildings or improvements now or hereafter a part of the premises which may become damaged or be destroyed by any cause whatsoever, so that upon completion of the repair, restoration and rebuilding of the building and improvements, there will be no liens of any nature arising out of the construction and the premises will be of substantially the same character and will have a commercial value at least as great as the commercial value thereof prior to the damage or destruction;
- (l) not, directly or indirectly, due to assignment of beneficial interest under a trust, partnership interest in a partnership, or otherwise, cause or permit any sale, transfer or conveyance of the premises or create, suffer or permit any encumbrance or lien on the premises other than the lien hereof, the leases of the premises assigned to Beneficiary and other exceptions expressly referred to herein, it being understood and agreed that the indebtedness evidenced by the Note and its terms are personal to Trustor and in accepting the same Beneficiary has relied upon what it perceived as the willingness and ability of Trustor to perform its obligations hereunder, under the Note, and as lessor under leases of the premises, Beneficiary may consent to a sale, transfer, conveyance or encumbrance and expressly waive this provision in writing to Trustor however any such consent and waiver shall not constitute any consent or waiver of this provision as to any sale, transfer, conveyance or encumbrance other than that for which the consent and waiver was expressly granted; Beneficiary's ability to consent to any sale, transfer, conveyance or encumbrance and waive this provision implies no standard of reasonableness in determining whether or not such consent shall be granted and the same may be based upon what Beneficiary solely deems to be in its best interest; without limiting Beneficiary's right to withhold its consent and waiver entirely, such consent and waiver may be conditioned upon an increase in the rate of interest under the Note and the imposition of other terms and conditions thereunder or hereunder; any sale, transfer, conveyance or encumbrance made, created or permitted in violation of this provision shall be null and void and in addition to the other rights and remedies available to Beneficiary hereunder, Beneficiary shall have the option of declaring the unpaid principal balance of the Note, together with all accrued and unpaid interest, premium, if any, and all other sums and charges evidenced thereby or owing hereunder, immediately due and payable; provided, however, that nothing in this subparagraph (l) shall prohibit a lien or encumbrance subordinate to the lien hereof provided the following conditions are met: (i) a minimum of 1.20 debt service coverage [annual net operating income (i.e. annual gross income provided by existing leases on the premises less annual operating expenses) divided by the total annual debt service on the loan and on the proposed subordinate financing including accrued or capitalized interest] is maintained, and (ii) Trustor has given Beneficiary prior written notice of the intent to obtain subordinate financing, the terms and conditions of which are subject to Beneficiary's approval;

Trustor hereby waives any right to prepay the Note in whole or in part without premium if the Note is accelerated pursuant to this subparagraph l(1) and agrees to pay a prepayment premium, said premium to be the greater of one percent of the principal amount to be prepaid or a premium which is calculated as follows:

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- (i) The "Reinvestment Yield" is the yield on the 1992 11 4/5s U.S. Treasury Issue (primary issue) published two weeks prior to the date of prepayment and converted to a monthly compounded nominal yield: If the Reinvestment Yield is greater than the interest rate in effect under this note, the premium will be one percent of the principal amount to be prepaid.
- (ii) The "Reinvestment Payment" is the interest payment that would be received by reinvesting the prepaid proceeds at the Reinvestment Yield. This is calculated by multiplying the Reinvestment Yield times the prepaid proceeds divided by 12 to equate to the reinvestment monthly income stream.
- (iii) The "Monthly Interest Payment" is determined using the interest rate in effect and the remaining principal balance as of the date of prepayment.
- (iv) The "Payment Differential" is the Monthly Interest Payment less the Reinvestment Payment.
- (v) The "Premium" equals the present value of the Payment Differential at Reinvestment Yield (monthly compounding) for the number of months remaining from date of prepayment to the date of loan maturity.

In the event there is no market activity involving the primary issue at the time of prepayment, the Beneficiary shall choose a comparable Treasury Bond, Note or Bill ("secondary issue") which the Beneficiary deems to be similar to the primary issue's characteristics (i.e. rate, remaining time to maturity, yield).

- (m) annually provide Beneficiary annual detailed income and operating expense statements covering the operation of the premises;
  - (n) preserve and keep in force its partnership existence with Murdoch & Coll, Inc. as managing General Partner; and
  - (o) on or before December 20, 1988, if an adjustment is made in the rate of interest in effect under the Note secured by this Deed of Trust, provide either a new ALTA Standard Loan policy or an endorsement extending the effective date of the existing policy (unless the holder of the Note is satisfied such is not needed because of having obtained a satisfactory endorsement initially covering such potential interest rate adjustment) in the full amount of the loan evidenced by the Note secured by this Deed of Trust, which shall be in form and by an issuer satisfactory to Beneficiary.
2. Trustor shall pay when due and before any penalty attaches or interest accrues all general taxes, special taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), water charges, sewer service charges, vault or space charges and all other like charges against or affecting the premises or against any property or equipment located on the premises, or which might become a lien on the premises, and shall, within 30 days following the last day on which any such tax, assessment or charge may be paid without incurring any penalty or interest for nonpayment thereof, furnish to Beneficiary a duplicate receipt of such payment. If any such tax, assessment or charge may legally be paid in installments, Trustor may, at its option, pay such tax, assessment or charge in installments.

To prevent default hereunder Trustor shall pay in full, under protest in the manner provided by law, any tax, assessment or charge which Trustor may desire to contest, provided, however, that

- (a) if contest of any tax, assessment or charge may be made without the payment thereof, and
- (b) such contest shall have the effect of preventing the collection of the tax, assessment or charge so contested and the sale or forfeiture of the premises or any part thereof or any interest therein to satisfy the same,

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Trustor may at its option and in its discretion and upon the giving of written notice to Beneficiary of its intended action and upon the furnishing to Beneficiary of such security or bond as Beneficiary may require, contest any such tax, assessment or charge in good faith and in the manner provided by law. All costs and expenses incidental to such contest shall be paid by Trustor. In the event of a ruling or adjudication adverse to Trustor, Trustor shall promptly pay such tax, assessment or charge. Subject to the provisions of paragraphs 39 and 40, Trustor shall indemnify and save harmless the Beneficiary and the premises from any loss or damage arising from any such contest and shall, if necessary to prevent sale, forfeiture or any other loss or damage to the premises or the Beneficiary, pay such tax, assessment or charge or take whatever action is necessary to prevent any sale, forfeiture or loss.

3. Trustor shall at all times keep all buildings and improvements which now are or hereafter become a part of the premises insured under an 'all risk' form of insurance policy containing both a replacement cost and an agreed amount endorsement (and against all other hazards as reasonably may be required by Beneficiary, which may include, without limitation, insurance against loss or damage by flood, earthquake and war risk) and, if requested by Beneficiary, shall procure and maintain in force boiler insurance (if any building or improvement has a boiler) and rent insurance against loss of rent due to fire or other casualties named in standard policies of insurance against loss of rents. All insurance shall be in form, content and amounts approved by Beneficiary (it being understood that "all risk" coverage shall be for the full insurable replacement cost value of the premises and that insurance required for lost rents shall be in an amount at least equal to six months cash rents under tenant leases plus all tenants' liability for such period for real estate taxes, assessments and insurance) and written by an insurance company or companies or governmental agency or instrumentality approved by Beneficiary. The policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Beneficiary to collect any and all proceeds payable under all such insurance. All such policies or certificates thereof shall be delivered to and held by Beneficiary as further security for the payment of the Note and other moneys herein mentioned, with evidence of renewal coverage delivered to Beneficiary at least 30 days before the expiration date of any policy. Not less frequently than once every three years, Trustor, at its expense, will furnish Beneficiary with an appraisal of the full insurable replacement cost value of the premises, made by fire insurance appraisers satisfactory to Beneficiary and fire insurance companies generally. Trustor shall also carry public liability insurance protecting Trustee, Beneficiary and any tenant or other user of the premises against liability for injuries to persons and property occurring in, on or adjacent to the premises, in forms, companies and amounts satisfactory to Beneficiary with the policy or policies evidencing such insurance to contain a 10 day notice of cancellation clause in favor of Beneficiary. Trustor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required herein.
4. Upon the occurrence of an Event of Default under this Deed of Trust, Trustor shall deposit with and pay to Beneficiary, on each payment date specified in the Note secured by this Deed of Trust, a sum equivalent to one-twelfth (1/12) of the estimated annual taxes and assessments assessed or levied against the premises and one-twelfth (1/12) of the annual premiums for insurance required by this Deed of Trust to be furnished by Trustor. Beneficiary shall use such deposits to pay the taxes, assessments and premiums when the same become due. Beneficiary shall not be liable for interest on such deposits. Trustor shall procure and deliver to Beneficiary, in advance, statements for such charges. If the total payments made by Trustor under this paragraph exceed the amount of payments actually made by Beneficiary for taxes, assessments and insurance premiums, such excess shall be credited by Beneficiary on subsequent deposits to be made by Trustor. If, however, the deposits are insufficient to pay the taxes, assessments and insurance premiums when the same shall be due and payable, Trustor will pay to Beneficiary any amount necessary to make up the deficiency, on or before the date when payment of such taxes, assessments and insurance premiums shall be due. If at any time Trustor shall tender to Beneficiary, in accordance with the provisions of the Note secured by this Deed of Trust, full payment of the entire indebtedness represented thereby, Beneficiary shall, in computing the amount of such indebtedness, credit to the account of Trustor any balance remaining in the funds accumulated and held by Beneficiary under the provisions of this paragraph. If there is a default

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under any of the provisions of this Deed of Trust resulting in a public sale of the premises, or if Beneficiary otherwise acquires the premises after default, Beneficiary shall apply, at the time of commencement of such proceedings, or at the time the premises is otherwise acquired, the balance then remaining in the funds accumulated under this paragraph as a credit on the interest accrued and unpaid and the balance to the principal then remaining unpaid under the Note. The enforceability of the covenants relating to taxes, assessments and insurance premiums provided for in this Deed of Trust shall not be affected except to the extent that said obligations have been actually met by compliance with this paragraph.

5. In the event of any damage to or destruction of the buildings or improvements which are a part of the premises:

(a) which damage or destruction is covered by any policy or policies of insurance required to be carried by Trustor, Trustor will immediately notify Beneficiary thereof in the manner provided in Paragraph 28 hereof. Beneficiary may in its discretion (and it is hereby authorized to) either settle or adjust any claim under such insurance policies without consent of Trustor, or allow Trustor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case, the proceeds shall be paid to Beneficiary and Beneficiary is authorized to collect and give receipts therefor.

(b) If no Event of Default shall have occurred and be continuing under this Deed of Trust; and

(i) Trustor is obligated to rebuild and restore the damaged or destroyed buildings or improvements under the terms of any lease or leases of 1,000 square feet or more, individually, or 25,000 square feet in the aggregate;

(ii) the lessee is not in default under any such lease; and

(iii) such damage or destruction does not result in the cancellation or termination of any such lease or any uninsured reduction or abatement of rent thereunder; and

(iv) the insurers do not deny liability with respect to the loss,

such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be used for the cost of rebuilding and restoring the buildings and improvements subject to the provisions of this paragraph 5. In all other cases such insurance proceeds may, at the option of Beneficiary, either be applied in reduction of the indebtedness secured hereby, whether or not then due and payable, or be held by Beneficiary and used for the cost or rebuilding and restoration of the buildings and improvements.

(c) Regardless of the cause of the damage or destruction or the availability or sufficiency of insurance proceeds until all indebtedness secured hereby shall be fully paid, Trustor shall be obligated to repair, restore and rebuild any buildings or improvements so damaged or destroyed, provided, however, that if any insurance proceeds have been paid to Beneficiary under any insurance policies maintained by Trustor under the provisions of Paragraph 3, Trustor shall be so obligated only if Beneficiary elects to apply such proceeds to the cost of rebuilding and restoration. Repair and restoration of the buildings and improvements shall be commenced promptly after the occurrence of the loss and shall be prosecuted to completion diligently, and the buildings and improvements shall be so restored and rebuilt as to be of at least equal value and substantially the same character as prior to such damage and destruction. In the event the estimated costs of rebuilding and restoration exceed 25% of the indebtedness then remaining unpaid as secured hereby, the drawings and specifications pertaining to such rebuilding and restoration shall be subject to the prior written approval of Beneficiary, which approval shall not be unreasonably withheld or delayed.

(d) In the event that Trustor is entitled to remittance of the insurance proceeds for payment of the cost of rebuilding and restoration, such proceeds shall be made available from time to time upon the furnishing to Beneficiary of satisfactory evidences of the estimated cost of

completion thereof and such architect's certificates, waivers of lien, contractor's sworn statements, and other evidence of cost and of the continued priority of the lien hereof over any potential liens of mechanics and materialmen as Beneficiary may require and approve. Evidence of payment shall be promptly provided to Beneficiary. No payment made by Beneficiary prior to the final completion of the work shall, together with all payments theretofore made, exceed 90% of the value of the work performed to the time of payment, and at all times the undisbursed balance of said proceeds shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

- (e) Should such damage or destruction occur after foreclosure or sale proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied in rebuilding or restoration of the buildings or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure or deficiency judgment that may be entered in connection with such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same, or otherwise as any court having jurisdiction may direct. Following any foreclosure sale, or other sale of the premises by Beneficiary pursuant to the terms hereof, Beneficiary is authorized without the consent of Trustor to assign any and all insurance policies to the purchaser at the sale and to take such other steps as Beneficiary may deem advisable to cause the interests of such purchaser to be protected by any of such insurance policies.
6. Trustor hereby assigns, transfers and sets over to Beneficiary the entire proceeds of any award or claim for damage to any of the premises taken or damaged under the power of eminent domain or by condemnation. In the event of the commencement of any eminent domain or condemnation proceeding affecting the premises:
- (a) Trustor shall notify Beneficiary thereof in the manner provided in Paragraph 28. Beneficiary may participate in such proceeding, and Trustor shall deliver to Beneficiary all documents requested by it to permit such participation.
- (b) Beneficiary may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether or not then due and payable, or to require Trustor to restore or rebuild, in which event the proceeds shall be held by Beneficiary and used to reimburse Trustor for the cost of restoring and rebuilding all buildings and improvements in accordance with plans and specifications to be submitted to and approved by Beneficiary.
- (c) In the event Beneficiary elects to reimburse Trustor for the costs of restoring and rebuilding the premises, then the proceeds of the award shall be paid out in the same manner as provided in Paragraph 5 for the payment of insurance proceeds in reimbursement of the costs of rebuilding and restoration. If the amount of such award is insufficient to cover the cost of restoring and rebuilding, Trustor shall pay such cost in excess of the award before being entitled to reimbursement out of the award. Any proceeds remaining after payment of cost of restoring and rebuilding shall, at the option of Beneficiary, either be applied on account of the indebtedness secured hereby or be paid to Trustor.
7. If by the laws of the United States of America or of any state or governmental subdivision having jurisdiction of Trustor or of the premises or of the transaction evidenced by the Note and this Deed of Trust, any tax or fee is due or becomes due in respect of the issuance of the Note hereby secured or the making, recording and registration of this Deed of Trust, Trustor covenants and agrees to pay such tax or fee in the manner required by such law, and to hold harmless and indemnify Trustee and Beneficiary, their successors and assigns, against any liability incurred by reason of the imposition of any such tax or fee.
8. In the event of the enactment after the date hereof of any applicable law deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Trustee or Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of deeds of trust or debts secured by deeds of trust or the interest of Trustee or Beneficiary in the premises, or the manner of collection of

taxes, so as to affect this Deed of Trust or the debt secured hereby or the holder thereof, then and in any such event Trustor shall, upon demand by Beneficiary, pay such taxes or assessments or reimburse Beneficiary therefor; provided, however, that, if in the opinion of counsel for Beneficiary (a) it might be unlawful to require Trustor to make such payment, or (b) the making of such payment might be construed as imposing a rate of interest beyond the maximum permitted by law, then and in such event Beneficiary may elect to declare all of the indebtedness secured hereby to be and become due and payable 60 days from the giving of written notice of such election to Trustor.

9. Upon the occurrence of any Event of Default under this Deed of Trust, Beneficiary may, but need not, make any payment or perform any act herein required of Trustor, in any form and manner deemed expedient and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises, or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including reasonable attorneys' fees and attorneys' fees on appeal and any other money advanced by Beneficiary to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as hereinafter defined) from the date of expenditure or advance until paid.

In making any payment hereby authorized relating to taxes or assessments or for the purchase, discharge, compromise or settlement of any prior lien, Beneficiary may make such payment according to any bill, statement or estimate secured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof or without inquiry as to the validity or amount of any claim for a lien which may be asserted.

10. If one or more of the following events (herein called "Events of Default") shall have occurred:
- (a) default shall be made in the due and punctual payment of the Note or any installment thereof in accordance with its terms, either of principal or interest, and such default shall have continued for 10 days; or
  - (b) Trustor's beneficiary shall be dissolved, or a decree or order for relief shall be entered by a court having jurisdiction in the premises in respect of Trustor or its Beneficiary in a voluntary or involuntary case under the Federal Bankruptcy Code as now or hereafter constituted, or Trustor or its Beneficiary shall file a voluntary petition in bankruptcy or for reorganization or an arrangement or any composition, readjustment, liquidation, dissolution or similar relief pursuant to any similar present or future state or federal bankruptcy law, or shall be adjudicated a bankrupt or become insolvent, or shall commit any act of bankruptcy as defined in such law, or shall take any action in furtherance of the foregoing; or
  - (c) a petition or answer shall be filed proposing the adjudication of Trustor or its Beneficiary as a bankrupt or its reorganization or arrangement, or any composition, readjustment, liquidation, dissolution or similar relief with respect to it pursuant to any present or future federal or state bankruptcy or similar law, and Trustor or its Beneficiary shall consent to the filing thereof, or such petition or answer shall not be discharged within 60 days after the filing thereof; or
  - (d) by the order of a court of competent jurisdiction, a receiver, trustee, custodian or liquidator of the premises or any part thereof or of Trustor or its Beneficiary or of substantially all of its assets shall be appointed and shall not be discharged or dismissed within 60 days after such appointment, or if Trustor or its Beneficiary shall consent to or acquiesce in such appointment; or
  - (e) Trustor shall fail to provide Beneficiary with a new ALTA standard loan policy (or an endorsement satisfactory to the holder of this Note extending the effective date of the existing policy or shall not have otherwise initially provided a satisfactory endorsement to the policy)

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## EXHIBIT A

LOTS 18, 19 AND 24 (EXCEPT THAT PART OF SAID LOTS TAKEN FOR DEARBORN STREET) IN GEORGE W. SNOWS SUBDIVISION OF BLOCK 139 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### COMMON STREET ADDRESS:

343 SOUTH DEARBORN STREET  
CHICAGO, ILLINOIS 60604

### PERMANENT TAX NUMBERS:

17-16-234-005-0000  
17-16-234-006-0000

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## EXHIBIT B

1. AGREEMENT DATED NOVEMBER 1, 1871 AND RECORDED FEBRUARY 27, 1875 IN BOOK 495 PAGE 211 AS DOCUMENT 15792 BETWEEN BENJAMIN LOMBARD AND ANNA MARIE BAILEY AND HENRY BAILEY, HER HUSBAND FOR A PARTY WALL BETWEEN LOT 18 AND LOT 13, NORTH OF AN ADJOINING TO SAID LOT.  
  
(AFFECTS LOT 18).
2. AGREEMENT DATED DECEMBER 19, 1905 AND RECORDED JANUARY 12, 1906 AS DOCUMENT 3807384 BETWEEN LUCIUS G. FISHER AND HIRAM B. PEABODY RELATING TO A PARTY WALL ON THE NORTH LINE OF LOT 18.  
  
(AFFECTS LOT 18).
3. TERMS, POWERS, PROVISIONS AND LIMITATIONS OF THE TRUST UNDER WHICH TITLE TO SAID LAND IS HELD.
4. AGREEMENT BETWEEN THE NORTHERN TRUST COMPANY AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF HIRAM B. PEABODY, DECEASED AND THE STANDARD CLUB LEASING PREMISES NOT NOW IN QUESTION DATED DECEMBER 21, 1923 AND RECORDED OCTOBER 23, 1924 AS DOCUMENT 8642058 RELATING TO PARTY WALLS AND CAISSONS THAT MAY AFFECT LOT 18.
5. BY ORDINANCE PASSED SEPTEMBER 20, 1978 A COPY OF WHICH WAS RECORDED OCTOBER 17, 1978 AS DOCUMENT 2467440 THE COMMISSION ON CHICAGO HISTORICAL AND ARCHITECTURAL LANDMARKS HAS DECLARED THAT THE BUILDING IS DESIGNATED "A CHICAGO LANDMARK".
6. TAXES FOR THE YEARS 1985 & 1986.
7. ENCROACHMENTS REVEALED BY SURVEY OVER WHICH TITLE INSURANCE COVERAGE HAS BEEN AFFORDED.

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as required by or contemplated in paragraph 1(o) of this Deed of Trust; or

- (f) default shall be made in the due observance or performance of any other covenant, condition or agreement of the Trustor contained herein or in the Note or in any other instrument further securing the Note, and such default shall have continued for 30 days after notice specifying such default is given by Beneficiary to Trustor; or
- (g) any representation or warranty made by Trustor herein or in the Note or in any instrument further securing the Note shall prove to be untrue or inaccurate in any material respect;

then, in each and every such case, and to the extent permitted by law, the whole of said principal sum hereby secured shall, at the option of the Beneficiary and without further notice to Trustor, become immediately due and payable together with accrued interest thereon.

If any event of Default under "(f)" above shall be of such nature that it cannot be cured or remedied within 30 days, Trustor shall be entitled to a reasonable period of time to cure or remedy such Event of Default, provided Trustor commences the cure or remedy thereof within the 30 day period following the giving of notice and thereafter proceeds with diligence to complete such cure or remedy.

In the event of default and foreclosure, Trustor waives all redemption rights to the property to the extent permitted by law.

11. Upon the occurrence of any Event of Default, Beneficiary may elect to declare the principal of said Note and all of the sums hereby secured, including any prepayment premium or charge provided for in said Note, to be immediately due and payable. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, holders of the Note or Trustee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Trustee or holders of the Note for attorneys' fees, Trustee's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Trustee or holders of the Note may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the default rate as hereinafter defined, when paid or incurred by Trustee or holders of the note in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this trust deed or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the premises or the security hereof, whether or not actually commenced.
12. The proceeds of any foreclosure sale shall be applied in payment, first, of the expenses incident to the foreclosure proceedings, together with the reasonable expenses of this trust and of Trustee, and in addition thereto, reasonable attorneys' fees, which shall become due upon any aforesaid Event of Default; and also such sums, if any, as Trustee or Beneficiary shall have paid for procuring abstract of, or for search of, or certificate or report as to, the title to said property, or any part thereof, subsequent to the execution of this Deed of Trust and such other items as are mentioned in paragraph 11 above; and in payment, second, of the principal of said Note and of the interest thereon herein agreed or provided to be paid by Trustor, and the balance or surplus of such proceeds of sale, if any, Trustee shall pay to Trustor, or Trustor's successors or assigns.



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13. During the continuance of any Event of Default, Trustor shall forthwith upon demand of Trustee or Beneficiary surrender to Beneficiary possession of the premises, and, if and to the extent permitted by law as to each act which Beneficiary is hereinafter in this paragraph 13 permitted to take, Beneficiary shall be entitled to take actual possession of the premises or any part thereof personally or by its agents or attorneys, as for condition broken, and Beneficiary in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the premises together with all documents, books, records, papers and accounts of the Trustor or the then owner of the premises relating thereto, and may exclude Trustor, its agents or assigns wholly therefrom, and may as attorney-in-fact or agent of the Trustor, or in its own name as Beneficiary and under the powers herein granted:

- (a) hold, operate, manage or control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion it deems proper or necessary to enforce the payment or security of the income, rents, issues and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rents, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Trustor;
- (b) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Trustor to cancel the same;
- (c) elect to cancel any lease or sublease made subsequent to this Deed of Trust (unless this Deed of Trust has specifically been made subordinate to such lease or sublease) or subordinated to the lien hereof;
- (d) extend or modify any then existing leases and make new leases, which extensions, modifications or new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Trustor and all persons whose interests in the premises are subject to the lien hereof and shall be binding also upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser;
- (e) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as it may deem judicious, insure and reinsure the same and all risks incidental to Beneficiary's possession, operation and management thereof, and receive all income, rents, issues and profits.

Neither Trustee nor Beneficiary shall be obligated to perform or discharge, nor does either hereby undertake to perform or discharge, any obligation, duty or liability under any lease, and the Trustor shall and does hereby agree to indemnify and to hold Trustee and Beneficiary harmless of and from all liability, loss or damage which either might incur under said leases or under or by reason of the assignment thereof, and of and from any and all claims or demands whatsoever which may be asserted against either of them by reason of any alleged obligations or undertakings on the part of either of them to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Trustee or Beneficiary incur any such liability, loss or damage under any of said leases, or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, including attorneys' fees on appeal, shall be secured hereby and Trustor shall reimburse Trustee or Beneficiary therefor immediately upon demand, together with interest at the Default Rate from the date of payment by Trustee or Beneficiary to the date of reimbursement.

14. Trustee and Beneficiary in the exercise of the rights and powers hereinabove conferred upon them shall have the full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as Beneficiary may determine:

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- (a) to the payment of the expenses of operating the premises, including cost of management and leasing thereof (which shall include reasonable compensation to Trustee, Beneficiary and their respective agent or agents if management is delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance as hereinabove authorized;
  - (b) to the payment of taxes and special assessments now due or which may hereafter become due on the premises;
  - (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the premises and of placing the premises in such condition as will in the judgment of Beneficiary make it readily rentable;
  - (d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.
15. During the continuance of any Event of Default under this Deed of Trust, Beneficiary may apply to any court having jurisdiction of the premises for the appointment of a receiver of the premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver and without regard to the then value of the premises or the adequacy of Beneficiary's security. To the extent permitted by law, Beneficiary or any holder of the Note may be appointed as such receiver. The receiver shall have power to collect the rents, issues and profits of the premises during the pendency of any foreclosure proceedings and, in case of a sale, during the full statutory period of any redemption period as well as during any further times when Trustor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits. In addition, the receiver shall have all other powers which shall be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in full or in part of:
- (a) the indebtedness secured hereby or provided by any decree foreclosing this Deed of Trust, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and
  - (b) the deficiency in case of a sale and deficiency.
16. Trustor agrees that all reasonable costs, charges and expenses, including attorneys' fees, incurred or expended by Trustee or Beneficiary arising out of or in connection with any action, proceeding or hearing, legal, equitable or quasi-legal, including the preparation therefor and any appeal therefrom, in any way affecting or pertaining to this Deed of Trust, the Note or the premises, shall be promptly paid by Trustor. All such sums not promptly paid by Trustor shall be added to the indebtedness secured hereby and shall bear interest at the Default Rate from the date of such advance and shall be due and payable on demand.
17. Trustor hereby assigns to Beneficiary the rents, issues, profits, royalties, and payments payable under any lease of the premises, or portion thereof, including any oil, gas or mineral lease, or any installments of money payable pursuant to any agreement for any sale of the premises or any part thereof. Beneficiary, without regard to the adequacy of any security for the indebtedness hereby secured, shall be entitled to (a) collect such rents, issues, profits, royalties, payments and installments of money and apply the same as more particularly set forth in this paragraph, all without taking possession of the premises, or (b) to the extent permitted by law, enter and take possession of the premises or any part thereof, in person, by agent, or by a receiver to be appointed by the court and to sue for or otherwise collect such rents, issues, profits, royalties, payment and installments of money. Beneficiary may apply any such rents, issues, profits, royalties, payments and installments of money so collected, less costs and expenses of operation and collection, including reasonable attorneys' fees and attorneys' fees on appeal, upon any indebtedness secured hereby, in such order as Beneficiary may determine, and, if such costs and

expenses and attorneys' fees shall exceed the amount collected, the excess shall be immediately due and payable. The collection of such rents, issues, profits, royalties, payments and installments of money and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice, except to the extent any such Event of Default fully is cured. Failure or discontinuance of Beneficiary at any time, or from time to time, to collect any such moneys shall not impair in any manner the subsequent enforcement by Beneficiary of the right, power and authority herein conferred on Beneficiary. Nothing contained herein, including the exercise of any right, power or authority herein granted to Beneficiary, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, or an assumption of liability under, or the subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option. Trustor hereby agrees that, in the event Beneficiary exercises its rights as in this paragraph provided, Trustor waives any right to compensation for the use of Trustor's furniture, furnishings or equipment in the premises for the period such assignment of rents or receivership is in effect, it being understood that the rents, issues, profits, royalties, payments and installments of money derived from the use of any such items shall be applied to Trustor's obligations hereunder as above provided. Notwithstanding any provision herein to the contrary, prior to a default by Trustor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement of Trustor contained herein or in the Note or the Collateral Assignment of Lease and Rents dated the date hereof, or in any of the Leases, Beneficiary hereby grants to Trustor the license to collect as the same become due and payable, but in any event for not more than one calendar month in advance, all rents and other income arising under the Leases and from the Mortgaged Premises, and to enforce all provisions contained in the Leases. Trustor shall render such accounts of collections as Beneficiary may require. The license herein granted to Trustor shall terminate immediately upon default in payment of any indebtedness secured hereby or in the performance of any other obligation, covenant or agreement of Assignor contained in the Note or the Collateral Assignment, or in this Deed of Trust, or in any of the Leases; upon written notice of Trustor's default at any time hereafter given by Beneficiary to any lessee by mailing the same by United States Certified Mail, Return Receipt Requested, postage prepaid, addressed to the lessee named in the Lease, all rentals thereafter payable and all agreements and covenants thereafter to be performed by the lessee shall be paid and performed by the lessee directly to Beneficiary in the same manner as if the above license had not been granted, without prosecution of any legal or equitable remedies under this Deed of Trust. Any lessee of the Mortgaged Premises or any part thereof is authorized and directed to pay to Trustor any rent herein assigned currently for not more than one calendar month in advance and any payment so made prior to receipt by such lessee of notice of Trustor's default shall constitute a full acquittance to lessee therefor.

18. Trustor has executed and delivered that certain Collateral Assignment of Lease and Rents of even date herewith assigning to Beneficiary the interest of Trustor as lessor under the existing leases of the premises, as well as all other leases which may hereafter be made in respect of the premises, and the rents and other income arising thereunder and from the use of the premises. Said Collateral Assignment of Lease and Rents grants to Beneficiary specific rights and remedies in respect of said leases and the collection of rents and other income thereunder and from the use of the premises, and such rights and remedies so granted shall be cumulative of those granted herein.

Trustor shall keep and perform all terms, conditions and covenants required to be performed by it as lessor under the aforesaid leases; shall promptly advise Beneficiary in writing of any claim of default by Trustor made by a lessee under any such lease or of any default thereunder by a lessee; and shall promptly provide Beneficiary with a copy of any notice of default or other notice served upon Trustor by any such lessee. Trustor will not cancel, modify or alter, or accept the surrender of, any existing or future lease of the premises or any part thereof without first obtaining written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed.

19. All rights and remedies granted to Trustee or Beneficiary herein or in the Note or any other instrument securing the Note shall be in addition to and not in limitation of any rights and remedies to which it is entitled in

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equity, at law or by statute, and the invalidity of any right or remedy herein provided by reason of its conflict with applicable law or statute shall not affect any other valid right or remedy afforded to Trustee or Beneficiary. No waiver of any Event of Default or of any default in the performance of any covenant contained in the Note or any other instrument securing the Note shall at any time thereafter be held to be a waiver of any rights of the Trustee or Beneficiary hereunder, nor shall any waiver of a prior Event of Default or default operate to waive any subsequent Event of Default or default. All remedies provided for herein, in the Note and in any other instrument securing the Note are cumulative and may, at the election of Beneficiary, be exercised alternatively, successively, or concurrently. No act of Trustee or Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision or to proceed against one portion of the premises to the exclusion of any other portion.

20. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or installments so secured or to declare a default for failure to pay the same.
21. Notwithstanding anything herein or in the Note to the contrary, no provision contained herein or in the Note which purports to obligate Trustor to pay any amount of interest or any fees, costs or expenses which are in excess of the maximum permitted by applicable law, shall be effective to the extent that it calls for the payment of any interest or other sums in excess of such maximum. Any such excess shall, at the option of the Beneficiary, either be paid to Trustor or be credited to principal on the Note.
22. In the event one or more provisions of this Deed of Trust or of the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Deed of Trust shall be construed as if any such provision had never been contained herein.
23. If the payment of the indebtedness secured hereby or of any part thereof shall be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Beneficiary notwithstanding such variation or release.
24. Upon payment in full of the indebtedness secured hereby and the performance by Trustor of all of the obligations imposed on Trustor herein and in the Note, these presents shall be null and void, and Trustee shall release this Deed of Trust and the lien hereof by proper instrument executed in recordable form.
25. If no Event of Default has occurred and is continuing under this Deed of Trust, the Trustor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments) to the extent permitted by and upon the terms and conditions set forth in the Note.
26. Beneficiary, its agents, employees or assigns shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.
27. Within 15 days after any written request by the other party, Trustor or Beneficiary shall certify, by a written statement duly acknowledged, the amount of principal and interest then owing on the Note and whether any offsets or defenses exist against the indebtedness secured hereby.
28. Any notice which any party hereto may desire or be required to give to the other shall be deemed to be an adequate and sufficient notice if given in writing and service is made by the mailing of such notice by registered or certified mail addressed to Trustor or Trustee at its address given on the first page hereof, and in case of a notice given to Trustor, a copy thereof shall also be sent to The Fisher Building Limited Partnership, c/o Murdoch & Co., Inc., 343 South Dearborn Street, Suite 410, Chicago, Illinois 60004, or to Beneficiary at 711 High Street, Des Moines, Iowa 50307, ATTN: Commercial Real Estate Servicing, or to such other place as any party may by notice in writing to the other parties designate as a place for service of

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- notice. Any such notice shall be deemed given and received two (2) days after deposit in the U.S. mails.
29. Beneficiary, from time to time, may substitute another Trustee in place of the Trustee named herein, to execute the trusts hereby created; and upon such appointment, and without conveyance to the successor trustee, the successor trustee shall be vested with all the title, interest, powers, duties and trusts in the premises hereby vested in or conferred upon Trustee herein named. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary containing reference to this Deed of Trust sufficient to identify it, which instrument, when recorded in the office of the County Recorder of the county or counties in which the premises is situated, shall be conclusive proof of proper appointment of the successor trustee. The recital or statement, in any instrument executed by Trustee in pursuance of any of said trusts, of the due authorization of any agent of the Trustee executing the same shall for all purposes be conclusive proof of such authorization.
  30. Trustee at any time, at Trustee's option, may commence and maintain suit in any court of competent jurisdiction and obtain the aid and direction of said court in the execution by him of the trusts or any of them, herein expressed or contained, and, in such suit, may obtain the orders or decrees, interlocutory or final of said court directing the execution of said trusts, and confirming and approving Trustee's acts, or any of them, or any sales or conveyances made by Trustee, and adjudging the validity thereof, and directing that the purchasers of the property sold and conveyed be let into immediate possession thereof, and providing for orders of court or other process requiring the Sheriff of the county in which said property is situated to place and maintain said purchasers in quiet and peaceable possession of the property so purchased by them, and the whole thereof.
  31. Trustor, forthwith upon request, at any and all times hereafter, at the expense of Trustor, will cause to be made, executed, acknowledged and delivered to Trustee, any and every deed or assurance in law which Trustee or counsel of Trustee shall reasonably advise or require for the more sure, effectual and satisfactory granting and confirming of said premises unto Trustee.
  32. Trustee shall not be liable or responsible with respect to its acts or omissions hereunder, except for Trustee's own gross negligence or willful default, or be liable or responsible for any acts or omissions of any agent, attorneys or employee by him employed hereunder, if selected with reasonable care.
  33. Trustee accepts this trust when this Deed of Trust executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.
  34. This is not a purchase money deed of trust.
  35. The undersigned Trustor requests that a copy of any notice of an Event of Default hereunder be mailed to it in accordance with Paragraph 28 hereof.
  36. This Deed of Trust and all provisions hereof shall extend to and be binding upon Trustor and all persons claiming by, under and through Trustor, and the word "Trustor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness secured hereby or any part thereof, whether or not such parties shall have executed the Note or this Deed of Trust. The word "Beneficiary" when used herein shall include the successors and assigns of the Beneficiary named herein, and the holder or holders from time to time of the Note secured hereby.
  37. This Deed of Trust shall be governed by, and construed in accordance with, the laws of the State of Illinois.
  38. As used herein, the term "Default Rate" means 2% plus the rate in effect under the Note secured by this Deed of Trust.
  39. Anything in the Note, this Deed of Trust or any other instrument by which the Note is secured notwithstanding, Trustor, or any of its officers, beneficiary of Trustor, or any of its partners, shall have no personal

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liability for the indebtedness secured hereby or any deficiency judgment, and upon the occurrence of an Event of Default hereunder Beneficiary shall look solely to the premises and the rents, income and profits thereof for satisfaction of the indebtedness evidenced by the Note, and resort therefor shall not be made to any other property of Trustor; provided, however, nothing herein shall limit the liability of any indemnitor or guarantor, nor any enforcement by Beneficiary or Trustee of any other legal or equitable rights or remedies, or any other provision of this Deed of Trust or the Note.

40. This Deed of Trust is executed by American National Bank and Trust Company of Chicago, not personally or individually but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on said American National Bank and Trust Company of Chicago or any person interested beneficially or otherwise in the mortgaged premises personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained (including specifically any indemnification provisions), all such liability, if any, being expressly waived by Beneficiary and by every person now or hereafter claiming any right or security hereunder, and that so far as said American National Bank and Trust Company of Chicago personally is concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the mortgaged premises covered by this Deed of Trust for the payment thereof, by the enforcement of the lien created by this Deed of Trust in the manner herein and in the Note provided, and any additional collateral or security given to Beneficiary.

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed and delivered as of the date first hereinabove written.

TRUSTOR:

American National Bank and Trust of Chicago, A  
National Banking Association, as Trustee under  
Trust Agreement dated October 23, 1979 and  
known as Trust Number 48032

By \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

Its: \_\_\_\_\_

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EXHIBIT 'C' 9 0 2 3 7 2 8

## SECURED PROMISSORY NOTE

\$8,000,000.00

January 17, 1986  
Chicago, Illinois

FOR VALUE RECEIVED, the undersigned, American National Bank and Trust Company of Chicago, A National Banking Association, as Trustee under a Trust Agreement dated October 23, 1979 and known as Trust Number 48032, hereby promises to pay to the order of BANKERS LIFE COMPANY, an Iowa corporation, at the Home Office of Bankers Life Company at 711 High Street, Des Moines, Iowa 50307, or at such other place as the holder of this note may designate, the principal sum of Eight Million Dollars (\$8,000,000.00) or so much thereof as shall from time to time have been advanced, together with interest on the unpaid balance of said sum at the rate and in the manner as follows:

- (i) On the date hereof, the principal sum of Eight Million Dollars (\$8,000,000.00) shall be advanced hereunder and interest shall accrue thereon from and including the date hereof until fully paid at the rate of ten and three quarter percent (10.750%) per annum, as such interest rate may be adjusted as hereinafter provided;
- (ii) Interest only shall be due and payable monthly in arrears beginning on the first day of February, 1986, and continuing on the first day of each month thereafter through and including January 1, 1991; principal and interest shall be due and payable monthly beginning on the first day of February, 1991 and continuing on the first day of each month thereafter until all principal sums advanced pursuant to subparagraphs (i) and any other amounts advanced pursuant to the Deed of Trust and all interest thereon shall be fully paid, provided, however, that all such sums or amounts and interest accrued thereon shall be fully due and payable on the first day of January, 1992;
- (iii) Subject to the adjustments referred to in subparagraphs (iv) and (v) monthly payments of interest shall be in the amount of Seventy-one Thousand Six Hundred Sixty-Six and 67/100 Dollars (\$71,665.67), which amount constitutes interest accrued for one (1) month at the rate of 10.750% per annum. If, on the date of any monthly payment, interest is accrued on any principal sums advanced for more or less than one (1) month, that particular payment shall be increased or decreased by the amount that interest accrued exceeds or is less than the interest which would have accrued for one (1) month;
- (iv) Anything to the contrary in subparagraphs (i) or (iii) notwithstanding, at the option of the holder of this note, from and after the first day of January, 1989, interest shall accrue on all principal sums advanced hereunder and on all other amounts advanced under the Deed of Trust until fully paid at a rate per annum which is Bankers Life Company Commercial Real Estate Department's "Best Rate" in effect during the fourth week of November, 1988. "Best Rate" is that rate at which the Bankers Life Company Commercial Real Estate Department would then agree to lend on a commercial real estate loan of similar quality, term and amount under current conditions at the time. The holder of this note shall notify the undersigned of the adjusted interest rate no later than the first day of December, 1988 and the undersigned shall in writing accept or reject the adjusted interest rate no later than December 20, 1988. The monthly payments referred to in subparagraphs (iii) shall be increased or decreased, as applicable, on the first day of February, 1989 to an amount which includes the amount of interest accrued for one (1) month at the rate determined in accordance with this subparagraph;
- (v) Principal shall be due and payable monthly beginning on the first day of February, 1991 in amounts sufficient to cause all principal sums outstanding on February 1, 1991 to be fully paid at the then applicable interest rate, but for the proviso in subparagraph (ii), on the 1st day of February, 2021.

All principal sums advanced and interest accrued hereunder shall be paid to the holder of this note by wire transfer of immediately available funds to Norwest Bank, Des Moines, N.A., 7th and Walnut Streets, Des Moines, Iowa 50304, for credit to Bankers Life Company General Account No. 014752, RE: BLC 397323 (with sufficient information identifying such wire transfer as a payment on this note) or at such other place or address as the holder of this note shall indicate in writing to the

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undersigned, in the lawful money of the United States of America, and all payments shall be credited first upon interest then accrued and the remainder upon principal. Interest shall be computed on the basis of a 360 day year composed of twelve 30-day months.

If the holder of this note exercises its option to adjust the interest rate on this note pursuant to subparagraph (iv) above, and either: (x) the holder of this note has not received the undersigned's written acceptance of such adjusted interest rate on or before the date specified in said subparagraph for such acceptance, or (y) the holder of this note has not received on or before the date specified in subparagraph 1(o) of the Deed of Trust by which this note is secured, a new ALTA standard loan policy satisfactory to the holder of this Note or an endorsement extending the effective date of the existing policy (unless the holder of this Note is satisfied such is not needed because of having obtained a satisfactory endorsement initially covering such potential interest rate adjustment) satisfactory to the holder of this note and as otherwise provided in said subparagraph, which policy, if required, shall insure, among other things, that there are no liens or encumbrances against the premises encumbered by said Deed of Trust other than: (xx) said Deed of Trust, (xy) that contain Collateral Assignment of Lease and Rents which further secures this note, and (yy) leases of the premises and those other exceptions as have been previously approved or permitted by the holder of this note, then, the holder of this note shall have the right, but not the obligation, to declare this note fully due and payable, without premium, on February 1, 1989 with interest accrued at the then applicable rate to the date of payment.

Except as hereinafter set forth, no privilege is reserved by the undersigned to prepay any principal on this note.

(1) In the event the undersigned does not accept the adjusted interest rate calculated pursuant to subparagraph (iv) above, the undersigned shall prepay the loan in full without premium including all accrued and unpaid interest to the date of prepayment on February 1, 1989.

(2) So long as no default or Event of Default exists under this note or any other instrument by which it is secured, privilege is reserved from July 1, 1987 through January 1, 1992, upon giving forty-five (45) days prior written notice to the holder of this note and payment of a premium as set forth herein, to make prepayment in full including accrued and unpaid interest to the date of prepayment. The prepayment premium to be paid is to be calculated as follows:

- (i) The "Reinvestment Yield" is the yield on the February, 1992 11 1/8% U.S. Treasury Issue (primary issue) published two weeks prior to the date of prepayment and converted to a monthly compounded nominal yield. If the Reinvestment Yield is greater than the interest rate in effect under this note, no premium will be due.
- (ii) The "Reinvestment Payment" is the interest payment that would be received by reinvesting the prepaid proceeds at the Reinvestment Yield. This is calculated by multiplying the Reinvestment Yield times the prepaid proceeds divided by 12 to equate to the reinvestment monthly income stream.
- (iii) The "Monthly Interest Payment" is determined using the interest rate in effect and the remaining principal balance as of the date of prepayment.
- (iv) The "Payment Differential" is the Monthly Interest Payment less the Reinvestment Payment.
- (v) The "Premium" equals the present value of the Payment Differential at Reinvestment Yield (monthly compounding) for the number of months remaining from date of prepayment to the date of loan maturity.

In the event there is no market activity involving the primary issue at the time of prepayment, the holder of this note shall choose a comparable Treasury Bond, Note or Bill ("secondary issue") which the holder deems to be similar to the primary issue's characteristics (i.e. rate, remaining time to maturity, yield).

The undersigned agrees that if the holder of this note accelerates the loan evidenced by this note pursuant to subparagraph 1(l) of the Deed of Trust dated the date hereof between the undersigned as Trustor and the holder of this note as

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Beneficiary, the undersigned waives any right to prepay the loan in whole or in part without premium and agrees to pay a prepayment premium, said premium to be the greater of one percent of the principal amount to be prepaid or a premium which is calculated as follows:

- (i) The "Reinvestment Yield" is the yield on the 1992 11 4/5s U.S. Treasury Issue (primary issue) published two weeks prior to the date of prepayment and converted to a monthly compounded nominal yield. If the Reinvestment Yield is greater than the interest rate in effect under this note, the premium will be one percent of the principal amount to be prepaid.
- (ii) The "Reinvestment Payment" is the interest payment that would be received by reinvesting the prepaid proceeds at the Reinvestment Yield. This is calculated by multiplying the Reinvestment Yield times the prepaid proceeds divided by 12 to equate to the reinvestment monthly income stream.
- (iii) The "Monthly Interest Payment" is determined using the interest rate in effect and the remaining principal balance as of the date of prepayment.
- (iv) The "Payment Differential" is the Monthly Interest Payment less the Reinvestment Payment.
- (v) The "Premium" equals the present value of the Payment Differential at Reinvestment Yield (Monthly compounding) for the number of months remaining from date of prepayment to the date of loan maturity.

In the event there is no market activity involving the primary issue at the time of prepayment, the holder of this note shall choose a comparable Treasury Bond, Note or Bill ("secondary issue") which the holder deems to be similar to the primary issue's characteristics (i.e. rate, remaining time to maturity, yield).

If default is made in the payment of any principal or interest when due, damages will be incurred by the holder of this note including additional expense in handling overdue payments, the amount of which is difficult and impractical to ascertain. The undersigned therefore agrees to pay upon demand the sum of four cents (\$.04) for each one dollar (\$1.00) of each amount which becomes overdue for a period exceeding five (5) days as a reasonable estimate of the amount of said damages.

If default is made for a period exceeding ten (10) days in the payment of any principal or interest when due hereunder or if any Event of Default has occurred or is continuing under any provision of any instrument by which this note is, or may hereafter be, secured, the entire principal balance and interest then accrued shall, at the option of the holder of this note, become immediately due and payable without demand or notice, and interest shall accrue on the entire principal balance and interest then accrued at the rate of two percent (2%) plus the rate currently in effect under this note.

Notwithstanding anything herein or in any instrument by which this note may be secured to the contrary, no provision contained herein or therein which purports to obligate the undersigned to pay any amount of interest or any fees, costs or expenses which are in excess of the maximum permitted by applicable law, shall be effective to the extent it calls for the payment of any interest or other amount in excess of such maximum. Any such excess shall, at the option of the holder of this note, either be paid to the undersigned or be credited to principal.

The undersigned and any endorsers or guarantors waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment and agree the due date of this note or any installment may be extended without affecting any liability hereunder, and further promise to pay all reasonable costs and expenses, including attorney's fees, incurred by the holder hereof in connection with any default or in any proceeding to enforce any provision of this note or any instrument by which it is secured.

Anything in this note or any other instrument by which it is secured notwithstanding, neither the undersigned, its beneficiary nor any partners of such beneficiary shall have any personal liability for the indebtedness evidenced hereby or any deficiency judgment, and upon the occurrence of a default or Event of Default hereunder or thereunder the holder hereof shall look solely to the instruments by which this note is secured and the premises constituting the security and the rents, issues and

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profits thereof for satisfaction of the indebtedness and resort shall not be made to any other property of the undersigned; provided, however, nothing herein shall limit the liability of any indemnitor or guarantor, or any enforcement by the holder of this note of any other legal or equitable rights or remedies, or any other provisions of this note or any instrument by which it is secured.

This Note is executed by American National Bank and Trust Company of Chicago, not personally or individually but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Note contained shall be construed as creating any liability on said American National Bank and Trust Company of Chicago or any person interested beneficially or otherwise in the mortgaged property personally to pay this note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained (including specifically any indemnification provisions), all such liability, if any, being expressly waived by the payee and by every person now or hereafter claiming any right or security hereunder, and that so far as said American National Bank and Trust Company of Chicago personally is concerned, the legal holder or holders of this note and the owner or owners of any indebtedness accruing hereunder shall look solely to the mortgaged property covered by the Deed of Trust securing this note for the payment hereof, by the enforcement of the lien created by the Deed of Trust in the manner therein and in this Note provided, and any additional collateral or security given to the payee.

If more than one, all obligations and agreements of the undersigned herein are joint and several.

This note is secured by instruments of even date herewith executed and delivered by the undersigned to Bankers Life Company creating legal and valid encumbrances on, and an assignment of all interest of the undersigned in any leases of, certain real property, including any buildings and improvements thereon and any rents, issues and profits therefrom, located in the County of Cook, State of Illinois.

American National Bank and Trust Company of Chicago, A National Banking Association, as Trustee under Trust Agreement dated October 23, 1978 and known as Trust Number 4805

Attest:

\_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

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