

RAH/jac08.1386

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STATE OF IOWA, Polk County
Filed for record the 10 day of Sept
1986 at 9:05 a.m. and recorded
in book 6553

Fee 30.00
3207

John Scortino
George Amy

ASSIGNMENT OF LEASES AND RENTS

KNOW ALL MEN BY THESE PRESENTS, That on this 10 day of September, 1986, the undersigned, Vacanti & Randazzo Construction Company, a Nebraska corporation ("Assignor") for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to Assignor in hand paid by Bankers Life Insurance Company of Nebraska (Assignee"), does hereby sell, transfer, and assign to the said Assignee, its successors and assigns, all of the right, title and interest of Assignor in and to any and all leases and other tenancies now or hereafter made on or with respect to the following described property or any portion thereof ("real estate herein described"), located in or near the City of Council Bluffs, State of Iowa:

See Exhibit "A" which, by this reference, is incorporated herein.

TOGETHER with all rents, issues, profits, revenues, rights and benefits arising from any said leases and tenancies and any and all extensions and renewals thereof, and together with all rents, issues, profits, revenues, rights and benefits from, or for the use and occupancy of the real estate herein described, and together with any and all guaranties of lessees' obligations, under any said leases and extensions and renewals thereof.

This Assignment is given as additional security for the payment of and the performance of all covenants and agreements of Assignor in that certain note and deed of trust or mortgage, hereinafter referred to as "mortgage", dated September 10, 1986 and made and delivered to Assignee for the sum of Eight Hundred Thousand Dollars (\$800,000.00) covering the real estate herein described and further as security for the performance of all covenants and duties contained in all other documents and agreements given in connection with the loan transaction (collectively, "Other Loan Documents"). The term of this Assignment shall be until said note, mortgage and Other Loan Documents (collectively, "Loan Documents"), including any extensions or renewals of any such Loan Documents, shall have been fully paid and satisfied, at which time this Assignment is to be fully satisfied, cancelled and released.

It is understood and agreed between Assignor and Assignee herein, that until the occurrence of any act or omission which is determined by Assignee in its sole discretion to constitute a default in the covenants, terms or conditions of the Loan Documents, the rents, issues, profits, revenues, rights and benefits as they become due may be

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paid to Assignor to retain, use, and enjoy the same. After the occurrence of a default as aforesaid, Assignor hereby grants to Assignee full power and authority to exercise its rights under this Assignment without notice to Assignor. Whereupon, Assignee may direct any or all of the tenants of the real estate herein described to pay to Assignee, its agents or attorneys, such rents, issues, profits, revenues, rights and benefits as may now be due or shall hereinafter become due, and Assignee may collect the same. The affidavit or written statement of an officer, agent or attorney of Assignee stating that there has been a default shall constitute conclusive evidence thereof, and any tenant or other person is authorized and directed to rely thereon.

Assignor shall, upon request of Assignee, furnish it a complete list as of the date of the request of all leases and other tenancies of the real estate herein described in such reasonable detail as may be requested by Assignee. Further, if requested, Assignor shall deliver to Assignee executed or certified copies of all leases and other written agreements, correspondence, and memoranda between Assignor and lessees and other tenants setting forth the contractual arrangements between them. Such requests may be made at any reasonable time. Annual requests, or more frequent requests if made after default under any Loan Documents (including this Assignment), shall be deemed to be made at a reasonable time.

Assignee may, with or without entry upon the real estate herein described, at its option, take over and assume the management, operation and maintenance of the real estate herein described and perform all acts necessary and proper and expend such sums out of the amounts collected as may be needful in connection therewith, in the same manner and to the same extent as Assignor might do. Assignor hereby releases any and all claims which it has or might have against Assignee arising out of such collection, management, operation and maintenance, excepting the liability of Assignee to account for amounts collected and expended by it. Assignee may, in connection with any and all of the foregoing powers, and without limiting the same, effect new leases, cancel or surrender existing leases, alter and amend the terms of and renew existing leases, evict tenants, and make concessions to tenants. Assignee may apply any rents and other amounts collected to delinquencies of interest and principal, advances and any other amounts evidenced by, secured by or owed in connection with Loan Documents, and pay any and all charges, costs and expenses of management, operation and maintenance of the real estate herein described. Without limiting the generality of such payments, Assignee may pay for repairs and upkeep, and for the opera-

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tion, protection and preservation of the real estate herein described, wages and payroll taxes, compensation of managing agent and other management costs and expenses, real estate taxes and assessments, water, sewer and similar charges, insurance and workmen's compensation premiums, ground rents, customary real estate commissions, and reasonable attorney's fees and court costs. Assignee may make the foregoing application and payments, or make some and omit others, and in any order as it sees fit.

From and after the date hereof, rents may not be discounted, reduced or paid by any tenant more than one month in advance, and any lease hereby assigned may not be altered, amended, modified or cancelled other than as specifically provided in said lease, without the written consent of Assignee. Assignor shall not permit anything to be done that would constitute an eviction, actual or constructive, or would permit any tenant to terminate any lease hereby assigned.

All of the foregoing powers herein granted Assignee shall be liberally construed. Assignee need not expend its own funds in the exercise of such powers, but if it does, such amounts shall be considered as advances for and on behalf of Assignor secured by all Loan Documents. Any amounts so advanced shall bear interest at the Default Rate prescribed in said note, unless a different rate is prescribed in other Loan Documents for advances in which event such rate shall apply.

Assignor covenants with Assignee faithfully to observe and perform all of the obligations and agreements imposed upon Assignor as lessor or landlord in any leases or tenancies, and Assignee will not be deemed in any manner to have assumed the same. Assignor agrees to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur by reason of any claims or demands against it based on its alleged assumption of Assignor's duty and obligation to perform and discharge the terms, covenants and agreements in said leases.

Nothing herein contained shall be construed as making Assignee a mortgagee in possession or as constituting a waiver or suspension by Assignee of its right to enforce payment of the debt under the terms of Loan Documents.

This Assignment may be enforced from time to time by Assignee at its discretion with or without order of any court and with or without appointment of a receiver, as Assignee shall determine. Assignee may also at any time cease to enforce this Assignment, and may direct the tenants

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of the real estate herein described to resume rental payments to Assignor. Any failure on the part of Assignee promptly to exercise any option at any time thereafter. Assignee may pursue and enforce any remedy or remedies accorded it herein, independently of, in conjunction or concurrently with, or subsequent to its pursuit and enforcement of any remedy or remedies which it may have under the Loan Documents.

The acquisition by a lessee in any of said leases in any manner whatsoever of the real estate herein described or any interest therein, shall not cause, or operate as, a merger of the leasehold estate or the demised term with the fee simple title.

Any and all rents payable by a lessee under the provisions of its lease shall be deemed to be rents for the use and occupancy of the real estate herein described, and none of said rents shall be ascribed to the lease or rental of any chattels.

When the context so requires, the singular number shall include the plural and conversely, and use of any gender shall include all genders. The term "note" shall be construed to include a bond, and the term "mortgage shall include a deed of trust, trust deed, security deed or similar security instrument. The obligations of each Assignor if there be more than one, shall be joint and several.

This Assignment and covenants and agreements herein shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective heirs, legatees, devisees, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Assignor has hereunto set his hand and seal or caused its corporate name to be subscribed and its corporate seal to be affixed the day and year first above written.

VACANTI & RANDAZZO CONSTRUCTION COMPANY,
A Nebraska Corporation

BY: 
MILO P. VACANTI

Title: President

BY: 
ALFRED VACANTI

Title: Secretary



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EXHIBIT "A"

LEGAL DESCRIPTION

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

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

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

DATED this 10 day of September 1986.

VACANTI & RANDAZZO CONSTRUCTION COMPANY

BY: Milo E. Vacanti
MILO E. VACANTI, President

BY: Alfred E. Vacanti
ALFRED E. VACANTI, Secretary

