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AMENDED AND RESTATED  
AGREEMENT TO PURCHASE STEAM

045297

THIS AMENDED AND RESTATED AGREEMENT TO PURCHASE STEAM IN POLK COUNTY, IOWA as of the 23<sup>rd</sup> day of February, 1989, by and between EQUITABLE LIFE INSURANCE COMPANY OF IOWA ("Seller"), an Iowa corporation, YOUNKERS, INC. ("Younkers"), a Delaware corporation, and TOWER LOCUST, LTD. ("Tower"), an Iowa corporation.

INST. NO. 045297  
FILED FOR RECORD  
AT FEB 23 1989 A.M.  
TIMOTHY J. BRIEN, Recorder  
By T. Cornwell Deputy

RECITALS

A. Seller, Younkens and Tower entered into an Agreement to Purchase Steam as of October 1, 1988 (the "Original Agreement"), with respect to properties in Des Moines, Iowa located at (i) 604 Locust Street (the legal description of which is set forth as Parcel I on attached Exhibit A) and commonly known as and referred to in this Agreement as the "Equitable Building", (ii) 7th and Walnut Streets (the legal description of which is set forth as Parcel II on attached Exhibit A) and commonly known as and referred to in this Agreement as the "Younkers Building", and (iii) 7th and Locust Streets (the legal description of which is set forth as Parcel III on attached Exhibit A) and commonly known as and referred to in this Agreement as the "Locust Mall".

B. Seller, Younkens and Tower now desire to amend and restate the Agreement to Purchase Steam effective as of the date of this Agreement as hereinafter provided.

THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, Younkens and Tower hereby agree that, effective as of the date of this Agreement, the Original Agreement is hereby amended and restated in its entirety as follows:

1. Term, Use and Availability. Commencing on the date of this Agreement and ending on the earlier of (a) July 31, 2023, (b) the termination of the Areaway Permit or the City Alley Easement, as herein defined, which may replace the Areaway Permit, or any of the three Easements, as herein defined, or (c) the earlier termination of this Agreement in accordance with the terms of this Agreement (the "Term"). Seller shall, subject to the terms and conditions of this Agreement, furnish steam to heat the Younkens Building and Locust Mall for the benefit of Younkens and Tower, in such quantities as Younkens shall deem reasonably necessary for the comfort of the occupants and users of the Younkens Building, and in such quantities as Tower shall deem reasonably necessary for the comfort of the occupants and users of Locust Mall, subject, however, to the following:

A. The steam which will be furnished to the Younkens Building and Locust Mall will not be used for any purpose other than for heating (i) the Younkens Building, (ii) the Locust Mall, (iii) skywalks within or connected to the Younkens Building or Locust Mall, but only to the extent now required by agreements existing as of the date of this Agreement, and (iv) replacements and alterations to the Younkens Building or Locust Mall which do not increase the heating requirements of the subject property.

B. Younkens shall, at Younkens' expense, but subject always to the provisions of Paragraph 11 below, continue, or improve upon, the steam heating system in the Younkens Building and maintain such system in a water tight condition throughout the Term of this Agreement, subject always to

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Younkers' right to add or remove individual heating units, such as, but not limited to, radiators.

- C. Tower shall, at Tower's expense, but subject always to the provisions of Paragraph 11 below, continue, or improve upon, the steam heating system in the Locust Mall and maintain such system in a water tight condition throughout the Term of this Agreement, subject always to Tower's right to add or remove individual heating units, such as, but not limited to, radiators.
- D. Steam shall be available to the Younkers Building and Locust Mall only between October 1 and March 31 of each Agreement Year (as such term is defined in Paragraph 4(A)(i) below) and at such other times as Seller is providing steam for heating purposes to the Equitable Building. In no event shall Seller be required to supply steam to any property in amounts which, when added to the steam needed by the other two properties, exceeds the capacity of Seller's boilers as existing on the date of this Agreement.

2. Steam Supply and Distribution. The steam to be supplied hereunder shall be supplied through the currently existing piping connection from the Equitable Building to the Younkers Building, or its equivalent, and Seller shall endeavor to supply steam at an operating pressure of not less than six (6) pounds per square inch gauge nor more than ten (10) pounds per square inch gauge. Upon receipt of the steam by the Younkers Building, Younkers shall cause steam to be passed on to the point of delivery in Locust Mall through the currently existing piping connection from the Younkers Building to Locust Mall, or its equivalent, at an operating pressure of not less than six (6) pounds per square inch gauge nor more than ten (10) pounds per square inch gauge.

3. Steam Measurements. The measurements of steam provided to the Equitable Building shall be according to the readings of a condensate meter installed in the Equitable Building. The combined measurements of steam provided to Locust Mall and the Younkers Building shall be according to the readings of a condensate meter installed in the Equitable Building. The measurements of steam provided to the Locust Mall shall be according to the readings of a condensate meter installed in the Locust Mall. The measurements of steam used by the Younkers Building shall be calculated by subtracting the measurements of steam used by Locust Mall from the measurements of steam provided to Locust Mall and the Younkers Building. In the event that any such meters shall at any time be inoperative, the amount of steam supplied to the Equitable Building, the Younkers Building or Locust Mall for the unmetered period shall be computed in accordance with the amount of such metered utility previously provided to the Equitable Building, the Younkers Building or Locust Mall, as the case may be, for the most seasonably comparable period as reasonably determined by Seller. Younkers shall provide Seller access to the Younkers Building for the purpose of measuring the amount of steam provided to Locust Mall, and to maintain and repair the Locust Mall condensate meter located in the Younkers Building, and in the event and to the extent Younkers does not permit such access, Younkers shall pay Seller for all steam furnished to Locust Mall, as well as the Younkers Building. Younkers shall pay Seller for all steam used by the Younkers Building for each Agreement Year. Locust Mall shall pay Seller for all steam used by Locust Mall for each Agreement Year. Seller or either of the Purchasers shall promptly notify the other parties to this Agreement whenever they are aware that any meters are

inoperative. If Seller determines that the steam consumption as measured by the meters referred to in this Paragraph 3 is less than the amount of steam produced by Seller (which amount Seller may reasonably determine based on factors such as fuel used and boiler efficiency), then Seller may inspect and investigate the entire steam system which is the subject of this Agreement and, based on results reasonably reached, equitably adjust consumption as metered to account for the shortfall. For example, a leak in the system in the Locust Mall would result in measurements of steam used which are less than the amount of steam produced and be cause for an increase in the amount of steam used by the Locust Mall as measured by the meter for the Locust Mall.

4. Cost and Price of Steam.

- A. For purposes of this Agreement, the following terms shall have the following meanings:
- (i) Agreement Year. The term "Agreement Year" shall mean each twelve (12) month period from October 1 to the following September 30.
  - (ii) Unit of Steam. The term "Unit of Steam" shall mean one thousand (1,000) pounds of steam. A pound of steam shall mean that amount of steam which will condense into one (1) pound of water measured on water.
- B. During the first Agreement Year (including that portion prior to the date of this Agreement which is covered by the Original Agreement), Seller shall be paid \$12.4854 per Unit of Steam supplied pursuant to the terms of this Agreement; provided, however, such charge of \$12.4854 per Unit of Steam shall be increased or decreased each month based on changes in the cost of fuel paid by Seller to produce a Unit of Steam as calculated under the provisions of Schedule 1 attached to this Agreement.
- C. During each Agreement Year after the first Agreement Year, Seller shall be paid an amount per Unit of Steam supplied pursuant to the terms of this Agreement as calculated under the provisions of Schedule 1, which amount shall be subject to increase or decrease each month based on changes in the cost of fuel paid by Seller to produce a Unit of Steam as calculated under the provisions of Schedule 1 attached to this Agreement. Prior to the beginning of each Agreement Year after the first Agreement Year, Seller shall provide to Younkere and Tower a written statement of Seller's then current price to produce one (1) Unit of Steam, such new price to be effective as of October 1 of the next Agreement Year. The method described in attached Schedule 1 of calculating the price of a Unit of Steam shall be the method of calculating a change in the price of a Unit of Steam anticipated by this subparagraph for the second and subsequent Agreement Years.
- D. In addition to the amounts paid by Younkere and Tower to Seller pursuant to subparagraphs (B) and (C) of this Paragraph 3, Younkere and Tower shall reimburse Seller for any increase in costs incurred by Seller with respect to producing and distributing steam as required by this Agreement subsequent to the first Agreement Year for the items which comprise the "Total Base Cost" on attached Schedule 1 and any other items reasonably

incurred by Seller in connection therewith, and amortization of special equipment necessitated by government regulations and amortization (straightline over useful life) of capital items which constitute or, in the reasonable opinion of a qualified professional, are intended to constitute, a substantial labor or cost-savings device or operation. Such reimbursement shall be based on consumption for the applicable period and shall be paid as billed by Seller after the end of each Agreement Year. There may be included in any amortized costs a reasonable interest carrying charge.

- E. Upon request made by either Younkens or Tower, but not more frequently than once each three (3) calendar months, Seller shall provide Younkens and/or Tower copies of Seller's bills for the previous period for the fuel used to generate the steam, as well as a copy of any other information upon which Seller relied in billing Younkens and Tower for steam pursuant to this Agreement.

5. Payment for Steam. Seller shall bill Younkens and/or Tower, as the case may be, for steam used pursuant to this Agreement at least quarterly, but not more frequently than monthly, and payment shall be due within ten (10) days after receipt of each such bill. Any payment which is not made within said 10-day period shall bear interest at the rate per annum of the greater of twelve percent (12%) or two percent (2%) over the Prime Interest Rate in effect from time to time, but in no event more than the maximum rate permitted by law. The "Prime Interest Rate" as used herein shall mean the rate per annum announced to the public from time to time by Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, as its "Prime Rate". Any payment which is not made within twenty (20) days after receipt of a bill therefor shall bear interest at a rate per annum of four percent (4%) over the Prime Interest Rate in effect from time to time, but in no event more than the maximum rate permitted by law.

6. Early Termination. Notwithstanding anything to the contrary contained in this Agreement: either Seller or Younkens may terminate this Agreement at any time upon two (2) years prior written notice to the other parties to this Agreement, in which event this Agreement shall terminate as to all three properties; and Tower may terminate this Agreement at any time upon not less than sixty (60) days written notice to Seller and Younkens, in which event this Agreement shall terminate only as to the Locust Mall. Seller may also terminate this Agreement as to all properties upon the withdrawal of any governmental authority essential for the furnishing by Seller of steam as provided by this Agreement or the enforcement by any governmental authority by any rule or regulation which prevents Seller from furnishing steam substantially as required under the provisions of this Agreement. Lastly, this Agreement is subject to early termination in accordance with the provisions of Paragraph 22 below.

7. Maintenance and Repairs.

A. Seller shall:

- (i) provide personnel in such numbers and at such times as necessary to monitor the operation of the boilers which produce the steam to be provided pursuant to this Agreement;
- (ii) keep the boilers and all parts thereof (including, without limitation, all piping, radiators, connections, valves, pumps, gauges and accessories thereto) in operating order and repair;

- (iii) not permit any open steam condensate water or steam connections except at air valves; and
- (iv) use its best efforts to protect connections in all such pipes, radiators, equipment and apparatus.

Younkers and Tower may at all reasonable times have access to the Equitable Building for the purpose of inspecting the boilers and all parts thereof. If Seller defaults with respect to its obligations as set forth in this Paragraph 7(A) and if Seller does not take steps to cure such default(s) within ten (10) days after notice thereof is received from either Younkers or Tower and thereafter diligently pursue the cure of such default(s), then Younkers or Tower may (but shall not be obligated) as their sole and exclusive remedy proceed to cure such default(s), and Seller shall reimburse Younkers or Tower, as the case may be, for all costs and expenses reasonably incurred by Younkers and Tower in doing so.

B. Younkers shall:

- (i) provide personnel in such numbers and at such times as necessary to monitor the operation of the receipt of and distribution of steam received from the Equitable Building and used in the Younkers Building or Locust Mall;
- (ii) keep such operation and all parts thereof (including, without limitation, all piping, radiators, connections, valves, pumps, gauges and accessories thereto) in operating order and repair;
- (iii) not permit any open steam condensate water or steam connections; and
- (iv) use its best efforts to protect connections in all such pipes, radiators, equipment and apparatus.

Seller and Tower may at all reasonable times have access to the Younkers Building for the purpose of inspecting its steam operation and all parts thereof. If Younkers defaults with respect to its obligations as set forth in this Paragraph 7(B) and if Younkers does not take steps to cure such default(s) within ten (10) days after notice thereof is received from either Seller or Tower and thereafter diligently pursue the cure of such default(s), then Seller or Tower may (but shall be obligated) to cure such default(s), and Younkers shall reimburse Seller or Tower, as the case may be, for all costs and expenses reasonably incurred by Seller and Tower in doing so.

C. Tower shall:

- (i) provide personnel in such numbers and at such times as necessary to monitor the steam operation in the Locust Mall;
- (ii) keep the steam operation and all parts thereof (including, without limitation, all piping, radiators, connections, valves, pumps, gauges and accessories thereto) in operating order and repair;

- (iii) not permit any open steam condensate water or steam connections; and
- (iv) use its best efforts to protect connections in all such pipes, radiators, equipment and apparatus.

Seller and Younkers may at all reasonable times have access to the Locust Mall for the purpose of inspecting the steam operation and all parts thereof. If Tower defaults with respect to its obligations as set forth in this Paragraph 7(c) and if Tower does not take steps to cure such default(s) within ten (10) days after notice thereof is received from either Seller or Younkers and thereafter diligently pursue the cure of such default(s), then Seller or Younkers may (but shall not be obligated) to cure such default(s), and Tower shall reimburse Seller or Younkers, as the case may be, for all costs and expenses reasonably incurred by Seller and Younkers in doing so.

8. Steam Distribution Lines. Seller shall maintain and repair the distribution lines extending westerly from the Equitable Building to the easterly building line of the Younkers Building, and those lines (if any) running between the Younkers Building and Locust Mall, but Younkers and Tower shall be responsible and pay for on demand all costs and expenses reasonably incurred by Seller in doing so. The liability of Younkers and Tower under this Paragraph 8 is joint and several.

9. Steam Supply Not Guaranteed. Seller shall use reasonable best efforts to supply a sufficient amount of steam to the Younkers Building and Locust Mall as required by this Agreement. Seller does not, however, guarantee that the supply of steam will at all times be constant, continuous, or uninterrupted, and it is agreed that any failure by Seller, whether due to negligence or otherwise, to supply steam to the Younkers Building or Locust Mall shall not constitute a breach of this Agreement by Seller, and neither Seller nor its partners, or any officers, agents, employees or representatives of any of them, shall be liable to Younkers or Tower or to anyone whomsoever for any injury, loss or damage to any property or person resulting from any such failure.

10. Seller Not Liable. Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be liable to anyone whomsoever for any injury, loss, or damage to any person or property occasioned by, arising out of, or caused by any leakage, escape, or presence of steam, vapor, or water in, on, or about the Younkers Building or Locust Mall or arising out of any failure of Seller, (except the willful omission), its agents, or employees to supply steam to the Younkers Building or Locust Mall. All claims and demands of every kind, nature and description for any such injury, loss, or damage are hereby expressly waived by Younkers and Tower and by every person, firm, or corporation who may be benefitted by performance under this Agreement, and Younkers and Tower hereby agree to cause any and all subrogation rights with respect to such injury, loss, or damage arising by way of any and all insurance coverages or otherwise, to be waived and released to the extent permitted by law and within Younkers' or Tower's control. Younkers and Tower hereby indemnify and agree to defend by competent counsel and hold Seller, its agents and employees free and harmless from all such claims and demands, including reasonable attorney fees, arising out of, or caused by any leakage, escape, or presence of steam, vapor, or water in, on or about the Younkers Building or Locust Mall, provided that:

- A. Seller shall promptly notify Younkers and Tower of any such claim or demand;

- B. Seller shall give Younkens and Tower a reasonable opportunity to defend against any such claim or demand and shall cooperate in good faith with Younkens or Tower in any such defense; and
- C. The claim or demand shall not have resulted from the gross negligence or intentional misconduct of either Seller or its agents or employees.

11. Casualty. If the Equitable Building or Younkens Building shall be torn down or substantially damaged by fire or other casualty, this Agreement may be terminated by Seller or Younkens (and such termination by Younkens shall constitute a termination by Tower) with such termination to be effective thirty (30) days after the giving of such written notice of termination. In such case this Agreement shall be terminated without any further obligation on the part of any party hereto, except for the adjustment and payment of all sums due up to the date of such damage or destruction. The Equitable Building or the Younkens Building shall be deemed to be substantially damaged if the cost of repair shall exceed forty percent (40%) of the replacement cost thereof. Notwithstanding the above, if Seller shall be unable to supply steam or cause steam to be supplied to the Younkens Building and Locust Mall for any period in excess of thirty (30) consecutive days, Tower may, at its option, and upon three (3) days prior written notice to Seller and Younkens, terminate this Agreement, provided notice of termination is given within fifteen (15) days after the end of said 30-day period. If, but only if, Tower has terminated this Agreement as permitted by the immediately preceding sentence, Younkens may, at its option, and upon three (3) days prior written notice, also terminate this Agreement, provided notice of termination is given within fifteen (15) days after Tower terminates this Agreement as aforesaid.

12. Purchaser Representations.

- A. Younkens represents that there are installed in the Younkens Building all pipes, radiators, valves, condensation pumps, gauges, and any and all other apparatus, equipment, and accessories, required or necessary for storing or processing steam in the Younkens Building and making proper and sufficient connections with Seller's lines for distribution of steam within the Younkens Building and from the Younkens Building to Locust Mall, and for making the proper and sufficient connection with Seller's condensate return line from the Younkens Building to the Equitable Building. Younkens agrees that it will keep in good order and repair, at its own expense, all said equipment and apparatus to the extent that such are located within the Younkens Building including without limitation, all pipes, radiators, connections, valves, pumps, gauges and accessories thereto; that it will not permit an open steam condensate water or steam connections; that it will use its best efforts to protect connections in such pipes, radiators, equipment, and apparatus; and that Seller may at all reasonable times have access to the Younkens Building for the purpose of inspecting any of the aforementioned items. Subject to the provision of Paragraph 11, Younkens shall at all times have the duty to repair all of its steam and water equipment located within the Younkens Building at its own expense and at no cost to Seller.
- B. Tower represents that there are installed in Locust Mall all pipes, radiators, valves,

condensation pumps, gauges, and any and all other apparatus, equipment, and accessories, required or necessary for storing or processing steam in Locust Mall or making proper and sufficient connections with Seller's lines for distribution of steam within Locust Mall from the Younkens Building, and for making the proper and sufficient connections with Younkens condensate return line from the Locust Mall to the Younkens Building. Tower agrees that it will keep in good order and repair, at its own expense, all said equipment and apparatus to the extent that such are located within Locust Mall including without limitation, all pipes, radiators, connections, valves, pumps, gauges and accessories thereto; that it will not permit an open steam condensate water or steam connections; that it will use its best efforts to protect connections in such pipes, radiators, equipment, and apparatus; and that Seller may at all reasonable times have access to Locust Mall for the purpose of inspecting any of the aforementioned items. Subject to the provision of Paragraph 11, Tower shall at all times have the duty to repair all of its steam and water equipment located within Locust Mall at its own expense and at no cost to Seller.

13. Defaults.

- A. In the event that Younkens shall default in the payment of any sum due hereunder, and if such default shall continue for ten (10) business days after Younkens and Tower shall have received a notice of such default, Seller shall have the right to terminate this Agreement as to both Younkens and Tower.
- B. In the event that Younkens or Tower shall default in the performance of any of their obligations hereunder other than the payment of money, and if such default shall continue for thirty (30) days after Younkens and Tower shall have received notice of such default, Seller shall have the right to terminate this Agreement as to both Younkens and Tower; provided, however, that if such default cannot reasonably be cured within such thirty (30) day period but can be cured with a reasonable time, and if Younkens or Tower shall have within such period commenced to cure such default and shall thereafter proceed diligently to cure such default, Seller may not terminate this Agreement unless the completion of such cure is not completed within sixty (60) days after the expiration of said 30-day period.
- C. If Younkens shall default in its performance under this Agreement, Tower may (but shall not be obligated) take any action that Tower deems necessary or desirable to prevent or to cure any default by Younkens in the performance of or compliance with any of Younkens covenants or obligations under this Agreement. Upon receipt by Tower from Seller of any written notice of default by Younkens, Tower may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by Younkens or by any party on behalf of Younkens. Younkens hereby expressly grants to Tower, and agrees that Tower shall have, the absolute and immediate right to



enter in and upon the Younkens Building or any part thereof to such extent and as often as Tower, in its sole discretion, deems necessary or desirable in order to prevent or cure any such default by Younkens. Tower may pay and expend such sums of money as Tower in its sole discretion deems necessary for any such purpose, and Younkens hereby agrees to pay to Tower, immediately and without demand, all such sums so paid and expended by Tower, together with interest thereon, at a rate equal to two percent (2%) over the Prime Interest Rate in effect from time to time. Nothing herein contained shall be construed to restrict or limit the use of any other remedy which Younkens or Tower may have, either at law or in equity.

14. Faulty Meters. In the event that Seller believes that any of the meters referred to in Paragraph 3 above are not properly recording steam used by Younkens or Tower, then Seller shall advise Younkens and Tower thereof and Seller shall cause said meters to be checked, and, if necessary, recalibrated and repaired at Seller's expense. In the event that either Younkens or Tower believes that the meters referred to in Paragraph 3 above are not properly recording steam or water used by Seller, Younkens or Tower, then either Younkens or Tower shall advise Seller thereof and Seller shall cause said meters to be checked, and if necessary, recalibrated, and repaired, provided that if said meters are found to be in operating order and repair or do not require repair or recalibration, Younkens and/or Tower, as the case may be, shall reimburse Seller for all monies expended by Seller in checking said meters.

15. No Waiver. No failure by a party hereto to enforce any right accruing to it because of any default of the other party in promptly performing any of the provisions hereof no matter how many times such failure may be repeated, shall be construed to operate as a waiver of any other provisions of this Agreement or a waiver of a subsequent default of the provision in question; but, a party hereto may at any time waive in writing any default in any of the provisions hereof without prejudice to its right to enforce each and all of the provision of this Agreement as to any subsequent violation thereof.

16. Successors and Assigns. Seller shall have the right to sell, transfer, and assign this Agreement to subsequent owners of the Equitable Building; and Tower shall have the right to sell, transfer, and assign this Agreement to subsequent owners of the Locust Mall; and Younkens shall have the right to sell, transfer, and assign this Agreement to subsequent owners of the Younkens Building. Neither Younkens nor Tower may otherwise assign this Agreement. Subject to the foregoing, the respective rights and obligations set forth in this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be deemed covenants which run with the land, and shall continue in full force and effect until such time as this Agreement is terminated or expires in accordance with its terms. In addition to the above, Younkens and Tower shall have the right to subcontract for the sale of steam for heating purposes only within the Younkens Building or Locust Mall.

17. Rule Against Perpetuities. It is the intent of the parties that, notwithstanding anything in the Code of Iowa to the contrary, the rights and obligations provided for in this Agreement shall be covenants running with the land for the Term of this Agreement without further action by the parties. However, the parties recognize and understand that Section 614.24 of the Code of Iowa may require that a verified claim be filed in the Office of the Polk County Recorder prior to the

twenty-first anniversary of the last filing of such verified claim in order to continue this Agreement in effect throughout the Term. The parties agree: (i) to act jointly to file all verified claims necessary to keep this Agreement in full force and effect throughout the Term; (ii) that in the event of any defect in the verified claim or its filing and recording at the Office of the Polk County Recorder, no party shall be entitled to assert such defect as a basis to avoid its obligations under this Agreement unless the other party fails to correct such defect within thirty (30) days after such party first becomes aware of the defect; (iii) that in the event a party fails or refuses to cooperate to file any verified claim required to continue this Agreement in full force and effect, that it hereby waives the right to and is estopped to, assert any failure to file such verified claim as a defense to its obligations under the Agreement; and (iv) that each party hereby waives its right to assert the failure to file any verified claim required by the Code of Iowa as a legal basis to avoid the obligations upon it and its respective portion of the property throughout the term of this Agreement.

18. Notices. All notices, requests, demands, or other communications required or permitted hereunder shall be in writing and delivered personally or by certified mail, return receipt requested, postage pre-paid, or by telecopy or other facsimile transmission or overnight courier (such as Federal Express), addressed as follows:

If to Seller: Equitable Life Insurance Company of Iowa  
604 Locust Street  
Des Moines, Iowa 50309

Attention: President

With copy to: Equitable Life Insurance Company of Iowa  
604 Locust Street  
Des Moines, Iowa 50309

Attention: General Counsel

If to Younkers: Younkers, Inc.  
7th & Walnut Streets  
Des Moines, Iowa 50309

Attention: President

With a copy to: Younkers, Inc.  
699 Walnut Street  
Des Moines, Iowa 50309

Attention: General Counsel

If to Tower: Tower Locust, Ltd.  
20th Floor, Hub Tower  
699 Walnut Street  
Des Moines, Iowa 50309

With a copy to: Smith, Schneider, Stiles, Mumford,  
Schrage & Zurek, P.C.  
10th Floor, Equitable Building  
604 Locust Street  
Des Moines, Iowa 50309

Attention: Russell E. Schrage

All notices given in accordance with the terms hereof shall be deemed served when received or delivered. Either party hereto may change the address for receiving notices, requests, demands, or other communication by notice sent in accordance with the terms hereof.

19. Estoppel Certificates. Seller, Younkers and Tower agree, upon written request from the other(s), to execute and deliver to the other(s), or to such person or entity as may be designated by the other(s), a certificate which (a) identifies this Agreement and any amendments hereto and states that this Agreement as so amended is in full force and effect and has not been further amended, (b) specifies the date through which amounts owing under this Agreement have been paid, and (c) states that, to the best of the knowledge of the party delivering such certificate, neither Seller, Younkers nor Tower is in default of any of its respective obligations under this Agreement (or, if any such default or defaults is claimed, identifying the same).

20. Remedies Not Exclusive. All rights and remedies of the parties hereto shall be cumulative and none shall exclude any other right or remedy available at law or in equity.

21. Easements. In order for steam to be distributed as anticipated by this Agreement it is necessary that the Seller be benefitted by the following described areaway permit and easements: (i) Areaway Permits issued by the City of Des Moines, Iowa and known as Permit Number 0248 dated December 15, 1988 (the "Areaway Permit") (the parties hereto acknowledge and accept the fact that the Areaway Permit may be replaced by a 5'-0" Wide Underground Energy Easement [the "City Alley Easement"] between the City of Des Moines, as grantor, and Seller or its transferees or assigns, as grantee); (ii) Easement Conveyance dated February 26, 1969 between Helen Ann Hubbell Ingham et al, as Grantors, and Seller, as Grantee recorded in the Office of the Recorder of Polk County, Iowa in Book 4021, Page 371 (the "Frankels Easement"); (iii) Easement Agreement dated March 31, 1980 between the Stephens Building Corp., as Grantor and Seller, as Grantee, recorded in the Office of the Recorder of Polk County, Iowa in Book 5023, Page 450 (the "Stephens Easement"); and (iv) Energy Easement dated October 15, 1979 between the City of Des Moines, Iowa as Grantor and Seller, as Grantee recorded in the Office of the Recorder of Polk County, Iowa in Book 4960, Page 751 (the "City Easement"); (heretofore and hereinafter the Frankels Easement, Stephens Easement and City Easement are collectively referred to the "Easements").

22. New Boilers. If Seller replaces the boilers which generate the steam to be supplied pursuant to this Agreement and intends to include the amortized cost thereof in the costs for which it is entitled to reimbursement pursuant to Paragraph 4(D) above, then Seller shall provide Younkers and Tower with notice thereof (which notice shall include the then anticipated yearly reimbursement for Younkers and Tower with respect thereto) and Younkers and Tower shall each have the right to terminate this Agreement as of a date not earlier than one (1) year after its election to terminate provided it elects so to terminate this Agreement by notice given to Seller within thirty (30) days after its receipt of Seller's notice as aforesaid. If either or both Younkers or Tower elects to terminate this Agreement as aforesaid, then Seller may elect to void such termination by agreeing not to seek reimbursement from the terminating party for the cost of the boilers, such agreement to be contained in a notice given within thirty (30) days after Seller's receipt of the applicable notice of termination. Even if Younkers or Tower elects to terminate this Agreement pursuant to this Paragraph 22, until such time as the termination is effective, the terminating party shall be responsible for and pay its share of the amortized cost of the new boilers pursuant to Paragraph 4(D) above for the period through the effective date of the termination.

IN WITNESS WHEREOF, Seller, Younkens and Tower have set their hands and seals as of the date and year first above written.

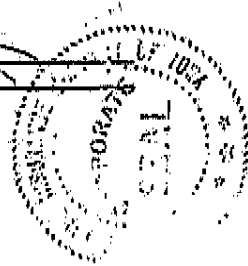
SELLER:

EQUITABLE LIFE INSURANCE COMPANY OF IOWA

By: [Signature]  
Title: Sec. Vice President

ATTEST:

By: [Signature]  
Title: Secretary



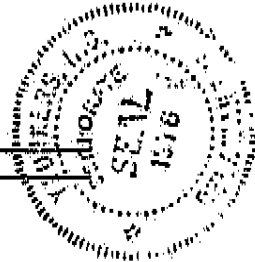
YOUNKERS:

YOUNKERS, INC.

By: [Signature]  
Title: Chairman

ATTEST:

By: [Signature]  
Title: Vice



TOWER:

TOWER LOEBST, LTD.

By: [Signature]  
Title: President

ATTEST:

By: [Signature]  
Title: Vice President

STATE OF IOWA }  
COUNTY OF POLK } SS:

On this 17<sup>th</sup> day of February, 1989, before me, a notary public in and for the State of Iowa, personally appeared Lawrence V. Moore, Ducland, etc. and James R. Sample, to me personally known, who being by me being duly sworn did say that they are the Sec. Vice President and Secretary, respectively, of Equitable Life Insurance Company of Iowa; that the seal affixed hereto is the seal of said corporation; the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Lawrence V. Moore, Ducland, etc. and James R. Sample, as such officers, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

G. Thomas Sullivan



Notary Public in and for the State of Iowa

STATE OF IOWA }  
COUNTY OF POLK } SS:

On this 20<sup>th</sup> day of February, 1989, before me, a notary public in and for the State of Iowa, personally appeared Fred S. Hubert and Jack Prady, to me personally known, who being by me being duly sworn did say that they are the Chairman and VP/GFO, respectively, of Younkers, Inc.; that the seal affixed hereto is the seal of said corporation; the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Fred S. Hubert and Jack Prady, as such officers, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

G. Thomas Sullivan



Notary Public in and for the State of Iowa

STATE OF IOWA }  
COUNTY OF POLK } SS:

On this 20<sup>th</sup> day of February, 1989, before me, a notary public in and for the State of Iowa, personally appeared Paul E. Larson and Kathryn M. Stetman, to me personally known, who being by me being duly sworn did say that they are the President and Vice President, respectively, of Tower Locust, Ltd., an Iowa corporation; that no seal has been procured by said corporation; the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Paul E. Larson and Kathryn M. Stetman as such officers, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Pam Reinert



Notary Public in and for the State of Iowa

EXHIBIT A

All of that certain real estate situated in Polk County, Iowa, and particularly described as follows:

PARCEL I

Lots Seven (7) and Eight (8) in Block Twelve (12) in FORT DES MOINES, now included in and forming a part of the City of Des Moines, Iowa.

PARCEL II

Lots Three (3), Four (4), Five (5) and Six (6), and that portion of the North/South alley lying Northerly of the Westerly extension of the South line of Lot Five (5) and lying Southerly of the Westerly extension of the North line of Lot Six (6), in block One (1) in FORT DES MOINES, now included in and forming a part of the City of Des Moines, Iowa.

PARCEL III

- (a) Lots 7 and 8, Block 1, Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa; and
- (b) Lots 1 and 2, Block 1, Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa, except a parcel of land 14 feet in width and 116 feet in length lying parallel to and adjoining the North property line of Lot 1 commencing at the Northwest corner of Lot 1 and running thence easterly 116 feet but including air rights commencing 14 feet above grade over such parcel of land and also the surface area needed for columns which will support such air rights construction, subject to final definition by construction design approval by the City of Des Moines, Iowa; and
- (c) All that part of the north and south alley lying between Seventh Street and Eighth Street extending from the north property line of Lot 8 to the North line of the east and west alley between Locust Street and Walnut Street, in Block 1, Original Town of Fort Des Moines, all now in and forming a part of the City of Des Moines, Iowa; and
- (d) All of the east and west alley lying between Walnut Street and Locust Street in Block 1, Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa, subject to a perpetual easement for utilities now in place with right of entry for servicing the same and subject to a nonexclusive ingress and egress easement in favor of fee owners or properties lying south of and adjacent thereto, their lessees, sublessees, successors, assigns, executors, administrators, legal representatives of their estates, invitees, guests, customers, licensees, patrons, employees, agents, tenants, lessees and anyone else transacting business with or dealing with the above enumerated parties, provided that the owner of the fee interest herein shall have and retain equal and coextensive rights of ingress and egress with such easement grantees.

SCHEDULE 1 - Page 1

RE: Equitable Building Steam Rate  
First Agreement Year  
October 1, 1988 to September 30, 1989

Charge For Thousand Pounds of Steam  
1988-89 Rate

Effective October 1, 1988

Labor Costs:	\$ 4.2488
Payroll, Taxes, Inc., Etc.:	1.2746
Repairs:	.6759
Maintenance:	.1488
Supplies:	<u>.0732</u>
	\$ 6.4220

15% Overhead, 10% Profit	<u>\$ 1.7018</u>
	\$ 8.1238

Fuel Costs Per MM BTU's: \$4.36	
(Base Cost of fuel at \$2.90 Dec. 1987)	<u>\$ 4.3616</u>

Total Base Cost: \$12.4854

Note: 1,504,000 BTU's required to produce 1,000 pounds of steam in 1987.

Base price of fuel for 1987 was \$4.36 [(1,504 X 2.90)]. The fuel clause adjustment will increase-decrease the costs per 1,000 pounds of steam used in 1988-89 by 1.50 cents for each .01 cent increase-decrease in the base cost per million BTU's.

Fuel Clause Adjustment Formula: If Seller's actual fuel costs in any month are less than the base cost for fuel of 2.90 cents per million B.T.U.s the base cost shall be reduced at the rate of 1.50 cents per Unit of Steam furnished for each .01 cent of actual cost per million B.T.U.s consumed below the base cost for fuel. If Seller's actual fuel costs in any month are more than the base cost for fuel fixed at 2.90 cents per million B.T.U.s, the base cost shall be increased at the rate of 1.50 cents per Unit of Steam furnished for each .01 cent of actual cost per million B.T.U.s consumed above the base cost for fuel.

The actual numbers used in this Schedule 1 and the resultant calculations represent the method of determining the price for one (1) Unit of Steam for the first Agreement Year. These numbers presume a certain boiler efficiency based on the presumption that 15,992,000 pounds of steam were produced during the period May 1, 1987 to April 30, 1988. If, as provided for in Paragraph 3 of this Agreement, Seller determines that the steam consumption as measured by the meters referred to in Paragraph 3 is less than the amount of steam presumed to have been produced by Seller, and if the result of Seller's investigation is that there is no leakage within any of the three buildings being serviced and that the boilers are therefore not as efficient as presumed, then Seller may, in its reasonable discretion, adjust the assumed efficiency of the boilers in the calculations made pursuant to this Schedule 1.

SCHEDULE I - Page 2

EQUITABLE BUILDING  
STEAM RATE CALCULATIONS  
EFFECTIVE MAY 1, 1988

STEAM PRODUCTION:

STEAM PRODUCED: May 1, to April 30 15,992,000 Pds.

BTUs USED TO PRODUCE STEAM

Natural Gas: 246,759 CCF X 97,500 BTUs/CCF=24,059,002,500 BTUs  
#2 Fuel Oil: -0- Gals. X 140,000 BTUs/Gal= \_\_\_\_\_ BTUs

Total BTUs Used 24,059,002,500 BTUs

EFFICIENCY:

BTUs: 24,059,002,500 X 1,000 = 1,504,000 BTUs to Produce 1,000  
Pds of Steam: 15,992,000 Pds. of Steam

FUEL COST:

BTUs to Produce 1,000# of Steam = (Cents) (Cost of Fuel) = Cost Per MM BTUs  
1,000,000 Per MM BTUs December  
Efficiency) for MM BTUs)

1,504,000 = (1.504) (2.90) = 4.35 Per MM BTUs  
1,000,000

LABOR:

25% Chief Eng: 6,656.00  
50% HVAC Foreman: 12,792.00  
2 Engineers: 48,500.00  
67,948.00 + Pds. of Steam Generated = \$4,248/1,000# Steam

PAYROLL TAXES, INS., ETC.: 20,384.00 + Pds of Steam  
Generated = 1.2746/1,000# Steam

REPAIRS: 3 Year Average 10,810.00 + Pds of Steam  
Generated = .6759/1,000# Steam

MAINTENANCE: 3 Year Average 2,381.00 + Pds of Steam  
Generated = .1488/1,000# Steam

SUPPLIES: 3 Year Average 1,183.00 + Pds of Steam  
Generated = .0739/1,000# Steam

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