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INSTRUMENT NO. 902  
POLK COUNTY, IOWA  
FILED FOR RECORD 15.00

THE EQUITABLE OF IOWA BUILDING, DES MOINES, IOWA

AT FEB 23 1989 A.M.  
1:31 P.M.

ASSIGNMENT AND ASSUMPTION OF AMENDED AND  
RESTATE AGREEMENT TO PURCHASE STEAM

TIMOTHY J. BRIEN, Recorder

By *[Signature]* Deputy

THIS ASSIGNMENT AND ASSUMPTION OF AMENDED AND RESTATED AGREEMENT TO PURCHASE STEAM (this "Assignment") is entered into as of the 23rd day of February, 1989, between Equitable Life Insurance Company of Iowa, ("Assignor"), an Iowa corporation, whose address is 604 Locust Street, Des Moines, Iowa, and First Capital Income and Growth Fund - Series XII, an Illinois limited partnership ("Assignee"), whose address is Suite 2244, Two North Riverside Plaza, Chicago, Illinois 60606.

1. Steam Agreement. "Steam Agreement" means that certain Amended and Restated Steam Agreement, dated February 22, 1989, by and between Equitable Life Insurance Company of Iowa, Younkers, Inc. and Tower Locust, Ltd. and the easements referred to therein if and as applicable, recorded February 23, 1989, in Book 6059, Page 305.

2. Assignment. For good and valuable consideration received by Assignor the receipt and sufficiency of which is hereby acknowledged, Assignor hereby grants, transfers and assigns to Assignee the entire right, title and interest of Assignor in and to the Steam Agreement. Assignor represents and warrants to and covenants with Assignee that: (a) the right, title and interest in and to the Steam Agreement assigned to Assignee hereby is free and clear of all liens, charges and encumbrances; and (b) Assignor shall continue to be responsible for and shall perform and satisfy its obligations under the Steam Agreement insofar as such obligations relate to the period on or before the date of this Assignment.

3. Assumption. Assignee hereby assumes the covenants, agreements and obligations of Assignor under the Steam Agreement which are applicable to the period and, by the terms of the Steam Agreement, required to be performed from and after the date of this Assignment, but not otherwise. Assignor shall promptly notify Assignee in writing if any claim is made against Assignor with respect to any matter which Assignee has agreed to assume in this Assignment, specifying the nature and details of such claim. If and as Assignee shall reasonably request, Assignor shall in good faith cooperate with Assignee and its counsel and attorneys in the defense against such claim in accordance with their judgment and discretion. Assignee shall reimburse Assignor for its reasonable out-of-pocket expenses incurred in providing the cooperation provided for in the immediately preceding sentence. Assignor shall not pay or settle any such claim without Assignee's prior written consent. No person or entity other than Assignor and Assignee shall be deemed a beneficiary of the provisions of this Section 3.


4. Power and Authority. Assignor represents and warrants to Assignee that it is fully empowered and authorized to execute and deliver this Assignment, and the individual signing this Assignment on behalf of Assignor represents and warrants to Assignee that he or she is fully empowered and authorized to do so.

5. Exculpation. By accepting this Assignment, Assignor agrees that it will look only to the Property for the performance or liability for nonperformance of any and all obligations of Assignee hereunder, it being expressly understood and agreed that neither Assignee nor any partner, shareholder, officer or director thereof shall have any personal liability or obligation of any kind or nature whatsoever under this Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment the day and year first above written.

ASSIGNOR

EQUITABLE LIFE INSURANCE COMPANY OF  
IOWA, an Iowa corporation

  
Lawrence Viking Durland  
Senior Vice President/Chief  
Financial Officer

ATTEST:


  
J.R. Sampel, Secretary



ASSIGNEE

FIRST CAPITAL INCOME AND GROWTH FUND -  
SERIES XII, an Illinois limited  
partnership

By: First Capital Properties  
Corporation, a Florida  
corporation, its general partner

By:   
Name: DONALD J. LIEBERSTEIN  
Title: Authorized Agent

STATE OF IOWA                 )  
   ):ss  
 COUNTY OF POLK                )

On this 23rd day of February, 1989, before, me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lawrence Vining Durland, Jr. and J. R. Sampel, to me personally known, who, being by me duly sworn, did say that they are the Senior Vice President/Chief Financial Officer and Secretary respectively, of said corporation executing the within and foregoing instrument to which this is attached, that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Lawrence Vining Durland, Jr. and J. R. Sampel as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



*E. Thomas Sullivan*  
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 NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

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600K6059 PAGE 331