

TRUST AGREEMENT



Old Second Bancorp, Inc.
37 S. River Street, Aurora, IL 60506
oldsecond.com

This Trust Agreement, dated this ____ day of _____ A.D. _____, and known as Trust No. _____, is to certify that **OLD SECOND NATIONAL BANK**, a national banking corporation, of Aurora, Illinois, as Trustee hereunder, is about to acquire an interest in the real estate in _____ County, Illinois, legally described in Schedule "A".

When the Trustee has taken such interest in the said real estate, or has accepted in writing any other real estate transferred to it as Trustee hereunder, it will hold the real estate, or interests therein, (hereinafter referred to as the "Property") for the uses and purposes and upon the trusts herein set forth. Any other property transferred or conveyed to the Trustee unless accepted in writing by the Trustee shall not be subject to this agreement.

BENEFICIARIES: The following named persons (Beneficiaries) and their successors in interest, if any, shall be entitled to the earnings, avails and proceeds of the said real estate, according to the respective interests of each as set forth below:

POWER OF DIRECTION: It is understood and agreed to by the parties to this Agreement, and by any person who may hereafter become a party hereto, that the power of direction referred to in the General Provisions shall be in

and shall remain therein, unless changed in writing by the Beneficiary or Beneficiaries *acting in concert*, as provided herein.

THIS AGREEMENT IS SUBJECT TO THE GENERAL PROVISIONS FOLLOWING THIS PAGE, WHICH ARE INCORPORATED HEREIN AND MADE A PART HEREOF BY REFERENCE.

IN WITNESS WHEREOF, the parties hereto have signed this Trust Agreement to signify their acceptance of its terms.

OLD SECOND NATIONAL BANK

By: _____
TRUST OFFICER

BENEFICIARY

BENEFICIARY

BENEFICIARY

BENEFICIARY

Signature of person having the power of direction, if other than Beneficiary _____

This instrument prepared by:

GENERAL PROVISIONS

The Trustee, the Beneficiaries and the holder of the power of direction agree to and accept the following general provisions:

A. The interest of every Beneficiary and of any person who may become entitled to any interest under this trust shall consist only of (1) the power to direct the Trustee to deal with title to the property; (2) the sole power to manage, possess, use and control the property; and (3) the right to receive the earnings, avails and proceeds from leases and other uses and from mortgages, sales and other dispositions of the property. Such rights and powers shall be personal property and may be assigned as such. On the death of any Beneficiary his interest, except as otherwise specifically provided, shall pass to his executor or administrator and not to his heirs at law. No Beneficiary at any time shall have any right, title or interest in or to any portion of the legal or equitable title to the property. The death of any Beneficiary shall not terminate the trust or affect the rights or powers of the Trustee or of the Beneficiaries except as provided by law.

B. No assignment of any beneficial interest shall be binding on the Trustee until the original or executed duplicate of the assignment in form satisfactory to the Trustee is delivered to the Trustee and accepted by it in writing. Every assignment of any beneficial interest, the original or duplicate of which shall not have been so delivered to and accepted by the Trustee, shall be ineffective as to all subsequent assignees or purchasers without notice.

C. The Trustee shall have no obligation to file any income, profit or other tax reports or returns or pay such or any other taxes. The Beneficiaries will prepare and file all such returns and reports, and pay general real estate and all other taxes or charges payable with respect to the property and to the earnings, avails and proceeds of the property or based on their interests under this agreement.

D. If the Trustee shall make any advances or incur any expenses on account of this trust or the property or shall incur any expenses by reason of being made a party to any litigation in connection with this trust or the property or if the Trustee shall be compelled to pay money on account of this trust or the property, whether for breach of contract, injury to person or property, fines or penalties under any law, or otherwise, the Beneficiaries jointly and severally on demand shall pay to the Trustee, with interest at the highest rate per annum permitted by law, the amount of all such expenses, advances or payments made by the Trustee, plus all its expenses, including attorney's fees. The Trustee shall not be obliged to convey, transfer or otherwise deal with the property or any part of it until all of the payments, advances and expenses made or incurred by it shall have been paid, with interest.

E. The Trustee shall not be obligated to pay any money for this trust or the property or to prosecute or defend any legal proceeding involving this trust or the property unless it shall elect to do so and be furnished with sufficient funds or be indemnified to its satisfaction. If the Trustee is served with process or notice of legal proceedings or of any other matter concerning the trust or the property, the sole duty of the Trustee shall be to forward the process or notice, unless prohibited by law, to the person named herein as the person to whom inquiries or notices shall be sent, or, in the absence of such designation, to the Beneficiaries. The latest address appearing in the records of the Trustee shall be used for all mailings.

F. It shall not be the duty of the purchaser of the property or of any part of it to see the application of the purchase money, nor shall anyone who may deal with the Trustee be required or privileged to inquire into the necessity or expediency of any act of the Trustee, or into the provisions of this agreement.

G. In this agreement the plural includes the singular, and vice versa, and the masculine gender includes the feminine.

H. The Trustee may at any time resign by sending by registered or certified mail a notice of such intention to each of the then Beneficiaries at his latest address appearing in the records of the Trustee. Such resignation shall become effective ten days after such mailing. On such resignation a successor may be appointed in writing by the persons then entitled to direct the Trustee in the disposition of the property, and the Trustee shall thereupon convey or transfer the property to such successor. If no successor is named as above provided within ten days after the mailing of such notices by the Trustee, the Trustee may convey or transfer the property to the Beneficiaries in accordance with their interest hereunder, and the conveyance may be recorded or registered, as the case may be, by the Trustee and such recording or registration shall constitute delivery of the conveyance or transfer to the Beneficiaries. The Trustee, at its option, may file a complaint for appropriate relief in any court of competent jurisdiction. The Trustee notwithstanding such resignation shall continue to have a first lien on the trust property for its costs, expenses, attorney's fees and for its reasonable compensation, and any conveyance by the Trustee pursuant to its resignation may be made subject to all unpaid costs, fees and expenses due the Trustee.

I. Every successor Trustee shall become fully vested with all the title, estate, rights, powers, trusts, and shall be subject to the duties and obligations, of its predecessor. The obligations of the Beneficiaries under this Agreement are joint and several.

J. It is agreed by the parties and by any person who may hereafter acquire any interest in this trust that the Trustee will deal with the property including cash or other assets of any kind which may have become subject to the trust only when authorized to do so in writing, except as required by court order or applicable law.

K. On the written direction of the party or parties designated on the reverse side hereof as having the power of direction the Trustee will make deeds for, or mortgages or trust deeds (which may include a waiver of the right of redemption from the sale under an order or decree of foreclosure) or execute leases or otherwise deal with the title to the property including cash or other assets subject to the trust. The Beneficiaries by written instrument delivered to the Trustee may revoke the foregoing power of direction and designate the person thereafter to exercise the power. Such instrument shall be signed by all the then Beneficiaries. The Trustee shall not be required to inquire into the propriety of any direction.

L. The Trustee shall not assume any personal obligation or liability in dealing with the property or be liable for any damages, costs, expenses, fines or penalties. The Trustee shall not deal with title to the property so long as any money is due to it hereunder.

M. The Beneficiaries shall have the sole possession, management and control of the selling, renting, repairing, maintaining and handling of the property and the Trustee shall have no right or duty in respect to any such matters. The Beneficiaries shall have the right to execute leases and collect rents in their own name or through their agents. The Trustee shall have no right or duty in respect to the payment of taxes or assessments or insurance, litigation or matters relating to the property, except on written direction accepted by it as above provided and after the payment to it of all money necessary in its opinion to carry out the directions without liability to it. The Beneficiaries are not the agents of the Trustee for any purpose and do not have any authority to contract or to execute leases or do any other act for or in the name of the Trustee or to obligate the Trustee personally or as Trustee.

N. **Compliance with Environmental Laws.** (1) The Beneficiary shall carry on any and all business and operations on the Property so as to comply in all respects, and will remain in compliance with all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning public health, safety or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 **et seq.** (2) The Beneficiary shall prevent the imposition of any liens or encumbrances against the Property by any private party or governmental entity for the costs of any response, removal, remedial action or clean up of hazardous substances. (3) The Beneficiary shall cause any tenant(s) of any portion of the Property to comply, and

to remain in compliance, with (1) and (2) above and shall annually confirm and represent the same in writing to the Trustee. Reference to tenant(s) under this Agreement is limited to tenants of any portion of the Property and includes any and all subtenants thereon.

O. Use of Property. The Beneficiary shall not conduct or allow to be conducted any business, operations or activity on the Property, or employ or use the Property, to manufacture, treat, store, or dispose of any hazardous substance (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), or any other substance which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would bring the Beneficiaries or the Property within the ambit of, or otherwise violate, the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. § 6901 **et seq.**, or cause, or allow to be caused, a release or threat of release, of hazardous substances on the Property within the ambit of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 **et seq.**, the Clean Air Act of 1966, as amended, 42 U.S.C. § 7401 **et seq.**, or any similar federal, state, county, regional or local statute, law, regulation, rule or ordinance, including, without limitation, any federal or state statute providing for financial responsibility for cleanup for the release or threatened release of substances provided for thereunder. (2) The Beneficiary shall not do or permit any act or thing, business or operation on the Property, that materially increases the dangers, or poses an unreasonable risk of harm, or impairs, or may impair, the value of the Property, or any part thereof.

P. Condition of Property. (1) The Beneficiary warrants and represents that the Property, including all personal property thereon, is and shall remain free from contamination, that there are no underground storage tanks under any portion of the Property, or if there are any underground storage tanks under any portion of the Property, the same are in compliance with all applicable laws and the rules, regulations and guidance documents promulgated thereunder, and that there has not been, nor shall there be thereon a release, discharge or emission, or threat of release, discharge or emission, of any hazardous substance, gas or liquid (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons) as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601, **et seq.**, the Illinois Environmental Protection Act of 1970, 111. Rev. Stat. Ch. 111 1/2, § 1001 **et seq.**, and any other federal or state statutes and the rules, regulations and guidance documents promulgated thereunder, or any other substance, gas or liquid, which is prohibited, controlled or regulated under any applicable law, or which poses a threat or nuisance to safety, health or the environment. (2) The Beneficiary shall promptly take all appropriate response action, at its sole cost and expense, including any removal and/or remedial action, in the event of a release, emission, discharge or disposal of hazardous substances in, on, under or about the Property, so as to (a) remain in compliance with (1) above, and to (b) keep the Property free from, and unaffected by, hazardous substances.

Q. Notice of Environmental Problem. During the term of this Agreement, the Beneficiary, on its behalf and on behalf of any and all tenants, warrant and represent they have not given, nor should they give, nor have they received any notice, letter, citation, order, warning, complaint, inquiry, claim or demand that: (1) the Beneficiary and any tenants have violated, or is about to violate, any federal, state, regional, county or local environmental, health or safety statute, law, rule, regulation, ordinance, judgment or order; (2) there has been a release, or there is a threat of release, of hazardous substances (including, without limitation, petroleum, its by-products, derivatives or other hydrocarbons) from, in, on, or under the Property; (3) the Beneficiary and any tenants may be or are liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of hazardous substances (including, without limitation, petroleum, its by-products, derivatives, or other hydrocarbons); (4) any portion of the Property is subject to a lien in favor of any private party or governmental entity for any liability, costs or damages, under federal, state or local environmental laws, rules or regulations arising from or costs incurred by such private party or governmental entity in response to a release of a hazardous substance (including, without limitation, petroleum, its by-products, derivatives or other hydrocarbons). In the event of such notice, Beneficiary and any tenants shall promptly provide a copy to the Trustee, and in no event, later than fifteen (15) days from Beneficiaries' and any tenants' receipt or submission thereof.

R. Inspection and Right of Inspection. (1) Each calendar year, or in the event the Beneficiary gives notice pursuant to the provisions of paragraph Q. herein, then within ninety (90) days of said notice, Beneficiary shall submit to Trustee a written report of a site assessment and an environmental audit prepared by an independent, competent and qualified engineer, in such form as is satisfactory to the Trustee. This report shall reflect that the engineer made all appropriate inquiry consistent with good commercial and customary practice and consistent with generally accepted engineering practice and procedure, that no evidence or indication came to light which would suggest there was a release of substances on the Property which could necessitate an environmental response action, and which demonstrates that the Property complies with, and does not deviate from, all applicable environmental statutes, laws, ordinances, rules and regulations. In the event Beneficiary is unable to provide a satisfactory environmental audit and site assessment, Trustee shall have the right to promptly resign from its duties as Trustee, as set forth in paragraph H. herein. (2) The Beneficiary hereby grants, and shall cause all tenants to grant, to Trustee, its agents, attorneys, employees, consultants and contractors, an irrevocable license and authorization to enter upon and inspect the Property and perform such tests, including without limitation, subsurface testing, soils and groundwater testing, and other tests which may physically invade them as the Trustee, in its sole discretion, determines is necessary. (3) Trustee may in its sole discretion at any time remove unacceptable property from the Trust. Notwithstanding such removal, Trustee shall continue to have a first lien on the Property for its costs, expenses, attorneys' fees and for its reasonable Trustee's compensation. Any conveyance by the Trustee pursuant to this paragraph shall be made subject to all unpaid costs, fees and expenses due the Trustee under this Agreement.

S. Indemnification. To the fullest extent permitted by applicable law, Beneficiary hereby agrees to and shall defend, indemnify and hold harmless the Trustee, its directors, officers, employees, agents, successors and assigns (hereinafter referred to as "indemnitees") from and against any and all loss, cost, expense, claim, liability or asserted liability incurred, whether due to the Trustee holding title to the Property under this Agreement, the performance of environmental remediation of any portion of the Property by the Beneficiary, its agents or contractors, in connection with any and all claims or proceedings (whether brought by a private party or governmental entity), or otherwise, for bodily injury, property damage, abatement or remediation, environmental damage or impairment or any other injury or damage (including but not limited to reasonable attorneys' fees and costs, all foreseeable and unforeseeable consequential damages) or any diminution in value of the Property resulting from or relating, directly or indirectly to: (1) Any hazardous substances located upon the Property or the release of any hazardous substances into, on, under, or from the Property (whether or not such release was caused by Beneficiary, tenants or a prior owner or tenant and whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of such hazardous substance or the mere presence of such hazardous substance on the Property); (2) Any hazardous substance located upon contiguous real property which was included at any time during the prior twenty (20) years in the description of the Property; or (3) The failure of Beneficiary to comply with any paragraph of this Agreement. The indemnification under this paragraph shall survive the termination or expiration of this Agreement, the resignation of the Trustee and/or removal from the Trust by the Trustee of any portion of the Property. For purposes of this paragraph, the Beneficiary shall defend Indemnitees by legal counsel reasonably satisfactory to Indemnitees. The Beneficiary shall be liable for any and all reasonable attorneys' fees and costs of the Trustee and/or the Indemnitees incurred in the enforcement of this Agreement against the Beneficiary.

T. The Trustee shall not be required to execute any instrument containing covenants of warranty, nor shall the Trustee execute documents unless prepared on forms furnished or approved by the Trustee.

U. If any property remains in this trust twenty years from the date of this agreement or any extension thereof, it shall be sold at public sale by the Trustee on reasonable notice as determined by it and the net proceeds of the sale shall be divided among those who are then entitled thereto under this agreement in the proportions in which they are then entitled.

V. The Trustee shall receive an acceptance fee for its services in accepting this trust and taking title hereunder, an annual fee for holding title, fees for executing deeds, mortgages, or other instruments, reasonable compensation for any special services which it may render, and fees for taking and holding any other property which may hereafter be conveyed to it hereunder. All fees and compensation shall be determined by the Trustee's then current rate schedule, which fees and other compensation the Beneficiaries jointly and severally agree to pay. At the discretion of the Trustee, when fees for Trustee's services rendered are unpaid, the Trustee may suspend services.

W. The Trustee when directed to do so by the Beneficiaries of the trust or the holder of the Power of Direction if not the Beneficiary, may convey the property directly to another Trustee.

GENERAL INFORMATION

Beneficiary Data

NAME	ADDRESS	TELEPHONE	SOC. SEC. NO.	DATE OF BIRTH
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Mail/refer written notices, inquiries (oral or written), legal summons, and other communications received by the Trustee to: _____

Send bills to: _____

Real estate tax bills to: _____

Type of improvement on real estate: _____

Is the property in this Land Trust the personal residence of a Beneficiary? Yes No

Property Valuation \$ _____

SCHEDULE "A"

(NOTE: For each property listed, include legal description, property tax identification number and commonly known address.)