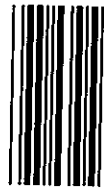


Unofficial Document



Prepared by and
When Recorded Return To:

Ronald M. Stoll, Esq.
STREICH LANG, P.A.
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391

OF
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HELEN PURCELL

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215781 TRANSNATION TITLE INS. CO.

CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THIS CONSTRUCTION DEED OF TRUST SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Deed of Trust"), made as of July 9, 1998, among ANCHOR-FORUM PORTALES I, LLC, a Delaware limited liability Company, having a principal place of business and post office address at 6263 North Scottsdale Road, Suite 290, Scottsdale, Arizona 85250, as Trustor, TRANSNATION TITLE INSURANCE COMPANY, having a post office address at 234 North Central Avenue, Suite 303, Phoenix, Arizona 85004, as Trustee, and PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, having its principal place of business and post office address at 711 High Street, Des Moines, Iowa 50392, as Beneficiary.

WITNESSETH:

THAT Trustor is or will be justly indebted to Beneficiary for money borrowed in a principal sum not to exceed THIRTY-EIGHT MILLION FIVE HUNDRED THOUSAND DOLLARS (\$38,500,000), evidenced by Trustor's promissory note ("Note") of even date herewith, made payable and delivered to Beneficiary, 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 June 7, 2014 ("Maturity Date").

NOW, THEREFORE, to secure the payment of such indebtedness in accordance with the terms and conditions hereof and of the Note, and all extensions, modifications, and renewals thereof and the performance of the covenants and agreements contained herein, in the Note, in the Construction Loan Agreement ("Loan Agreement") of even date herewith between Trustor and Beneficiary and in any of the other Loan Documents (as defined in the Loan Agreement), and to secure the payment of any and all other indebtedness, direct or contingent, that may now or hereafter become owing from Trustor to Beneficiary, and in consideration of Ten Dollars in hand

paid, receipt of which is hereby acknowledged, Trustor does by these presents mortgages, irrevocably grants, bargains, sells, warrants, conveys, aliens, remises, releases, assigns, sets over and confirms unto Trustee, his successors and assigns forever, that certain real estate and all of Trustor's estate, light, title and interest therein, located in the County of Maricopa, State of Arizona, 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, income, issues, proceeds, any and all amounts paid by tenants under, in connection with, or otherwise directly or indirectly related to, the termination of any such lease (a "Termination Fee") 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 Trustor's interest in all tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, rights in trade names, 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, the right in case of ^{Unofficial Document} ~~Termination~~ Foreclosure of the encumbered property for Beneficiary to take and use Trustor's interest in the name by which the buildings and all other improvements situated on the Premises are commonly known (excluding the names "Anchor," "Forum" and "Portales" and any combinations thereof) and the right to manage and operate the said buildings under any such name and variants thereof.

Together with all right, title and interest of Trustor in any and all buildings and improvements of every kind and description now or thereafter 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 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) 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, as "debtor," hereby grants to Beneficiary as "secured party." Trustor agrees to execute any and all documents, including financing statements which may be required by Beneficiary to perfect the security interest granted hereby.

Together with all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises, or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Trustor hereby appoints Beneficiary its attorney-in-fact and authorizes Beneficiary, at its option, on behalf of Trustor, or the successors or assigns of Trustor, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittance therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Beneficiary, of the indebtedness secured hereby, notwithstanding the fact that the same may not then be due or that the indebtedness secured hereby is otherwise adequately secured, subject to the provisions of paragraphs 5 and 6 hereof.

Together with all right, title and interest ^{Unofficial Document} 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.

Together with all funds now or hereafter held by Beneficiary under any escrow security agreement or under any of the terms hereof, including but not limited to funds held under the provisions of paragraph 4 hereof.

TO HAVE AND TO HOLD the same unto Beneficiary, Beneficiary's successors and assigns, upon the trusts, covenants and agreements herein expressed; the Trustor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Arizona.

Trustor 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 B** 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**.

Trustor further represents that: (i) the Premises is not subject to any casualty damage; (ii) the Premises, the present use and occupancy of the Premises, the Plans and Specifications (as defined in the Loan Agreement), the construction of the Project (as defined in the Loan Agreement) pursuant to the Plans and Specifications and the use and occupancy of the Premises and any Offsite Improvements (as defined in the Loan Agreement) when the Project is completed will not violate or conflict in any material respect with any Environmental Law; (iii) to Trustor's current actual knowledge, except as disclosed in that Phase I Environmental Report conducted by Speedie and Associates and dated November 17, 1997 (the "Report"), the Premises are in compliance with all Environmental Laws and there are no Hazardous Material(s) (as hereinafter defined) affecting the Premises except in quantities which do not violate any Environmental Laws; (iv) to Borrower's current actual knowledge, there are no facilities on the Premises which are subject to reporting under any State laws or Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11022), and federal regulations promulgated thereunder; and (v) to Borrower's current actual knowledge, the Premises do not contain any underground storage tanks. "Hazardous Material(s)" as used in this Deed of Trust means any hazardous or toxic material, substance, pollutant, contaminant, or waste, or similar terms, defined by or regulated as such under any Environmental Laws, but shall not include (a) supplies for cleaning and maintenance in commercially reasonable amounts required for use in the ordinary course of business, provided such items are incidental to the use of the Premises and are stored and used in compliance with all Environmental Laws, (b) standard office supplies in commercially reasonable amounts required for use in the ordinary course of business, provided such items are incidental to the use of the Premises and are stored and used in compliance with all Environmental Laws, or (c) retail ^{Unofficial Document}ten generally held for resale in a typical shopping center (if the Premises are permitted under the Loan Documents to be used and are used as a shopping center), provided such inventory is stored and sold in compliance with Environmental Laws (items referred to in clauses (a), (b) and (c) hereinafter sometimes referred to as "Excluded Hazardous Material"). "Environmental Law(s)" as used in this Deed of Trust means any federal, state or local law, whether common law, court or administrative decision, ordinance, regulation, rule, court order or decree, or administrative order or any administrative policy or guideline concerning action levels of a governmental authority relating to the environment, public health, any Hazardous Material or any Environmental Activity or Condition (as hereinafter defined) on, under or about the Premises, in effect from time to time, including, but not limited to (w) the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251, et seq.); (x) the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, et seq.); (y) the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. §9601, et seq.); or (z) the Federal Clean Air Act, as amended (42 U.S.C. §7401, et seq.). "Environmental Activity or Condition" as used in this Deed of Trust means the presence, use, generation, manufacture, production, processing, storage, release, threatened release, discharge, disposal, treatment or transportation of any Hazardous Material on, onto, in, under, over or from the Premises, or the violation of any Environmental Law because of the condition of, or activity on, the Premises.

TRUSTOR COVENANTS 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) pay a late charge equal to two cents (\$.02) for each one dollar (\$1.00) of each payment of principal, interest or premium which is not paid on or before 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 except to the extent such lien or charge is being contested in accordance with paragraph 1(f) hereof, and upon request of Beneficiary exhibit satisfactory evidence of the discharge thereof;

(d) complete the construction of the Project (as defined in the Loan Agreement) as set forth in the Loan Agreement;

(e) after completion of the Project, make no material alteration to the Premises without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld), except ^{Unofficial Document} alterations as are required by law or ordinance and (ii) provided that they are of the type described to Beneficiary prior to the date hereof, are completed with reasonable diligence once commenced and do not impair access to or function of the Premises, alterations to the Premises are done to the Project in conjunction with the construction of a second office building on adjacent property and a second parking garage constructed on adjacent property as part of the second building ("Permitted Alterations");

(f) except as part of the Permitted Alterations, remove or demolish no building at any time a part of the Premises, and shall, subject to paragraph 2 hereinbelow, 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; provided, however, that Trustor may in good faith, with reasonable diligence and upon written notice to Beneficiary within ten (10) days after Trustor has knowledge of such lien, contest the validity or amount of any such lien and defer payment and discharge thereof during the pendency of such contest in the manner provided by law, provided that (i) such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) Trustor shall have either obtained, at its option, either a title endorsement over such lien insuring against loss by reason of such lien or a bond over such lien from a bonding company acceptable to Beneficiary which has the effect of removing such lien or shall have deposited with

Beneficiary at such place as Beneficiary may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of Beneficiary to pay in full such lien and all interest which might become due thereon and which shall be held by Beneficiary without interest to Trustor, and (iii) Trustor shall pay all costs and expenses incidental to such contest; and further provided, that in the event of a ruling or adjudication adverse to Trustor, Trustor shall promptly pay such claim or lien, shall indemnify and hold Beneficiary harmless from any loss for damage arising from such contest and shall pay such claim or take whatever action is necessary to prevent sale, forfeiture or any other loss or damage to the Premises or to the Beneficiary;

(g) comply, and shall use all reasonable efforts to cause each lessee or other user of the Premises to comply, with all requirements of law and ordinance, and with all rules and regulations, now or hereafter enacted, by authorities having jurisdiction of the Premises and the use thereof, all orders and directions of the national Fire Protection Association or similar body, and all covenants, conditions and 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 use of the Premises without Beneficiary's prior written consent;

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(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 use, 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) subject to the provisions of paragraph 5(c) hereof, 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) if Trustor has terminated either the leasing or property manager for the Premises, engage a replacement leasing or property manager, as the case may be, reasonably acceptable to Lender for the Premises within ninety (90) days after termination of the prior such manager; except as set forth below, without the prior

written consent of Beneficiary, not, directly or indirectly, (i) due to assignment of a beneficial interest under a trust, a partnership interest in a general partnership, any interest in a limited liability company which would result in a change of control (as hereinafter defined) of such company, any shares of a corporation which would result in a change of control of such corporation, or otherwise, cause or permit any sale, transfer or conveyance of the Premises other than a conveyance of up to one hundred thirty-six (136) parking spaces to the City of Scottsdale, in accordance with the terms and conditions of the Development Agreement (as defined in the Loan Agreement), or (ii) 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, except for liens which are being contested in accordance with the provisions of paragraph 1(f) hereof, 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 under the Loan Documents, and as lessor under leases of the Premises and that for purposes of this paragraph 1(l) "control" means the power to directly or indirectly direct or cause the direction of the management or policies of any corporation, partnership, limited liability company or trust, as the case may be; 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, ~~encumbrance~~ ^{Unofficial Document} 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; notwithstanding the foregoing, Beneficiary will allow a one time transfer ("Permitted One Time Transfer") of the Premises and subsequent assumption of Trustor's obligations under the Loan Documents at any time from and after the Conversion Date, subject to Beneficiary's right to review and approve the proposed purchaser and Beneficiary's receipt of an assumption fee in the amount of one percent (1%) of the outstanding principal balance of the Note; Beneficiary's decision to approve a transfer of the Premises and an assumption of the Trustor's obligations under the Loan Documents shall be conditioned upon, but not limited

to, (i) Beneficiary's approval, in its sole and absolute judgment, of the proposed purchaser's creditworthiness, financial strength and real estate management expertise and (ii) confirmation by the Guarantors (as defined in the Loan Agreement) of their obligations under their respective Guaranties (as defined in the Loan Agreement) or an assumption of such obligations by an individual(s) and/or entity(ies) acceptable to Beneficiary, in its discretion; notwithstanding the above, in the event of a pre-sale prior to the Conversion Date where the closing of the transfer does not actually occur until after the Conversion Date, Beneficiary will allow the pre-sale subject to the terms and conditions set forth above and the transfer of the Premises upon the closing of such allowed pre-sale shall constitute the Permitted One Time Transfer; and furthermore Beneficiary will allow the existing members (i.e., Forum Capital L.C., a Utah limited liability company, and Anchor National Life Insurance Company, an Arizona corporation) of Trustor to transfer their interests in the Trustor to one another so long as (i) Anchor National Life Insurance Company remains a member of Trustor, owning a minimum of fifty-one percent (51%) of the capital and voting interest in Trustor, (ii) within thirty (30) days of such transfer, Beneficiary receives copies all documentation in connection with such transfer; and (iii) Beneficiary shall have the right to evaluate, review and approve the leasing and property manager of the Premises;

(m) not cause or permit any Hazardous Material to exist on or discharge from the Premises, and comply and cause the Premises to comply with all Environmental Laws, and promptly ^{Unofficial Document} pay any claim against Trustor or the Premises due to an Environmental Activity or Condition, (ii) remove any charge or lien upon the Premises due to an Environmental Activity or Condition, and (iii) indemnify, defend and hold Beneficiary harmless from any and all loss or damage, resulting from any Environmental Activity or Condition; provided, however, that this indemnity does not apply to any future Environmental Activity or Condition resulting solely from any act of omission for which Trustor bears no responsibility and which occurs after Trustor or any person or entity in any way related to Trustor no longer holds title to or has any interest in the Premises;

(n) not cause or permit any Hazardous Material to exist on or discharge from any property owned or used by Trustor which would result in any charge or lien upon the Premises;

(o) notify Beneficiary of any Hazardous Material that exists on or is discharged from the Premises within ten (10) days after Trustor first has knowledge of such existence or discharge;

(p) if other than a natural person, to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and, if other than its state of formation, the state where the Premises is located;

(q) do all things necessary to preserve and keep in full force and effect Beneficiary's title insurance coverage insuring the lien of this Deed of Trust as a first and prior lien, subject only to the exceptions stated in **Exhibit B**, including without limitation, delivering to Beneficiary not less than 30 days prior to the effective date of any rate adjustment, modification or extension of the Note or this Deed of Trust, any new policy or endorsement which may be required to assure Beneficiary of such continuing coverage;

(r) not, directly or indirectly, commit waste;

(s) perform and observe all of the requirements of the Note, this Deed of Trust, the Loan Agreement and the other Loan Documents; and

(t) pay to Beneficiary any Termination Fee made by any tenant of the Premises in accordance with the terms and conditions of the Assignment of Leases and Rents (as defined in paragraph 22 below).

2. (a) Trustor shall pay or cause to be paid prior to delinquency 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, CAM charges, if any, vault or space charges and all other like charges against or affecting the Premises or against any property or equipment ^{Unofficial Document} 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.

(b) 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:

(i) if contest of any tax, assessment or charge may be made without the payment thereof, and

(ii) such contest shall have the effect of preventing the collection of the tax, assessment or charge so contested and the sale of forfeiture of the Premises or any part thereof or any interest therein to satisfy the same,

then 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. Trustor shall indemnify and save harmless 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 Beneficiary, pay such tax, assessment or charge or take whatever action is necessary to prevent any sale, forfeiture or loss.

3. (a) Trustor shall at all times keep in force (i) Builder's Risk Insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the Premises, including materials in storage and while in transit, against loss or damage by fire or other casualty covered by "all risks" coverage, with extended coverage, "X", "C" and "U" coverage, vandalism and malicious mischief coverage, bearing a replacement cost on an agreed amount endorsement and permission of occupancy endorsement; (ii) after substantial completion of the Project (as defined in the Loan Agreement), property insurance insuring all buildings and improvements which now are or hereafter become a part of the Premises on an "all risk" basis for perils covered by a causes of loss-special form insurance policy with an ordinance or law coverage endorsement containing a replacement cost on an agreed amount basis endorsement with deductibles of no ^{Unofficial Document} greater than One Hundred Thousand Dollars (\$100,000) or options; (iii) commercial general liability insurance naming Trustee and Beneficiary as additional insureds protecting Trustor, Beneficiary and Trustee against liability for bodily injury or property damage occurring in, on or adjacent to the Premises, in commercially reasonable amounts; (iv) boiler and machinery insurance if the property has a boiler or is an office building with deductibles of no more than \$100,000; (v) after substantial completion of the Project, rental value insurance for the perils specified herein for one hundred percent (100%) of the rents (including operating expenses, real estate taxes, assessments and insurance costs which are lessee's liability) for a period of twelve (12) months; (vi) Employer's Liability Insurance if Trustor has any employees; and (vii) insurance against all other hazards as may be reasonably required by Beneficiary, including, without limitation, insurance against loss or damage by flood and war risk, but not earthquake.

(b) All insurance shall be in form, content and amounts approved by Beneficiary in its reasonable discretion and written by an insurance company or companies rated A, class size X or better in the most current issue of Best's Insurance Reports, licensed to do business in the state in which the Premises are located and domiciled in the United States, or by a 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 thereunder and shall include a 30 day (except for nonpayment of premium, in which case, a 10 day) notice of cancellation clause in favor of Beneficiary (except in the case of Builder's Risk Insurance, to the extent such notice is not available on such insurance). All policies or certificates of insurance shall be delivered to and held by Beneficiary and shall include a clause in favor of Beneficiary wherein Beneficiary shall be entitled to notice of cancellation concurrently with any notice given to Trustor, with evidence of renewal coverage delivered to Beneficiary at least 30 days before the expiration date of any policy (except in the case of Builder's Risk Insurance, to the extent such notice is not available on such insurance). Not less frequently than once every three years, if Beneficiary has a reasonable belief that the replacement cost value is not correct, it shall notify Trustor and Trustor, at its expense, will furnish Beneficiary with an appraisal of the full insurable replacement cost value of the Premises, made by the fire insurance appraisers satisfactory to Beneficiary and fire insurance companies generally. Trustor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required herein.

4. (a) Upon request of Beneficiary made after the occurrence of an Event of Default, Trustor shall deposit with and pay to Beneficiary, on each payment date specified in the Note, a sum equivalent to: (1) the taxes and assessments assessed or levied against and next due on the Premises divided by the number of payments that will become due and payable ^{Unofficial Document} before the date when such taxes and assessments will become due and payable, plus (2) the premiums that will next become due and payable for insurance required by this Deed of Trust to be furnished by Trustor divided by the number of payments that will become due and payable under the Note before the date when such premiums will become due and payable. 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 five (5) business days before 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, 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 an Event of Default 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 an Event of Default, Beneficiary shall apply any funds accumulated under this paragraph to the indebtedness secured hereby in such order and manner as Beneficiary may elect; and any remaining funds shall be paid to Trustor. All funds accumulated under this paragraph are hereby pledged as additional security for the indebtedness secured hereby, and shall be held by Beneficiary irrevocably to be applied for the purposes for which made as herein provided. The provisions of this paragraph shall not affect the enforceability of the covenants relating to taxes, assessments and insurance premiums provided for in this Deed of Trust, except to the extent that obligations for the same have been actually met by compliance with this paragraph.

(b) Any funds held under this paragraph shall not constitute any deposit or account of the Trustor or moneys to which the Trustor is entitled upon demand, or upon the mere passage of time, or sums to which Trustor is entitled to any interest or crediting of interest by virtue of Beneficiary's mere possession of such deposits. Beneficiary shall not be required to segregate such deposits or hold such deposits in any separate account for the benefit of Trustor. Beneficiary may hold such deposits in its general account or any other account and may commingle such deposits with any other moneys of Beneficiary or any other person or entity. Trustor hereby consents to the investment of such deposits by Beneficiary as outlined herein

5. In the event of any damage ^{Unofficial Document} or destruction of the buildings or improvements which are a part of the Premises:

(a) Trustor will immediately notify Beneficiary thereof in the manner provided in this Deed of Trust for the giving of notices. Beneficiary may in its discretion (and it is hereby authorized to) either settle and adjust any claim under such insurance policies, 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 to give receipts therefor. In the event Beneficiary elects to either settle or adjust any claim under such insurance policies, and provided there is neither an Event of Default nor an event which with the passage of time or notice or both would constitute an Event of Default which has occurred and is continuing, Trustor shall have the right to participate in said settlement or adjustment; provided, however, that any settlement or adjustment shall be subject to the written approval of Beneficiary. Notwithstanding anything in this paragraph 5(a) to the contrary, if damage or destruction occurs in an amount less than \$350,000 and no Event of Default then exists, Trustor shall have the right to settle and adjust any claim under insurance policies covering such damage or destruction without Beneficiary's participation or approval and insurance proceeds in respect of such damage or obstruction shall be paid to Trustor.

(b) Except as provided in the last sentence of paragraph 5(a) hereof or as provided in paragraph 5(c) hereof, such proceeds, after deducting therefrom any expenses incurred in the collection thereof, including attorneys' fees and costs, shall be applied at the option of Beneficiary either to the cost of rebuilding and restoring the buildings and improvements or in reduction of the indebtedness secured hereby whether or not then due and payable; provided, however, that if no Event of Default has occurred and Beneficiary has not otherwise accelerated the whole or any part of the indebtedness secured hereby, such reduction shall be without Make Whole Premium (as defined below). Any excess proceeds remaining after said indebtedness is fully paid shall be promptly remitted to Trustor.

(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 commercial value and substantially the same character as ^{Unofficial Document} ~~the~~ 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.

Notwithstanding anything to the contrary contained in this Deed of Trust, insurance proceeds not entitled to be paid to Trustor pursuant to the last sentence of paragraph 5(a) hereof shall be held by Beneficiary without any allowance of interest and shall be made available to pay the cost of the rebuilding or restoration of buildings or improvements on the Premises, subject to paragraph 5(d) hereof and the following conditions:

(i) there exists no Event of Default or event which with the passage of time or notice or both would become an Event of Default under the Loan Documents;

(ii) the Annual Net Operating Income from the Premises provides for an Annual Debt Service Coverage Ratio of not less than 1.2 to 1.0 as determined by Beneficiary in its reasonable discretion, provided that lease income shall be excluded for (x) any

lease which gives either Trustor or lessee the right to terminate the lease on account of such damage or destruction unless such right has been waived to the reasonable satisfaction of Beneficiary and (y) any lease with an uncured default;

(iii) Trustor confirms in writing to Beneficiary that (x) the FINOVA Lease (as defined in **Exhibit B**) the lease is in full force and effect and (y) no defaults have occurred and are continuing thereunder;

(iv) Beneficiary approves the plans and specifications of such work before such work is commenced, such approval not to be unreasonably withheld;

(v) Trustor provides suitable completion or performance bonds and builder's all risk insurance;

(vi) no insurer asserts any defense against Trustor pursuant to any insurance policies covering the improvements on the Premises;

(vii) there shall be sufficient funds on deposit with Beneficiary at all times to ^{Unofficial Document} complete the repair and restoration, as certified from time to time by an inspecting architect reasonably approved by Beneficiary;

(viii) said rebuilding or restoration shall be in Beneficiary's reasonable opinion, economically feasible;

(ix) Trustor pays to Beneficiary a non-refundable processing fee equal to the greater of \$5,000.00 or .5% of the amount of such proceeds before Beneficiary disburses any proceeds;

(x) the installment payments and any other sums that become due and all obligations under the Loan Documents shall be fully recourse obligations to Trustor commencing upon Beneficiary's receipt of said non-refundable processing fee and continuing until such time as the rebuilding or restoration is completed in accordance with the provisions contained herein; and

(xi) such other conditions to such disbursements, in Beneficiary's discretion as would be customarily required by a construction lender doing business in the area.

If the foregoing conditions are not met, Beneficiary at its option may require Trustor to use any proceeds to either immediately rebuild any portion or all of the improvements or apply the insurance proceeds to the reduction of the indebtedness secured hereby, whether due or not, without the imposition of a Make Whole Premium. Trustor agrees and acknowledges that all such proceeds shall be deemed to be "Cash Collateral" as that term is defined in Section 363 of the Bankruptcy Code in any bankruptcy proceeding of Trustor.

(d) In the event that Trustor is to be paid the insurance proceeds, 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 payment and of the continued priority of the lien hereof over any potential liens of mechanics and materialmen as Beneficiary may reasonably require and approve. 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. If no Event of Default exists, any proceeds remaining after payment of the cost of rebuilding and restoration shall be paid to Trustor; ^{Unofficial Document} otherwise, such proceeds shall, at the option of Beneficiary, either be applied in reduction of the indebtedness secured hereby with imposition of a Make Whole Premium or paid to Trustor.

(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 any equity of redemption exists who 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 to the purchaser at the sale any and all insurance policies to the extent such policies are assignable under the terms thereof and Beneficiary's rights to the proceeds thereof, and to take such other steps as Beneficiary may deem advisable to cause the assigned interests to remain in effect under 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 this Deed of Trust for the giving of notices. Beneficiary may participate in such proceedings, and Trustor shall deliver to Beneficiary all documents requested by it to permit such participation. Notwithstanding anything in this paragraph 6(a) to the contrary, if any taking or damage in an amount less than \$350,000 occurs under the power of eminent domain or by condemnation and no Event of Default exists, Trustor shall have the right to settle any claim for such taking or damage without Beneficiary's participation or approval and proceeds in respect of such taking or damage shall be paid to Trustor.

(b) Except as provided in the last sentence of paragraph 6(a) hereof or as provided below in this paragraph 6(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; provided, however, that if no Event of Default has occurred and Beneficiary has not otherwise accelerated the whole or any part of the indebtedness secured hereby, such reduction shall be without Make Whole Premium, 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 ^{Unofficial Document} to and approved by Beneficiary.

(c) Notwithstanding anything to the contrary contained in this Deed of Trust, proceeds of an award not entitled to be paid to Trustor pursuant to the last sentence of paragraph 5(a) hereof shall be held by Beneficiary without any allowance of interest and shall be disbursed to pay the cost of the rebuilding or restoration of buildings or improvements on the Premises, subject to paragraph 6(d) hereof and the conditions set forth in paragraph 5(c) above pertaining to the disbursement of insurance proceeds (other than the condition pertaining to absence of a defense by an insurer). If the conditions to disbursement are not met, Beneficiary at its option may require Trustor to use any proceeds to either immediately rebuild any portion or all of the improvements or apply the proceeds of an award to the reduction of the indebtedness secured hereby, whether due or not, without the imposition of a Make Whole Premium. Trustor agrees and acknowledges that all such proceeds shall be deemed to be "Cash Collateral" as that term is defined in Section 363 of the Bankruptcy Code in any bankruptcy proceeding of Trustor.

(d) In the event Beneficiary advances proceeds to 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 this Deed of Trust 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. If no Event of Default exists, any proceeds remaining after payment of cost of restoring and rebuilding shall be paid to Trustor; otherwise such proceeds shall, at the option of Beneficiary, either be applied on account of the indebtedness secured hereby with imposition of a Make Whole Premium 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, except for Beneficiary's income tax, 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 change 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, except for Beneficiary's income tax, 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 provided, however, that if no Event of Default has occurred and Beneficiary has not otherwise previously accelerated the whole or any part of the indebtedness secured hereby, such payment shall be without Make Whole Premium.

9. (a) Upon the occurrence of any Event of Default or in the reasonable opinion of Beneficiary such action must be taken by Beneficiary because an emergency exists or to preserve the value of the Premises, 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 the 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 costs and attorneys' fees and costs 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 upon demand and with interest thereon at the Default Rate (as hereinafter defined) from the date of expenditure or advance until paid.

(b) 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 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 payment of any principal, interest, premium, utilities, taxes or assessments referred to in this Deed of Trust or insurance premiums for the insurance required pursuant to this Deed of Trust when due under the Note or this Deed of Trust, and such default shall have continued for 10 days; or

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(b) Trustor shall be dissolved, or a decree or order for relief shall be entered by a court having jurisdiction in respect of Trustor in a voluntary or involuntary case under the Federal Bankruptcy Code as now or hereafter constituted, or Trustor 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 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 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 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 shall consent to or acquiesce in such appointment; or

(e) with respect to the matters not described in the other subparagraphs of this paragraph 10, default shall be made in the due observance or performance of any covenant, condition or agreement of Trustor contained in this Deed of Trust, the Note, or any other Loan Document, and such default shall have continued for 30 days after notice specifying such default is given by Beneficiary to Trustor; or

(f) any representation or warranty made by Trustor herein or in the Loan Documents shall prove to be untrue or inaccurate in any material respect; or

(g) the failure of Trustor to give notice to Beneficiary in the manner provided in this Deed of Trust for the giving of notices within 30 days after the death of any natural person who is personally liable for the payment of the indebtedness secured hereby or any part thereof, as Trustor, indemnitor, or guarantor, whether or not such person has executed the Note or this Deed of Trust. The term "Trustor" as used herein shall be as defined in this Deed of Trust; or

(h) the death of any natural person, other than Patricia P. Barker, who is personally liable for the payment of the indebtedness secured hereby or any part thereof whether such person is the ^{Unofficial Document} Trustor or any indemnitor or guarantor and whether or not such person has executed the Note or this Deed of Trust or the death of any general partner of Trustor unless within ninety (90) days thereafter a person reasonably acceptable to Beneficiary has assumed the liability of the decedent or executed a replacement document undertaking such liability; or

(i) an Event of Default under the Loan Agreement shall have occurred; then, in each and every such case, 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 and a Make Whole Premium calculated in accordance with the provisions hereof, and whether or not Beneficiary has exercised said option, interest shall accrue on the entire principal balance and any interest or premium then due, at the Default Rate until fully paid or if Beneficiary has not exercised said option, for the duration of any Event of Default.

If any default under "(e)" 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. Furthermore, unless (i) a default under "(f)" above results from a representation or warranty that Trustor recklessly made or knew was untrue or inaccurate when the representation

was made or deemed made and (ii) the actual condition cannot be cured or remedied in a manner so that the representation or warranty would not be untrue or inaccurate in any material respect upon completion of such action, then Trustor shall have thirty (30) days after notice specifying such default is given by Beneficiary to Trustor within which to so cure or remedy such condition plus, if such condition cannot be so cured or remedied within the thirty (30) day period following the giving of notice and Trustor has commenced the cure or remedy within that period and thereafter proceeds with diligence to complete the cure or remedy, such additional period of time as may be reasonably necessary to complete the cure or remedy. Trustor shall have no right under the preceding sentence to cure or remedy a default under "(f)" above if the actual condition would give rise to an Event of Default under any other subsection of this paragraph 10.

11. Trustor agrees that if Beneficiary accelerates the whole or any part of the principal sum hereby secured, or applies any proceeds as if such application had been made as a result of such acceleration, pursuant to the provisions hereof, Trustor waives any right to prepay the principal sum hereby secured in whole or in part without premium and agrees to pay, as yield maintenance protection and not as a penalty, a "Make Whole Premium." The Make Whole Premium shall be the greater of one percent (1%) of the principal amount to be prepaid or a premium calculated as follows:

(a) Determine the "Reinvestment Yield." The Reinvestment Yield will be equal to the yield on the similar remaining term [i.e. to the next occurring Rate Adjustment/Call Date (as those terms are defined in the Note) or, if none, the Maturity Date] U.S. Treasury Issue (^{Unofficial Document} "primary issue"), which is to be determined by Beneficiary, published two weeks prior to the date of prepayment, plus thirty-five (35) basis points, and converted to an equivalent monthly compounded nominal yield.

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

(c) Calculate the "Present Value of the Mortgage." The Present Value of the Mortgage is the present value of the payments to be made in accordance with the Note (all installment payments and any remaining payment due on the next occurring Rate Adjustment/Call Date or, if none, the Maturity Date) discounted at the Reinvestment Yield for the number of months remaining from the date of prepayment to the next occurring Rate Adjustment/Call Date or, if none, the Maturity Date. However, in the event of a voluntary partial prepayment or in the event of a non-voluntary partial prepayment as may be required in paragraph 6.11 of the Loan Agreement, the Present Value of the Mortgage shall be calculated in accordance with the preceding provisions of this subsection (c) and then multiplied by the fraction which results from dividing the amount of the prepaid proceeds by the principal balance immediately prior to prepayment.

(d) Subtract the amount of the prepaid proceeds from the Present Value of the Mortgage as of the date of prepayment. Any resulting positive differential shall be the premium.

12. Upon the occurrence of any Event of Default, in addition to any other rights or remedies of Beneficiary provided in the Note, this Deed of Trust, the Loan Agreement, any of the other Loan Documents, at law, in equity or otherwise, Beneficiary shall have the right to cause the Premises or any part thereof to be sold in order to accomplish the object of these trusts and upon demand by Beneficiary, Trustee, without demand on Trustor, shall sell the Premises or such part thereof as Trustee in its sole discretion may deem necessary to accomplish the objects of these trusts having first given notice of the time and place of such sale as required by law for the sale of real property upon execution.

13. Trustee may postpone such sale from time to time by giving notice of such postponement in the same manner in which any original notice of sale was given or by an announcement of proclamation made to the persons assembled at the time and place previously appointed and noticed for such sale or postponed sale, and on the date of such sale or the date to which such sale may have been postponed Trustee may sell the Premises to the highest bidder. Beneficiary or the holder or holders of the Note or their agents may bid and purchase at such sale. Trustee in conducting the sale may act either in person or through the agency of an auctioneer and may establish as one of the conditions of such sale that all bids and payments for the Premises be made in cash.

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14. Upon such sale, Trustee shall make, execute, and after due payments made, deliver to the purchaser or purchasers a deed or deeds for the Premises or part hereof sold and, except to the extent otherwise required by applicable law, shall apply the proceeds of the sale, first, to all of the expenses of such sale including the reasonable expenses of this trust or Trustee and the fees and costs of any attorneys for this trust, environmental audits, Trustee or Beneficiary, all of which shall accrue and become due from and after any Event of Default, together with any sums which Trustee or Beneficiary shall have paid for procuring any abstract, certificate or report of title to the Premises and, second, to all sums or amounts due under the Note or agreed or provided to be paid by Trustor herein or in any other instrument by which the Note is secured. The remainder of such proceeds, if any, shall be paid to Trustor or Trustor's successors or assigns.

15. In the event of a sale of the Premises or any part thereof and the execution of a deed or deeds therefor under these trusts, any recital therein of the occurrence of an Event of Default or of the giving or recording of any notice or demand by Trustee or Beneficiary regarding such sale shall be conclusive proof thereof, and the receipt of the purchase money recited therein shall fully discharge the purchaser from any obligation for the proper application of the proceeds of sale in accordance with these trusts.

16. 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 Beneficiary shall be entitled to take actual possession of the Premises or any part thereof

personally or by its agents or attorneys, 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 or subordinated to the lien hereof unless this Deed of Trust has specifically been made subordinate to such lease or sublease;

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(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; and/or

(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 the 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 the leases. Should Trustee or Beneficiary incur any such liability, loss or damage under any of lease, 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 and costs, including attorneys' fees and costs 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.

17. Trustee and Beneficiary in the exercise of the rights and powers 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:

(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.

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(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; and/or

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

If an Event of Default exists, Beneficiary shall also have the right to apply any monies then held by it as security to the payment of the items described in the preceding sentence.

18. 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. 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.

19. Trustor agrees that all reasonable costs, charges and expenses, including attorneys' fees and costs, 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, any other instrument or agreement securing 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.

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20. Trustor hereby agrees that upon the occurrence of an Event of Default and the acceleration of the principal sum secured hereby pursuant to this Deed of Trust, to the full extent that such rights can be lawfully waived, Trustor hereby waives and agrees not to insist upon, plead, or in any manner take advantage of, any notice of acceleration, any stay, extension, exemption, homestead, marshalling or moratorium law or any law providing for the valuation or appraisal of all or any part of the Premises prior to any sale or sales thereof under any provision of this Deed of Trust or before or after any decree, judgment or order of any court or confirmation thereof, or claim or exercise any right to redeem all or any part of the Premises so sold and hereby expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the Premises, all benefit and advantage of any such laws which would otherwise be available to Trustor or any such person or entity, and agrees that neither Trustor nor any such person or entity will invoke or utilize any such law to otherwise hinder, delay or impede the exercise of any remedy granted or delegated to Beneficiary herein but will permit the exercise of such remedy as though any such laws had not been enacted. Trustor hereby further expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the Premises any and all rights of redemption from any sale or any order or decree of foreclosure obtained pursuant to provisions of this Deed of Trust.

21. [Intentionally Deleted]

22. Trustor has executed and delivered that certain Assignment of Leases and Rents of even date herewith ("Assignment of Leases and Rents") assigning to Beneficiary, directly and absolutely, and not merely collaterally, 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. That Assignment of Leases and Rents grants to Beneficiary specific rights and remedies in respect of the 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.

23. [Intentionally Deleted]

24. All rights and remedies granted to Trustee or Beneficiary in the Loan Documents shall be in addition to and not in limitation of any rights and remedies to which it is entitled in 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 or agreement contained in the Loan Documents shall at any time thereafter be held to be a waiver of any rights of 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 in the Loan Documents 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. In any action by Beneficiary to recover a deficiency judgment for any balance due under the Note upon the foreclosure of this Deed of Trust or in any action to recover the indebtedness secured hereby, and as a material inducement to making the loan evidenced by the Note, Trustor acknowledges and agrees that the successful bid amount made at any judicial or non-judicial foreclosure sale, if any, shall be conclusively deemed to constitute the fair market value of the Premises, that such bid amount shall be binding against Trustor in any proceeding seeking to determine or contest the fair market value of the Premises and that such bid amount shall be the preferred alternative means of determining and establishing the fair market value of the Premises. Trustor hereby waives and relinquishes any right to have the fair market value of the Premises determined by a judge or jury in any action seeking a deficiency judgment or any action on the indebtedness secured hereby, including, without limitation, a hearing to determine fair market value pursuant to A.R.S. §12-1566, §33-814, §33-725 or §33-727.

25. This Deed of Trust is subject to any existing statutory condition and upon the further condition that all covenants and agreements of Trustor herein shall be fully or timely performed, time being of the essence under this Deed of Trust. No breach of any such condition or agreement shall be permitted, for any breach of which Beneficiary shall have any statutory power of sale and this Deed of Trust shall be subject to foreclosure as provided by law.

26. 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 such other sums or installments.

27. 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. All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand for payment of or acceleration of the maturity of any of the indebtedness secured hereby or otherwise, shall the interest contracted for, charged or received by Beneficiary exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Beneficiary in excess of the maximum lawful amount, the interest payable to Beneficiary shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Beneficiary shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall, at Beneficiary's option, be refunded to Trustor or be applied to the reduction of the principal balance of the indebtedness secured hereby and not to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal of the indebtedness secured hereby, such excess shall be refunded to Trustor. This paragraph shall control all agreements between Trustor and Beneficiary.

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28. In the event one or more provisions of the Loan Documents 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.

29. If the payment of the indebtedness 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 the 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 lease.

30. Upon payment in full of the indebtedness secured hereby and the performance by Trustor of all of the obligations imposed on Trustor in the Loan Documents, 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.

31. The Trustor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments) if and only to the extent and upon the terms and conditions, if any, expressly set forth in the Note. If not expressly set forth, the Note is not subject to such prepayment.

32. Trustor hereby grants to Beneficiary and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to enter upon and inspect the Premises and all facilities located thereon at reasonable times.

33. In connection with any sale or conveyance of this Deed of Trust, Trustor grants to Beneficiary and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to conduct, at Beneficiary's expense, a Phase I environmental audit of the Premises.

34. In the event an Event of Default exists or in the event Beneficiary has formed a reasonable belief, based on its inspection of the Premises or other factors known to it, that Hazardous Materials may be present on the Premises, then Trustor grants to Beneficiary and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to conduct, at Trustor's expense, environmental tests of the Premises, including without limitation, a Phase I environmental audit, subsurface testing, soil and ground water testing, and other tests which may physically invade the Premises or facilities (the "Tests"). The scope of the Tests shall be such as Beneficiary, in its sole discretion, determines is necessary to (i) investigate the condition of the Premises, (ii) protect the security interests created under this Deed of Trust, or (iii) determine compliance with Environmental Laws, the provisions of this Deed of Trust and other matters relating thereto.

35. The foregoing licenses and authorizations are intended to be a means of protection of Beneficiary's security interest in the Premises ^{Unofficial Document} and not as participation in the management of the Premises.

36. Within 15 days after any written request by Beneficiary, Trustor 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.

37. Trustor shall furnish to Beneficiary within 90 days after the end of each fiscal year of Trustor a detailed and analytical financial report, prepared in accordance with generally accepted accounting principles consistently applied, certified in a manner, and otherwise in form and substance reasonably acceptable to, Beneficiary, covering the full and complete operation of the Premises, including without limitation: (i) income and expense statements, and, (ii) a report of the leasing status of the Premises as of the end of such year, identifying the lessee, square footage leased, rental amount, base rental increases, rental concessions and or rental deferments, if any, and commencement and expiration date under each lease of the Premises. Such reports shall be prepared by an accountant who may be an employee of Trustor, or of an affiliate of Trustor, reasonably acceptable to Beneficiary. In the event there is vacant leasable space in the Premises, Trustor shall report to Beneficiary in writing at quarterly (every three months) intervals regarding Trustor's progress in leasing the Premises. Each such report shall state the names and addresses of all parties with whom Trustor, its brokers and agents are engaged in formal negotiations for leases of space within the Premises, the specific terms of any leases in negotiation and the terms and parties to any leases submitted to Trustor for execution, together with such

other information as Beneficiary may reasonably request regarding the leasing of the Premises. In addition to the reports referred to herein, Trustor shall promptly supply any additional information or records relating to the Premises or its operation as Beneficiary may from time to time request.

38. Trustor shall submit to Beneficiary, within 90 days following the end of each fiscal year annual balance sheets and income statements for each Guarantor. Said balance sheets and income statements shall be subject to Beneficiary's review.

39. 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 either (i) registered or certified mail, postage prepaid, in which case notice shall be deemed to have been received three (3) business days following deposit to U.S. mail; or (ii) nationally recognized overnight air courier, next day delivery, prepaid, in which case such notice shall be deemed to have been received one (1) business day following delivery to such nationally recognized overnight air courier. All notices shall be addressed to Trustor at its address given on the first page hereof, or to Beneficiary at 711 High Street, Des Moines, Iowa 50392-1450, Attn: Commercial Real Estate Loan Administration, Loan No. 751951, or to such other place as any party may by notice in writing to the other parties designate as a place for service of notice.

40. 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, ^{Unofficial Document} 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 country 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.

41. 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 such 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 such court directing the execution of such 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 such 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.

42. Trustor has had the opportunity to fully negotiate the terms hereof and modify the draftsmanship of this Deed of Trust. Therefore, the terms of this Deed of Trust shall be construed and interpreted without any presumption, inference, or rule requiring construction or interpretation of any provision of this Deed of Trust against the interest of the party causing this Deed of Trust or any portion of it to be drafted. Trustor is entering into this Deed of Trust freely and voluntarily without any duress, economic or otherwise.

43. 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 the Premises unto Trustee.

44. Trustee shall not be liable or responsible for 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 employed by him hereunder, if selected with reasonable care.

45. 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.

46. This is not a purchase money ^{Unofficial Document} deed or trust, where a seller is providing financing to a buyer for the payment of all or any portion of the purchase price.

47. 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.

48. This Deed of Trust shall be governed by, and construed in accordance with, the laws of the State of Arizona.

49. As used herein, the term "Default Rate" means a rate equal to the lesser of (i) two percent (2%) per annum above the then applicable interest rate payable under the Note or (ii) the maximum rate allowed by applicable law.

50. Notwithstanding any provision of this Deed of Trust, the Note or any other instruments evidencing or securing the loan evidenced by the Note which might be construed to the contrary, the assignment of rents and other amounts provided for herein is an absolute assignment and not merely a collateral assignment or a security interest, and is effective whether

or not a default occurs hereunder, subject only to a license, if any, granted by Beneficiary to Trustor with respect thereto prior to the occurrence of a default hereunder. It is the intention of Beneficiary and Trustor that the assignment effectuated by this Deed of Trust with respect to such rents and other amounts payable under the leases shall be a direct and currently effective assignment and shall not constitute merely the granting of a lien, security interest or pledge for the purpose of securing the indebtedness secured hereby. In the event that a court of competent jurisdiction determines that, notwithstanding such expressed intent of the parties, Beneficiary's interest in the rents and other amounts payable under the leases constitutes a lien on or security interest in or pledge thereof, it is agreed and understood that the forwarding of a notice to Trustor after the occurrence of a default, advising Trustor of the revocation of any license then in favor of Trustor to collect such rents or other amounts payable under the leases, or of the existence of a default, shall be sufficient action by Beneficiary to (i) perfect such lien on or security interest in or pledge of the rents and other amounts payable under the leases, (ii) take possession thereof, and (ii) entitle Beneficiary to immediate and direct payment of the rents and other amounts payable under the leases, for application as provided in this Deed of Trust, all without the necessity of any further action by Beneficiary, including, without limitation, any action to obtain possession of the land, improvements or any other portion of the Premises. Notwithstanding the direct and absolute assignment of the rents and other amounts payable under the leases as herein described, there shall be no pro tanto reduction in any portion of the indebtedness secured by this Deed of Trust except with respect to rents and other amounts payable under the leases actually received by Beneficiary and applied by Beneficiary toward payment of the indebtedness. Beneficiary may, upon written notice to Trustor, elect to (i) exclude from the assignment provided in this Deed of Trust any of the leases as specified in such notice so that the interest under such indicated lease is not assigned to Beneficiary, and (ii) subordinate the lien and other terms and provisions of this Deed of Trust to any the leases as indicated in said notice to Trustor.

51. TRUSTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTIONS BROUGHT BY TRUSTOR, TRUSTEE OR BENEFICIARY IN CONNECTION WITH THIS DEED OF TRUST, ANY OF THE LOAN DOCUMENTS, THE INDEBTEDNESS SECURED HEREBY, OR ANY OTHER STATEMENTS OR ACTIONS OF BENEFICIARY.

52. Notwithstanding any provision to the contrary in the Note, this Deed of Trust or any of the other Loan Documents, and except as otherwise provided in this paragraph or either of the following two paragraphs, from and after the Conversion Date (as defined in the Loan Agreement) the liability of Trustor shall be limited to the Trustor's interest in the Premises, the rents, issues, proceeds and profits thereof and the other collateral which is security for the payment and performance of such liability. In the event of foreclosure of the liens evidenced by the Loan Documents from and after the Conversion Date, no judgment for any deficiency upon the indebtedness evidenced by the Loan Documents shall be sought or obtained by Beneficiary against Trustor. Nothing contained in this paragraph shall:

(a) limit or impair Beneficiary's right to declare an Event of Default under the Loan Documents in the event of the failure of Trustor to make any

payment or to perform any obligation under any of the Loan Documents within the time periods provided therein;

(b) be construed as limiting the obligations of Trustor to any tenant under any lease of the Premises;

(c) in any way limit or, except as otherwise set forth in this paragraph or paragraph 53, impair the lien or enforcement of the Loan Documents pursuant to the terms thereof; or

(d) limit the obligations of any indemnitor or guarantor, if any, of Trustor's obligations under the Loan Documents.

53. Notwithstanding the foregoing paragraph, Trustor shall be personally liable to Beneficiary for:

(a) Trustor's failure to comply with paragraphs 2 (taxes and assessments) and 3 (insurance) hereof;

(b) any event or circumstance for which Trustor indemnifies Beneficiary under paragraph 1(m) (environmental indemnity) hereof or under any separate Environmental Indemnity Agreement;

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(c) Trustor's failure to pay utilities on or before the date such payments are due;

(d) operation and maintenance expenses of the Premises;

(e) any sums expended by Beneficiary in fulfilling the obligations of Trustor as lessor under any lease of the Premises prior to a sale of the Premises pursuant to foreclosure or power of sale, a bona fide sale (permitted by the terms of paragraph 1(l) hereof or consented to in writing by Beneficiary) to an unrelated third party or upon conveyance to Beneficiary of the Premises by a deed acceptable to Beneficiary in form and content (each of which shall be referred to as a "Sale" for purposes of this paragraph) or expended by Beneficiary after a Sale of the Premises for obligations of Trustor which arose prior to a Sale of the Premises;

(f) any rents or other income regardless of type or source of payment (including, but not limited to, CAM charges, Termination Payments, refunds of any type, prepayment of rents, settlements of litigation, or settlements of past due rents) from the Premises which Trustor has received or has a right to receive after an Event of Default under the Loan Documents or an event which with the passage of time, the giving of notice or both would constitute an Event of Default, either or both of which has occurred and is continuing, and which are not applied to

(A) expenses of operation and maintenance of the Premises and the taxes, assessments, utility charges and insurance of the Premises, taking into account sufficient reserves for the same and for replacements and recurring items, and (B) payment of principal, interest and other charges when due under the Loan Documents; provided that any payments to parties related to Trustor shall be considered expenses of operation only if they are at market rates or fees consistent with market rates or fees for the same or similar services;

(g) any security deposits of tenants, together with any interest on such security deposits required by law in the leases not turned over to Beneficiary upon conveyance of the Premises to Beneficiary pursuant to foreclosure or power of sale or by a deed acceptable to Beneficiary in form and content;

(h) misapplication or misappropriation of tax reserve accounts, tenant improvement reserve accounts, security deposits, prepaid rents or other similar sums paid to or held by Trustor or any other entity or person in connection with the operation of the Premises;

(i) any waste committed or allowed by Trustor with respect to the Premises; and

(j) any insurance or condemnation ^{Unofficial Document} proceed or other similar funds or payments applied by Trustor in a manner other than as expressly provided in the Loan Documents.

54. Notwithstanding anything to the contrary in the Loan Documents, the limitation on liability contained in subparagraph (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect in the event:

(a) of any breach or violation of paragraph 1(l) (due on sale of encumbrance) hereof, other than the filing of a nonmaterial mechanic's lien affecting the Premises, the granting of any utility or other nonmaterial easement or servitude burdening the Premises, or any other transfer or encumbrance not in the nature of a transfer, reduction or impairment of any material economic interest in the Premises; or

(b) of any fraud or willful misrepresentation by Trustor regarding the Premises, the making or delivery of any of the Loan Documents or in any materials or information provided by Trustor in connection with the Loan.

55. This Deed of Trust and the indebtedness secured hereby is for the sole purpose of conducting or acquiring a lawful business, professional or commercial activity or for the acquisition, construction or management of real or personal property as a commercial investment, and all proceeds of such indebtedness shall be used for said business or commercial investment

purpose. Such proceeds will not be used for the purchase of any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation of any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto, including without limitation, Regulations G, T and X of the Board of Governors of the Federal Reserve System. This is not a purchase money mortgage and the Premises secured hereby is not a residence or homestead or used for mining, grazing, agriculture, timber or farming purposes.

56. Unless Beneficiary shall otherwise direct in writing, Trustor shall appear in and defend all actions or proceedings purporting to affect the security hereunder, or any right or power of Beneficiary. Beneficiary shall have the right to appear in such actions or proceedings. Trustor shall save Beneficiary harmless from all costs and expenses, including reasonable attorneys' fees and costs of a title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in and to which Beneficiary may be or become a party by reason hereof. Such proceedings shall include but not be limited to condemnation, bankruptcy, probate and administration proceedings, as well as any other action, suit, proceeding, right, motion or application wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms of this Deed of Trust or otherwise purporting to affect the security hereof or the rights or powers of Beneficiary. All money paid or expended by Beneficiary in that regard, together with interest thereon from date of such payment at the Default Rate shall be additional indebtedness secured hereby and shall be immediately due and payable by Trustor without notice.

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57. During the occurrence of an Event of Default, all rents, issues and profits collected or received by Trustor shall be accepted and held for Beneficiary in trust and shall not be commingled with the funds and property of Trustor, but shall be promptly paid over to Beneficiary.

58. Trustor has executed and delivered to Beneficiary the Loan Agreement, which relates to the construction of certain improvements upon the Premises and the disbursement of all or part of the indebtedness secured hereby for the purpose of financing a portion of the costs thereof. The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. This Deed of Trust secures all funds advanced pursuant to the Loan Agreement (which advances shall constitute part of the indebtedness secured hereby, whether more or less than the principal amount stated in the Note) and the punctual performance, observance and payment by Trustor of all of the requirements of the Loan Agreement to be performed, observed or paid by Trustor. In the event of express and direct contradiction between any of the provisions of the Loan Agreement and any of the provisions contained herein, then the provisions contained in the Loan Agreement shall control. Any warranties, representations and agreements made in the Loan Agreement by Trustor shall survive the execution and recording of this Deed of Trust and shall not merge herein.

59. At all times, regardless of whether any loan proceeds have been disbursed, this Deed of Trust secures as part of the indebtedness secured hereby the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Beneficiary in connection with the indebtedness secured hereby, all in accordance with the Note, this Deed of Trust, the Loan Agreement and the other Loan Documents; provided, however, that in no event shall the total amount of the indebtedness secured hereby, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note. Trustor acknowledges that Beneficiary has bound itself to make advances pursuant to the Loan Agreement and that all such future advances shall be a lien from the time this Deed of Trust is recorded.

60. If any part of the indebtedness secured hereby is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Beneficiary shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

61. At the option of Beneficiary, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Beneficiary and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

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62. Trustor acknowledges that the relationship between the parties is that of Trustor and Beneficiary and that in no event shall Beneficiary be deemed to be a partner or joint venturer with Trustor. Beneficiary shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Deed of Trust or any other of the Loan Documents.

63. All of the covenants of this Deed of Trust shall run with the land and be binding on any successor owners of the land. If the ownership of Premises or any portion thereof becomes vested in a person other than Trustor, Beneficiary, without notice to Trustor, may deal with such person with reference to this Deed of Trust and the indebtedness secured hereby in the same manner as with Trustor without in any way releasing Trustor from its obligations hereunder. Trustor will give immediate written notice to Beneficiary of any conveyance, transfer or change

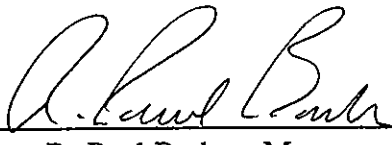
of ownership of the Premises, but nothing in this paragraph shall vary the provisions of paragraph 1(l) hereof.

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

Witness as to Borrower

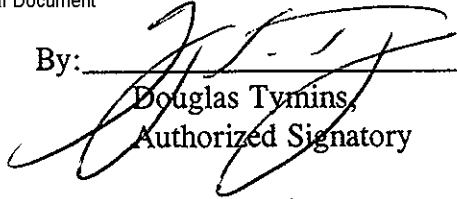
ANCHOR-FORUM PORTALES I, LLC, a
Delaware limited liability company

BY: FORUM CAPITAL L.C., a Utah limited
liability company, General Manager

By: 
R. Paul Barker, Manager

BY: ANCHOR NATIONAL LIFE INSURANCE
COMPANY, an Arizona corporation,
Associate Manager

Unofficial Document

By: 
Douglas Tymins,
Authorized Signatory

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 2nd day of July, 1998, by R. PAUL BARKER, the Manager of FORUM CAPITAL L.C., a Utah limited liability company ("Forum"), which is the General Manager of ANCHOR-FORUM PORTALES I, LLC, a Delaware limited liability Company ("AFPI"), on behalf of Forum for AFPI.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

Theresa Ann Zmijewski
Notary Public



My commission expires
Sept 13, 2001

Unofficial Document

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me on this 2nd day of July, 1998, by Douglas Tymins, the Authorized Signatory of ANCHOR NATIONAL LIFE INSURANCE COMPANY, an Arizona corporation ("Anchor") and the Associate Manager of ANCHOR-FORUM PORTALES I, a Delaware limited liability company ("AFPI"), on behalf of Anchor for AFPI.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Theresa Ann Zmijewski
Notary Public



My commission expires
Sept. 13, 2001

EXHIBIT A

Order Number: 215781

LEGAL DESCRIPTION

PARCEL NO. 1

An undivided fee simple interest in and to that portion of the Northeast quarter of the Northeast quarter of Section 22, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 22;

THENCE South 00° 00' 34" West, along the Easterly line of said Section 22, a distance of 245.05 feet;

THENCE North 89° 59' 26" West, a distance of 65.00 feet to a point on the Westerly right-of-way line of Scottsdale Road;

THENCE South 08° 35' 23" West, a distance of 24.38 feet to the beginning of a non-tangent curve, concave Northwesterly, whose radius point bears North 84° 24' 37" West, a distance of 441.25 feet;

THENCE Southwesterly, along said curve to the right, through a central angle of 14° 08' 01", an arc distance of 108.85 feet to a point on curve and the TRUE POINT OF BEGINNING;

THENCE continuing Southwesterly, along said curve to the right, through a central angle of 04° 46' 41", an arc distance of 36.80 feet to the beginning of a non-tangent compound curve, concave

Northwesterly, whose radius point bears North 48° 18' 22" West, a distance of 545.00 feet;

THENCE Southwesterly, along said curve to the right, through a central angle of 22° 17' 35", an arc distance of 212.05 feet to a point of non-tangency;

THENCE South 25° 49' 53" East, a distance of 5.50 feet to the beginning of a non-tangent curve, concave Northerly, whose radius point bears North 26° 00' 41" West, a distance of 550.50 feet;

THENCE Westerly, along said curve to the right, through a central angle of 20° 24' 32", an arc distance of 196.09 feet to a point of tangency;

THENCE South 84° 23' 51" West, a distance of 27.67 feet to the beginning of a tangent curve, concave Northeasterly, whose radius point bears North 05° 36' 09" West, a distance of 58.92 feet;

THENCE Northwesterly, along said curve to the right, through a central angle of 88° 44' 35", an arc distance of 91.26 feet to a point of non-tangency;

THENCE South 89° 59' 50" West, a distance of 91.55 feet;

THENCE North 00° 00' 10" West, a distance of 182.60 feet;

THENCE North 31° 58' 38" West, a distance of 117.52 feet;

THENCE North 58° 01' 22" East, a distance of 320.51 feet;

THENCE North 88° 41' 51" East, a distance of 137.67 feet;

THENCE South 52° 14' 52" East, a distance of 32.97 feet to the beginning of a non-tangent curve, concave Northeasterly, whose radius point bears North 29° 23' 20" East, a distance of 136.00 feet;

THENCE Southeasterly, along said curve to the left, through a central angle of 23° 23' 18", an arc distance of 55.52 feet to the beginning of a tangent reverse curve, concave Southwesterly, whose radius point bears South 06° 00' 02" West, a distance of 141.00 feet;

THENCE Southeasterly, along said curve to the right, through a central angle of 84° 03' 25", an arc distance of 206.86 feet to a point of non-tangency;

THENCE South 00° 01' 55" East, a distance of 108.05 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2

Easements for parking, ingress and egress, pedestrian traffic, and comfort and convenience, as set forth in Construction, Operation and Reciprocal Easement Agreement recorded in Document No. 98-558440 over property designated as Common Area in said Agreement.

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Exhibit B

Permitted Exceptions

1. Taxes and Assessments collectible by the Maricopa County, Arizona, Treasurer not yet due and payable for the year 1998 and subsequent year.
2. Easement for electric transmission lines and rights incident thereto, as set forth in instrument recorded in Docket 710, page 522.
3. Agreement for roadway maintenance and responsibility, dated September 25, 1990, recorded November 9, 1990 in Document No. 90-505835.
4. Agreement for Scottsdale Portales Development, dated May 19, 1997, recorded August 5, 1997 in Document No. 97-532903.
5. Public utility easement and public access easement as shown on the plat recorded in Book 340 of Maps, page 13.
6. Agreement for construction, operation and reciprocal easements, dated June 29, 1998, recorded June 30, 1998 in Document No. 98-558440.
7. Restrictions, conditions, covenants, ^{Unofficial Document} "abilities and obligations contained in instrument recorded in Document No. 98-558441.
8. The rights of The FINOVA Group, Inc. under a lease ("FINOVA Lease") dated December 18, 1997, as amended by instrument dated July 1 1998, which is referred to in and affected by that Subordination, Non-Disturbance and Attornment Agreement among Principal Life Insurance Company, Anchor-Forum Portales I, LLC and The FINOVA Group, Inc., dated as of even date herewith, and recorded on the date the Deed of Trust is recorded, in the official records of Maricopa County, Arizona ("FINOVA SNDA"), provided that those are rights are subordinated to the Deed of Trust and the Assignment of Leases and Rents by the FINOVA SNDA.
9. The rights of Forum Capital L.C. under a lease dated June 9, 1998, which is referred to in and affected by that Subordination, Non-Disturbance and Attornment Agreement among Principal Life Insurance Company, Anchor-Forum Portales I, LLC and Forum Capital L.C., dated as of even date herewith, and recorded on the date the Deed of Trust is recorded, in the official records of Maricopa County, Arizona ("Forum SNDA"), provided that those SNDA rights are subordinated to the Deed of Trust by the Forum SNDA.