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Cook County Recorder 122.00

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Loan No. 6 103 813

MORTGAGE AND SECURITY AGREEMENT

Cover Sheet

Dated as of February 21, 2003

Mortgagor: PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation  
(Hereinafter sometimes "Borrower")

Mortgagor's Notice Address: c/o Principal Real Estate Investor, LLC  
801 Grand Avenue, Des Moines, Iowa 50392

Mortgagee: THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation  
(Hereinafter sometimes "Lender")

Mortgagee's Notice Address: c/o Prudential Asset Resources, Inc.  
2200 Ross Avenue, Suite 4900-E  
Dallas, Texas 75201

Note Amount: \$10,850,000.00

Maturity Date: December 15, 2004

State: Illinois

8079890 DR W 15K 3

Property of Cook County Clerk's Office

BOX 333-CTA

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## MORTGAGE AND SECURITY AGREEMENT

30273346

THIS MORTGAGE AND SECURITY AGREEMENT (this "**Instrument**") is made as of the 21<sup>st</sup> day of February, 2003, by PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, solely for the benefit of its Real Estate Separate Account, having its principal office and place of business at c/o Principal Real Estate Investors, LLC, 801 Grand Avenue, Des Moines, Iowa 50392, as mortgagor ("**Borrower**"), to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, having an office at c/o Prudential Asset Resources, Inc., 2200 Ross Avenue, Suite 4900-E, Dallas, Texas 75201, as mortgagee ("**Lender**").

### RECITALS:

1. Borrower, by the terms of that certain Promissory Note dated December 15, 1999 (as amended, the "**Note**") and in connection with the loan ("**Loan**") from Lender to Borrower, is indebted to Lender in the principal sum of TEN MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 U.S. DOLLARS (\$10,850,000), as amended by that certain First Modification of Promissory Note and Substitution of Collateral Agreement between Borrower and Lender of even date herewith.
2. The stated maturity date of the Note is December 15, 2004.
3. Borrower desires to secure the payment of and the performance of all of its obligations under the Note and certain additional Obligations (as defined in Section 1.01).

IN CONSIDERATION of the principal sum of the Note, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower irrevocably:

A. Grants, bargains, sells, assigns, transfers, pledges, mortgages, warrants, and conveys to Lender, and grants Lender a security interest in, the following property, rights, interests and estates owned by Borrower (collectively, the "**Property**"):

- (i) The real property in Cook County, Illinois and described in Exhibit A ("**Land**");
- (ii) All buildings, structures and improvements (including fixtures) now or later located in or on the Land ("**Improvements**");
- (iii) All easements, estates, and interests including hereditaments, servitudes, appurtenances, tenements, mineral and oil/gas rights, water rights, air rights, development power or rights, options, reversion and remainder rights, and any other rights owned by Borrower and relating to or usable in connection with or access to the Property;
- (iv) All right, title, and interest owned by Borrower in and to all land lying within the rights-of-way, roads, or streets, open or proposed, adjoining the Land to the center line thereof, and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;
- (v) All right, title, and interest of Borrower in, to, and under all plans, specifications, surveys, studies, reports, permits, licenses, agreements, contracts, instruments, books of account, insurance policies, and any other documents relating to the use, construction, occupancy, leasing, activity, or operation of the Property;

(vi) All of the fixtures and personal property described in Exhibit B owned by Borrower and replacements thereof; but excluding all personal property owned by any tenant (a "Tenant") of the Property;

(vii) All of Borrower's right, title and interest in the proceeds (including conversion to cash or liquidation claims) of (A) insurance relating to the Property and (B) all awards made for the taking by eminent domain (or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access, or otherwise) and for severance damages;

(viii) All tax refunds, including interest thereon, tax rebates, tax credits, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Property and all amounts deposited in escrow for the payment of ad valorem taxes, assessments and charges and/or premiums for policies of insurance with respect to the Property;

(ix) All leasehold estates, ground leases, leases, subleases, licenses, or other agreements affecting the use, enjoyment or occupancy of the Property now or later existing (including any use or occupancy arrangements created pursuant to Title 7 or 11 of the United States Code, as amended from time to time, or any similar federal or state laws now or later enacted for the relief of debtors (the "**Bankruptcy Code**") and all extensions and amendments thereto (collectively, the "**Leases**") and all of Borrower's right, title and interest under the Leases, including all guaranties thereof; and

(x) All rents, issues, profits, royalties, receivables, use and occupancy charges (including all oil, gas or other mineral royalties and bonuses), income and other benefits now or later derived from any portion or use of the Property (including any payments received with respect to any Tenant or the Property pursuant to the Bankruptcy Code) and all cash, security deposits, advance rentals, or similar payments relating thereto (collectively, the "**Rents**") and all proceeds from the cancellation, termination, surrender, sale or other disposition of the Leases, and the right to receive and apply the Rents to the payment of the Obligations.

B. Absolutely and unconditionally assigns, sets over, and transfers to Lender all of Borrower's right, title, interest and estates in and to the Leases and the Rents, subject to the terms and license granted to the Borrower under that certain Assignment of Leases and Rents made by Borrower to Lender dated the same date as this Instrument (the "**Assignment**"), which document shall govern and control the provisions of this assignment.

TO HAVE AND TO HOLD the Property unto the Lender and its successors and assigns forever, subject to the matters listed in Exhibit C ("**Permitted Encumbrances**") and the provisions of this Instrument.

PROVIDED, HOWEVER, if Borrower shall pay and perform the Obligations as provided for in the Documents (defined below) and shall comply with all the provisions in the Documents, these presents and the estates hereby granted (except for the obligations of Borrower set forth in Sections 3.11 and 3.12 and Article VIII hereof) shall cease, terminate and be void.

IN FURTHERANCE of the foregoing, Borrower warrants, represents, covenants and agrees as follows:

## ARTICLE I - OBLIGATIONS

**Section 1.01 Obligations.** This Instrument is executed, acknowledged, and delivered by Borrower to secure and enforce the following obligations (collectively, the “Obligations”):

(a) Payment of all obligations, indebtedness and liabilities under the Documents including (i) the Prepayment Premium (as defined in the Note)(“**Prepayment Premium**”), (ii) interest at both the rate specified in the Note and at the Default Rate (as defined in the Note)(“**Default Rate**”), if applicable and to the extent permitted by Laws (defined below), and (iii) renewals, extensions, and amendments of the Documents;

(b) Performance of every obligation, covenant, and agreement under the Documents including renewals, extensions, and amendments of the Documents; and

(c) Payment of all sums advanced (including costs and expenses) by Lender pursuant to the Documents including renewals, extensions, and amendments of the Documents.

**Section 1.02 Documents.** The “Documents” shall mean this Instrument, the Note, the Assignment, and any other written agreement executed in connection with the Loan (but excluding the Loan application and Loan commitment) and by the party against whom enforcement is sought, including those given to evidence or further secure the payment and performance of any of the Obligations, and any written renewals, extensions, and amendments of the foregoing, executed by the party against whom enforcement is sought. All of the provisions of the Documents are incorporated into this Instrument as if fully set forth in this Instrument.

## ARTICLE II - REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Lender as follows:

**Section 2.01 Title, Legal Status and Authority.** Borrower (i) is seized of the Land and Improvements in fee simple and has good and marketable title to the Property, free and clear of all liens, charges, encumbrances, and security interests, except the Permitted Encumbrances; (ii) will forever warrant and defend its title to the Property and the validity, enforceability, and priority of the lien and security interest created by this Instrument against the claims of all persons; (iii) is a corporation duly organized, validly existing, and in good standing and qualified to transact business under the laws of its state of organization or incorporation (“**Organization State**”) and the state where the Property is located (“**Property State**”); and (iv) has all necessary approvals, governmental and otherwise, and full power and authority to own its properties (including the Property) and carry on its business.

**Section 2.02 Validity of Documents.** The execution, delivery and performance of the Documents and the borrowing evidenced by the Note (i) are within the power of Borrower; (ii) have been authorized by all requisite action; (iii) have received all necessary approvals and consents; (iv) will not violate, conflict with, breach, or constitute (with notice or lapse of time, or both) a default under (1) any law, order or judgment of any court, governmental authority, or the governing instrument of Borrower or (2) any indenture, agreement, or other instrument to which Borrower is a party or by which it or any of its property is bound or affected; (v) will not result in the creation or imposition of any lien, charge, or encumbrance upon any of its properties or assets except for those in this Instrument; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this



Instrument, the Assignment and Uniform Commercial Code (“U.C.C.”) filings). The Documents constitute legal, valid, and binding obligations of Borrower.

**Section 2.03 Litigation.** There is no action, suit, or proceeding, judicial, administrative, or otherwise (including any condemnation or similar proceeding), pending or, to the best knowledge of Borrower, threatened or contemplated against, or affecting, Borrower or the Property which would have a material adverse effect on either the Property or Borrower’s ability to perform its obligations.

**Section 2.04 Status of Property**

(a) The Land and Improvements are not located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law (collectively, the “Flood Acts”) or, if located within any such area, Borrower has and will maintain the insurance prescribed in Section 2.06 below.

(b) Borrower has all necessary (i) material certificates, licenses, and other approvals, governmental and otherwise, for the operation of the Property and the conduct of its business and (ii) zoning, building code, land use, environmental and other similar permits or approvals, all of which are currently in full force and effect and not subject to revocation, suspension, forfeiture, or modification. To the best of Borrower’s knowledge after due investigation and inquiry, the Property and its use and occupancy are in full compliance with all Laws and Borrower has received no notice of any violation or potential violation of the Laws which has not been remedied or satisfied.

(c) The Property is served by all utilities (including water and sewer) required for its use.

(d) All public roads and streets necessary to serve the Property for its use have been completed, are serviceable, are legally open, and have been dedicated to and accepted by the appropriate governmental entities.

(e) The Property is free from damage caused by fire or other casualty.

(f) All costs and expenses for labor, materials, supplies, and equipment used in the construction of the Improvements have been paid in full except for the Permitted Encumbrances.

(g) Borrower owns and has paid in full for all furnishings, fixtures, and equipment (other than Tenants’ property) used in connection with the operation of the Property, free of all security interests, liens, or encumbrances except the Permitted Encumbrances and those created by this Instrument.

(h) The Property is assessed for real estate tax purposes as one or more wholly independent tax lot(s), separate from any adjoining land or improvements and no other land or improvements is assessed and taxed together with the Property.

**Section 2.05 Tax Status of Borrower.** Borrower is not a “foreign person” within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

**Section 2.06 Bankruptcy and Equivalent Value.** No bankruptcy, reorganization, insolvency, liquidation, or other proceeding for the relief of debtors has been instituted by or against Borrower, any



general partner of Borrower (if Borrower is a partnership), or any manager or managing member of Borrower (if Borrower is a limited liability company). Borrower has received reasonably equivalent value for granting this Instrument.

**Section 2.07 Disclosure.** Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading. There has been no adverse change in any condition, fact, circumstance, or event that would make any such information materially inaccurate, incomplete or otherwise misleading.

**Section 2.08 Illegal Activity.** No portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any illegal activity and, to the best of Borrower's knowledge, there are no illegal activities at or on the Property.

**Section 2.09 Executive Order 13224** Borrower and all persons or entities holding any legal or beneficial interest whatsoever in Borrower are not included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

### ARTICLE III - COVENANTS AND AGREEMENTS

Borrower covenants and agrees with Lender as follows:

**Section 3.01 Payment of Obligations.** Borrower shall timely pay and cause to be performed the Obligations.

**Section 3.02 Continuation of Existence.** Borrower shall not (a) dissolve, terminate, or otherwise dispose of, directly, indirectly or by operation of law, all or substantially all of its assets; (b) reorganize or change its legal structure without Lender's prior written consent (except that the provisions of this Section 3.2(b) shall not apply so long as the "Borrower" is Principal Life Insurance Company); (c) change its name, address, or the name under which Borrower conducts its business without promptly notifying Lender; or (d) do anything to cause the representations in Section 2.02 to become untrue.

**Section 3.03 Taxes and Other Charges**

(a) **Payment of Assessments.** Borrower shall pay when due all taxes, liens, assessments, utility charges (public or private and including sewer fees), ground rents, maintenance charges, dues, fines, impositions, and public and other charges of any character (including penalties and interest) assessed against, or which could become a lien against, the Property ("Assessments") ten (10) days prior to the date any fine, penalty, interest or charge for nonpayment may be imposed. Unless Borrower is making deposits per Section 3.10, Borrower shall provide Lender with receipts evidencing such payments (except for income taxes, franchise taxes, ground rents, maintenance charges, and utility charges) within thirty (30) days after their due date.

(b) **Right to Contest.** So long as no Event of Default (defined below) is continuing, Borrower may, prior to delinquency and at its sole expense, contest any Assessment, but this shall not change or extend Borrower's obligation to pay the Assessment as required above unless (i) Borrower gives Lender

prior written notice of its intent to contest an Assessment; (ii) Borrower demonstrates to Lender's reasonable satisfaction that (1) the Property will not be sold to satisfy the Assessment prior to the final determination of the legal proceedings, (2) it has taken such actions as are required or permitted to accomplish a stay of any such sale, or (3) it has furnished a bond or surety (satisfactory to Lender in form and amount) sufficient to prevent a sale of the Property; (iii) at Lender's option, Borrower has deposited the full amount necessary to pay any unpaid portion of the Assessments with Lender; and (iv) such proceeding shall be permitted under any other instrument to which Borrower or the Property is subject (whether superior or inferior to this Instrument); provided, however, that the foregoing shall not apply to the contesting of any income taxes, franchise taxes, ground rents, maintenance charges, and utility charges.

(c) Documentary Stamps and Other Charges. Borrower shall pay all taxes, assessments, charges, expenses, costs and fees (including registration and recording fees and revenue, transfer, stamp, intangible, and any similar taxes)(collectively, the "Transaction Taxes") required in connection with the making and/or recording of the Documents. If Borrower fails to pay the Transaction Taxes after demand, Lender may (but is not obligated to) pay these and Borrower shall reimburse Lender on demand for any amount so paid with interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws.

(d) Changes in Law Regarding Taxation. If any law (i) deducts from the value of real property for the purpose of taxation any lien or encumbrance thereon, (ii) taxes mortgages or debts secured by mortgages for federal, state or local purposes or changes the manner of the collection of any such existing taxes, and/or (iii) imposes a tax, either directly or indirectly, on any of the Documents or the Obligations, Borrower shall, if permitted by law, pay such tax within the statutory period or within twenty (20) days after demand by Lender, whichever is less; provided, however, that if, in the opinion of Lender, Borrower is not permitted by law to pay such taxes, Lender shall have the option to declare the Obligations immediately due and payable (without any Prepayment Premium) upon sixty (60) days' notice to Borrower.

(e) No Credits on Account of the Obligations. Borrower will not claim or be entitled to any credit(s) on account of the Obligations for any part of the Assessments and no deduction shall be made or claimed from the taxable value of the Property for real estate tax purposes by reason of the Documents or the Obligations. If such claim, credit or deduction is required by law, Lender shall have the option to declare the Obligations immediately due and payable (without any Prepayment Premium) upon sixty (60) days' notice to Borrower.

***Section 3.04 Defense of Title, Litigation, and Rights under Documents.*** Borrower shall forever warrant, defend and preserve Borrower's title to the Property, the validity, enforceability and priority of this Instrument and the lien or security interest created thereby, and any rights of Lender under the Documents against the claims of all persons, and shall promptly notify Lender of any such claims. Lender (whether or not named as a party to such proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may deem necessary or proper for the defense of any such proceeding or the protection of the lien, security interest, validity, enforceability, or priority of this Instrument, title to the Property, or any rights of Lender under the Documents, including the employment of counsel, the prosecution and/or defense of litigation, the compromise, release, or discharge of such adverse claims, the purchase of any tax title, the removal of any such liens and security interests, and any other actions Lender deems necessary to protect its interests. Borrower authorizes Lender to take any actions required to be taken by Borrower, or permitted to be taken by Lender, in the Documents in the name and on behalf of Borrower. Borrower shall reimburse Lender on demand for all expenses (including attorneys' fees) incurred by it in connection with the foregoing and Lender's exercise of its rights under the

Documents. All such expenses of Lender, until reimbursed by Borrower, shall be part of the Obligations, bear interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, and shall be secured by this Instrument.

**Section 3.05 Compliance with Laws and Operation and Maintenance of Property.**

(a) Repair and Maintenance. Borrower will operate and maintain the Property in good order, repair, and operating condition. Borrower will promptly make all necessary repairs, replacements, additions, and improvements necessary to ensure that the Property shall not in any way be diminished or impaired. Borrower will not cause or allow any of the Property to be misused, wasted, or to deteriorate and Borrower will not abandon the Property. No new building, structure, or other improvement shall be constructed on the Land nor shall any material part of the Improvements be removed, demolished, or structurally or materially altered, without Lender's prior written consent. Notwithstanding the foregoing, provided (i) the "Borrower" is Principal Life Insurance Company, and (ii) Borrower complies with all laws and all other provisions of the Documents, Borrower may, without the prior consent of Lender (but at Borrower's sole cost and expense), construct additional Improvements or make alterations to the Improvements, provided such additional Improvements or alterations do not, in the aggregate, cost more than \$1,000,000 in any calendar year.

(b) Replacement of Property. Borrower will keep the Property fully equipped and will replace all worn out or obsolete Property with new, comparable fixtures or Property. Borrower will not, without Lender's prior written consent, remove any Property covered by this Instrument unless the same is replaced by Borrower with a new, comparable article (i) owned by Borrower free and clear of any lien or security interest (other than the Permitted Encumbrances and those created by this Instrument) or (ii) leased by Borrower (A) with Lender's prior written consent or (B) if the replaced Property was leased at the time of execution of this Instrument.

(c) Compliance with Laws. Borrower shall comply with and shall cause the Property to be maintained, used, and operated in compliance with all (i) present and future laws, Environmental Laws (defined below), ordinances, regulations, rules, orders and requirements (including zoning and building codes) of any governmental or quasi-governmental authority or agency applicable to Borrower or the Property (collectively, the "Laws"); (ii) orders, rules, and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization, or other body exercising similar functions; (iii) duties or obligations of any kind imposed under any Permitted Encumbrance or by law, covenant, condition, agreement, or easement, public or private; and (iv) policies of insurance at any time in force with respect to the Property. If proceedings are initiated or Borrower receives notice that Borrower or the Property is not in compliance with any of the foregoing, Borrower will promptly send Lender notice and a copy of the proceeding or violation notice. Without limiting Lender's rights and remedies under Article VI or otherwise, if Borrower or the Property is not in compliance with all Laws, Lender may impose additional requirements upon Borrower including monetary reserves or financial equivalents.

(d) Zoning and Title Matters. Borrower shall not, without Lender's prior written consent, (i) initiate or support any zoning reclassification of the Property or variance under existing zoning ordinances; (ii) modify or supplement any of the Permitted Encumbrances; (iii) impose any restrictive covenants or encumbrances upon the Property; (iv) execute or file any subdivision plat affecting the Property; (v) consent to the annexation of the Property to any municipality; (vi) permit the Property to be used by the public or any person in a way that might make a claim of adverse possession or any implied dedication or easement possible; (vii) cause or permit the Property to become a non-conforming use under zoning

ordinances or any present or future non-conforming use of the Property to be discontinued; or (viii) fail to comply with the terms of the Permitted Encumbrances.

### ***Section 3.06 Insurance***

(a) Property and Time Element Insurance. Borrower shall keep the Property insured for the benefit of Borrower and Lender (with Lender named as mortgagee) by (i) an "all risk" property insurance policy with an agreed amount endorsement for full replacement cost (defined below) without any coinsurance provisions or penalties, or the broadest form of coverage available, in an amount sufficient to prevent Lender from ever becoming a coinsurer under the policy or Laws, and with a deductible not to exceed Ten Thousand Dollars (\$10,000.00); (ii) a policy or endorsement providing business income insurance (including business interruption insurance, extra expense insurance and rent insurance) on an actual loss sustained basis in an amount equal to at least one (1) year's total income from the Property including all rents plus all other pro forma annual income such as percentage rent and tenant reimbursements of fixed and operating expenses; (iii) a policy or endorsement insuring against damage by flood if the Property is located in a Special Flood Hazard Area identified by the Federal Emergency Management Agency or any successor or related government agency as a 100 year flood plain currently classified as Flood Insurance Rate Map Zones "A", "AO", "AH", "A1-A30", "AE", "A99", "V", "V1-V30", and "VE", under which flood insurance has been made available under the Flood Acts, in an amount equal to the lesser of (1) the original amount of the Note or (2) the maximum limit of coverage available for the Property under the Flood Acts; (iv) a policy or endorsement covering against damage or loss from (A) sprinkler system leakage and (B) boilers, boiler tanks, HVAC systems, heating and air-conditioning equipment, pressure vessels, auxiliary piping, and similar apparatus, in the amount reasonably required by Lender; (v) during the period of any construction, repair, restoration, or replacement of the Property, a standard builder's risk policy with extended coverage in an amount at least equal to the full replacement cost of such Property, and worker's compensation, in statutory amounts; and (vi) a policy or endorsement covering against damage or loss by earthquake and other natural phenomenon in the amounts reasonably required by Lender. "Full replacement cost" shall mean the one hundred percent (100%) replacement cost of the Property, without allowance for depreciation and exclusive of the cost of excavations, foundations, footings, and value of land, and shall be subject to verification by Lender. Full replacement cost will be determined, at Borrower's expense, periodically (but at least every two (2) years) by the insurance company or an appraiser, engineer, architect, or contractor approved by said company and Lender.

(b) Liability and Other Insurance. Borrower shall maintain commercial general liability insurance with per occurrence limits of \$1,000,000, a products/completed operations limit of \$2,000,000, and a general aggregate limit of \$2,000,000, with an excess/umbrella liability policy of not less than \$10,000,000 per occurrence and annual aggregate covering Borrower, with Lender named as an additional insured, against claims for bodily injury or death or property damage occurring in, upon, or about the Property or any street, drive, sidewalk, curb, or passageway adjacent thereto. The insurance policies shall also include operations and blanket contractual liability coverage which insures contractual liability under the indemnifications set forth in Section 8.02 below (but such coverage or the amount thereof shall in no way limit such indemnifications). Upon request, Borrower shall also carry additional insurance or additional amounts of insurance covering Borrower or the Property as Lender shall reasonably require including insurance against war risks.

(c) Form of Policy. All insurance required under this Section shall be fully paid for, non-assessable, and the policies shall contain such provisions, endorsements, and expiration dates as Lender shall reasonably require. The policies shall be issued by insurance companies authorized to do business in the Property State, approved by Lender, and must have and maintain a current financial strength rating of



“AA” (or higher) from Standard & Poor’s or equivalent (or if a rating by Standard & Poor’s is no longer available, a similar rating from a similar or successor service). In addition, all policies shall (i) include a standard mortgagee clause, without contribution, in the name of Lender, (ii) provide that they shall not be canceled, amended, or materially altered (including reduction in the scope or limits of coverage) without at least thirty (30) days’ prior written notice to Lender except in the event of cancellation for non-payment of premium, in which case only ten (10) days’ prior written notice will be given to Lender, and (iii) include a waiver of subrogation clause substantially equivalent to the following: “The Company may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefore is made by the Company, but the Company shall not acquire any rights of recovery which the Insured has expressly waived prior to loss, nor shall such waiver affect the Insured’s rights under this policy”.

(d) Original Policies. Borrower shall deliver to Lender (i) original or certified copies of all policies (and renewals) required under this Section and (ii) receipts evidencing payment of all premiums on such policies at least thirty (30) days prior to their expiration. If original and renewal policies are unavailable or if coverage is under a blanket policy, Borrower shall deliver duplicate originals, or, if unavailable, original ACORD 27 and ACORD 25-S certificates (or equivalent certificates) evidencing that such policies are in full force and effect together with certified copies of the original policies.

(e) General Provisions. Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section unless endorsed in favor of Lender as per this Section and approved by Lender in all respects. In the event of foreclosure of this Instrument or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Obligations, all right, title, and interest of Borrower in and to all policies of insurance then in force regarding the Property and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Property. No approval by Lender of any insurer shall be construed to be a representation, certification, or warranty of its solvency. No approval by Lender as to the amount, type, or form of any insurance shall be construed to be a representation, certification, or warranty of its sufficiency. Borrower shall comply with all insurance requirements and shall not cause or permit any condition to exist which would be prohibited by any insurance requirement or would invalidate the insurance coverage on the Property.

(f) Waiver of Subrogation. Borrower and Lender each waive and release the other from any and all liability or responsibility to the other or anyone claiming by, through or under them by way of subrogation or otherwise for any liability or loss resulting from or relating to any damage to the Property caused by fire or any other casualty, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible.

### ***Section 3.07 Damage and Destruction of Property***

(a) Borrower’s Obligations. If any damage to, loss, or destruction of the Property occurs (any “**Damage**”), (i) Borrower shall promptly notify Lender and take all necessary steps to preserve any undamaged part of the Property and (ii) if the insurance proceeds are made available for Restoration (defined below) (but regardless of whether any proceeds are sufficient for Restoration), Borrower shall promptly commence and diligently pursue to completion the restoration, replacement, and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Damage or a Taking (defined below) in accordance with plans and specifications approved by Lender (“**Restoration**”). Borrower shall comply with other reasonable requirements established by Lender to preserve the security under this Instrument.

(b) Lender's Rights. If any Damage occurs and some or all of it is covered by insurance, then (i) Lender may, but is not obligated to, make proof of loss if not made promptly by Borrower and Lender is authorized and empowered by Borrower to settle, adjust, or compromise any claims for the Damage; (ii) each insurance company concerned is authorized and directed to make payment directly to Lender for the Damage; and (iii) Lender may apply the insurance proceeds in any order it determines (1) to reimburse Lender for all Costs (defined below) related to collection of the proceeds and (2) subject to Section 3.07(c) and at Lender's option, to (A) payment (without any Prepayment Premium) of all or part of the Obligations, whether or not then due and payable, in the order determined by Lender (provided that if any Obligations remain outstanding after this payment, the unpaid Obligations shall continue in full force and effect and Borrower shall not be excused in the payment thereof); (B) the cure of any default under the Documents; or (C) the Restoration. Any insurance proceeds held by Lender shall be held without the payment of interest thereon. If Borrower receives any insurance proceeds for the Damage, Borrower shall promptly deliver the proceeds to Lender. Notwithstanding anything in this Instrument or at law or in equity to the contrary, none of the insurance proceeds paid to Lender shall be deemed trust funds and Lender may dispose of these proceeds as provided in this Section. Borrower expressly assumes all risk of loss from any Damage, whether or not insurable or insured against.

(c) Application of Proceeds to Restoration. Lender shall make the Net Proceeds (defined below) available to Borrower for Restoration if: (i) there shall then be no Event of Default; (ii) Lender shall be satisfied that (A) Restoration can and will be completed within one (1) year after the Damage occurs and at least one (1) year prior to the maturity of the Note and (B) Leases which are terminated or terminable as a result of the Damage cover an aggregate of less than ten percent (10%) of the total rentable square footage contained in the Property at the closing of the Loan or such Tenants agree in writing to continue their Leases; (iii) Borrower shall have entered into a general construction contract acceptable in all respects to Lender for Restoration, which contract must include provision for retainage of not less than ten percent (10%) until final completion of the Restoration; and (iv) in Lender's reasonable judgment, after Restoration has been completed the net cash flow of the Property will be sufficient to cover all costs and operating expenses of the Property, including payments due and reserves required under the Documents. Notwithstanding any provision of this Instrument to the contrary, Lender shall not be obligated to make any portion of the Net Proceeds available for Restoration unless, at the time of the disbursement request, Lender has determined in its reasonable discretion that (y) Restoration can be completed at a cost which does not exceed the aggregate of the remaining Net Proceeds and any funds deposited with Lender by Borrower ("**Additional Funds**") and (z) the aggregate of any loss of rental income insurance proceeds which the carrier has acknowledged to be payable ("**Rent Loss Proceeds**") and any funds deposited with Lender by Borrower are sufficient to cover all costs and operating expenses of the Property, including payments due and reserves required under the Documents.

(d) Disbursement of Proceeds. If Lender elects or is required to make insurance proceeds available for Restoration, Lender shall, through a disbursement procedure established by Lender, periodically make available to Borrower in installments the net amount of all insurance proceeds received by Lender after deduction of all reasonable costs and expenses incurred by Lender in connection with the collection and disbursement of such proceeds ("**Net Proceeds**") and, if any, the Additional Funds. The amounts periodically disbursed to Borrower shall be based upon the amounts currently due under the construction contract for Restoration and Lender's receipt of (i) appropriate lien waivers, (ii) a certification of the percentage of Restoration completed by an architect or engineer acceptable to Lender, and (iii) title insurance protection against materialmen's and mechanic's liens. At Lender's election, the disbursement of funds may be handled by a disbursing agent selected by Lender, and such agent's reasonable fees and expenses shall be paid by Borrower. The Net Proceeds, Rent Loss Proceeds, and any Additional Funds shall constitute additional security for the Loan and Borrower shall execute, deliver, file and/or record, at its

expense, such instruments as Lender requires to grant to Lender a perfected, first-priority security interest in these funds. If the Net Proceeds are made available for Restoration and (x) Borrower refuses or fails to complete the Restoration, (y) an Event of Default occurs, or (z) the Net Proceeds or Additional Funds are not applied to Restoration, then any undisbursed portion may, at Lender's option, be applied to the Obligations in any order of priority, and any application to principal shall be deemed a voluntary prepayment subject to the Prepayment Premium.

(e) Damage Less Than \$500,000. Anything to the contrary herein notwithstanding, in the event the value of the Restoration is less than \$500,000, and the "**Borrower**" is Principal Life Insurance Company, and provided the requirements set forth in subsection 3.7(c)(i) and (ii) above are satisfied, all insurance proceeds relating to such Restoration shall be paid directly to Borrower. Any such insurance proceeds shall be held in trust by Borrower and applied to the costs of Restoration, which Borrower shall promptly commence and diligently pursue to completion.

### **Section 3.08** Condemnation

(a) Borrower's Obligations. Borrower will promptly notify Lender of any threatened or instituted proceedings for the condemnation or taking by eminent domain of the Property including any change in any street (whether as to grade, access, or otherwise) a "**Taking**"). Borrower shall, at its expense, (i) diligently prosecute these proceedings, (ii) deliver to Lender copies of all papers served in connection therewith, and (iii) consult and cooperate with Lender in the handling of these proceedings. No settlement of these proceedings shall be made by Borrower without Lender's prior written consent not to be unreasonably withheld or delayed. Lender may participate in these proceedings (but shall not be obligated to do so) and Borrower will sign and deliver all instruments requested by Lender to permit this participation.

(b) Lender's Rights to Proceeds. All condemnation awards, judgments, decrees, or proceeds of sale in lieu of condemnation ("**Award**") are assigned and shall be paid to Lender. Borrower authorizes Lender to collect and receive them, to give receipts for them, to accept them in the amount received without question or appeal, and/or to appeal any judgment, decree, or award. Borrower will sign and deliver all instruments requested by Lender to permit these actions.

(c) Application of Award. Lender shall have the right to apply any Award, subject to Section 3.08(d), as per Section 3.07 for insurance proceeds held by Lender, including the waiver of Prepayment Premium. If Borrower receives any Award, Borrower shall promptly deliver them to Lender. Notwithstanding anything in this Instrument or at law or in equity to the contrary, none of the Award paid to Lender shall be deemed trust funds and Lender may dispose of these proceeds as provided in this Section.

(d) Application of Award to Restoration. With respect to any portion of the Award that is not for loss of value or property, Lender shall permit the application of the Award to Restoration in accordance with the provisions of Section 3.07 if: (i) no more than (A) twenty percent (20%) of the gross area of the Improvements or (B) ten percent (10%) of the parking spaces is affected by the Taking, (ii) the amount of the loss does not exceed twenty percent (20%) of the original amount of the Note; (iii) the Taking does not affect access to the Property from any public right-of-way; (iv) there is no Event of Default at the time of application; (v) after Restoration, the Property and its use will be in compliance with all Laws; (vi) in Lender's reasonable judgment, Restoration is practical and can be completed within one (1) year after the Taking and at least one (1) year prior to the maturity of the Note; and (vii) the Tenants listed in Exhibit "**D**" ("**Major Tenants**") agree in writing to continue their Leases without abatement of rent. Any portion of the Award that is (i) for loss of value or property or (ii) in excess of the cost of any Restoration permitted above, may, in Lender's sole discretion, be applied against the Obligations or paid to Borrower.



(e) Effect on the Obligations. Notwithstanding any Taking, Borrower shall continue to pay and perform the Obligations as provided in the Documents. Any reduction in the Obligations due to application of the Award shall take effect only upon Lender's actual receipt and application of the Award to the Obligations. If the Property shall have been foreclosed, sold pursuant to any power of sale granted hereunder, or transferred by deed-in-lieu of foreclosure prior to Lender's actual receipt of the Award, Lender may apply the Award received to the extent of any deficiency upon such sale and Costs incurred by Lender in connection with such sale.

**Section 3.09 Liens and Liabilities.** Borrower shall pay, bond, or otherwise discharge all claims and demands of mechanics, materialman, laborers, and others which, if unpaid, might result in a lien or encumbrance on the Property or the Rents (collectively, "**Liens**") and Borrower shall, at its sole expense, do everything necessary to preserve the lien and security interest created by this Instrument and its priority. Nothing in the Documents shall be deemed or construed as constituting the consent or request by Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration, or repair of the Property. Borrower further agrees that Lender does not stand in any fiduciary relationship to Borrower. Any contributions made, directly or indirectly, to Borrower by or on behalf of any of its partners, members, principals or any party related to such parties shall be treated as equity and shall be subordinate and inferior to the rights of Lender under the Documents.

**Section 3.10 Tax and Insurance Deposits.** At Lender's option following the occurrence of an Event of Default, Borrower shall make monthly deposits ("**Deposits**") with Lender equal to one-twelfth (1/12) of the annual Assessments (except for income taxes, franchise taxes, ground rents, maintenance charges and utility charges) and the premiums for insurance required under Section 3.06 (the "**Insurance Premiums**") together with amounts sufficient to pay these items thirty (30) days before they are due (collectively, the "**Impositions**"). Lender shall estimate the amount of the Deposits until ascertainable. At that time, Borrower shall promptly deposit any deficiency. Borrower shall promptly notify Lender of any changes to the amounts, schedules and instructions for payment of the Impositions. Borrower authorizes Lender or its agent to obtain the bills for Assessments directly from the appropriate tax or governmental authority. All Deposits are pledged to Lender and shall constitute additional security for the Obligations. The Deposits shall be held by Lender without interest (except to the extent required under Laws) and may be commingled with other funds. If (i) there is no Event of Default at the time of payment, (ii) Borrower has delivered bills or invoices to Lender for the Impositions in sufficient time to pay them when due, (iii) the Deposits are sufficient to pay the Impositions or Borrower has deposited the necessary additional amount, then Lender shall pay the Impositions prior to their due date. Any Deposits remaining after payment of the Impositions shall, at Lender's option, be credited against the Deposits required for the following year or paid to Borrower. If an Event of Default occurs, the Deposits may, at Lender's option, be applied to the Obligations in any order of priority. Any application to principal shall be deemed a voluntary prepayment subject to the Prepayment Premium. Borrower shall not claim any credit against the principal and interest due under the Note for the Deposits. Upon an assignment or other transfer of this Instrument, Lender may pay over the Deposits in its possession to the assignee or transferee and then it shall be completely released from all liability with respect to the Deposits. Borrower shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of the Deposits to a new assignee or transferee. Subject to Article V, a transfer of title to the Land shall automatically transfer to the new owner the beneficial interest in the Deposits. Upon full payment and satisfaction of this Instrument or, at Lender's option, at any prior time, the balance of the Deposits in Lender's possession shall be paid over to the record owner of the Land and no other party shall have any right or claim to the Deposits. Lender may transfer all its duties under this Section to such servicer or financial institution as Lender may periodically designate and Borrower agrees to make the Deposits to such servicer or institution.

**Section 3.11 ERISA.** Borrower represents and warrants to Lender that (i) Borrower is not an “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), or a “governmental plan” within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; (iii) the assets of the Borrower do not constitute “plan assets” of one or more plans within the meaning of 29 C.F.R. Section 2510.3-101; and (iv) one or more of the following circumstances is true: (1) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. Section 2510.3-101(b)(2); (2) Less than twenty-five percent (25%) of all equity interests in Borrower are held by “benefit plan investors” within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or (3) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. Section 2510.3-101(c) or (e). Borrower shall deliver to Lender such certifications and/or other evidence periodically requested by Lender, in its sole discretion, to verify these representations and warranties. Failure to deliver these certifications or evidence, breach of these representations and warranties, or consummation of any transaction which would cause this Instrument or any exercise of Lender’s rights under this Instrument to (i) constitute a non-exempt prohibited transaction under ERISA or (ii) violate ERISA or any state statute regulating governmental plans (collectively, a “Violation”), shall be an Event of Default. Notwithstanding anything in the Documents to the contrary, no sale, assignment, or transfer of any direct or indirect right, title, or interest in Borrower or the Property (including creation of a junior lien, encumbrance or leasehold interest) shall be permitted which would, in Lender’s opinion, negate Borrower’s representations in this Section or cause a Violation. At least fifteen (15) days before consummation of any of the foregoing, Borrower shall obtain from the proposed transferee or lienholder (i) a certification to Lender that the representations and warranties of this Section will be true after consummation and (ii) an agreement to comply with this Section.

**Section 3.12 Environmental Representations, Warranties, and Covenants**

(a) Environmental Representations and Warranties. Borrower represents and warrants, to the best of Borrower’s knowledge (after due inquiry and investigation) and additionally based upon the environmental site assessment report of the Property (the “**Environmental Report**”), that except as fully disclosed in the Environmental Report delivered to and approved by Lender: (i) there are no Hazardous Materials (defined below) or underground storage tanks affecting the Property (“**affecting the Property**” shall mean “in, on, under, stored, used or migrating to or from the Property”) except for (A) routine office cleaning, janitorial and other materials and supplies necessary to operate the Property for its current use and (B) Hazardous Materials that are (1) in compliance with Environmental Laws (defined below), (2) have all required permits, and (3) are in only the amounts necessary to operate the Property; (ii) there are no past, present or threatened Releases (defined below) of Hazardous Materials in violation of any Environmental Law affecting the Property; (iii) there is no past or present non-compliance with Environmental Laws or with permits issued pursuant thereto; (iv) Borrower does not know of, and has not received, any written or oral notice or communication from any person relating to Hazardous Materials affecting the Property; and (v) Borrower has provided to Lender, in writing, all information relating to environmental conditions affecting the Property known to Borrower or contained in Borrower’s files. “**Environmental Law**” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, that apply to Borrower or the Property and relate to Hazardous Materials including the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act. “**Hazardous Materials**” shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; microbial matter, infectious diseases, asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the

Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste", "toxic substance", "toxic pollutant", "contaminant", or "pollutant" within the meaning of any Environmental Law. "Release" of any Hazardous Materials includes any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, pumping, pouring, escaping, dumping, disposing or other movement of Hazardous Materials.

(b) Environmental Covenants. Borrower covenants and agrees that: (i) all use and operation of the Property shall be in compliance with all Environmental Laws and required permits; (ii) there shall be no Releases of Hazardous Materials affecting the Property; (iii) there shall be no Hazardous Materials affecting the Property except (A) routine office, cleaning and janitorial supplies, (B) in compliance with all Environmental Laws, (C) with all required permits, and (D) (1) in only the amounts necessary to operate the Property or (2) fully disclosed to and approved by Lender in writing; (iv) Borrower shall keep the Property free and clear of all liens and encumbrances imposed by any Environmental Laws due to any act or omission by Borrower or any person (the "Environmental Liens"); (v) Borrower shall, at its sole expense, fully and expeditiously cooperate in all activities in Section 3.12(c) including providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, at its sole expense, (A) perform any environmental site assessment or other investigation of environmental conditions at the Property upon Lender's request based on Lender's reasonable belief that the Property is not in compliance with all Environmental Laws, (B) share with Lender the results and reports and Lender and the Indemnified Parties (defined below) shall be entitled to rely on such results and reports, and (C) complete any remediation of Hazardous Materials affecting the Property or other actions required by any Environmental Laws; (vii) Borrower shall not allow any Tenant or other user of the Property to violate any Environmental Law; (viii) Borrower shall immediately notify Lender in writing after it becomes aware of (A) the presence, Release, or threatened Release of Hazardous Materials affecting the Property, (B) any non-compliance of the Property with any Environmental Laws, (C) any actual or potential Environmental Lien, (D) any required or proposed remediation of environmental conditions relating to the Property, or (E) any written or oral communication or notice from any person relating to Hazardous Materials, and (ix) if an Asbestos Operation and Maintenance Plan and any other Operation and Maintenance Plan (collectively, the "O&M Plan") is in effect (or required to be implemented by Lender) at the time of the closing of the Loan, then Borrower shall, at its sole expense, implement and continue the O&M Plan (with any modifications required to comply with applicable Laws) until payment and full satisfaction of the Obligations. Any failure of Borrower to perform its obligations under this Section 3.12 shall constitute bad faith waste of the Property.

(c) Lender's Rights. Lender and any person designated by Lender may enter the Property to assess the environmental condition of the Property and its use including (i) conducting any environmental assessment or audit (the scope of which shall be determined by Lender) and (ii) taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing at all reasonable times when (A) a default has occurred under the Documents, (B) Lender reasonably believes that a Release has occurred or the Property is not in compliance with all Environmental Laws, or (C) the Loan is being considered for sale. Borrower shall cooperate with and provide access to Lender and such person.

**Section 3.13 Electronic Payments**. Unless directed otherwise in writing by Lender, all payments due under the Documents shall be made by electronic funds transfer debit entries to Borrower's account at an Automated Clearing House member bank satisfactory to Lender or by similar electronic transfer process selected by Lender. Each payment due under the Documents shall be initiated by Lender through the Automated Clearing House network (or similar electronic process) for settlement on the Due Date (as defined in the Note) for the payment. Borrower shall, at Borrower's sole cost and expense, direct its bank in writing to permit such electronic fund transfer debit entries (or similar electronic transfer) to be made by

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Lender. Prior to each payment Due Date under the Documents, Borrower shall deposit and/or maintain sufficient funds in Borrower's account to cover each debit entry. Any charges or costs, if any, by Borrower's bank for the foregoing shall be paid by Borrower.

**Section 3.14 Inspection.** Borrower shall allow Lender and any person designated by Lender to enter upon the Property and conduct tests or inspect the Property at all reasonable times. Borrower shall assist Lender and such person in effecting said inspection.

### **Section 3.15 Records, Reports, and Audits**

(a) **Records and Reports.** Borrower shall maintain complete and accurate books and records with respect to all operations of or transactions involving the Property. Annually, Borrower shall furnish Lender financial statements for the most current fiscal year (including a schedule of all related Obligations and contingent liabilities) for (i) Borrower, (ii) any general partner(s) of Borrower and any general partners of such partners, (iii) any guarantors or sureties of the Note, and (iv) any Major Tenants, to the extent available through commercially reasonable efforts by Borrower. Annually (or quarterly upon Lender's request), Borrower shall furnish Lender (i) operating statements showing cash flow and capital expenditures for the Property including income and expenses (before and after Obligations service), major capital improvements, a schedule showing tenant sales and percentage rent for retail properties where sales are reported, and the average daily rate and average daily occupancy for hotel properties; (ii) copies of paid tax receipts for the Property; (iii) a certified rent roll including security deposits held, the expiration of the terms of the Leases, and identification and explanation of any Tenants in default; (iv) a budget showing projected income and expenses (before and after Obligations service) for the next twelve (12) month budget period; and (v) upon Lender's request, (A) a schedule showing the Borrower's tax basis in the Property, (B) the distribution of economic interests in the Property, (C) copies of any other loan documents affecting the Property; and (D) any appraisals of the Property performed during the previous year.

(b) **Delivery of Reports.** All of the reports, statements, and items required under this Section shall be (i) certified as being true, correct, and accurate by an authorized person, partner, or officer of the delivering party or, at the deliverer's option, audited by a Certified Public Accountant; (ii) prepared in accordance with GAAP and satisfactory to Lender in form and substance; and (iii) delivered within (A) one hundred twenty (120) days after the end of Borrower's fiscal year for annual reports and (B) fifteen (15) days after the end of each calendar quarter for quarterly reports. If any one report, statement, or item is not received by Lender on its due date, a late fee of Five Hundred and No/100 Dollars (\$500.00) per month shall be due and payable by Borrower. If any one report, statement, or item is not received within thirty (30) days of its due date, Lender may immediately declare an Event of Default under the Documents. Borrower shall (i) provide Lender with such additional financial, management, or other information regarding Borrower, any general partner of Borrower, or the Property, as Lender may reasonably request and (ii) upon Lender's request, deliver all items required by Section 3.15 in an electronic format (i.e. on computer disks) or by electronic transmission acceptable to Lender (provided Borrower shall not be required to spend more than \$2,000 to comply with such request).

(c) **Inspection of Records.** Borrower shall allow Lender or any person designated by Lender to examine, audit, and make copies of all such books and records and all supporting data at the place where these items are located at all reasonable times after reasonable advance notice; provided that no notice shall be required after any default under the Documents. Borrower shall assist Lender in effecting such examination. Upon five (5) days' prior notice, Lender may inspect and make copies of Borrower's or any general partner of Borrower's income tax returns with respect to the Property for the purpose of verifying



any items referenced in this Section (provided that the provisions of this last sentence of Section 3.15(c) shall not apply so long as the "Borrower" is Principal Life Insurance Company).

**Section 3.16 Borrower's Certificates.** Within ten (10) days after Lender's request, Borrower shall furnish a written certification to Lender and any Investors (defined below) as to (a) the amount of the Obligations outstanding; (b) the interest rate, terms of payment, and maturity date of the Note; (c) the date to which payments have been paid under the Note; (d) whether any offsets or defenses exist against the Obligations and a detailed description of any listed; (e) whether all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications); (f) the date to which the Rents have been paid; (g) whether, to the best knowledge of Borrower, any defaults exist under the Leases and a detailed description of any listed; (h) the security deposit held by Borrower under each Lease and that such amount is the amount required under such Lease; (i) whether there are any defaults (or events which with the passage of time and/or notice would constitute a default) under the Documents and a detailed description of any listed; (j) whether the Documents are in full force and effect; and (k) any other matters reasonably requested by Lender related to the Leases, the Obligations, the Property, or the Documents. For all non-residential properties and promptly upon Lender's request, Borrower shall use its best efforts to deliver a written certification to Lender and Investors from Tenants specified by Lender that: (a) their Leases are in full force and effect; (b) there are no defaults (or events which with the passage of time and/or notice would constitute a default) under their Leases or a detailed description of any listed; (c) none of the Rents have been paid more than one month in advance; (d) there are no offsets or defenses against the Rents or a detailed description of any listed; and (e) any other matters reasonably requested by Lender related to the Leases; provided, however, that Borrower shall not have to pay money to a Tenant to obtain such certification, but it will deliver a landlord's certification for any certification it cannot obtain.

**Section 3.17 Full Performance Required; Survival of Warranties.** All representations and warranties of Borrower in the Loan application or made in connection with the Loan shall survive the execution and delivery of the Documents and shall remain continuing warranties, and representations of Borrower.

**Section 3.18 Additional Security.** No other security now existing or taken later to secure the Obligations shall be affected by the execution of the Documents and all additional security shall be held as cumulative. The taking of additional security, execution of partial releases, or extension of the time of payment obligations of Borrower shall not diminish the effect and lien of this Instrument and shall not affect the liability or obligations of any maker or guarantor. Neither the acceptance of the Documents nor their enforcement shall prejudice or affect Lender's right to realize upon or enforce any other security now or later held by Lender. Lender may enforce the Documents or any other security in such order and manner as it/either of them may determine in its/their discretion.

**Section 3.19 Further Acts.** Borrower shall take all necessary actions to (i) keep valid and effective the lien and rights of Lender under the Documents and (ii) protect the lawful owner of the Documents. Promptly upon request by Lender, and at Borrower's expense, Borrower shall execute additional instruments and take such actions as Lender reasonably believes are necessary or desirable to (a) maintain or grant Lender a first-priority, perfected lien on the Property, (b) grant to Lender, to the fullest extent permitted by Laws, the right to foreclose on, or transfer title to, the Property non-judicially, (c) correct any error or omission in the Documents, and (d) effect the intent of the Documents, including filing/recording the Documents, additional mortgages, financing statements, and other instruments.

## ARTICLE IV - ADDITIONAL ADVANCES; EXPENSES; SUBROGATION

**Section 4.01 Expenses and Advances.** Borrower shall pay all reasonable appraisal, recording, filing, registration, brokerage, abstract, title insurance (including premiums), title searches and examinations, surveys and similar data and assurances with respect to title, U.C.C. search, escrow, attorneys' (both in-house staff and retained attorneys), engineers', environmental engineers', environmental testing, and architects' fees, costs (including travel), expenses, and disbursements incurred by Borrower or Lender in connection with the granting, closing, servicing, and enforcement of (a) the Loan and Documents or (b) attributable to Borrower as owner of the Property. The term "Costs" shall mean any of the foregoing incurred in connection with (a) any default by Borrower under the Documents, (b) the servicing of the Loan, or (c) the exercise, enforcement, compromise, defense, litigation, or settlement of any of Lender's rights or remedies under the Documents or relating to the Loan or the Obligations. If Borrower fails to pay any amounts or perform any actions required under the Documents, Lender may (but shall not be obligated to) advance sums to pay such amounts or perform such actions. Borrower grants Lender the right to enter upon and take possession of the Property to prevent or remedy any such failure and the right to take such actions in Borrower's name. No advance or performance shall be deemed to have cured a default by Borrower. All (a) sums advanced by or payable to Lender per this Section or under applicable Laws, (b) except as expressly provided in the Documents, payments due under the Documents which are not paid in full when due, and (c) all Costs, shall: (i) be deemed demand obligations, (ii) bear interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, until paid if not paid on demand, (iii) be part of, together with such interest, the Obligations, and (iv) be secured by the Documents. Lender, upon making any such advance, shall also be subrogated to rights of the person receiving such advance.

**Section 4.02 Subrogation.** If any proceeds of the Note were used to extinguish, extend or renew any indebtedness on the Property, then, to the extent of the funds so used, (a) Lender shall be subrogated to all rights, claims, liens, titles and interests existing on the Property held by the holder of such indebtedness and (b) these rights, claims, liens, titles and interests are not waived but rather shall (i) continue in full force and effect in favor of Lender and (ii) are merged with the lien and security interest created by the Documents as cumulative security for the payment and performance of the Obligations.

## ARTICLE V - SALE, TRANSFER, OR ENCUMBRANCE OF THE PROPERTY

**Section 5.01 Due-on-Sale or Encumbrance.** It shall be an Event of Default and, at the sole option of Lender, Lender may accelerate the Obligations and the entire Obligations (including any Prepayment Premium) shall become immediately due and payable, if, without Lender's prior written consent (which may be withheld for any or no reason, including the possibility of an ERISA violation or the proposed transferee's failure to agree in writing to Lender increasing the interest payable on the Obligations to any rate, changing any other terms [including maturity] of the Obligations or Documents, or requiring the payment of a transfer fee) any of the following shall occur:

(a) Borrower shall sell, convey, assign, transfer, dispose of or be divested of its title to, convey security title to the Property, mortgage, encumber or cause to be encumbered (except for the imposition of mechanics' or materialmen's liens) the Property or any interest therein, in any manner or way, whether voluntary or involuntary; or

(b) in the event of any merger, consolidation, sale, transfer, assignment, or dissolution involving all or substantially all of the assets of Borrower or any managing general partner or managing member of the original Borrower; or

(c) in the event of the assignment, transfer, pledge, voluntary or involuntary sale, or encumbrance (or any of the foregoing at one time or over any period of time) of:

(i) ten percent (10%) or more of (1) the ownership interest of Borrower, regardless of the type or form of entity of Borrower, (2) the voting stock or ownership interest of any corporation or limited liability company which is, respectively, general partner or managing member of Borrower or any corporation or limited liability company directly or indirectly owning ten percent (10%) or more of any such corporation or limited liability company, (3) the ownership interests of any owner of ten percent (10%) or more of the beneficial interests of Borrower if Borrower is a trust; or

(ii) any general partnership interest in (1) Borrower, (2) a partnership which is in Borrower's chain of ownership and which is derivatively liable for the obligations of Borrower, or (3) any general partner who has the right to participate directly or indirectly in the control of the management or operations of Borrower; or

(d) in the event of the conversion of any general partnership interest in Borrower to a limited partnership interest; or

(e) in the event of any change, removal, or resignation of any general partner of Borrower; or

(f) in the event of any change, removal, addition or resignation of a managing member (or if no managing member, any member) if Borrower is a limited liability company.

The provisions set forth above shall not apply to transfers under any will or applicable law of descent. This provision does not prohibit the transfer of any existing limited partnership interest in (i) Borrower, (ii) any partner of Borrower, or (iii) any partner of a partner of Borrower.

**Section 5.02 One-Time Transfer Rights.** Notwithstanding anything to the contrary contained in Section 5.01, if no Event of Default or event which with the passage of time or the giving of notice or both would constitute an Event of Default under the Documents has occurred and is continuing, Lender agrees upon thirty (30) days' prior written request of Borrower to consent to one and only one transfer of the entire Property if all of the following conditions are satisfied:

(a) The proposed transferee of the Property is a person which, in the reasonable judgment of Lender, has financial capability and creditworthiness, reputation and experience in the ownership, operation, management and leasing of similar properties, equal to or greater than Borrower;

(b) At the time of transfer the Loan to Value Ratio (defined below) does not exceed fifty percent (50%);

(c) Borrower pays Lender a non-refundable servicing fee (as specified by Lender) at the time of the request and an additional fee the combined amount of which shall be equal to one-half percent (0.50%) of the outstanding principal balance of the Loan at the time of the transfer;

(d) At Lender's option, Lender's title policy is endorsed to verify the first priority of the Documents, at Borrower's expense or, if such endorsement is unavailable, Lender has received an abstractor's certificate, at Borrower's expense, which evidences that this Instrument remains a first and prior lien against the Property;



(e) The Debt Service Coverage Ratio (defined below) is at least 2.00 to 1.00 for the preceding twelve (12) month period and Lender receives satisfactory evidence that this Debt Service Coverage Ratio will be maintained for the next succeeding twelve (12) months;

(f) The transferee expressly assumes all obligations under the Documents and executes any documents reasonably required by Lender, and all of these documents are satisfactory in form and substance to Lender;

(g) Lender reasonably approves the form and content of all transfer documents and Lender is furnished with a certified copy of the recorded transfer documents;

(h) The transferee complies with and delivers the ERISA Certification and Environmental Indemnity Agreement, both of even date herewith; and

(i) Borrower or the transferee pays all reasonable fees, costs and expenses incurred by Lender in connection with the proposed transfer, including, without limitation, all legal (for both Lender's outside counsel and staff attorneys), accounting, title insurance, documentary stamps taxes, intangible taxes, mortgage taxes, recording fees and appraisal fees, whether or not the transfer is actually consummated.

**Section 5.03 Certain Definitions.** As used herein, the following terms shall be defined as set forth below: The term "**Loan to Value Ratio**" shall mean the ratio, as reasonably determined by Lender, of (i) the aggregate principal balance of all encumbrances against the Property to (ii) the fair market value of the Property. The Term "**Debt Service Coverage Ratio**" shall mean the ratio, as reasonably determined by Lender, calculated by dividing (i) net operating income ("**NOI**") by (ii) total annual debt service ("**TADS**"). NOI is the gross annual income realized from operation of the Property for the applicable twelve (12) month period after subtracting all necessary and ordinary operating expenses (both fixed and variable) for that twelve (12) month period (assuming for expense purposes only that the Property is 95% leased and occupied if actual leasing is less than 95%), including, without limitation, utilities, administrative, cleaning, landscaping, security, repairs, and maintenance, ground rent payments, management fees, reserves for replacements, real estate and other taxes, assessments and insurance, but excluding deduction for federal, state and other income taxes, debt service expenses, depreciation or amortization of capital expenditures, and other similar non-cash items. Gross income shall not be anticipated for any greater time period than that approved by generally accepted accounting principles and ordinary operating expenses shall not be prepaid. Documentation of NOI and expenses shall be certified by an officer of Borrower with detail satisfactory to Lender and shall be subject to the approval of Lender. TADS shall mean the aggregate debt service payments for any given calendar year on the Loan and on all other indebtedness secured, or to be secured, by any part of the Property.

## ARTICLE VI - DEFAULTS AND REMEDIES

**Section 6.01 Events of Default** The following shall be an "**Event of Default**":

(a) if Borrower fails to make any payment required under the Documents when due and such failure continues for five (5) days after written notice; *provided*, however, that if Lender gives one (1) notice of default within any twelve (12) month period, Borrower shall have no further right to any notice of monetary default during that twelve (12) month period;

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(b) except for defaults listed in the other subsections of this Section 6.01, if Borrower fails to perform or comply with any other provision contained in the Documents and the default is not cured within thirty (30) days of Lender providing written notice thereof (the "Grace Period"); provided, however, that Lender may extend the Grace Period up to an additional sixty (60) days (for a total of ninety (90) days from the date of default) if (i) Borrower immediately commences and diligently pursues the cure of such default and delivers (within the Grace Period) to Lender a written request for more time and (ii) Lender determines in good faith that (1) such default cannot be cured within the Grace Period but can be cured within ninety (90) days after the default, (2) no lien or security interest created by the Documents will be impaired prior to completion of such cure, and (3) Lender's immediate exercise of any remedies provided hereunder or by law is not necessary for the protection or preservation of the Property or Lender's security interest;

(c) if any representation made (i) in connection with the Loan or Obligations or (ii) in the Loan application or Documents shall be false or misleading in any material respect;

(d) if any default under Article V occurs;

(e) if Borrower shall (i) become insolvent, (ii) make a transfer in fraud of creditors, (iii) make an assignment for the benefit of its creditors, (iv) not be able to pay its debts as such debts become due, or (v) admit in writing its inability to pay its debts as they become due;

(f) if any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding, or any other proceedings for the relief of debtors, is instituted by or against Borrower, and, if instituted against Borrower, is allowed, consented to, or not dismissed within the earlier to occur of (i) ninety (90) days after such institution or (ii) the filing of an order for relief;

(g) if any of the events in Sections 6.01 (e) or (f) shall occur with respect to any (i) managing member of Borrower, (ii) general partner of Borrower or (iii) guarantor of payment or performance of any of the Obligations;

(h) if the Property shall be taken, attached, or sequestered on execution or other process of law in any action against Borrower;

(i) if any default occurs under the Environmental Indemnity (defined below) and such default is not cured within any applicable grace period in that document;

(j) if Borrower shall fail at any time to obtain, maintain, renew, or keep in force the insurance policies required by Section 3.06 within ten (10) days after written notice;

(k) if Borrower shall be in default under any other mortgage or security agreement covering any part of the Property, whether it be superior or junior in lien to this Instrument;

(l) if any claim of priority (except based upon a Permitted Encumbrance) to the Documents by title, lien, or otherwise shall be upheld by any court of competent jurisdiction or shall be consented to by Borrower; or

(m) (i) the consummation by Borrower of any transaction which would cause (A) the Loan or any exercise of Lender's rights under the Documents to constitute a non-exempt prohibited transaction under ERISA or (B) a violation of a state statute regulating governmental plans; (ii) the failure of any representation in Section 3.11 to be true and correct in all respects; or (iii) the failure of Borrower to provide Lender with the written certifications required by Section 3.11.

**Section 6.02 Remedies.** If an Event of Default occurs, Lender or any person designated by Lender may (but shall not be obligated to) take any action (separately, concurrently, cumulatively, and at any time and in any order) permitted under any Laws, without notice, demand, presentment, or protest (all of which are hereby waived), to protect and enforce Lender's rights under the Documents or Laws including the following actions:

(a) accelerate and declare the entire unpaid Obligations immediately due and payable, except for defaults under Section 6.01 (f), (g), or (h) which shall automatically make the Obligations immediately due and payable;

(b) judicially or otherwise, (i) completely foreclose this Instrument or (ii) partially foreclose this Instrument for any portion of the Obligations due and the lien and security interest created by this Instrument shall continue unimpaired and without loss of priority as to the remaining Obligations not yet due;

(c) sell for cash or upon credit the Property and all right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale;

(d) recover judgment on the Note either before, during or after any proceedings for the enforcement of the Documents and without any requirement of any action being taken to (i) realize on the Property or (ii) otherwise enforce the Documents;

(e) seek specific performance of any provisions in the Documents;

(f) apply for the appointment of a receiver, custodian, trustee, liquidator, or conservator of the Property without (i) notice to any person, (ii) regard for (A) the adequacy of the security for the Obligations or (B) the solvency of Borrower or any person liable for the payment of the Obligations; and Borrower and any person so liable waives or shall be deemed to have waived the foregoing and any other objections to the fullest extent permitted by Laws and consents or shall be deemed to have consented to such appointment;

(g) with or without entering upon the Property, (i) exclude Borrower and any person from the Property without liability for trespass, damages, or otherwise, (ii) take possession of, and Borrower shall surrender on demand, all books, records, and accounts relating to the Property, (iii) give notice to Tenants or any person, make demand for, collect, receive, sue for, and recover in its own name all Rents and cash collateral derived from the Property; (iv) use, operate, manage, preserve, control, and otherwise deal with every aspect of the Property including (A) conducting its business, (B) insuring it, (C) making all repairs, renewals, replacements, alterations, additions, and improvements to or on it, (D) completing the construction of any Improvements in manner and form as Lender deems advisable, and (E) executing, modifying, enforcing, and terminating new and existing Leases on such terms as Lender deems advisable and evicting any Tenants in default; (v) apply the receipts from the Property to payment of the Obligations, in any order or priority determined by Lender, after first deducting all Costs, expenses, and liabilities incurred by Lender in connection with the foregoing operations and all amounts needed to pay the Impositions and other expenses of the Property, as well as just and reasonable compensation for the services of Lender and its attorneys, agents, and employees; and/or (vi) in every case in connection with the foregoing, exercise all rights and powers of Borrower or Lender with respect to the Property, either in Borrower's name or otherwise;

(h) release any portion of the Property for such consideration, if any, as Lender may require without, as to the remainder of the Property, impairing or affecting the lien or priority of this Instrument or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been actually reduced, and Lender may accept by assignment, pledge, or otherwise

any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder;

(i) apply any Deposits to the following items in any order and in Lender's sole discretion: (A) the Obligations, (B) Costs, (C) advances made by Lender under the Documents, and/or (D) Impositions;

(j) take all actions permitted under the U.C.C. of the Property State including (i) the right to take possession of all tangible and intangible personal property now or hereafter included within the Property ("Personal Property") and take such actions as Lender deems advisable for the care, protection and preservation of the Personal Property and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower at least five (5) days prior to such action shall constitute commercially reasonable notice to Borrower; or

(k) take any other action permitted under any Laws.

If Lender exercises any of its rights under Section 6.02(g), Lender shall not (a) be deemed to have entered upon or taken possession of the Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose; (b) be deemed a beneficiary or mortgagee in possession by reason of such entry or taking possession; nor (c) be liable (i) to account for any action taken pursuant to such exercise other than for Rents actually received by Lender, (ii) for any loss sustained by Borrower resulting from any failure to lease the Property, or (iii) any other act or omission of Lender except for losses caused by Lender's willful misconduct or gross negligence. THE FOREGOING RELEASES AND EXCULPATIONS SHALL INCLUDE CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) RESULTING FROM THE NEGLIGENCE OF LENDER OR ANY STRICT LIABILITY, BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER. Borrower hereby consents to, ratifies, and confirms the exercise by Lender of its rights under this Instrument and appoints Lender as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and irrevocable, for such purposes.

**Section 6.03 Expenses.** All Costs, expenses, or other amounts paid or incurred by Lender in the exercise of its rights under the Documents, together with interest thereon at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, shall be (a) part of the Obligations, (b) secured by this Instrument, and (c) allowed and included as part of the Obligations in any foreclosure, decree for sale, power of sale, or other judgment or decree enforcing Lender's rights under the Documents.

**Section 6.04 Rights Pertaining to Sales.** To the extent permitted under (and in accordance with) any Laws, the following provisions shall, as Lender may determine in its sole discretion, apply to any sales of the Property under Article VI, whether by judicial proceeding, judgment, decree, power of sale, foreclosure or otherwise: (a) Lender may conduct multiple sales of any part of the Property in separate tracts or in its entirety and Borrower waives any right to require otherwise; (b) any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice; and (c) Lender may acquire the Property and, in lieu of paying cash, may pay by crediting against the Obligations the amount of its bid, after deducting therefrom any sums which Lender is authorized to deduct under the provisions of the Documents.

**Section 6.05 Applications of Proceeds.** Any proceeds received from any sale or disposition under Article VI or otherwise, together with any other sums held by Lender, shall, except as expressly provided to



the contrary, be applied in the order determined by Lender to: (a) payment of all Costs and expenses of any enforcement action or foreclosure sale, including interest thereon at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, (b) all taxes, Assessments, and other charges unless the Property was sold subject to these items; (c) payment of the Obligations in such order as Lender may elect; (d) payment of any other sums secured or required to be paid by Borrower; and (e) payment of the surplus, if any, to any person lawfully entitled to receive it. Borrower and Lender intend and agree that during any period of time between any foreclosure judgment that may be obtained and the actual foreclosure sale that the foreclosure judgment will not extinguish the Documents or any rights contained therein including the obligation of Borrower to pay all Costs and to pay interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws.

**Section 6.06 Additional Provisions as to Remedies.** No failure, refusal, waiver, or delay by Lender to exercise any rights under the Documents upon any default or Event of Default shall impair Lender's rights or be construed as a waiver of, or acquiescence to, such or any subsequent default or Event of Default. No recovery of any judgment by Lender and no levy of an execution upon the Property or any other property of Borrower shall affect the lien and security interest created by this Instrument and such liens, rights, powers, and remedies shall continue unimpaired as before. Lender may resort to any security given by this Instrument or any other security now given or hereafter existing to secure the Obligations, in whole or in part, in such portions and in such order as Lender may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights, or benefits granted hereunder. Acceptance of any payment after any Event of Default shall not be deemed a waiver or a cure of such Event of Default and such acceptance shall be deemed an acceptance on account only. If Lender has started enforcement of any right by foreclosure, sale, entry, or otherwise and such proceeding shall be discontinued, abandoned, or determined adversely for any reason, then Borrower and Lender shall be restored to their former positions and rights under the Documents with respect to the Property, subject to the lien and security interest hereof.

**Section 6.07 Waiver of Rights and Defenses.** To the fullest extent Borrower may do so under Laws, Borrower (a) will not at any time insist on, plead, claim, or take the benefit of any statute or rule of law now or later enacted providing for any appraisal, valuation, stay, extension, moratorium, redemption, or any statute of limitations; (b) for itself, its successors and assigns, and for any person ever claiming an interest in the Property (other than Lender), waives and releases all rights of redemption, reinstatement, valuation, appraisal, notice of intention to mature or declare due the whole of the Obligations, all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created under the Documents; (c) shall not be relieved of its obligation to pay the Obligations as required in the Documents nor shall the lien or priority of the Documents be impaired by any agreement renewing, extending, or modifying the time of payment or the provisions of the Documents (including a modification of any interest rate), unless expressly released, discharged, or modified by such agreement. Regardless of consideration and without any notice to or consent by the holder of any subordinate lien, security interest, encumbrance, right, title, or interest in or to the Property, Lender may (a) release any person liable for payment of the Obligations or any portion thereof or any part of the security held for the Obligations or (b) modify any of the provisions of the Documents without impairing or affecting the Documents or the lien, security interest, or the priority of the modified Documents as security for the Obligations over any such subordinate lien, security interest, encumbrance, right, title, or interest.

## ARTICLE VII - SECURITY AGREEMENT

**Section 7.01 Security Agreement.** This Instrument constitutes both a real property mortgage and a "security agreement" within the meaning of the U.C.C. The Property includes real and personal property

and all tangible and intangible rights and interest of Borrower in the Property. Borrower grants to Lender, as security for the Obligations, a security interest in the Personal Property to the fullest extent that the same may be subject to the U.C.C. Borrower authorizes Lender to file any financing or continuation statements and amendments thereto relating to the Personal Property without the signature of Borrower if permitted by Laws.

#### ARTICLE VIII - LIMITATION ON PERSONAL LIABILITY AND INDEMNITIES

**Section 8.01 Limited Recourse Liability.** The provisions of Paragraph 8 and Paragraph 9 of the Note are incorporated into this Instrument as if such provisions were set forth in their entirety in this Instrument.

**Section 8.02 General Indemnity.** Borrower agrees that while Lender has no liability to any person in tort or otherwise as lender and that Lender is not an owner or operator of the Property, Borrower shall, at its sole expense, protect, defend, release, indemnify and hold harmless (“**indemnify**”) the Indemnified Parties (defined below) from any Losses (defined below) imposed on, incurred by, or asserted against the Indemnified Parties, directly or indirectly, arising out of or in connection with the Property, Loan, or Documents, including Losses; provided, however, that the foregoing indemnities shall not apply to any Losses caused by the gross negligence or willful misconduct of the Indemnified Parties. The term “**Losses**” shall mean any claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, expenses, fines, penalties, charges, fees, judgments, awards, and amounts paid in settlement of whatever kind including attorneys’ fees (both in-house staff and retained attorneys) and all other costs of defense. The term “**Indemnified Parties**” shall mean (a) Lender, (b) any prior owner or holder of the Note, (c) any existing or prior servicer of the Loan, (d) the officers, directors, shareholders, partners, members, employees and trustees of any of the foregoing, and (e) the heirs, legal representatives, successors and assigns of each of the foregoing. THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO LOSSES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY, BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES. Notwithstanding anything in this Instrument or in the Documents to the contrary, so long as Principal Life Insurance Company, solely for the benefit of its Real Estate Separate Account, is the owner of the Property, any personal liability of Borrower prescribed in this Instrument shall be limited to the assets of Principal Life Insurance Company’s Real Estate Separate Account.

**Section 8.03 Transaction Taxes Indemnity.** Borrower shall, at its sole expense, indemnify the Indemnified Parties from all Losses imposed upon, incurred by, or asserted against the Indemnified Parties or the Documents relating to Transaction Taxes.

**Section 8.04 ERISA Indemnity.** Borrower shall, at its sole expense, indemnify the Indemnified Parties against all Losses imposed upon, incurred by, or asserted against the Indemnified Parties (a) as a result of a Violation, (b) in the investigation, defense, and settlement of a Violation, (c) as a result of a breach of the representations in Section 3.11 or default thereunder, (d) in correcting any prohibited transaction or the sale of a prohibited loan, and (e) in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender’s sole discretion.

**Section 8.05 Environmental Indemnity.** Borrower and other persons, if any, have executed and delivered the Environmental Indemnity Agreement dated the date hereof to Lender (“**Environmental Indemnity**”).

**Section 8.06 Duty to Defend, Costs and Expenses.** Upon request, whether Borrower’s obligation to indemnify Lender arises under Article VIII or in the Documents, Borrower shall defend the Indemnified

Parties (in Borrower's or the Indemnified Parties' names) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, the Indemnified Parties may, in their sole discretion, engage their own attorneys and professionals to defend or assist them and, at their option, their attorneys shall control the resolution of any claims or proceedings. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse and/or indemnify the Indemnified Parties for all Costs imposed on, incurred by, or asserted against the Indemnified Parties by reason of any items set forth in this Article VIII and/or the enforcement or preservation of the Indemnified Parties' rights under the Documents. Any amount payable to the Indemnified Parties under this Section shall (a) be deemed a demand obligation, (b) be part of the Obligations, (c) bear interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, until paid if not paid on demand, and (d) be secured by this Instrument.

**Section 8.07 Recourse Obligation and Survival** Notwithstanding anything to the contrary in the Documents and in addition to the recourse obligations in the Note, the obligations of Borrower under Sections 8.03, 8.04, 8.05, and 8.06 shall be a full recourse obligation of Borrower, shall not be subject to any limitation on personal liability in the Documents, and shall survive (a) repayment of the Obligations, (b) any termination, satisfaction, assignment or foreclosure of this Instrument, (c) the acceptance by Lender (or any nominee) of a deed in lieu of foreclosure, (d) a plan of reorganization filed under the Bankruptcy Code, or (e) the exercise by the Lender of any rights in the Documents. Borrower's obligations under Article VIII shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation under any applicable insurance policy.

#### ARTICLE IX - ADDITIONAL PROVISIONS

**Section 9.01 Usury Savings Clause** All agreements in the Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid under the Documents for the use, forbearance, or detention of money exceed the highest lawful rate permitted by Laws. If, at the time of performance, fulfillment of any provision of the Documents shall involve transcending the limit of validity prescribed by Laws, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If Lender shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall be deemed a mistake and (a) shall be canceled automatically or (b) if paid, such excess shall be (i) credited against the principal amount of the Obligations to the extent permitted by Laws or (ii) rebated to Borrower if it cannot be so credited under Laws. Furthermore, all sums paid or agreed to be paid under the Documents for the use, forbearance, or detention of money shall to the extent permitted by Laws be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Obligations does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Obligations for so long as the Obligations are outstanding.

**Section 9.02 Notices** Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted under the Documents shall be in writing and shall be validly given if sent by a nationally-recognized courier that obtains receipts, delivered personally by a courier that obtains receipts, or mailed by United States certified mail (with return receipt requested and postage prepaid) addressed to the applicable person as follows:



# UNOFFICIAL COPY

If to Borrower:

**30273346**

Principal Life Insurance Company  
c/o Principal Real Estate Investors, LLC  
801 Grand Avenue  
Des Moines, Iowa 50392  
Attention: Equity Closing Department  
RESA #169

If to Lender:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
Prudential Asset Resources  
2200 Ross Avenue  
Suite 4900-E  
Dallas, Texas 75201  
Attention: Asset Management Department  
Reference Loan No. 6 103 813

With a copy of notices sent to Lender to:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
Prudential Asset Resources  
2200 Ross Avenue  
Suite 4900-E  
Dallas, Texas 75201  
Attention: Legal Department  
Reference Loan No. 6 103 813

Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Any party may periodically change its address for notice and specify up to two (2) additional addresses for copies by giving the other party at least ten (10) days' prior notice.

**Section 9.03 Sole Discretion of Lender.** Except as otherwise expressly stated, whenever Lender's judgment, consent, or approval is required or Lender shall have an option or election under the Documents, such judgment, the decision as to whether or not to consent to or approve the same, or the exercise of such option or election shall be in the sole and absolute discretion of Lender.

**Section 9.04 Applicable Law and Submission to Jurisdiction.** The Documents shall be governed by and construed in accordance with the laws of the Property State and the applicable laws of the United States of America. Without limiting Lender's right to bring any action or proceeding against Borrower or the Property relating to the Obligations (an "Action") in the courts of other jurisdictions, Borrower irrevocably (a) submits to the jurisdiction of any state or federal court in the Property State, (b) agrees that any Action may be heard and determined in such court, and (c) waives, to the fullest extent permitted by Laws, the defense of an inconvenient forum to the maintenance of any Action in such jurisdiction.

**Section 9.05 Construction of Provisions.** The following rules of construction shall apply for all purposes of this Instrument unless the context otherwise requires: (a) all references to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Instrument and such Exhibits are incorporated into this Instrument as if fully set forth in the body of the Instrument; (b) all Article, Section, and Exhibit captions are used for convenience and reference only and in no way define, limit, or in any way affect this Instrument; (c) words of masculine, feminine, or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa; (d) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion of this Instrument; (e) all obligations of Borrower hereunder shall be performed and satisfied by or on behalf of Borrower at Borrower's sole expense; (f) the terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to"; (g) the terms "Property," "Land," "Improvements," and "Personal Property" shall be construed as if followed by the phrase "or any part thereof"; (h) the term "Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof"; (i) the term "person" shall include natural persons, firms, partnerships, corporations, governmental authorities or agencies, and any other public or private legal entities; (j) the term "provisions," when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, and/or conditions"; (k) the term "lease" shall mean "tenancy, subtenancy, lease, sublease, or rental agreement," the term "lessor" shall mean "landlord, sublandlord, lessor, and sublessor," and the term "Tenants" or "lessee" shall mean "tenant, subtenant, lessee, and sublessee"; (l) the term "owned" shall mean "now owned or later acquired"; (m) the terms "any" and "all" shall mean "any or all"; and (n) the term "on demand" or "upon demand" shall mean "within five (5) business days after written notice".

**Section 9.06 Transfer of Loan.** Lender may, at any time, (i) sell, transfer or assign the Documents and any servicing rights with respect thereto or (ii) grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (collectively, the "Securities"). Lender may forward to any purchaser, transferee, assignee, servicer, participant, or investor in such Securities (collectively, "Investors"), to any Rating Agency (defined below) rating such Securities and to any prospective Investor, all documents and information which Lender now has or may later acquire relating to the Obligations, Borrower, any guarantor, any indemnitor(s), the Leases, and the Property, whether furnished by Borrower, any guarantor, any indemnitor(s) or otherwise, as Lender determines advisable. Without limiting Lender's rights under this Section 9.06, Lender agrees to use commercially reasonable efforts to cause any such recipient to treat such information on a confidential basis. Borrower, any guarantor and any indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section including the delivery of an estoppel certificate in accordance with Section 3.16 and such other documents as may be reasonably requested by Lender. Borrower shall also furnish any consent of Borrower, any guarantor and any indemnitor in order to permit Lender to furnish such Investors or such prospective Investors or such Rating Agency with any and all information concerning the Property, the Leases, the financial condition of Borrower, any Guarantor and any indemnitor, as may be reasonably requested by Lender, any Investor, any prospective Investor or any Rating Agency and which may be complied with without undue expense. "Rating Agency" shall mean any one or more credit rating agencies approved by Lender.

**Section 9.07 Miscellaneous.** If any provision of the Documents shall be held to be invalid, illegal, or unenforceable in any respect, this shall not affect any other provisions of the Documents and such provision shall be limited and construed as if it were not in the Documents. If title to the Property becomes vested in any person other than Borrower, Lender may, without notice to Borrower, deal with such person

regarding the Documents or the Obligations in the same manner as with Borrower without in any way vitiating or discharging Borrower's liability under the Documents or being deemed to have consented to the vesting. If both the lessor's and lessee's interest under any Lease ever becomes vested in any one person, this Instrument and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and Lender shall continue to have and enjoy all its rights and privileges as to each separate estate. Upon foreclosure of this Instrument, none of the Leases shall be destroyed or terminated as a result of such foreclosure, by application of the doctrine of merger or as a matter of law, unless Lender takes all actions required by law to terminate the Leases as a result of foreclosure. All of Borrower's covenants and agreements under the Documents shall run with the land and time is of the essence. Borrower appoints Lender as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the execution, acknowledgment, delivery, filing or recording for and in the name of Borrower of any of the documents listed in Sections 3.04, 3.19, 4.01 and 6.02. The Documents cannot be amended, terminated, or discharged except in a writing signed by the party against whom enforcement is sought. No waiver, release, or other forbearance by Lender will be effective unless it is in a writing signed by Lender and then only to the extent expressly stated. The provisions of the Documents shall be binding upon Borrower and its heirs, devisees, representatives, successors, and assigns including successors in interest to the Property and inure to the benefit of Lender and its heirs, successors, substitutes, and assigns. Where two or more persons have executed the Documents, the obligations of such persons shall be joint and several, except to the extent the context clearly indicates otherwise. The Documents may be executed in any number of counterparts with the same effect as if all parties had executed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Document which is not of public record, and, in the case of any mutilation, upon surrender and cancellation of the Document, Borrower will issue, in lieu thereof, a replacement Document, dated the date of the lost, stolen, destroyed or mutilated Document containing the same provisions. Any reviews, inspections, reports, approvals or similar items conducted, made or produced by or on behalf of Lender with respect to Borrower, the Property or the Loan are for loan underwriting and servicing purposes only, and shall not constitute an acknowledgment, representation or warranty of the accuracy thereof, or an assumption of liability with respect to Borrower, Borrower's contractors, architects, engineers, employees, agents or invitees, present or future tenants, occupants or owners of the Property, or any other party.

**Section 9.08 Entire Agreement.** Except as provided in Section 3.17, (a) the Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the Loan and supersede all prior written or oral understandings and agreements with respect to the Loan including the Loan application and Loan commitment and (b) Borrower is not relying on any representations or warranties of Lender except as expressly set forth in the Documents.

**Section 9.09 WAIVER OF TRIAL BY JURY.** BORROWER AND LENDER WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE DOCUMENTS, OR ANY ALLEGED ACTS OR OMISSIONS OF BORROWER OR LENDER IN CONNECTION THEREWITH.

## ARTICLE X - LOCAL LAW PROVISIONS

If any conflict or inconsistency exists between this Article X and the remainder of this Instrument, the provisions contained in this Article X shall govern.

**Section 10.01 Additional Remedies.** In addition to the remedies set forth in Article VI hereof, Lender, at Lender's option, may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorneys' fees, costs of documentary evidence, abstracts and title reports.

**Section 10.02 Illinois Mortgage Foreclosure Law.** Lender shall be entitled to the following benefits, among others, pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101) (the "Act"):

(a) **Benefits to Act.** Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) **Insurance.** Wherever provision is made in the Instrument for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Lender shall continue in the Lender as judgment creditor or mortgagee until confirmation of sale.

(c) **Protective Advances.** All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings authorized by the Instrument or by the Act (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by the Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note. The Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Instrument is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by the Instrument at any time;
- (ii) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

- (iii) if right of redemption has not been waived by the Borrower in the Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;
- (iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (v) application of income in the hands of any receiver or Lender in possession; and
- (vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

(d) **Lender in Possession.** In addition to any provision of the Instrument authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Instrument, all powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act.

**Section 10.03 Release.** Upon payment of all sums secured by this Instrument, Lender shall cancel this Instrument. Borrower shall pay Lender's reasonable costs incurred in canceling this Instrument.

**Section 10.04 Attorneys' Fees.** As used herein, "attorneys' fees" shall mean "reasonable attorneys' fees."

**Section 10.05 Future Advances.** This Instrument shall secure the payment of any amounts advanced from time to time under the Instrument, or under other documents stating that such advances are secured hereby. This Instrument also secures any and all future obligations and indebtedness arising under or in connection with this Instrument, which future obligations and indebtedness shall have the same priority as if all such future obligations and indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Instrument shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Instrument shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the indebtedness to be secured hereby and which are to be reimbursed by Borrower under the terms of this Instrument; provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts exceed \$21,700,000.00.

**Section 10.06 Waiver of Rights of Redemption and Reinstatement** Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement of any rights or remedies of Lender under this Instrument, but hereby waives the benefit of such laws and the benefit of any homestead or other exemptions which it may now or hereafter from time to time have with respect to the Property or the Obligations hereby secured. Borrower for itself and all creditors, mortgagees, trustees, lienholders and other persons or entities who may claim through or under it waives any and all right to have the property and estates comprising the Property, or any part thereof, marshalled upon any foreclosure or other disposition (whether or not the entire Property be sold as a unit, and whether



or not any parcels thereof be sold as a unit or separately) of any kind or nature of the Property, or any party thereof, or interest therein, and agrees that any court having jurisdiction to foreclose or otherwise enforce the liens granted and security interests created by this Instrument may order the Property sold as an entirety. On behalf of Borrower, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Instrument, and on behalf of all other persons to the maximum extent permitted by applicable law, Borrower hereby waives any and all rights (x) of redemption from any foreclosure, or other disposition of any kind or nature of the Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Lender, and (y) to reinstatement of the indebtedness hereby secured, including, without limitation, any right to reverse any acceleration of such indebtedness pursuant to 735 ILCS 5/15-1602. Borrower further waives and releases (a) all errors, defects, and imperfections in any proceedings instituted by Lender under the Note, this Instrument or any of the Documents, (b) all benefits that might accrue to the Borrower by virtue of any present or future laws exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy, or sale under civil process, or extension, exemption from civil process, or extension of time for payment, and (c) all notices not specifically required by this Instrument of default, or of Lender's exercise, or election to exercise, any option under this Instrument. All waivers by Borrower in this Instrument have been made voluntarily, intelligently and knowingly by Borrower after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Instrument shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

***Section 10.07 [INTENTIONALLY DELETED]***

***Section 10.08 Leasing and Management Agreements.*** Borrower covenants and agrees that all agreements to pay leasing commissions (a) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement, (b) shall be subordinate to the lien of this Instrument, and (c) shall not be enforceable against Lender. Borrower shall furnish Lender with evidence of the foregoing which is in all respects satisfactory to Lender. Borrower further covenants and agrees that any property management agreement and operating agreement for the Property, whether now in effect or entered into hereafter by Borrower, with a property manager or operator, shall contain a "no lien" provision whereby, to the maximum extent permitted by law, the property manager or operator waives and releases, and to the extent that the above is not permitted by applicable law, subordinates to the lien hereof, any and all mechanics' lien rights that it or anyone claiming through or under it may have pursuant to 770 ILCS 60/1. Such property management agreement or operating agreement or a short form thereof shall, at Lender's request, be recorded with the Office of the Recorder of Deeds for the county in which the Property is located. In addition, Borrower shall cause the property manager or operator to enter into a subordination agreement with Lender, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Instrument. Borrower's failure to require the "no lien" provision or the subordination agreement described herein shall constitute an Event of Default under this Instrument.

***Section 10.09 Costs.*** In the event it should become necessary for Lender to employ legal counsel to collect the Obligations, or to enforce Lender's rights under this Instrument, Borrower agrees to pay all reasonable fees and expenses of Lender including, without limitation, reasonable attorneys' fees for the services of such counsel whether or not suit be brought.

***Section 10.10 Business Loan Recital/Statutory Exemption.***

# UNOFFICIAL COPY

(i) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (B) the indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; (C) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Instrument is part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 5/15-1219 (1992)).

**Section 10.11 Collateral Protection Act.** Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless the Borrower provides Lender with evidence of the insurance coverage required by this Instrument, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property or any other collateral for the indebtedness. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the indebtedness. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by this Instrument. If Lender purchases insurance for the Property or any other collateral for the indebtedness, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

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# UNOFFICIAL COPY 30275346

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the day first set forth above.

Borrower:

PRINCIPAL LIFE INSURANCE COMPANY,  
an Iowa corporation,  
solely for the benefit of its Real Estate Separate Account

By: Principal Real Estate Investors, LLC,  
a Delaware limited liability company  
Its Authorized Signatory

By: W.R. Courtney  
Name: W.R. Courtney  
Title: Senior Closing Consultant

By: Dennis D. Ballard  
Name: Dennis D. Ballard  
Title: Counsel

[Acknowledgments Follow]

STATE OF IOWA

COUNTY OF Polk

I, Amy L. McFadden, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT W.R. Courtney, Senior Closing Consultant of Principal Real Estate Investors, LLC, a Delaware limited liability company, authorized signatory of Principal Life Insurance Company, an Iowa corporation, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, acting on behalf of said corporation, for the uses and purposes therein set forth. GIVEN under my hand and notarial seal this 19<sup>th</sup> day of February, 2003.



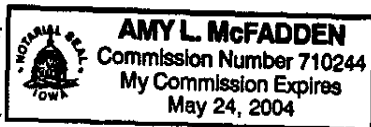
Amy L. McFadden  
Notary Public  
My Commission Expires: May 24, 2004

(SEAL)

STATE OF IOWA

COUNTY OF Polk

I, Amy L. McFadden, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Dennis D. Ballard, General of Principal Real Estate Investors, LLC, a Delaware limited liability company, authorized signatory of Principal Life Insurance Company, an Iowa corporation, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, acting on behalf of said corporation, for the uses and purposes therein set forth. GIVEN under my hand and notarial seal this 19<sup>th</sup> day of February, 2003.



Amy L. McFadden  
Notary Public  
My Commission Expires: May 24, 2004

(SEAL)

## PARCEL 1:

Lot 10 (except the North 30.00 feet and except the East 100.00 feet thereof) in Butterfield's Addition to Chicago in the West ½ of the Northwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

## PARCEL 2:

Lot 16 in Butterfield's Addition to Chicago in the West ½ of the Northwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian (except that part of Lot 16 falling in Oscar Mayer's Resubdivision of various lots and alleys in various subdivisions in the West ½ of the Northeast ½ and the East ½ of the Northwest ¼ of Section 4 aforesaid), in Cook County, Illinois.

## PARCEL 3:

Lots 1, 2 and 3 in Subdivision of the East 100.00 feet of the South 78.00 feet of Lot 10 in Butterfield's Addition to Chicago in the West ½ of the Northwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

## PARCEL 4:

Lots 1 and 4 in the Subdivision of Lots 14 and 15 in Butterfield's Addition to Chicago in the West ½ of the Northwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois (except the South 3.646m (11.96 feet) of Lot 4 and except that part of Lot 1 described as follows):

Commencing at the northwesterly corner of aforesaid Lot 1; thence southeasterly 7.024m (23.04 feet) to a point on the southwesterly line of said Lot 1, also being the point of beginning; thence along a straight line to a point on the southeasterly line of said Lot 1, said point being 0.979m (3.21 feet) northeasterly of the southwesterly corner of said Lot 1; thence southwesterly to the Southwest corner of said Lot 1; thence northwesterly 6.699m (21.98 feet) to the point of beginning, in Cook County, Illinois.

## PARCEL 5:

Lots 1, 2, 3, 4 and 5 in the Subdivision of Sublots 2 and 3 of Lots 14 and 15 in Butterfield's Addition to Chicago in the West ½ of the Northwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois (except that part described as follows):

Beginning at the Southeast corner of aforesaid Lot 5; thence northerly to a point that is 3.646m (11.96 feet) North of aforesaid corner and on the East line of said Lot 5; thence westerly along a straight line to a point of curve, said point being 3.732m (12.24 feet) westerly of the East line and 3.646m (11.96 feet) northerly of the South line of said Lot 4; said curve having a radius of 21.021m (69.0 feet) and an arc length of 13.545m (44.44 feet), concave to Northeast and bears northwesterly to a point of tangent, said point of tangent being 4.241m (13.91 feet) northeasterly of the southerly line and 6.504m (21.34 feet) southeasterly of the northwesterly line of said Lot 3; thence along a straight line to a point of the northwesterly line of said Lot 1, said point being 0.979m (3.21 feet) northeasterly of the Northwest corner of said Lot 1, thence southwest to the Northwest corner of said Lot 1, thence southeasterly to the Southwest corner of said Lot 3; thence easterly to the Southeast corner of said Lot 5, also being the point of beginning, in Cook County, Illinois.

PARCEL 6:

Lots 1 to 9, both inclusive, in Assessor's Division of Lots 11, 12 and 13 in Butterfield's Addition to Chicago in the West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois (except that part of Sublots 5 to 9, described as follows):

Beginning at the Northwest corner of West Division Street and North Sedgwick Street, also being the Southeast corner of aforesaid Lot 6; thence northerly along the East line of said Lot 6 to a point that is 6.674m (21.89 feet) northerly of the Southeast corner of said Lot 6; thence along a straight line to a point that is 3.030m (9.94 feet) West of the East line and 3.646m (11.96 feet) North of the South line of said Lot 6; thence westerly along a straight line to a point that is 3.646m (11.96 feet) northerly of the Southwest corner of said Lot 9 and on the West line of said Lot 9; thence southerly to the Southwest corner of said Lot 9; thence East to the Southeast corner of said Lot 6, also being the point of beginning, in Cook County, Illinois.

PARCEL 7:

Lots 6 and 7 in the Subdivision of Lot 9 and the North 30.00 feet of Lot 10 in Butterfield's Addition to Chicago in the West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 8:

The East 12.00 feet of Lot 5 in Subdivision of Lot 9 and the North 30.00 feet of Lot 10 in Butterfield's Addition to Chicago in the West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

## PARCEL 9:

All of the 12-foot vacated North/South alley lying West of and adjoining Lots 6 and 7 in the Subdivision of Lot 9 and the North 30.00 feet of Lot 10 in said Butterfield's Addition to Chicago, lying South of the North line, extended West of said Lot 7 and lying North of the South line, extended West of said Lot 6, in Cook County, Illinois.

## PARCEL 10:

All of the 12-foot vacated East/West alley lying South of the South line of Lot 4 in said Oscar Mayer's Resubdivision, lying West of the East line, extended South of said Lot 4 and lying East of the most eastern westerly line of said Lot 4, extended South, in Cook County, Illinois.

## PARCEL 11:

All that part of the North and South and northwesterly and southeasterly 12-foot vacated alley lying easterly of the East line of Lot 1, lying westerly of the westerly line and said westerly line extended South of Lot 4 in said Oscar Mayer's Resubdivision, lying northerly of the most southerly South line extended East of said Lot 1 and lying southerly and southeasterly of the most northern southerly line of said Lot 1, in Cook County, Illinois.

## PARCEL 12:

Lots 1 to 4, inclusive, in Oscar Mayer's Resubdivision of various lots and vacated alleys in various subdivisions in the West ½ of the Northeast ¼ and in the East ½ of the Northwest ¼ of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, according to the plat thereof, recorded November 21, 1980 as Document 25677341 and registered in the Registrar's Office of Cook County, Illinois, November 21, 1980 as Document LR3189994 (except the North 22.00 feet of Lots 2 and 3 and except that part of Lot 2, lying West of a line drawn perpendicular to the North line of said Lot 2 through a point therein 109.75 feet West of the Northeast corner of said Lot 2), in Cook County, Illinois.

## PARCEL 13:

Lot 1 (except the North 22.0 feet thereof) and Lots 2, 3, and 4 in the Subdivision of Block 8 and Street in Block 9 in Butterfield's Addition to Chicago, a Subdivision in the West ½ of the Northwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

## ALSO

All of the North/South 12-foot vacated alley lying West of and adjoining Lot 1 (except the North 22.00 feet thereof) and Lots 2, 3 and 4 in the Subdivision of Block 8 and Street in Block 9 in Butterfield's Addition to Chicago, a Subdivision in the West ½ of the Northwest ¼



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Exhibit "A"

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and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

## PARCEL 14:

That part of Lots 1 and 2 in the Subdivision of Lots 18 and 19 in Butterfield's Addition to Chicago in the West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, lying northeasterly of the southeasterly extension of the West line of Lot 2 in Oscar Mayer's Resubdivision of various lots and vacated alleys in various subdivisions in the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  and in the East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, recorded November 21, 1980 as Document 25677341 and registered in the Registrar's Office of Cook County, Illinois, November 21, 1980 as Document LR3189994, in Cook County, Illinois.

## PARCEL 15:

That part of vacated West Scott Street, lying West of a line drawn from the Southeast corner of Lot 3 to the Northeast corner of Lot 4 in Oscar Mayer's Resubdivision of various lots and vacated alleys in various subdivisions in the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  and in the East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, recorded November 21, 1980 as Document 25677341 and registered in the Registrar's Office of Cook County, Illinois, November 21, 1980 as Document LR3189994, in Cook County, Illinois.

## ALSO

That part of vacated Hudson Avenue, lying between Lots 2 and 3 in Oscar Mayer's Resubdivision and lying North of vacated West Scott Street and lying South of a line 22.00 feet South of and parallel with the South line of West Goethe Street in the East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

## ALSO

That part of the East/West vacated alley; together with that part of the northeasterly/southwesterly vacated alley, lying West of the West line of vacated North Hudson Avenue extended South and lying East of the southeasterly extension of the southwesterly line of the northeasterly 13.00 feet of Lot 2 in the Subdivision of Lots 18 and 19 in Butterfield's Addition to Chicago in the West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PINs:

17-04-134-014-0000

17-04-134-016-0000

17-04-143-030-0000

17-04-143-031-0000

17-04-143-034-0000

17-04-143-025-0000

17-04-143-046-0000

17-04-143-050-0000

17-04-143-053-0000

17-04-143-055-0000

17-04-143-056-0000

17-04-143-060-0000

17-04-143-063-0000

17-04-143-066-0000

17-04-143-067-0000

17-04-143-068-0000

17-04-143-069-0000

17-04-143-070-0000

17-04-143-071-0000

17-04-143-072-0000

Commonly known as: 425 W. Division, Chicago, Illinois 60610

## Exhibit B

### DESCRIPTION OF PERSONAL PROPERTY SECURITY

1. All machinery, apparatus, goods, equipment, materials, fittings, fixtures, chattels, and tangible personal property, and all appurtenances and additions thereto and betterments, renewals, substitutions, and replacements thereof, owned by Borrower, wherever situate, and now or hereafter located on, attached to, contained in, or used or usable in connection with the real property described in Exhibit A attached hereto and incorporated herein (the "Land"), and all improvements located thereon (the "Improvements") or placed on any part thereof, though not attached thereto, including all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, electrical, lighting, plumbing, ventilating, air-conditioning, refrigerating, incinerating and/or compacting plants, systems, fixtures and equipment, elevators, hoists, stoves, ranges, vacuum and other cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances, equipment, fittings, and fixtures.

2. All funds, accounts, deposits, instruments, documents, contract rights, general intangibles, notes, and chattel paper arising from or by virtue of any transaction related to the Land, the Improvements, or any of the personal property described in this Exhibit B.

3. All permits, licenses, franchises, certificates, and other rights and privileges now held or hereafter acquired by Borrower in connection with the Land, the Improvements, or any of the personal property described in this Exhibit B.

4. All right, title, and interest of Borrower in and to the name and style by which the Land and/or the Improvements is known, including trademarks and trade names relating thereto.

5. All right, title, and interest of Borrower in, to, and under all plans, specifications, maps, surveys, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies, and other documents of whatever kind or character, and all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds, relating to the use, construction upon, occupancy, leasing, sale, or operation of the Land and/or the Improvements.

6. All interests, estates, or other claims or demands, in law and in equity, which Borrower now has or may hereafter acquire in the Land, the Improvements, or the personal property described in this Exhibit B.

7. All right, title, and interest owned by Borrower in and to all options to purchase or lease the Land, the Improvements, or any other personal property described in this Exhibit B, or any portion thereof or interest therein, and in and to any greater estate in the Land, the Improvements, or any of the personal property described in this Exhibit B.

8. All of the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance relating thereto, which Borrower now has or may hereafter acquire in the Land, the Improvements, or any of the personal property described in this Exhibit B, or any portion thereof or interest therein, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of such property,

including without limitation, any award resulting from a change of any streets (whether as to grade, access, or otherwise) and any award for severance damages.

9. All right, title, and interest of Borrower in and to all contracts, permits, certificates, licenses, approvals, utility deposits, utility capacity, and utility rights issued, granted, agreed upon, or otherwise provided by any governmental or private authority, person or entity relating to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements, including all of the Borrower's rights and privileges hereto or hereafter otherwise arising in connection with or pertaining to the Land and/or the Improvements, including, without limiting the generality of the foregoing, all water and/or sewer capacity, all water, sewer and/or other utility deposits or prepaid fees, and/or all water and/or sewer and/or other utility tap rights or other utility rights, any right or privilege of Borrower under any loan commitment, lease, contract, Declaration of Covenants, Restrictions and Easements or like instrument, Developer's Agreement, or other agreement with any third party pertaining to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements.

AND ALL PROCEEDS AND PRODUCTS OF THE FOREGOING PERSONAL PROPERTY DESCRIBED IN THIS EXHIBIT B.

A PORTION OF THE ABOVE DESCRIBED GOODS ARE OR ARE TO BE AFFIXED TO THE REAL PROPERTY DESCRIBED IN EXHIBIT A.

THE BORROWER IS THE RECORD TITLE HOLDER AND OWNER OF THE REAL PROPERTY DESCRIBED IN EXHIBIT A.

Exhibit CPERMITTED ENCUMBRANCES

1. Rights of tenants as tenants only, under validly existing unrecorded written leases affecting the property and of any person or party claiming by, through or under the tenants.
2. Lease to Blockbuster, Inc., a Memorandum of Lease was recorded March 10, 1999, as Document 99226695, which Lease demises the land for a term of 10 years with 3 five year extensions, and all rights thereunder of, and all acts done or suffered thereunder by, said Lessee or by any party claiming by, through, or under said Lessee.  
Assigned to Old Town Square Shopping Center, L.L.C. by instrument recorded November 19, 2001, as Document No. 0011085580.  
Assigned to Principal Life Insurance Company by instrument recorded December 3, 2001, as Document No. 0011130237.
3. Lease to Dominick's Finer Foods, Inc., a Delaware corporation dated September 22, 1998, which Memorandum of Lease was recorded December 22, 1999, as Document 09187233, which Lease demises the land for a term of years as set forth in Article II of the Lease Agreement, and all rights thereunder of, and all acts done or suffered thereunder by, said Lessee or by any party claiming by, through, or under said Lessee.  
Lease shall be automatically extended for (5) consecutive periods of (5) years each. The first extended term commences immediately following the expiration of the initial term.  
Assigned to Old Town Square Shopping Center, L.L.C. by instrument recorded November 19, 2001, as Document No. 0011085579.  
Assigned to Principal Life Insurance Company by instrument recorded December 3, 2001, as Document No. 0011130238.
4. Unrecorded Easement in favor of public and quasi-public utility companies for the right to maintain and repair storm manholes, storm catch basins, sanitary manholes, water manholes and a concrete transformer pad, together with the right of access thereto as shown on that certain plat of Survey Number 982862, dated February 6, 2003, prepared by Robert J. Tremblay of Gremley and Biederman, Inc., R.P.L.S. # 2575.
5. Easement in favor of Commonwealth Edison, Ameritech, Peoples Gas Light & Coke Company and Chicago Cable, and its respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the plat recorded/filed as Document No. 08168997 as shown on that certain plat of Survey Number 982862, dated February 6, 2003, prepared by Robert J. Tremblay of Gremley and Biederman, Inc., R.P.L.S. # 2575.
6. Easement in favor of Ameritech Illinois and Commonwealth Edison, and their respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the Grant recorded as Document 09187234 as shown on that certain plat of Survey Number 982862, dated February 6, 2003, prepared by Robert J. Tremblay of Gremley and Biederman, Inc., R.P.L.S. # 2575.



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7. a. Taxes for the years 2002, 2003 and subsequent years, the second installment of 2002 taxes and 2003 taxes not yet due and payable.
- b. General real estate taxes not assessed for years 2003 and prior with respect to the east ½ of Parcel 8 and 11 and north ½ of Parcel 15.

Property of Cook County Clerk's Office

Exhibit D

LIST OF MAJOR TENANTS

- I. Any Tenant whose premises are larger than 4,600 rentable square feet; and
- II. The following Tenants, their successors, assigns and replacements:

Dominick's Finer Foods, Inc.,  
a Delaware corporation

Property of Cook County Clerk's Office