

# UNOFFICIAL COPY

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## RIGHT OF FIRST REFUSAL

THIS RIGHT OF FIRST REFUSAL (the "Agreement") is made as of this 14th day of October, 1990, by and between DOWNERS GROVE NATIONAL BANK, not individually but as Trustee of that certain trust dated September 6, 1990 and known as Trust No. 90-85 ("Grantor"), PLATINUM DEVELOPMENT CORP., an Illinois corporation ("Platinum") and AMERICAN MEDICORP DEVELOPMENT CO., a Delaware corporation ("Grantee").

## RECITALS

A. Grantee has conveyed, or is about to convey, to Grantor that certain real property described in Exhibit A attached hereto and made a part hereof (the "Property"), in accordance with an Agreement of Sale and Purchase of even date herewith between Grantee, as seller, and Platinum, as purchaser (the "Sale Agreement"). Platinum is sole beneficiary of Grantor.

B. Grantor and Platinum intend to construct on the Property a medical office building containing approximately 78,000 square feet of rentable area (the "Office Building").

C. The Sale Agreement provides that, under certain circumstances, Grantor must offer to sell or lease the Property back to Grantee.

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## AGREEMENTS

NOW THEREFORE, for and in consideration of the Recitals set forth above, which by this reference are made a part of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor, Platinum and Grantee agree as follows:

### 1. RIGHT OF FIRST REFUSAL.

1.1. Grant. In the event Grantor receives a bona fide offer to purchase or lease the Property, the Office Building, or any part or parts thereof (a "Purchase Offer"), from any entity or person which does not control or is not controlled by or under common control with Grantor (a "Grantor Nonaffiliate"), or should Grantor desire to offer to sell or lease the Property, the Office Building, or any part or parts thereof (a "Sale Offer"), Grantor shall deliver a certified copy of such Purchase Offer or Sale Offer, as the case may be, to Grantee. Grantee shall have the right to purchase or lease, as the case may be, the subject property upon the same terms and conditions as contained in such Purchase Offer or Sale Offer (the "Right of First Refusal"). Grantee shall exercise such right, if at all, by written notice thereof to Grantor given within 20 days after Grantee's receipt of such Purchase Offer or Sale Offer. Upon such exercise, Grantor and Grantee shall enter into a sale contract or lease, as the case may be, upon the same terms and conditions as are contained in the applicable Purchase Offer or Sale Offer. If Grantor desires to sell or lease, or such a Grantor Nonaffiliate desires to purchase or lease, property and assets of Grantor in

addition to the Property, the Office Building and other improvements on the Property, the Purchase Offer or the Sale Offer, as the case may be, shall contain purchase price and/or rent information pertaining solely to the property subject to this Section 1.

1.2. Failure to Exercise. In the event Grantee refuses or fails to exercise its rights as provided in this Section 1, Grantor shall be free to sell or lease, as the case may be, the subject property upon the terms and conditions contained in such Purchase Offer or Sale Offer. However, if Grantor does not close on such sale or enter into such a lease within 9 months after the expiration of the aforesaid 20 day period, Grantor shall deliver to Grantee another certified copy of the applicable Purchase Offer or Sale Offer, or any such revised Purchase Offer or Sale Offer, whereupon Grantee's shall again have the right to purchase or lease, as the case may be, the subject property as provided in this Section 1.

If Grantee's failure or refusal to exercise its rights hereunder results in the sale of the Property or the Office Building to a Grantor Nonaffiliate, Grantee's rights hereunder shall expire and terminate without further actions of the parties.

1.3. Humana Affiliates. Notwithstanding anything contained in this Section 1 to the contrary, Grantor may sell, convey or lease the Property and the Office Building to any entity wholly

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owned by Grantor and/or physicians providing medical services at the Humana Hospital in Hoffman Estates, Illinois, free of the Right of First Refusal.

2. REPRESENTATIONS AND WARRANTIES OF GRANTEE.

Grantee hereby represents and warrants to Grantor as follows:

2.1. Organization. Grantee is a corporation duly organized, legally existing and in good standing under the laws of the State of Delaware and has full corporate power and authority (a) to own or lease its properties and to carry on its business as it is now being conducted, (b) to enter into this Agreement and to purchase or lease, as the case may be, the Property from Grantor as provided herein, and (c) to carry out the other transactions and agreements contemplated hereby.

2.2. Execution. The execution, delivery and performance of this Agreement and each of the other agreements contemplated hereby and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action of Grantee. This Agreement has been duly executed and delivered by Grantee and is a valid and binding obligation of Grantee, enforceable against Grantee in accordance with its terms.

2.3. Violations, Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will: (a) conflict with or violate any provision of Grantee's articles of incorporation or bylaws, or of

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any law, ordinance or regulation or any decree or order of any court or administrative or other governmental body which is either applicable to, binding upon or enforceable against Grantee; (b) result in any breach of or default under any material mortgage, contract, restrictive covenant, agreement, indenture or other instrument which is either binding upon or enforceable against Grantee or the Property; or (c) impair or in any way limit any governmental or official license, approval, permit or authorization of Grantee.

2.4. Brokers. Grantee has not dealt with any broker, salesperson, agent or finder in this transaction.

3. REPRESENTATIONS AND WARRANTIES OF GRANTOR.

Grantor hereby represents and warrants to Grantee that:

3.1. Organization. Grantor is a corporation duly organized, legally existing and in good standing under the laws of the State of Illinois and has full corporate power and authority (a) to own or lease its properties and to carry on its business as it is now being conducted, (b) to enter into this Agreement and to sell or lease, as the case may be, the Property to Grantee as provided herein, and (c) to carry out the other transactions and agreements contemplated hereby.

3.2. Execution. The execution, delivery and performance of this Agreement and each of the other agreements contemplated hereby and the consummation of the transactions contemplated hereby have been duly authorized by all necessary

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corporate action of Grantor. This Agreement has been duly executed and delivered by Grantor and is a valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms.

3.3. Violations, Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will: (a) conflict with or violate any provision of Grantor's articles of incorporation or bylaws, or of any law, ordinance or regulation or any decree or order of any court or administrative or other governmental body which is either applicable to, binding upon or enforceable against Grantor; (b) result in any breach of or default under any material mortgage, contract, restrictive covenant, agreement, indenture or other instrument which is either binding upon or enforceable against Grantor or the Property; or (c) impair or in any way limit any governmental or official license, approval, permit or authorization of Grantor.

3.4. Brokers. Grantor has not dealt with any broker, salesperson, agent or finder in this transaction.

#### 4. DEFAULT.

Grantor and Grantee agree that in the event of a default by either party, the other party shall, prior to taking any such action as may be available to it, provide written notice to the defaulting party stating the default and giving the defaulting party 15 days within which to cure such default. The non-

defaulting party shall not be required to tender performance to the defaulting party as a condition precedent to holding the defaulting party in default.

In the event that Grantor defaults in the performance of its obligations hereunder with respect to a sale or lease, as the case may be, Grantee may avail itself of any or all rights (including, without limitation, the right of specific performance) which it may have at law or in equity under or by reason of such default.

If Grantee defaults in its obligations hereunder, Grantor shall have the right, as its sole and exclusive remedy, to cancel any prior or future exercise by Grantee of the Right of First Refusal.

## 5. GENERAL.

5.1. Modification/ Waiver. Neither this Agreement nor any of the terms, covenants or conditions hereof may be amended, supplemented, modified or waived orally, but only by written instrument executed by the party against which such amendment, supplement, modification or waiver is sought to be enforced.

5.2. Expenses. Whether or not the transactions contemplated hereby shall be consummated, Grantor and Grantee will each bear its own costs and expenses and will pay for all services rendered to it in facilitation of the transactions contemplated hereby, including, without limitation, attorneys', accountants' and investment bankers' fees.



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5.3. Notices. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed, on the third (3rd) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, or (iii) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

If to Grantor

Platinum Development Corp.  
2625 Butterfield Road  
Suite 1116E  
Oakbrook, Illinois 60521  
Attention: Steven Devick

with a copy to:

Malk, Harris & Miller  
212 East Ohio Street  
Suite 500  
Chicago, Illinois 60611  
Attention: Daniel D. Drew

If to Grantee:

American Medicorp Development Co.  
P.O. Box 1438  
500 West Main Street  
Louisville, Kentucky 40201  
Attention: Vice President -- Real Estate

with a copy to

Bell, Boyd & Lloyd  
Three First National Plaza  
Suite 3200  
Chicago, Illinois 60602  
Attention: Lawrence C. Eppley

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

5.4 Parties in Interest; Assignment. This Agreement and all the provisions hereof shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other party hereto. Nothing in this Agreement, whether expressed or implied, shall be construed to give any person other than Grantor or Grantee any legal or equitable right, remedy or claim under or in respect of this Agreement.

5.5. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

5.6. Headings. The article and section headings of this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

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5.7. Governing Law. This Agreement shall be construed, performed and enforced in accordance with the laws of the State of Illinois without regard to the laws that might otherwise govern under applicable principles of conflicts of laws.

5.8. Rule Against Perpetuities. The Right of First Refusal shall be limited in time to the extent necessary to comply with any Rule Against Perpetuities or statute of similar import. Without limiting the generality of the foregoing, no such right shall continue with respect to the Property beyond the date 20 years and six months after the death of the last to survive of the now living descendants of George Bush, the current President of the United States of America.

5.9. Recording. This Agreement shall be filed of record in the real estate records pertaining to the Property.

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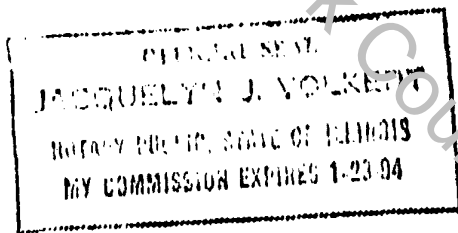
STATE OF ILLINOIS )  
COUNTY OF Kane ) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that John M. Morrison and Francis Johnson, Vice President of Downers Grove National Bank and Assistant Secretary of said Bank, respectively who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19<sup>th</sup> day of October, 1927.

Jacquelyn J. Volkert  
Notary Public

My commission expires \_\_\_\_\_.



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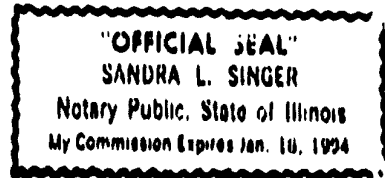
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STATE OF ILLINOIS )  
COUNTY OF Peoria ) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that William D. ... the President of Platinum Development Corp., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such William D. ..., appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

Given under my hand and official seal, this 12th day of April, 1944.

My commission expires Jan. 16, 1944.  
Sandra L. Singer  
Notary Public



State of Illinois )  
County of Peoria ) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that William D. ... the President of American Medicorp Development Co., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such William D. ..., appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

Given under my hand and official seal, this 12th day of April, 1944.

My commission expires 1-14, 1944.  
Sandra L. Singer  
Notary Public

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LEGAL DESCRIPTION

Lot 2 in Humana Medical Office Building No. 2 Subdivision,  
being a subdivision of part of the Northwest fractional  
Quarter of Section 7, Township 41 North, Range 10, East of  
the Third Principal Meridian, in Cook County, Illinois.

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