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Recording Requested By and
When Recorded Mail To:
Oppenheimer, Wolff & Donnelly
45 South 7th Street
Plaza VII
Minneapolis, Mn 55402
Attn: Duane L. Paulson
GNA Loan No. 1458

ASSIGNMENT OF RENTS AND LEASES

STATE OF ALABAMA)
)
SHELBY COUNTY) ss.

THIS ASSIGNMENT, made this 12th day of September, 1991 by F.O. Merz & Co., Inc., a Pennsylvania corporation (Assignor), whose post office address is P.O. Box 430, Cowpens, South Carolina 29330, to GREAT NORTHERN INSURED ANNUITY CORPORATION, a Washington corporation (Assignee), whose post office address is P.O. Box 490, Seattle, Washington 98111-0490.

PRELIMINARY STATEMENT OF FACTS:

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- A. The Assignee is making a loan to the Assignor in the amount of Four Hundred Thousand and no/100 Dollars (\$400,000.00) (herein the "Loan").
- B. To evidence the Loan the Assignor is executing and delivering to the Assignee its Promissory Note of even date herewith in the amount of the Loan (herein the "Note").
- C. As security for the repayment of the Note, the Assignor is executing and delivering to the Assignee, its Mortgage, Assignment of Rents and Leases, Security Agreement (and Fixture Financing Statement) of even date herewith (herein the "Mortgage") mortgaging that certain real property more fully described in Exhibit "A" attached hereto (herein the "Property"), and such documents and any other documents or instruments securing the Loan are herein referred to as the Loan Documents.
- D. As further security for the repayment of the Note, the Assignor is executing and delivering to the Assignee this Assignment.

NOW THEREFORE FOR VALUE RECEIVED, Assignor hereby grants, transfers and assigns to Assignee

- i) the immediate and continuing right to receive and collect the rents, income, profits and issues arising out of, payable from or collected from the Property including all monies owed the Assignor as landlord under a Lease for services, materials, leasehold improvements or otherwise furnished or installed pursuant to any Lease (collectively the "Rental Income");
- ii) all leases and agreements for the leasing, use or occupancy of the Property now, heretofore or hereafter entered into, and all renewals and extensions thereof, including but not limited to

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that certain lease described in Exhibit "B" attached to the Mortgage, ("Lease" or "Leases" as the case may be);

- iii) all guarantees of the obligations of any tenant under a Lease ("Guarantees");
- iv) all payments derived therefrom including but not limited to claims for the recovery of damages done to the Property or for the abatement of any nuisance existing thereon, claims for damages resulting from default under said Leases whether resulting from acts of insolvency or acts of bankruptcy or otherwise, and lump sum payments for the cancellation of said Leases or the waiver of any obligation or term thereof prior to the expiration date ("Payments");
- v) all rights and remedies the Assignor may have against a tenant under a Lease ("Remedies");
- vi) all proceeds payable by reason of the exercise by a tenant of any option to purchase the Property or any first refusal rights of a tenant contained in a Lease ("Option Proceeds");
- vii) all rights in and to any proceeds of insurance payable to Assignor and damages or awards resulting from an authority exercising the rights of eminent domain with respect to the Property ("Awards");
- viii) any award or damages payable to the Assignor pursuant to any bankruptcy, insolvency or reorganization proceeding affecting any tenant ("Bankruptcy Payments");
- ix) any payments made to Assignor in lieu of rent ("Payments in Lieu"); and
- x) all security deposits paid by any tenant under a Lease ("Security Deposits");

all the foregoing being collectively referred to herein as the "Rents".

This Assignment is given for the purpose of securing the following (herein collectively referred to as the "Secured Obligations"):

ONE. Payment of the indebtedness evidenced by and performance of the terms and conditions of the Note;

TWO. Payment of all other sums with interest thereon becoming due and payable to the Assignee as provided herein and in the Note and Mortgage;

THREE. Performance and discharge of each and every obligation, covenant and agreement provided herein and in the Mortgage.

AND THE ASSIGNOR FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES:

ARTICLE 1
PERFORMANCE OF LEASES

1.1. PERFORMANCE OF LEASES. The Assignor shall:

- a) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any Leases or other agreements for the occupancy or use of the Property (collectively "Leases") to be performed by the landlord thereunder;
- b) Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of said Leases by the tenants thereunder to be performed;
- c) Not borrow against, pledge or further assign any rentals due under said Leases;
- d) Not permit the prepayment of any Rents for more than two months prior to the due date thereof, nor anticipate, discount, compromise, forgive or waive any Rents;
- e) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases;
- f) Not permit any tenant to assign or sublet its interest in any of the Leases unless required to do so by the terms of the Lease and then only if such assignment does not work to relieve the tenant of any liability for payment of and performance of its obligations under such Lease;
- g) Not terminate any Lease or accept a surrender thereof or a discharge of the tenant unless required to do so by the terms of its Lease or unless the Assignor and tenant shall have executed a new Lease effective upon such termination for the same term of years at a rental not less than as provided in the terminated Lease and on terms no less favorable to the landlord than as in the terminated Lease;
- h) Not consent to a subordination of the interest of any tenant to any party other than Assignee and then only if specifically consented to by the Assignee; and
- i) Not amend or modify any Lease or alter the obligations of the parties thereunder, excepting in the ordinary and prudent course of business with due regard for the security afforded the Assignee by the Lease and which does not in any way reduce the rent or diminish the term thereof or the obligations of the tenant thereunder or increase the term of the tenancy or impose additional obligations or burdens on the landlord.

ARTICLE 2 PROTECTION OF SECURITY

2.1. PROTECTION OF SECURITY. The Assignee shall have the right at Assignor's sole cost and expense to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of the landlord thereunder, and Assignor agrees to pay all costs and expenses of Assignee, including attorney's fees in a reasonable sum, in any such action or proceeding in which the Assignee in its sole discretion may appear.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1. REPRESENTATIONS AND WARRANTIES. Assignor represents and warrants:

- a) that it is now the absolute owner of said Rents and Leases with full right and title to assign the same;
- b) that there are no outstanding assignments or pledges of any Lease or Rents;
- c) that there are no existing defaults under the provisions of any Lease on the part of any party to the Lease;
- d) that all obligations on the part of the landlord under any Lease have been fully complied with;
- e) that no Rents have been collected for more than one month in advance of their due date or waived, anticipated, discounted, compromised or released, except as disclosed to Assignee;

- f) that to Assignor's knowledge no tenant has any defenses, setoffs, or counterclaims against Assignor;
- g) Assignor has not executed any instrument that would prevent Assignee from enjoying the benefits of this Assignment; and
- h) that no part of the Property is used as a homestead or agricultural property.

ARTICLE 4 PRESENT ASSIGNMENT

4.1. PRESENT ASSIGNMENT. This Assignment shall constitute a perfected, absolute and present assignment, provided the Assignor shall have the right to collect, but not prior to accrual, all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur hereunder. The right of Assignor to collect the Rents shall constitute a revocable license in favor of Assignor revocable by Assignee in accordance with this Agreement.

ARTICLE 5 EVENTS OF DEFAULT

5.1. EVENT OF DEFAULT. It shall be an Event of Default under this Assignment upon the happening of any of the following:

- a) Failure to make any payment when due under the Note, the Mortgage or any of the other Loan Documents, followed by the failure to make such payment within ten (10) days after written notice thereof given to Assignor by Assignee; provided, however, that Assignee shall not be obligated to give Assignor written notice prior to exercising its remedies with respect to such default if Assignee had previously given Assignor during that calendar year a notice of default for failure to make a payment of similar type.
- b) Failure to perform any other covenant, agreement or obligation under the Note, the Mortgage or any of the other Loan Documents, followed by the failure to cure such default within thirty (30) days after written notice thereof given to Assignor by Assignee (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Assignor to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Assignee's notice of default).
- c) Assignor or any trustee of Assignor files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief; or such a petition is filed against Assignor or any trustee of Assignor and the petition is not dismissed within forty-five (45) days after filing.
- d) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Assignor or Assignor's property, and such decree or order is not vacated within forty-five (45) days after the date of entry.
- e) Assignor commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Assignor and the proceeding is not dismissed within forty-five (45) days after the date of commencement.
- f) Assignor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

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- g) There is an attachment, execution or other judicial seizure of any portion of Assignor's assets and such seizure is not discharged within ten (10) days.
- h) Any representation or disclosure made to Assignee by Assignor or any guarantor of the Loan proves to be materially false or misleading when made, whether or not that representation or disclosure is contained herein.

ARTICLE 6 **REMEDIES**

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6.1. REMEDIES. Upon an Event of Default the Assignee, without regard to waste, adequacy of the security or solvency of the Assignor, may declare all Secured Obligations immediately due and payable, may revoke the license granted Assignor hereunder to collect the Rents, and may, at its option, without notice, in person, by agent or by a court-appointed receiver, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Assignor could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Assignee to protect the security of Note. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Assignee in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Assignee shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default, Assignee shall be entitled (without notice and regardless of the adequacy of Assignee's security) to the appointment of a receiver, Assignor hereby consenting to the appointment of such receiver, and the receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Assignee in the Mortgage and herein. Assignee or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

6.2. APPLICATION OF RENTS. All Rents collected subsequent to delivery of written notice by Assignee to Assignor of an Event of default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Assignor under the Leases, and then to the Secured Obligations. Assignee or the receiver shall be liable to account only for those Rents actually received.

The exercise of Assignee's rights hereunder, the appointment of a receiver, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or waive, modify or affect notice of default under said Note or Mortgage or invalidate any act done pursuant to said notice, nor in any way operate to prevent the Assignee from pursuing any remedy which now or hereafter it may have under the terms and conditions of said Mortgage or the Note secured thereby or any other instruments securing the same. The rights and powers of the Assignee hereunder shall remain in full force and effect both prior to and after any foreclosure of the Mortgage and any sale pursuant thereto and until expiration of the period of redemption from said sale, regardless of whether a deficiency remains from said sale. The purchaser at any foreclosure sale, including the Assignee, shall have the right, at any time and without limitation, to advance money to any receiver appointed of the Property to pay any part or all of the items which the receiver would otherwise be authorized to pay if cash were available from the Property and the sum so

advanced, with interest at the rate provided for in the Note, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

ARTICLE 7 GENERAL COVENANTS

7.1. NO LIABILITY IMPOSED ON ASSIGNEE. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under the Leases nor shall this Assignment operate to place responsibility for the control, care, management or repair of the Property upon the Assignee nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Property, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of said Property resulting in loss or injury or death to any tenant, licensee, employee or stranger nor liable for laches or failure to collect any Rents.

7.2. INDEMNIFICATION. The Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases excepting the gross negligence or intentional wrongful acts of Assignee. Should the Assignee incur any such liability, or in the defense of any such claims or demands or a judgment be entered against Assignee, the amount thereof, including costs, expenses, and reasonable attorney's fees, shall bear interest thereon at the rate then in effect on the Note, shall be secured hereby, shall be added to the Secured Obligations and Assignor shall reimburse the Assignee for the same immediately upon demand, and upon the failure of Assignor so to do the Assignee may declare all Secured Obligations immediately due and payable.

7.3. TENANT TO RECOGNIZE ASSIGNEE. Each tenant under any Lease is hereby irrevocably authorized and directed to recognize the claims of Assignee or any receiver appointed without investigating the reason for any action taken or the validity or the amount of indebtedness owing to the Assignee, or the existence of any default in the Note, Mortgage, or Event of Default hereunder, or the application to be made by the Assignee or such receiver. Assignor hereby irrevocably directs and authorizes the tenants to pay to Assignee or such receiver all sums due under the Leases and consents and directs that said sums shall be paid to any such receiver in accordance with terms of its receivership or to Assignee without the necessity for a judicial determination that a default has occurred hereunder or under the Mortgage or that Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to Assignee or such receiver, the Assignor agrees that the tenant shall have no further liability to Assignor for the same. The sole signature of the Assignee or such receiver shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of the Assignee or such receiver for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rentals collected under this Assignment shall upon notice from the Assignee be drawn to the exclusive order of the Assignee or such receiver.

7.4. SECURITY DEPOSITS. Upon an Event of Default Assignor shall on demand transfer to the Assignee any security deposits held by Assignor under the terms of the Leases to be held by Assignee and applied in accordance with the provisions of the Leases. Until Assignee makes such demand and the deposits are paid over to Assignee the Assignee assumes no responsibility for any such security deposit. The Assignor shall deposit the same in an account, separated from its general funds, and if such deposits are required by law to be refunded to the respective tenants with interest thereon, such account shall be an interest bearing account.

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7.5. ATTORNEY IN FACT. Assignor hereby irrevocably appoints Assignee and its successors and assigns as its agent and attorney in fact, irrevocable, which appointment is coupled with an interest, to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Assignee may deem necessary to make this Assignment and any further assignment effective.

7.6. ASSIGNMENT OF FUTURE LEASES. That until the Secured Obligations shall have been paid in full, Assignor will on demand of the Assignee deliver to the Assignee executed copies of any and all other and future Leases upon all or any part of the said Property and agrees to make, execute and deliver unto Assignee upon demand and at any time or times, any and all assignments and other instruments sufficient to assign such Leases and Rents thereunder to Assignee or that the Assignee may deem to be advisable for carrying out the true purposes and intent of this Assignment. From time to time on request of the Assignee the Assignor agrees to furnish Assignee with a rent roll of the Property disclosing current tenancies, rents payable, and such other matters as Assignee may reasonably request.

7.7. ASSIGNEE NOT MORTGAGEE IN POSSESSION. Nothing herein shall constitute Assignee a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property and delivery of written notice to the Assignor of its election to be a mortgagee in possession, entry upon and taking possession by a receiver not constituting possession by Assignee.

7.8. ASSIGNEE CREDITOR OF TENANT. Assignor agrees that Assignee, and not Assignor, shall be and be deemed to be the creditor of the Tenant in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Tenant, (without obligation on the part of Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein) with an option to Assignee to apply any money received by Assignee as such creditor in reduction of the Secured Obligations.

7.9. CONTINUING RIGHTS. The rights and powers of Assignee or any receiver hereunder shall continue and remain in full force and effect until all Secured Obligations, including any deficiency remaining from a foreclosure sale, are paid in full, and shall continue after commencement of a foreclosure action and after foreclosure sale and until expiration of any period of redemption.

ARTICLE 8 **MISCELLANEOUS**

8.1. SUCCESSORS AND ASSIGNS. This Assignment and each and every covenant, agreement and provision hereof shall be binding upon the Assignor and its successors and assigns including without limitation each and every from time to time record owner of the Property or any other person having an interest therein and shall inure to the benefit of the Assignee and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to mean the heirs, executors, representatives and administrators of any natural person who is a party to this Assignment.

8.2. GOVERNING LAW. This Assignment is executed pursuant to and shall be governed by the laws of the State of Alabama.

8.3. SEVERABILITY. It is the intent of this Assignment to confer to Assignee the rights and benefits hereunder to the full extent allowable by law. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid. Any provisions found to be unenforceable shall be severable from this Assignment.

8.4. NOTICES. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail, or equivalent, to the respective party's address as set forth hereinabove or to such other place such party may subsequently by notice in writing designate as its address shall constitute service of notice hereunder.

8.5. CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Assignment are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

IN WITNESS WHEREOF, this Assignment is executed as of the date first above written.

F.O. MERZ & CO., INC.

By _____

Frederick Halbach-Merz
Its President

THIS DOCUMENT WAS DRAFTED BY:

Duane L. Paulson
Oppenheimer, Wolff & Donnelly
Plaza VII, Suite 3400
45 South Seventh Street
Minneapolis, MN 55402

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STATE OF SC)
COUNTY OF Spartanburg) SS

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Frederick Halbach-Merz, whose name as President of F.O. Merz & Co., Inc., a Pennsylvania corporation, is signed to the foregoing instrument and who is known to me to be such Frederick Halbach-Merz, acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily as such President of F.O. Merz & Co., Inc. on the day the same bears date.

Given under my hand and official seal this 12th day of September, 1991.

Betty P. Hammett
Notary Public

My Commission Expires 10/10/20

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**EXHIBIT A
TO
ASSIGNMENTS OF RENTS AND LEASES**

Lot 1, according to the Survey of Village on Valleydale at Southlake, recorded in Map Book 11, page 84, together with Declaration of Restrictions and Grant of Easement recorded in Real 173, page 355 in the Probate Office of Shelby County, Alabama.

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EXHIBIT B
TO
ASSIGNMENT OF RENTS AND LEASES

<u>Tenant</u>	<u>Lease Date</u>	<u>Lease Term Expires</u>
Goodyear Tire & Rubber Company	April 23, 1990	October 15, 2005

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STATE OF ALA. CLERK
I CERTIFY THIS
INSTRUMENT WAS FILED

91 OCT -1 AM 9:12

JUDGE OF PROBATE

1. Deed Tax	_____
2. Mtg. Tax	_____
3. Recording Fee	<u>27.50</u>
4. Indexing Fee	<u>3.00</u>
5. No Tax Fee	_____
6. Certified Fee	<u>1.00</u>
Total	<u>31.50</u>