

119775
Record and Return to:

Principal Mutual Life Insurance Company

711 High Street

Des Moines, IA 50392

ATTN: Donna J. Howell

Commercial Real Estate Closing

Inst # 1998-43184

11/03/1998-43184
08:57 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 CRH 28.50

State of Alabama, County of Shelby

ASSIGNMENT OF
LEASES AND RENTS
D-751811

THIS ASSIGNMENT, made as of 10/26/98, by MCWHORTER PROPERTIES-HOOVER, L.L.C., an Alabama limited liability company, having a post office address at 1106 Woodstock Avenue, Anniston, Alabama 36201, as Assignor ("Assignor" to be construed as "Assignors" if the context so requires), to PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, having its principal place of business and post office address at 711 High Street, Des Moines, Iowa 50392, as Assignee,

WITNESSETH THAT:

WHEREAS, Assignor, to evidence and secure a loan indebtedness, in the principal amount of Nine Million Four Hundred Fifty-two Thousand and 00/100 Dollars (\$9,452,000.00), has made and delivered two secured promissory notes of even date herewith to Assignee in the principal amounts of \$5,452,000.00 and \$4,000,000.00, payable as provided for in each of the respective secured promissory notes (said secured promissory notes hereinafter collectively referred to as the "Note") and finally maturing on October 10, 2018 (absent any acceleration of maturity as therein provided). Assignee has executed and delivered a Mortgage and Security Agreement (it being agreed that "Mortgage" as hereinafter used shall be construed to mean "deed of trust" or "trust deed" or "deed to secure debt" if the context so requires) bearing the aforesaid date to secure the Note and creating a lien on Assignor's interest in certain real estate in the County of Shelby, State of Alabama, more particularly described in Exhibit A attached hereto and made a part hereof, including the improvements now or hereafter thereon and the easements, rights and appurtenances thereunto belonging, all of which are hereinafter called the "Premises"; and

WHEREAS, Assignor is the lessor under that certain written lease of the Premises made to Lowe's Home Centers, Inc. (herein called the "Lessee") together with any corporation succeeding thereto by merger, consolidation or acquisition of Lessee's assets substantially as an entirety, under the Lease, dated as of October 30, 1997 (herein together with all supplements and amendments thereto and any memorandum of short form thereof for purposes of recording, called the "Lease"), between Assignor as lessor, and Lessee as lessee; and

CANADA TITLE

WHEREAS, Assignee has required the assignment hereafter made as a condition to making the above described loan;

NOW, THEREFORE, Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely and directly (and not merely collaterally) assign, bargain, sell, transfer, convey, set over and deliver unto Assignee, all rights of the lessor under the above described lease(s) and all other leases, tenancies, rental arrangements, subleases, and guarantees of the performance or obligations of any tenants thereunder affecting the Premises, or any part thereof, now existing or which may be executed at any time in the future during the life of this Assignment, and all amendments, extensions and renewals of said leases, subleases, and guarantees and any of them, all of which are hereinafter called the "Leases," and all rents or other income or payments, regardless of type or source of payment (including but not limited to CAM charges, lease termination payments, purchase option payments, refunds of any type, prepayment of rents, settlements of litigation or settlements of past due rents) which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Premises. It is intended hereby to establish a present and complete transfer, and direct and absolute assignment of all the Leases and all rights of the lessor thereunder and all the rents, and other payments arising thereunder on account of the use of the Premises unto Assignee. Assignor agrees to deposit with Assignee copies of all leases of all or any portion of the Premises.

1. Assignor hereby appoints Assignee the true and lawful attorney of Assignor with full power of substitution and with power for it and in its name, place and stead, to demand, collect, receipt and give complete acquittances for any and all rents and other amounts herein assigned which may be or become due and payable by the lessees and other occupants of the Premises, and at its discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of any and all rents and other amounts herein assigned. Lessees of the Premises, or any part thereof, are hereby expressly authorized and directed to pay all rents and other amounts herein assigned to Assignee or such nominee as Assignee may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.
2. Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents and other amounts assigned hereunder, including the right to enter upon the Premises, or any part thereof, and take possession thereof forthwith to the extent necessary to effect the cure of any default on the part of Assignor as lessor in any of the Leases. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor, with full power to use and apply all of the rents and other amounts assigned hereunder to the payment of the costs of managing and operating the Premises and of any indebtedness or liability of Assignor to Assignee, including but not limited

to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises or of making same rentable, attorney fees and costs incurred in connection with the interpretation and/or enforcement of this Assignment, and of principal and interest payments and/or any other payments due from Assignor to Assignee on the Note, the Mortgage or any of the other Loan Documents (as defined in the Mortgage), all at Assignee's election and in such order as Assignee may determine. Assignee shall be under no obligation to press any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor in the Leases; and Assignor covenants and agrees that it will faithfully perform all of the obligations imposed under any and all of the Leases and hereby agrees to indemnify Assignee and to hold it harmless from any liability, attorney's fees, costs, loss or damage which may or might be incurred by it under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases is incurred by reason of Assignor's failure to fulfill its obligation under the Lease prior to the date on which Assignee or a third party takes title by deed to the Premises, regardless of when such claim is raised by claimant. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Assignee nor shall it operate to make Assignee liable for the carrying out of any of the terms and conditions of any of the Leases, or for any waste of the Premises by the lessee under any of the Leases or any other party, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control thereof resulting in loss or injury or death to any lessee, licensee, employee or stranger.

The manner of the application of rentals, the reasonableness of the costs and charges to which such rentals are applied and the item or items which shall be credited thereby shall be within the sole and unlimited discretion of Assignee.

3. Provided there has been no default by Assignor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement of Assignor contained herein or in the Note or Mortgage, or in any of the Leases, any amounts collected hereunder by Assignee which are in excess of those applied to pay in full the aforesaid liabilities and indebtedness at the time due shall be promptly paid to Assignor; provided, however, that this provision shall not be applicable to any payments under the Leases in excess of one calendar month in advance, including, but not limited to, lease termination payments, purchase option exercise payments, refunds of any type, prepayment of rents, litigation settlements or settlements of past due rents (all of which shall be referred to collectively herein as the "Extraordinary Rental Payments"), all of which may be retained by Assignee pursuant to the provisions hereof.

4. Assignor hereby represents and warrants to Assignee that except for the sublessor's interest in subleases, if any, it is the sole owner of the entire lessor's interest in each of the Leases; that the Leases are not in default and are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as herein expressly mentioned; that all conditions precedent to the effectiveness of the Leases have been satisfied; that Assignor has not heretofore transferred or assigned the Leases or any of the rents thereunder or any right or interest therein, nor has it collected in advance or anticipated any of the rents thereunder; and Assignor represents and warrants that it is not indebted to the lessees under the Leases in any manner whatsoever so as to give rise to any right of setoff against, or reduction of, the rents payable under the Leases.
5. Assignor covenants not to alter, modify, amend or change the terms of the Leases or give any consent or permission or exercise any option required or permitted by the terms thereof or waive any obligation required to be performed by any lessee or execute, cancel or terminate any of the Leases or accept a surrender thereof or enter into leases after the date hereof without prior written consent of Assignee, and Assignor will not make any further transfer or assignment thereof, or attempt to pledge, assign or encumber any of the Leases or rents or other amounts payable thereunder, or convey or transfer or suffer a conveyance or transfer of the Premises or of any interest therein so as to effect, directly or indirectly, a merger of the estates and rights of, or a termination or diminution of the obligations of, any lessee thereunder. Assignor further covenants to deliver to Assignee, promptly upon receipt thereof, copies of any and all demands, claims and notices of default received by it from any lessee under any of the Leases assigned herein. If requested by Assignee, Assignor shall enforce the Leases and all remedies available to Assignor against the lessees thereunder in case of default under the Leases by lessees.
6. Upon payment in full of the principal sum, interest and other indebtedness secured hereby, and by any other documents which secure the Note, this Assignment shall be and become null and void; otherwise, it shall remain in full force and effect as herein provided and, with the covenants, warranties and power of attorney herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note, and shall be binding upon Assignor, and its heirs, legal representatives, successors and assigns, and any subsequent owner of the Premises.
7. Concurrently with the execution of any lease covering the Premises, Assignor will notify the lessee, by U. S. Certified Mail, of the existence of this Assignment and will deliver an executed copy of this Assignment to such lessee, directing such lessee to make all payments under its lease to Assignee or its nominee in accordance with the terms of this Assignment.
8. It is understood and agreed that this Assignment shall become effective concurrently with the Note and the Mortgage. This Assignment shall be governed by and construed in accordance with the laws of the State where the Premises is located.


9. (a) It is the intention of Assignee and Assignor that the assignment effectuated by this Assignment with respect to the rents and other amounts due under the Leases shall be a direct and currently effective assignment and shall not constitute merely the granting of a lien, security interest or pledge for the purpose of securing the indebtedness secured by the Mortgage. Notwithstanding the direct and absolute assignment of the rents and other amounts as herein described, there shall be no pro tanto reduction of any portion of the indebtedness secured by the Mortgage except with respect to rents or other amounts actually received by Assignee and applied by Assignee toward payment of such indebtedness.
- (b) Without limitation of the absolute nature of the assignment of the rents and other amounts due under the Leases hereunder, Assignor and Assignee agree that (i) this Assignment shall constitute a "security agreement" for purposes of 11 U.S.C. Section 552(b), (ii) the security interest created by this Assignment extends to property of Assignor acquired before the commencement of a case in bankruptcy and to all amounts paid as rents and/or other amounts due under the Leases (including, without limitation, any Extraordinary Rental Payments), and (iii) such security interest shall extend to all rents and/or other amounts due under the Leases (including, without limitation, any Extraordinary Rental Payments) acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the absolute nature of the assignment of the rents and other amounts due under the Leases hereunder, to the extent Assignor (or Assignor's bankruptcy estate) shall be deemed to hold any interest in the rents and/or other amounts due under the Leases (including, without limitation, any Extraordinary Rental Payments) after the commencement of a voluntary or involuntary bankruptcy case, Assignor hereby acknowledges and agrees that such rents and/or other amounts due under the Leases (including, without limitation, any Extraordinary Rental Payments) are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. Assignor may not use the cash collateral without the consent of Assignee and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(b)(2), and Assignor hereby waives any right it may have to assert that such rents and/or other amounts due under the Leases (including, without limitation, any Extraordinary Rental Payments) do not constitute cash collateral. No consent by Assignee to the use of cash collateral by Assignor shall be deemed to constitute Assignee's approval, as the case may be, of the purpose for which such cash collateral was expended.
- (c) Assignor acknowledges and agrees that, upon recordation of this Assignment, Assignee's interest in the rents shall be deemed to be fully perfected, "choate" and enforced as to Assignor and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of (a) commencing a foreclosure action with respect to this Assignment, (b) furnishing notice to Assignor or tenants under the Leases, (c) making formal demand for the rents, (d) taking possession of the Premises as a lender-in-possession, (e) obtaining the appointment of a receiver of the


rents and profits of the Premises, (f) sequestering or impounding the rents, or (g) taking any other affirmative action.

10. Notwithstanding anything in this Assignment to the contrary, Assignee may, upon written notice to Assignor, elect to (i) exclude from the assignment provided in this Assignment any of the Leases as specified in such notice so that the interest under such indicated Lease is not assigned to Assignee, (ii) subordinate the lien and other terms and provisions of the Mortgage to any of the Leases as indicated in said notice to Assignor, and/or (iii) require Assignor to use best efforts to obtain a Subordination, Non-Disturbance and Attornment Agreement, in form and substance approved by Assignee, from any of the lessees under any of the Leases as indicated in said notice to Assignor.
11. Assignor has had the opportunity to fully negotiate the terms hereof and modify the draftsmanship of this Assignment. Therefore, the terms of the Assignment shall be construed and interpreted without any presumption, inference, or rule requiring construction or interpretation of any provision of this Assignment against the interest of the party causing this Assignment or any portion of it to be drafted. Assignor is entering into this Assignment freely and voluntarily without any duress, economic or otherwise.

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

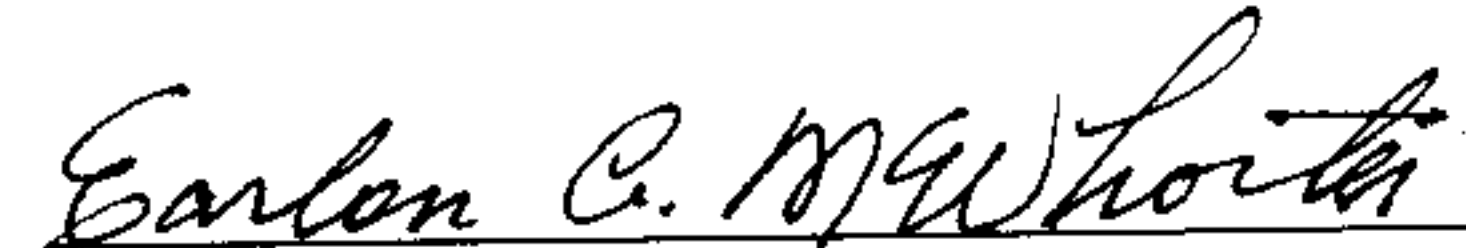
WITNESSES:


Print Name: HUBERT CARNACKI


Print Name: Cindy R. Halbrooks

DH:bg\s:\751811\alr

MCWHORTER PROPERTIES-HOOVER, L.L.C.,
an Alabama limited liability company

By 
Earlon C. McWhorter, Manager

STATE OF Al)
COUNTY OF Calhoun)
SS.

I, Lisa Stringfield, a Notary Public in and for said County in said State, hereby certify that Earlton C. McWhorter, whose name as Manager of McWhorter Properties-Hoover, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date and as the act of said company oration.

Given under my hand and official seal this 26th day of October, 1998.

Lisa Stringfield
Notary Public

[SEAL]

My commission expires: 7/24/2000

Exhibit A
D-751811

A tract of land in Sections 20 and 29, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Begin at the NE corner of the NW 1/4 of the NW 1/4 of said Section 29 and run Southerly along the East line of said 1/4 1/4 Section a distance of 201.41 feet; thence turn 40 degrees 05 minutes 32 seconds left and run Southeasterly 128.89 feet to a point on the Northwest right of way line of Valleydale Road; thence turn 96 degrees 26 minutes 38 seconds right and run Southwesterly along said right of way line 430.12 feet; thence turn 35 degrees 56 minutes 44 seconds right and run Westerly 478.15 feet; thence turn 71 degrees 49 minutes 38 seconds right and run Northwesterly 295.80 feet; thence turn 15 degrees 53 minutes 15 seconds right and run Northerly 251.18 feet; thence turn 16 degrees 31 minutes 05 seconds right and run Northeasterly 333.60 feet; thence turn 73 degrees 31 minutes 48 seconds right and run Easterly 738.03 feet; thence turn 89 degrees 56 minutes 03 seconds right and run 337.80 feet to the point of beginning; being situated in Shelby County, Alabama.

For informational purposes only:

The Ad Valorem Tax ID No.(s): 58-10-4-20-0-001-009-002 and 58-10-9-29-0-001-048

DH:mjm:s:751811:exha
10/15/98

Inst # 1998-43184

11/03/1998-43184
08:57 AM CERTIFIED
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