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Eugene "Gene" Moore Fee: \$38.00
Cook County Recorder of Deeds
Date: 12/24/2003 10:16 AM Pg: 1 of 8

CT1 8174189 ES2 LND No ABS E 3

MORTGAGE

PREPARED BY AND MAIL TO:

VICTOR M. GRIMM, P.C.
1027 14th Street
Boulder, Colorado 80302

Property Address:

2124 Hudson Place, Unit 102
Chicago, IL

Property of Cook County Clerk's Office

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MORTGAGE

THIS INDENTURE made this 28th day of October, 2003, between **Highland Properties 3803 LLC**, a Colorado limited liability company, (herein referred to as the "Mortgagor"), and **Michael G. Fassett and Ann Hartwell Fassett** (herein collectively referred to as the "Mortgagee");

WITNESSETH:

THAT, WHEREAS, the Mortgagor is justly indebted to the legal holder or holders of the Note hereinafter described, said legal holder or holders being herein referred to as the "Holder of the Note," in the principal sum of **Three Hundred Sixty-Four Thousand Eight Hundred and no/100 Dollars (\$364,800.00)**, evidenced by one certain Note of the Mortgagor in even date herewith, made payable to the order of the Mortgagee and delivered, in and by which said Note the Mortgagor promises to pay the said principal sum, with interest thereon at **Eight Percent (8.0%)** per annum. Interest shall be computed on the basis of a 360 day year. The Note may be prepaid at any time without premium or penalty. All unpaid principal and interest shall be due and payable in full on the earlier of: (1) the sale or transfer by Mortgagor of their interest in the Property; or (2) April 28, 2004 (the "Maturity Date.")

NOW, THEREFORE, the Mortgagor, to secure the payment of said principal sum of money and said interest, in accordance with the terms, provisions and limitations of this Mortgage, and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of One dollar in hand paid, the receipt hereof is hereby acknowledged, does by these presents CONVEY and QUIT CLAIM unto the Mortgagee, its successors and assigns, the following described real estate and all of its estate, right, title and interest therein situate, lying and being in the County of Cook and State of Illinois, to-wit:

**UNIT 2124-102, IN EAST LAKE VIEW VILLAGE CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:
THE SOUTH ½ OF LOT 15 (EXCEPT THAT PART TAKEN FOR LINCOLN PLACE) IN THE SUBDIVISION OF LOTS 1 AND 7 AND THE SOUTH ½ OF LOT 2 IN BLOCK 21 IN CANAL TRUSTEES SUBDIVISION IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; ALSO THE SOUTH 100 FEET OF LOT 13 IN THE SUBDIVISION OF LOT 3 IN THE ASSESSOR'S DIVISION OF BLOCK 21 IN CANAL TRUSTEES SUBDIVISION OF PART OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0324732145 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.**

Common address: 2124-2128 Hudson Place, Unit 102, Chicago Illinois, 60614

which, with the property hereinafter described, is referred to herein as the "Premises", together with:

A. All and singular the tenements, hereditaments, easements, appurtenances (including an easement to use one parking space), passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof;

B. All right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues and alleys adjoining the Premises;

C. All rents, issues, proceeds and profits occurring and to accrue from the Premises; and

D. All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs for such improvements

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now or thereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Premises including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, and sprinkler equipment and fixtures and all appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by the Mortgagor used or useful in the operation of the said real estate, buildings and improvements; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings or improvements in any manner; it being mutually agreed, intended, and declared that all the aforesaid property owned by said Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance of the Premises shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage; and as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code), this Mortgage is hereby deemed to be as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee or Holder of the Note as Secured Party (as such term is defined in the Uniform Commercial Code);

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns forever, for the purposes and upon the uses and trusts herein set forth.

TO PROTECT THE SECURITY OF THIS MORTGAGE, the Mortgagor, for itself, its successors and assigns, does covenant and agree with the Mortgagee for the use of the holders of said indebtedness until the same shall be fully paid:

(1) To pay said principal indebtedness and each installment thereof and of the interest thereon, as well as other sums secured hereby, duly, punctually and without grace when the same shall come due.

(2) To pay, before any penalty attaches, all general or special taxes, or special assessments, or installments thereof, all water charges, sewer charges and other charges which may be levied against the Premises, and upon written request to furnish to the Mortgagor, or to the Holder of the Note, evidence of such payment; and in the event that the Mortgagor shall consider any taxes or assessments to be illegal or unjust and shall desire to make objections or to contest in Court the validity of such taxes or assessments, it shall, before such taxes or assessments become delinquent or subject to penalty, advise the Mortgagee or the Holder of the Note of its intention so to do, and may, in the discretion of the Mortgagee, or the Holder of the Note, be required to deposit with the Mortgagee the amount of the taxes so contested, with an additional amount of Twenty-Five percent (25%) thereof as security for the payment of such taxes or assessments, and the Mortgagee shall hold said funds without interest, and shall have the right at any time in its discretion or at the direction of the Holder of the Note, to use said deposit, or any part thereof, for the payment or discharge of the said taxes, or the redemption of the property from a sale for the said taxes, or the purchase of a certificate of sale in the event the same shall have been sold; or, to provide for the payment of general taxes as aforesaid, upon written demand (after an event of default or during the pendency of any contest) by the Mortgagee, or the Holder of the Note, to make deposit with the Mortgagee of monthly installments in an amount not less than one-twelfth of the general taxes, according to the latest available bill, with such additional deposits or adjustments from time to time as may be necessary, to the end that the Mortgagee may have a sufficient sum to pay each installment of such general taxes before any penalty attaches thereto; and the Mortgagee, upon being furnished with bills for such general taxes, or any installments thereof, shall use the money so deposited, to pay such taxes or reimburse the Mortgagor in the event it shall have paid the same, and any balance from time to time remaining in the Mortgagee's hands, after payment of taxes then due or accrued, shall be returned to the Mortgagor.

(3) To keep the said Premises and all parts thereof and all equipment and fixtures thereon at all times in good repair, and not to permit to be done upon said Premises anything that may impair the value thereof or of the security intended to be effected by this instrument.

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(4) (a) That the Mortgagor will not create, suffer or permit to be created or filed against the Premises, any lien including, but not limited to, any mortgage lien, mechanic's or materialman's lien, superior or inferior to the lien of this Mortgage. The Mortgagor may contest any lien claim arising from any work performed, material furnished, or obligations incurred by Mortgagor upon furnishing Mortgagee, or the Holder of the Note, security and indemnification satisfactory to Mortgagee, or Holder of the Note, for the final payment and discharge thereof. In the event Mortgagor shall suffer or permit any superior or junior lien to be attached to the Premises, the Mortgagee or Holder of the Note, at its or their option, has the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest to be immediately due and payable without notice to Mortgagor.

(b) In the event that the Mortgagor shall sell, transfer, convey, or assign the title to all or any portion of the Premises, or in the event of an assignment of all or any portion of the beneficial interest of Mortgagor (including a collateral assignment thereof) whether by operation of law, voluntarily or otherwise, or in the event Mortgagor shall contract to do any of the foregoing without the prior written consent of Mortgagee or the Holder of the Note, the Mortgagee or Holder of the Note, at its option, has the unqualified right to accelerate the maturity of the Note causing the full principal balance, accrued interest and prepayment premium, if any, to be immediately due and payable without notice to Mortgagor.

(5) (a) To keep all buildings and fixtures and improvements of any kind that may be upon said Premises at any time during the continuance of said indebtedness insured against loss by fire and other risks (commonly known as "extended coverage") for the full replacement value thereof (without allowance for depreciation) in such insurance company or companies as may be approved by the Mortgagee or the Holder of the Note, and to deliver all such policies to the Mortgagee with the usual mortgagee clause attached and containing provision for ten (10) days' notice to Mortgagee prior to any cancellation or amendment thereof, which shall provide that all sums recoverable upon the same shall be payable to the Mortgagee; and all such policies or renewals thereof shall be delivered as aforesaid ten (10) days before the expiration of any then existing insurance, and in case of failure so to insure or deliver, the Mortgagee, or the Holder of the Note, may procure such insurance and all moneys paid therefor, with interest thereon at the Note Rate plus four percent (4%) set forth in the Note (hereafter the "Penalty Rate"), shall become so much additional indebtedness secured by this Mortgage; but it shall not be obligatory upon said Mortgagee, or the Holder of the Note, to advance or pay for such insurance in case of failure to insure or otherwise.

(b) To carry and maintain insurance as may be required from time to time by the Mortgagee, or the Holder of the Note, in forms, amounts, and with companies satisfactory to the Mortgagee, or the Holder of the Note. Certificates of such insurance, premiums prepaid, shall be deposited with the Mortgagee and shall contain provisions for ten (10) days' notice to the Mortgagee prior to any cancellation or amendment thereof.

(6) To comply with all statutes, ordinances, orders, requirements or decrees relating to the Premises or any part thereof by any Federal, State or Municipal authority (including, without limitation all environmental laws and regulations) and to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, (including, but not limited to, zoning variances, special exceptions, and non-conforming uses) privileges, franchises, grants and concessions which are applicable to the Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or contemplated use of the Premises.

In the event of any voluntary sale or transfer, or transfer by operation of law or otherwise, of all or any part of the Premises (including the beneficial interest therein) the Mortgagee and Holder of the Note are hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing or discharging the Mortgagor from the said Mortgagor's covenants and/or undertakings hereunder, specifically including paragraph (4)(b) hereof, and without the Mortgagee or Holder of the Note waiving its or other rights to accelerate the Note as set forth in paragraph (4)(b).

In case default shall be made (i) in the due and punctual payment of any installment of principal or interest at the time and place herein specified or in case default shall be made (ii) in the due observance or performance of

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any other covenant, condition or agreement in this Mortgage or in the Note or in any instrument now or hereafter evidencing or securing the indebtedness required to be kept or performed by the Mortgagor, including the deposit of any funds as herein required, then the Mortgagee, or the Holder of the Note, may, without notice, as to a default under (i) and with ten (10) days' written notice as to a default under (ii), declare the whole of said principal sum secured hereby, together with accrued interest thereon, to be due and payable forthwith and thereupon or at any time during the existence of such a default the Mortgagee or Holder of the Note may proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the rights to exercise the same at any other time.

In case of either of such defaults, or in the case any remainder of the principal indebtedness shall not be paid when the same shall come due by the terms of the Note, the Mortgagee may, in its discretion forthwith (whether before or after the institution of legal proceedings to foreclose the lien hereof), enter upon and take possession of the Premises or any part or parts thereof and expel or remove therefrom the Mortgagor or anyone claiming by, through or under it and may manage, control and lease the said Premises or any part or parts thereof, for such periods of time and upon such terms and to such persons as said Mortgagee, its agents and attorneys may deem proper and may employ agents to manage the said Premises and collect the rents thereof and may make all necessary repairs, renewals and alterations and may restore and insure the buildings and improvements thereon and may enjoy and exercise all the incidents of ownership of the said Premises and shall be entitled to remuneration for its services and expenses thus incurred, including attorney's fees. The right of the Mortgagee to enter upon, take possession or retain the possession of said Premises shall continue after sale under foreclosure decree or judgment in the event that such sale shall result in a deficiency. Such right shall be effective during the entire period allowed by law for redemption from any sale, or until the deficiency shall be satisfied in full, even though redemption may have been made prior to the expiration of such period.

The Mortgagee, or the Holder of the Note, shall also have the right to waive any default or defaults hereunder or, having possession of said Premises, shall have the right to return said Premises and the possession thereof to the Mortgagor, and having exercised the right hereunder to declare the entire indebtedness due, shall have the right to revoke such declaration. No such waiver or revocation or surrender of the possession of the Premises by the Mortgagee shall be construed to waive any subsequent or other default or impair any right or remedy of the Mortgagee, or the Holder of the Note. The Mortgagee, or the Holder of the Note, shall have the right at any time to pay and advance funds for the discharge of insurance premiums, mechanic's lien claims, taxes and other proper charges against the said Premises, and all such advances shall become part of the indebtedness of the Mortgagor to the Mortgagee secured hereby, and in no event shall such advance of money or payments be construed as a subordination of such indebtedness or a discharge thereof, but in any such event this indenture shall stand as security for any advances so made.

In addition to the right of entry as hereinabove provided, the Mortgagee, or the Holder of the Note, may, in case of any of the defaults above mentioned and the continuance thereof beyond any applicable grace period for a period of ten (10) days, or in case of a default in the payment of principal at maturity, then forthwith cause this Mortgage to be foreclosed, either for the amount then due under the terms of this Mortgage or for the full amount thereof, and to proceed to protect and enforce its rights and the rights of the Holder of the Note hereunder by appropriate proceedings at law or in equity for the specific performance of any covenant, condition or agreement herein contained, or in aid of the execution of any power herein granted or for the enforcement of such other appropriate legal or equitable remedy as may in its or his opinion be proper.

Upon the filing of a complaint to foreclose this Mortgage by the Mortgagee, or by the Holder of the Note, as hereinabove provided, the Court in which such complaint is filed may forthwith, either before or after sale and without notice to the Mortgagor or any party claiming under it and without regard to the solvency or insolvency of such Mortgagor, and without regard to the value of said Premises, appoint a receiver for the same for the benefit of the Holder of the Note secured hereby and the Mortgagee, with power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit, and in case of sale and deficiency during the period of redemption, if any; and the Court may from time to time authorize the receiver to apply the net amounts in his hands to the payment of the indebtedness secured hereby, the amount due upon any decree that may be entered in any suit

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to foreclose this indenture, insurance paid or required upon said Premises, taxes, special assessments or any other lien or charge upon said Premises that may become superior to the lien of this indenture or to any decree foreclosing the same.

In case of the foreclosure of this Mortgage, or the commencement of any foreclosure or preparation therefor, a reasonable sum shall be allowed for the services of the Mortgagee herein and for the attorney's fees and stenographer's fees, appraiser's fees of the plaintiff, and also for all outlays for documentary evidence and the cost of a complete abstract of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as said plaintiff may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Premises, all expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee or Holder of the Note in any litigation or proceeding affecting this Mortgage or the Note secured hereby or the Premises or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be and become so much additional indebtedness, with interest thereon at the Penalty Rate, shall be immediately due and payable by Mortgagor and shall be allowed in any decree foreclosing the lien hereof.

It is further agreed that if a foreclosure proceeding shall be instituted upon this Mortgage, then unless the undersigned Mortgagor shall pay all amounts due for principal, interest, costs and other charges found in any decree that may be entered hereunder, prior to any sale that may be had under such decree of foreclosure, then upon such sale and the confirmation thereof of the Court or other officer who shall have made such sale, or his successor in office, shall immediately execute and deliver to the purchaser at such sale a deed describing and conveying the above Premises purchased by him showing the amount paid therefor, or if the sale shall have been made to the plaintiff in such proceeding, then the amount of his bid therefor.

Out of the proceeds of any sale under foreclosure of this Mortgage, and out of the net rents, issues and profits derived by the Mortgagee if it shall take possession of said Premises, and out of the net funds in the hands of any receiver that may be appointed by the Court, there shall be paid, first, all the costs of such foreclosure suit and such Mortgagee's fees and attorney's and stenographer's fees and other fees and costs hereinbefore set forth and outlays for documentary evidence and cost of examination of title, and, second, all moneys advanced or debts incurred by the Mortgagee or the Holder of the Note for any purpose authorized in this Mortgage or by reason of the same with interest on such advances at the Penalty Rate, and, third, all the principal and accrued interest remaining unpaid on the indebtedness hereby secured. The overplus of the proceeds of sale, if any, and the funds in the hands of the Mortgagee or receiver, as aforesaid, shall then be paid to the Mortgagor, its successors, legal representatives or assigns on reasonable request.

Nothing herein or in the Note contained, nor any transaction related thereto, shall be construed or shall so operate either presently or prospectively, (a) to require Mortgagor to pay interest at a rate greater than is lawful for Mortgagor in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to require Mortgagor to make any payment or do any act contrary to law, and if any clause and provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clauses and provisions only shall be held for naught as though not herein contained, and the remainder of the Mortgage shall remain operative and in full force and effect, and Mortgagee or the Holder of the Note shall be given a reasonable time to correct any such error.

All rights and remedies herein provided are cumulative and the Mortgagee and the Holder of the Note secured hereby and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right afforded by this Mortgage.

Any notice which either party hereto may desire or be required to give to the other party shall be in writing and shall be mailed by certified mail addressed to such other party at the address hereinbefore set forth, or at such

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STREET ADDRESS: 2124 NORTH HUDSON

UNIT 102

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 14-33-123-031-0000

LEGAL DESCRIPTION:

PARCEL 1:

UNIT 2124-102, IN EAST LAKE VIEW VILLAGE CONDOMINIUM

AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: THE SOUTH 1/2 OF LOT 15 (EXCEPT THAT PART TAKEN FOR LINCOLN PLACE) IN THE SUBDIVISION OF LOTS 1 AND 7 AND THE SOUTH 1/2 OF LOT 2 IN BLOCK 21 IN CANAL TRUSTEES SUBDIVISION IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; ALSO THE SOUTH 100 FEET OF LOT 13 IN THE SUBDIVISION OF LOT 3 IN THE ASSESSOR'S DIVISION OF BLOCK 21 IN CANAL TRUSTEES SUBDIVISION OF PART OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0324732145 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EXCLUSIVE RIGHT TO THE USE OF PARKING SPACE NUMBER P-9, A LIMITED COMMON ELEMENT, AS DELINEATED ON THE SURVEY ATTACHED TO THE DECLARATION OF CONDOMINIUM AFORESAID, AND AS AMENDED BY FIRST AMENDMENT RECORDED AS DOCUMENT NUMBER 0328319202.