

MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT

Loan No. 204730-6

THIS MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT (hereinafter referred to as the "Mortgage") is made as of the 8 day of June, 1988, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated August 20, 1986 and known as Trust No. 100677-00, whose address is set forth below, as Mortgagor, in favor of THE TRAVELERS INSURANCE COMPANY, a Connecticut corporation, whose address is set forth below, as Mortgagee.

Article 1

TERMS OF THE INDEBTEDNESS

1.1 Certain Terms of Indebtedness: The following is a summary of certain terms of the Indebtedness (as hereinafter defined) secured by this Mortgage:

(a) The Note: That certain Promissory Note (hereinafter referred to as the "Note") of even date herewith made by Mortgagor and the Theatre-Restaurant Trustee (as hereinafter defined) payable to the order of Mortgagee in the original principal amount of Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00).

(b) Interest Rate and Payments: Interest shall accrue under the Note at the rate of Ten Percent (10%) per annum, and installments of interest and of principal outstanding under the Note shall be due and payable in the amounts, at the times and otherwise as provided in the Note.

(c) Maturity Date: All of the unpaid principal balance outstanding under the Note and all unpaid interest accrued thereon shall become due and payable, if not sooner paid or if not sooner due by acceleration, notice of prepayment, or otherwise, on June 1, 1993 (hereinafter referred to as the "Maturity Date").

(d) Prepayment: The Note may be prepaid in full, but not in part, but only as provided in the Note, and subject to the payment of prepayment premiums, as more specifically provided in the Note. Any payment in full of the Note shall include, in addition to the unpaid principal balance outstanding, all interest accrued thereon and any other sums which are secured by the Mortgage and other Loan Documents (as hereinafter defined), including, but not limited to, any expenses incurred by Mortgagee in connection with this Loan or in connection with any prior Event of Default (as hereinafter defined) of Mortgagor under the Note, Mortgage or other Loan Documents.

(e) Definition of the Indebtedness: The term "Indebtedness" shall mean the principal amount and interest payable thereon, and all the fees, including prepayment premiums, amounts, payments, premiums, liabilities and monetary liabilities and obligations due or required to be paid by Mortgagor under the Note, this Mortgage or the other Loan Documents, or under any future advance note, or under any and all amendments, modifications, restatements, replacements, consolidations, substitutions, renewals, extensions and increases to the Note and other Loan Documents, whether heretofore or hereafter existing, and whether direct or indirect, absolute or contingent.

Article 2

DEFINITIONS

2.1. Definitions: The following terms shall have the following meanings (any other capitalized term used herein that is not expressly defined in this Article shall have the meaning defined elsewhere in this Mortgage or in the other Loan Documents):

(a) Affiliated Person: (i) if Mortgagor is a trustee, any beneficiary of the trust, including the general partners of any general or limited partnership that is a beneficiary of the trust, and the general partners of any general or limited partnership that is a

88279651

UNOFFICIAL COPY

Property of Cook County Clerk's Office

PROPERTY



# UNOFFICIAL COPY

88279651

general partner of Beneficiary, and any joint venture partners of any joint venture that is the beneficiary of the trust, and any persons or entities holding the controlling shareholder interests in any corporation that is the beneficiary of the trust; (ii) if Mortgagor is a general or limited partnership, the general partners thereof; (iii) if Mortgagor is a joint venture, the joint venture partners thereof; and (iv) if Mortgagor is a corporation, the persons or entities holding the controlling shareholder interests therein.

(b) Awards: All awards and payments heretofore or hereafter made by any municipal, state or federal agency or authority to Mortgagor, including any awards or payments for any taking of the Mortgaged Property as a result of the exercise of the right of condemnation or eminent domain and any and all proceeds and payments heretofore or hereafter made by any insurance company as a result of any casualty or other event in connection with the Mortgaged Property.

(c) Beneficiary: The presently existing beneficiary of Mortgagor, and any and all successors and assigns.

(d) Buildings: That certain Highland Superstore regional distribution center containing approximately 453,816 square feet of rentable area, commonly known as Phase II of The Landings Shopping Center, located in Lansing, Cook County, Illinois, and any and all buildings, structures, parking areas and improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Real Estate or any part thereof.

(e) Commitment: That certain Statement of Mortgage Loan Application and Commitment Terms and Conditions dated September 21, 1987, from Beneficiary to Mortgagor, as amended by letter amendments dated November 30, 1987, December 8, 1987, December 10, 1987, December 14, 1987 and February 5, 1988, and accepted by Mortgagor on February 24, 1988, as amended by that certain letter amendment dated March 14, 1988 by and between Beneficiary and Mortgagor, as further amended by certain letter amendments dated April 25, 1988 and May 25, 1988, by and between Beneficiary and Mortgagor, the terms and conditions of which shall survive disbursement of the loan secured hereby.

(f) Construction Loan: That certain loan in an amount up to \$18,100,000.00 made to Mortgagor and Beneficiary by the Construction Lender (as defined below) for the purpose of constructing the Buildings.

(g) Construction Lender: Mellon Bank

(h) Contracts: Any and all contracts, documents or agreements pertaining to the ownership, use, occupancy, development, design, construction, financing, operation, management, alteration, repair, marketing, sale, lease or enjoyment of the Mortgaged Property, and all rights, privileges, authority and benefits thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder).

(i) Default Rate: The lesser of: (i) the interest rate of Four Percent (4%) per annum in excess of the rate of interest otherwise applicable under the Note at any time, or (ii) the highest rate allowed to be charged or collected under applicable law.

(j) Event of Default: The occurrences defined in Article 8 of this Mortgage.

(k) Fixtures: All fixtures, as defined in and subject to the Uniform Commercial Code, located on the Real Estate including, without limitation, all systems, fittings, structures, equipment, apparatus, fixtures and other improvements and items now or hereafter temporarily or permanently attached to, installed in or used in connection with any of the Buildings or the Real Estate, including, but not limited to, any and all partitions, hardware, motors, engines, boilers, furnaces, pipes, plumbing, conduit, sprinkler systems, fire extinguishing equipment, elevator equipment, telephone and other communications equipment, security equipment, master antennas and cable television equipment, water tanks, heating, ventilating, air conditioning and refrigeration equipment, laundry facilities, and incinerating, gas and electric machinery and equipment.

(l) General Partner: The presently existing managing general partner of Beneficiary and the presently existing managing general partner of the presently existing managing general partner of Beneficiary, and any and all successors and assigns.

88279651

(m) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or other authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) or arbitration authority, whether now or hereafter in existence.

(n) Hazardous Material: (i) Any asbestos or insulation or other material composed of or containing asbestos; or (ii) any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so called "superfund" or "superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decrease regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, now or at any time hereafter in effect.

(o) Highland Lease: That certain lease dated December 30, 1986 by and between Mortgagor, as landlord, and Highland Superstores, Inc., a Michigan corporation, as tenant.

(p) Impositions: All (i) general and special real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, (ii) charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the Loan Documents may be assessed, levied or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, (iii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor in connection with the Mortgaged Property, and (iv) annual premiums for insurance policies required to be maintained under this Mortgage.

(q) Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests (written or oral) now or hereafter in force, covering or affecting the Mortgaged Property, or any part thereof or interest therein, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder).

(r) Legal Requirements: The terms, covenants, conditions and restrictions now or hereafter existing to which Mortgagor, Beneficiary or any other Affiliated Person may be bound or to which the Mortgaged Property is subject under (i) any and all present and future statutes, laws, rulings, opinions, rules, regulations, codes, permits, certificates, approvals, ordinances, judicial decisions or orders of any Governmental Authority in any way applicable to Mortgagor, Beneficiary or any other Affiliated Person or the Mortgaged Property, and the ownership, use, occupancy, possession, development, design, construction, financing, operation, maintenance, alteration, repair, marketing, sale, lease or enjoyment thereof, including, without limitation, any related to zoning, building, utility service, sewer service, fire safety, land and water use, subdivision control, condominium property, environmental protection, occupational health and safety or flood hazard; (ii) Mortgagor's, Beneficiary's or any other Affiliated Person's presently or subsequently effective corporate resolutions, by-laws, articles of incorporation, partnership agreement, limited partnership agreement, joint venture agreement, limited partnership agreement, joint venture agreement or trust agreement, or other form of business association; and (iii) any and all other easements, covenants, conditions and restrictions to which Mortgagor, Beneficiary or any other Affiliated Person may be bound and which pertain to the Mortgaged Property, or to which the Mortgaged Property may be subject.

(s) Loan Documents: The Commitment, this Mortgage, the Note, the Security Agreement between Beneficiary and Mortgagee, the Assignment of Leases, Rents and Profits made by Mortgagor to Mortgagee, and the Theatre-Restaurant Mortgage, all of even date herewith, and any and all other documents now or hereafter evidencing or securing the payment of the Indebtedness hereunder or the observance or performance of the Obligations hereunder including, without limitation, all documents and instruments defined as "Loan Documents" under the Theatre-Restaurant Mortgage, and any and all amendments, modifications, restatements, replacements, substitutions, renewals, extensions and increases thereto whether heretofore or hereafter entered into in connection with the Indebtedness hereunder.

(t) Mortgaged Property: The Real Estate, Buildings, Fixtures, Leases, Contracts, Rents, Awards and Personalty together with:

(i) any and all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Real Estate and/or the Buildings belonging or in anyway appertaining thereto, and all right, title and interest of Mortgagor in and to any streets, ways, strips or gores of land adjoining the Real Estate or any part thereof; and

(ii) any and all betterments, additions, appurtenances, substitutions, replacements and after acquired title or interests thereof and all reversions and remainders therein; and

(iii) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

(u) Mortgagee: The above named Mortgagee and any and all successors, transferees, assignees and subsequent holders of the Note or other Loan Documents.

(v) Mortgagee's Address: 2215 York Road, Suite 504, Oak Brook, Illinois, 60521, Attention: Regional Counsel.

(w) Mortgagor: The above named Mortgagor and any and all successors, transferees, assignees and subsequent owners of the Mortgaged Property.

(x) Mortgagor's Address: 33 North LaSalle Street, Chicago, Illinois 60690.

(y) Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than the obligation to repay the Indebtedness) of Mortgagor or others to Mortgagee under or as set forth in the Note, this Mortgage or the other Loan Documents and under the Legal Requirements.

(z) Permitted Exceptions: The encumbrances and title exceptions specifically described in Exhibit B attached hereto and made a part hereof.

(aa) Permitted Subordinate Financing and Additional Permitted Subordinate Financing: Defined in Subparagraphs 7.23 (A) and (B) hereof.

(bb) Personalty: All right, title and interest of Mortgagor in and to all furniture, furnishings, equipment, machinery, goods, inventory and all other tangible personal property and any intangibles of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code now or hereafter located upon, within or about the Real Estate and the Buildings, or used or useful in connection therewith, together with all existing or future accessories, replacements and substitutions thereto or therefor and the proceeds therefrom, including, but not limited to: (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or the Buildings; (ii) all building materials and equipment intended to be incorporated in the improvements now or hereafter to be constructed on the Real Estate, whether or not yet incorporated in such improvements; (iii) all machinery, apparatus, systems, equipment or articles used in supplying heating, gas, electricity, ventilation, air conditioning, water, light power, refrigeration, fire protection, elevator service, telephone and other communication service, master antennas and cable television service, waste removal and all fire sprinklers, smoke detectors, alarm systems, security systems, electronic monitoring equipment and devices; (iv) all window or structural cleaning and maintenance equipment; (v) all indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers, cabinets, wall safes and other furnishings; (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (vii) all lamps, chandeliers and other lighting fixtures; (viii) all recreational equipment and materials; (ix) all office furniture, equipment and supplies; (x) all kitchen equipment and appliances, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units; (xi) all laundry equipment, including washers and dryers; (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of interior and exterior portions of the Real Estate; and (xiii) all other maintenance supplies and inventories; provided, that the enumeration of any specific articles of personalty set forth above shall in no way exclude or be held to exclude any items or property not specifically enumerated, and that any of the foregoing items that do not constitute personal property but constitute fixtures under applicable law shall be included in the definition of the term "Fixtures" as used herein; provided, however, any such items of property which are

owned by tenants and which according to the terms of the applicable Leases may be removed by such tenants at the expiration or termination of the applicable Leases are hereby excluded from the foregoing definition of Personality.

(cc) Real Estate: The real estate owned in fee simple by Mortgagor located north of 170th Street and east of the Commonwealth Edison power lines, Lansing, Cook County, Illinois and legally described on Exhibit A attached hereto and made a part hereof.

(dd) Rents: All of the rents, revenues, income, profits, deposits and other benefits payable under the Leases and/or otherwise arising from or out of the Mortgaged Property or out of the ownership, use, enjoyment or disposition of all or any portion of the Mortgaged Property or part thereof or interest therein.

(ee) Theatre-Restaurant Mortgage: That certain Mortgage, Assignment of Leases and Security Agreement of even date herewith made by the Theatre-Restaurant Trustee, as mortgagor, in favor of Mortgagee.

(ff) Theatre-Restaurant Property: The property encumbered by the Theatre-Restaurant Mortgage.

(gg) Theatre-Restaurant Trustee: American National Bank and Trust Company of Chicago, not personally but as Trustee under Trust Agreement dated December 1, 1985 and known as Trust No. 66007.

## Article 3

### GRANT

3.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor by these presents hereby Grants, Bargains, Sells, Assigns, Mortgages and Conveys unto Mortgagee the Mortgaged Property, subject to, but only to, the Permitted Exceptions, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever, and Beneficiary, by directing Mortgagor to execute and deliver this Mortgage, does hereby warrant that Mortgagor is well and lawfully seized of good, absolute and indefeasible fee simple absolute title to the Mortgaged Property, free and clear of all mortgages, liens, charges, security interests and encumbrances whatsoever, except only the Permitted Exceptions, and does hereby bind itself, its successors and assigns to warrant and forever defend fee simple absolute title to the Mortgaged Property, unto Mortgagee, and the quiet and peaceful enjoyment and possession thereof, against every person whomsoever claiming the same or any part thereof or interest therein.

3.2 Condition of Grant: The condition of these presents is such that if Mortgagor shall pay or cause to be paid the Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations in accordance with this Mortgage and the other Loan Documents, then this Mortgage and the other Loan Documents and the estates and rights granted by them shall be released and terminated by Mortgagee.

## Article 4

### ASSIGNMENT OF LEASES

4.1 Assignment of Rents, Leases and Profits: To further secure the full and timely payment of Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor hereby sells, assigns and transfers unto Mortgagee all of the Leases and the Rents now due and which may hereafter become due under or by virtue of any of the Leases which may have been heretofore or may be hereafter made or agreed to by Mortgagor, or the agents of Mortgagor, or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute and present transfer and assignment of all such Leases, Rents and all avails thereunder, to Mortgagee; provided, however, the acceptance by Mortgagee of the foregoing assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking possession of the Mortgaged Property by Mortgagee, be deemed or construed to constitute Mortgagee a "Mortgagee in Possession,"

nor thereafter or at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding related to the Leases or to the Mortgaged Property, to take any actions thereunder, to expend any money, incur any expenses, or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Mortgagor by any lessee thereunder. Reference is hereby made to that certain Assignment of Leases, Rents and Profits of even date herewith, executed by Mortgagor to Mortgagee, which sets forth in more detail the terms and conditions of said assignment and the rights, remedies, powers and authority vested in Mortgagee by virtue of said assignment, which terms, conditions, rights, remedies, powers and authority are herein incorporated by this reference. Neither Mortgagor nor Beneficiary shall have the right to terminate or enter into new leases with respect to the Mortgaged Property without giving Mortgagee prior written notice thereof and obtaining Mortgagee's prior written consent in connection therewith.

## Article 5

### SECURITY AGREEMENT

5.1 Security Interest: This Mortgage shall be construed as a mortgage on real property and it shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute, until the grant of this Mortgage shall terminate as provided in paragraph 3.2 above, a security interest under the Uniform Commercial Code with respect to the Personalty, Fixtures, Leases and Rents. To this end, Mortgagor does Grant, Bargain, Convey, Assign, Transfer and Set Over unto Mortgagee a security interest in and to any and all of Mortgagor's right, title and interest in, to and under the Personalty, Fixtures, Leases and Rents (hereinafter referred to as the "Collateral") to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Reference is hereby made to that certain Security Agreement of even date herewith between Beneficiary and Mortgagee, which sets forth in more detail the terms and conditions of said Security Agreement and the rights, remedies, powers and authority vested in Mortgagee by virtue of said Security Agreement, which terms, conditions, rights, remedies, powers and authority are herein incorporated by reference.

5.2 Financing Statement: This Mortgage is intended to be a financing statement within the purview of the Uniform Commercial Code with respect to the Personalty and Fixtures. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are as set forth herein. This Mortgage is to be filed for record in the real estate records of the county where the Real Estate is located. Mortgagor is the record owner of the Real Estate. Notwithstanding the foregoing, Mortgagor and Beneficiary hereby agree with Mortgagee to execute and deliver to Mortgagee, in form, scope and substance satisfactory to Mortgagee, any renewals or extensions of said Security Agreement or Financing Statements and such additional Security Agreements or Financing Statements and such further assurances as Mortgagee may, from time to time, consider necessary to create, perfect and preserve Mortgagee's security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

## Article 6

### REPRESENTATIONS AND WARRANTIES

Mortgagor hereby represents and Beneficiary, by directing Mortgagor to execute and deliver this Mortgage, represents and warrants to Mortgagee as of the date hereof and as of all dates hereafter that, provided, however, said direction by Beneficiary is not intended to create any personal liability of Beneficiary except to the extent provided in the exceptions to the non-recourse provisions appearing in paragraph 6(a) of the Commitment:

6.1 Organization, Authority, etc. Mortgagor, Beneficiary, the General Partner and any other Affiliated Person, to the extent applicable: (a) are duly organized, validly existing and in good standing under the laws of the State of Illinois; (b) have the right and authority to own their properties and to carry on their businesses as now being conducted; (c) are qualified to do business in every jurisdiction in which the nature of

88279651

their businesses or properties makes such qualification necessary; and (d) are in compliance with all laws, regulations, ordinances and orders of public authorities applicable to them.

6.2 Validity of Loan Documents. (a) The execution, delivery and performance by Mortgagor, Beneficiary, the General Partner and any other Affiliated Person, as the case may be, of the Loan Documents, and the borrowing evidenced by the Note: (i) are within the powers of Mortgagor, Beneficiary, the General Partner and any other Affiliated Person; (ii) have been duly authorized by all requisite partnership, corporate or trust action; (iii) have received all necessary governmental approval; (iv) will not violate any of the Legal Requirements; and (b) the Note and the Loan Documents, when executed and delivered by Mortgagor, Beneficiary, the General Partner and any other Affiliated Person, as the case may be, will constitute the legal, valid and binding obligations of Mortgagor, Beneficiary, the General Partner and any other Affiliated Person named therein in accordance with their respective terms.

6.3 Permits and Approvals. All permits, certificates, approvals and licenses required for or in connection with the ownership, use, occupancy or enjoyment of the Mortgaged Property, or in connection with the organization, existence and conduct of the businesses of Mortgagor, Beneficiary, the General Partner or any other Affiliated Person, have been duly and validly issued and are and shall at all times hereafter be in full force and effect.

6.4 Zoning. The Mortgaged Property is duly and validly zoned as to permit the current use, occupancy and operation of the Mortgaged Property and such zoning is final and unconditional and in full force and effect, and no attacks are pending or threatened with respect thereto. The Mortgaged Property complies and will comply with the requirements, standards and limitations set forth in the applicable zoning ordinance and other applicable ordinances in all particulars, including, but not limited to, bulk, density, height, character, dimension, location and parking restrictions or provisions.

6.5 Utilities. All utility services necessary and sufficient for the full use, occupancy and operation of the Mortgaged Property are available to and currently servicing the Mortgaged Property without the necessity of any offsite improvements or further connection costs.

6.6 Access. All streets, highways and waterways necessary for access to and full use, occupancy and operation of the Mortgaged Property have been completed and are open and available to the Mortgaged Property without further condition or cost to Mortgagor.

6.7 Condition of Mortgaged Property. The Buildings are in high quality physical order, repair and condition, are structurally sound and wind and water tight, and all plumbing, electrical, heating, ventilation, air conditioning, elevator and other mechanical systems and equipment are in good operating order, repair and condition.

6.8 Financial and Other Information. Neither this Mortgage nor any other document or statement furnished to Mortgagee by Mortgagor, Beneficiary, the General Partner or any other Affiliated Person or any other person contains or will contain any untrue statement of fact or omits or will omit to state a fact material to the submitted document or to the Mortgaged Property.

6.9 Other Information. All other information, reports, papers and data given to Mortgagee with respect to Mortgagor, Beneficiary, the General Partner or any other Affiliated Person or others obligated under the terms of the Loan Documents are accurate, correct and complete in all material respects.

6.10 No Brokerage Commissions. No brokerage fees or commissions are payable in connection with the loan to be disbursed by Mortgagee hereunder, except for brokerage fees payable to Pearce, Urstadt, Mayer & Greer and American Realty & Financial, Inc., which fees shall be paid in full by Mortgagor prior to or simultaneous with the closing of the loan secured hereby.

6.11 Other Agreements. (a) Mortgagor has heretofore given or caused to be given or shall hereafter give or cause to be given to Mortgagee true and correct copies (accompanied in each case by all related agreements and documents) of the partnership, corporate or trust agreements or articles or by-laws pursuant to which Mortgagor, Beneficiary, the General Partner and any other Affiliated Person was formed and any amendments



thereto; (b) such instruments (i) have been duly executed and delivered by the respective parties thereto, (ii) have not been amended, modified, or assigned (except as specified therein), (iii) are in full force and effect and (iv) are legal, valid and binding obligations of the respective parties thereto in accordance with their respective terms; (c) neither Mortgagor, Beneficiary, the General Partner nor any other Affiliated Person is a party to any agreement or instrument adversely affecting its respective present or proposed business, properties or assets, operation or condition, financial or otherwise; and (d) neither Mortgagor, Beneficiary, the General Partner nor any other Affiliated Person is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which it respectively is a party or to which the Mortgaged Property is subject.

6.12 Taxes. Mortgagor has filed all federal, state, county and municipal income tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and Mortgagor does not know of any basis for additional assessment with respect to such taxes.

6.13 Litigation. There is not now pending against or affecting Mortgagor, Beneficiary, the General Partner or any other Affiliated Person or the Mortgaged Property nor, to the knowledge of Mortgagor, is there threatened any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially impair or affect the financial condition or operation of Mortgagor, Beneficiary, the General Partner or any other Affiliated Person or the Mortgaged Property.

6.14 No Violation of Legal Requirements. Neither the contemplated use, occupancy, operation or disposition of the Mortgaged Property, nor the organization, existence and conduct of the business of Mortgagor, Beneficiary, the General Partner or any other Affiliated Person, violates or will then violate any Legal Requirements to which Mortgagor, Beneficiary, the General Partner or any other Affiliated Person may be bound or to which the Mortgaged Property may be subject. Mortgagor shall promptly notify Mortgagee, in writing, of its receipt of any notice of a violation of any Legal Requirements. Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense incurred by Mortgagee on account of Mortgagor's failure to perform the obligations of this subparagraph.

6.15 Survival of Representations and Warranties. Each and all of the representations and warranties contained herein shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein, and shall continue in full force and effect until the Obligations and the Indebtedness shall have been satisfied and paid in full.

## Article 7

### COVENANTS

Until the entire Indebtedness shall have been paid in full, Mortgagor hereby unconditionally covenants and agrees as follows:

7.1 Payment and Performance. Mortgagor shall pay or cause to be paid the Indebtedness, as and when all or any payment thereunder is due under the Note, this Mortgage or the Loan Documents, and shall perform or cause to be performed all of the Obligations in full on or before the dates the Obligations or any part thereof are required to be performed, and shall commit or suffer no act or event which (upon notice or the passage of time, or both) would constitute a default or Event of Default under the Loan Documents or the Legal Requirements.

7.2 Compliance with Laws. Mortgagor will promptly and faithfully comply with all present and future laws, ordinances, rules, regulations and requirements, and all other Legal Requirements, including, without limitation, applicable zoning, building, land use, occupational health and safety, hazardous waste and substances, and environmental requirements, of every Governmental Authority and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use, occupancy, possession, operation, maintenance, alteration, repair, reconstruction or disposition of the Mortgaged Property, or any part thereof or interest therein. Mortgagor shall immediately notify Mortgagee, orally and in writing, of its receipt of any notice of a

violation of any Legal Requirements. Mortgagor shall pay to Mortgagee, upon demand, all losses, costs, damages, claims and expenses incurred by Mortgagee on account of Mortgagor's failure to perform the obligations of this paragraph.

7.3 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid not later than the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof.

7.4 Maintenance and Repair. Mortgagor shall (i) constantly maintain (or cause the tenants under the Leases pertaining to the Mortgaged Property to constantly maintain in accordance with their Leases, but only to the extent required under the Leases) the Mortgaged Property in high quality and first-class condition and make all repairs and replacements thereof and additions and improvements thereto as are necessary or appropriate under sound management practices, or as Mortgagee shall require, (ii) prevent any act or thing which might impair or diminish the value or usefulness of the Mortgaged Property (including landscaped and recreation areas), or the onsite paved parking area and/or structures located on the Mortgaged Property, during the term of the loan secured hereby, and (iii) not erect any new structures of any kind or additions to existing Buildings on the Mortgaged Property, without in each instance the prior written consent of Mortgagee. Mortgagor covenants and agrees to establish and maintain such cash reserves and segregated accounts for deferred maintenance or improvements as are necessary or appropriate under sound management practices.

7.5 Management, Leasing and Operation. If Mortgagee requires, Mortgagor shall at all times provide competent and responsible management for the Mortgaged Property, with individuals devoting such time and attention as is necessary and appropriate to manage and maintain the Mortgaged Property as a high quality Highland warehouse. Mortgagor shall employ management and leasing agents approved by Mortgagee and the terms and conditions of any management, leasing or other commission agreement or any change or replacement of any such agent or agreement shall, at Mortgagee's option, be subject to approval by Mortgagee. Mortgagor covenants and agrees to hold all security deposits collected under any and all of the Leases in a segregated account. Mortgagor further covenants and agrees that all Rents generated by or derived from the Mortgaged Property shall be utilized solely for expenses directly attributable to the Mortgaged Property, including Mortgagor's liabilities and obligations with respect to the indebtedness and the Impositions, so that all of the foregoing are paid in full on or before the dates when due, and so that no accounts payable with respect to the Mortgaged Property shall be allowed to remain unpaid for more than thirty (30) days, and none of the Rents generated by or derived from the Mortgaged Property shall be diverted by Mortgagor and utilized for any other purposes unless the foregoing covenants and conditions have been fully satisfied. Upon full satisfaction of the foregoing covenants and conditions, Mortgagor may utilize any surplus Rents.

7.6 Insurance. From the Interest Commencement Date until the Closing Date, or the Extended Closing Date, if applicable (as such terms are defined in the Commitment), Mortgagor shall procure for, deliver to and maintain for the benefit of Mortgagee during the term of this Mortgage a policy of builder's risk insurance covering the Buildings for their full insurable value, but not less than \$7,700,000.00 with respect to the Mortgaged Property. Such policy shall be written in amounts and with companies and in form satisfactory to Mortgagee, shall cite Mortgagee's interest as mortgagee in standard non-contributory mortgagee clauses effective as of the Interest Commencement Date and shall be deposited with Mortgagee, and shall contain such provisions as Mortgagee deems necessary or desirable to protect its interest, including, without limitation, a provision for thirty (30) days prior written notice to Mortgagee of cancellation of or any material change in the risk or coverage insured. With respect to the Mortgaged Property only, Mortgagee acknowledges that its position under said builder's risk insurance will be subordinate to that of the Construction Lender but only until the construction mortgage securing the Construction Loan shall be satisfied in full. Mortgagor shall also procure for, deliver to and maintain for the benefit of Mortgagee during the term of this Mortgage all insurance required by Mortgagee including, without limitation, Prepaid All Risk Property insurance policies (or where appropriate "Builder's Risk" All Risk Policies) covering the Buildings and the Personalty, including replacement cost coverage and inflation adjustment endorsements, comprehensive general liability policies and such other insurance policies as Mortgagee shall require, including, without limitation, malicious mischief, flood, rental or business interruption coverages; all such policies shall be for the full insurable value or other limits and to have the coverages and to insure the risks (without deduction for

88279651

depreciation or obsolescence) specified in Exhibit C attached to the Commitment. If a blanket policy is issued, a certified copy of said policy shall be furnished together with a certificate indicating that Mortgagee is the insured under said policy in the proper designated amount. If any portion of any of the insured risks are reinsured, the policies shall contain a "cut-through" endorsement.

All insurance policies required hereby shall be issued by companies, on forms and with deductibles all of which are acceptable to Mortgagee, and shall recite Mortgagee's interest as Mortgagee in standard non-contributory mortgagee clauses effective as of initial funding of the loan secured hereby, or shall name Mortgagee as an additional insured, shall be maintained throughout the term of the loan secured hereby without cost to Mortgagee, shall be deposited with Mortgagee, and shall contain such provisions as Mortgagee deems necessary or desirable to protect its interest, including, without limitation, a provision for thirty (30) days prior written notice to Mortgagee of cancellation of or any change in the risk or coverages insured.

If any such policy or part thereof shall (i) expire or be withdrawn; or (ii) become void or subject to cancellation by reason of the breach of any condition thereof; or (iii) become void by reason of the failure or impairment of the capital of any company in which the insurance shall be carried; or (iv) for any reason whatsoever become unsatisfactory to Mortgagee, Mortgagee may procure such insurance as it deems necessary to protect its sole interest; provided, however, if Mortgagee is not satisfied with the insurance pursuant to subparagraph (iv) immediately above, Mortgagee shall first give Mortgagor written notice thereof and Mortgagor shall then have twenty (20) days thereafter to satisfy Mortgagee with respect to said insurance; provided further, however, if such insurance is the responsibility of tenants under the Leases, then Mortgagor's obligation to satisfy Mortgagee with respect to said insurance is subject to Mortgagor's ability to obtain said insurance from the tenants pursuant to the terms and conditions of the respective Leases. Mortgagor will promptly upon demand pay directly to or reimburse Mortgagee for all premiums and other costs incurred in procuring such insurance. Mortgagor shall deliver to Mortgagee the policies evidencing such insurance and any additional insurance which shall be taken out upon the Mortgaged Property, and receipts evidencing the payment of all premiums and renewals of all such policies of insurance shall be delivered to Mortgagee at least thirty (30) days before any such insurance shall expire, together with receipts evidencing the payment of such renewals. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Indebtedness, all right, title and interest of Mortgagor in and to such policies then in force concerning the Mortgaged Property, and all proceeds payable thereunder, shall thereupon vest in the purchaser at such foreclosure or in Mortgagee in the event of such transfer.

**7.7 Adjustment of Losses with Insurer and Application of Proceeds of Insurance.** Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies pertaining to the Mortgaged Property, and Mortgagee is hereby authorized and empowered, at its option, to make or file proofs of loss or damage and to adjust or compromise any loss, and to collect and receive the proceeds from any such policies. However, Mortgagee shall not be held responsible for any failure to collect any insurance proceeds regardless of the cause of failure. In the event the Mortgaged Property or any part thereof covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, then subject to the terms and conditions of the Highland Lease regarding the use of insurance proceeds, Mortgagee shall have the right, at its option, after deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, to apply the net insurance proceeds of any such policies to the payment of the Indebtedness (whether then matured or to mature in the future), either in whole or in part (in such order as Mortgagee shall in its sole discretion deem proper), or to Mortgagor, on such terms as Mortgagee may specify, to be used for the sole purpose of altering, restoring or rebuilding all or any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of any of the insured perils, subject to paragraph 7.8 below. If Mortgagee does elect to apply such insurance proceeds in payment or reduction of the Indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee shall have the right and option to declare the entire balance of the Indebtedness remaining unpaid to be immediately due and payable.

88279651

7.8 Application of Insurance Proceeds to Repair. In the event of any insured loss, Mortgagor shall give immediate written and oral notice thereof to Mortgagee and to the insurer. Provided that no Event of Default hereunder or under any of the other Loan Documents is then existing, or no event has occurred which, with the giving of notice or the passage of time, or both, may ripen into an Event of Default hereunder or under the other Loan Documents, and provided Mortgagee has elected pursuant to paragraph 7.7 above to have the Mortgaged Property repaired, then any such proceeds held by Mortgagee for repairs or replacements shall be held by Mortgagee or, if Mortgagee elects, in its sole discretion, with a title insurance company or escrow agent designated by Mortgagee, upon such terms and conditions as Mortgagee may specify, without payment or allowance of interest thereon, and shall be paid out from time to time to Mortgagor (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or material incident to such alteration, restoration, repair or replacement or directly to such persons as the work progresses), upon such terms and conditions as Mortgagee may specify. As a condition precedent to the initial disbursement Mortgagor shall be required to simultaneously deposit with Mortgagee the amount, if any, which, when added to the net available insurance proceeds, is necessary and sufficient in Mortgagee's judgment to complete such alteration, restoration, repairs, rebuilding or other purposes as required by Mortgagee. If, upon completion of the work, any portion of the insurance proceeds has not been disbursed to Mortgagor (or one or more of the other aforesaid persons) incident thereto, Mortgagee may, at Mortgagee's option, disburse such balance to Mortgagor or apply such balance toward the payment of the Indebtedness. In the event of an Event of Default hereunder, Mortgagee shall have the right, at its option, to apply the whole or any part of such insurance proceeds toward any of the Indebtedness, in such order and manner as Mortgagee may elect.

7.9 Condemnation Proceeds. All Awards shall be paid to Mortgagee and, after deducting from said Awards all of its expenses in the collection and administration of said sums, Mortgagee shall have the right, at its option, to apply the net proceeds in payment of the Indebtedness (whether then matured or to mature in the future), either in whole or in part (in such order as Mortgagee shall deem proper), or to require the Mortgaged Property so affected by such condemnation to be repaired or restored by the use of such proceeds in the same manner as provided in paragraphs 7.7 and 7.8 above. If Mortgagee does elect to apply such proceeds in payment or reduction of the Indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, and if the principal balance then secured by this Mortgage and the Theatre-Restaurant Mortgage exceeds seventy-five percent (75%) of the appraised value of the remaining Mortgaged Property and the Theatre-Restaurant Property, as determined by Mortgagee, then Mortgagee shall have the right and option to declare the entire balance of the Indebtedness remaining unpaid to be immediately due and payable. Mortgagee shall be entitled to all Awards, and is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in Mortgagor's name, any such proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. Mortgagor hereby assigns and transfers to Mortgagee all Awards up to the amount of the Indebtedness and the claims, rights and proceedings in connection therewith. Mortgagor agrees to execute such further assignments of all Awards and claims, rights and proceedings in connection therewith as Mortgagee may request. Mortgagee shall not be held responsible for any failure to collect any amount in connection with any such proceeding regardless of the cause of failure.

7.10 Performance of Agreements. Mortgagor, Beneficiary, the General Partner and any other Affiliated Person will duly and punctually perform all covenants and agreements under any agreements to which it is respectively a party with respect to the Mortgaged Property or any part thereof.

7.11 Inspection. Mortgagor will permit Mortgagee, at all reasonable times, to inspect the Mortgaged Property.

7.12 Hold Harmless. Mortgagor will defend and hold Mortgagee harmless from any action, proceeding or claims affecting the Mortgaged Property, or the value of the Note or the Loan Documents.

7.13 Books and Records. Beneficiary will maintain full and complete books and records reflecting the results of its operations (in conjunction with its other operations as well as its operations of the Mortgaged Property) in accordance with generally accepted accounting principles, and all such books and records shall, upon five (5) days' prior written notice, be subject to inspection by the Mortgagee and its representatives.

7.14 Annual Statements. Beneficiary will cause to be delivered to Mortgagee, within ninety (90) days after the close of each fiscal year of Beneficiary, an annual operating statement showing all income and expenses of the Mortgaged Property during such fiscal year, and financial statements of Beneficiary, the General Partner and any other Affiliated Person, all in form and substance satisfactory to Mortgagee, all audited by an independent certified public accountant acceptable to Mortgagee and all accompanied by a statement from said public accountant to the effect that said financial statements are to be relied upon by Mortgagee and that said financial statements have been delivered to Mortgagee; provided, however, with respect to the financial statements of Beneficiary, the General Partner and any other Affiliated Person, if audited financial statements are not available, Mortgagee will accept, in lieu thereof, financial statements certified by the General Partner. With respect to the operating statements for the Mortgaged Property, each annual statement shall include an annual rent schedule and a schedule of gross receipts collected by each tenant who is obligated to pay additional rent based on a percentage of gross receipts and such other data and information as Mortgagee may request. In addition to the foregoing, at any time and from time to time Mortgagor shall deliver or cause to be delivered to Mortgagee such other financial or business data or information as Mortgagee shall request with respect to the Mortgaged Property, Beneficiary, the General Partner or any other Affiliated Person. Mortgagee shall have the right, upon five (5) days' prior written notice, to inspect and make copies during normal business hours of Beneficiary's, the General Partner's or any other Affiliated Person's books, records and income tax returns with respect to the Mortgaged Property for the purpose of verifying any reports or other information delivered in accordance with this paragraph 7.14.

7.15 Deposits For Impositions. Mortgagor shall, at Mortgagee's option, pay to Mortgagee, on and subsequent to the date hereof and on each of the due dates of installments of principal and/or interest as set forth in the Note, an amount equal to one-twelfth (1/12) of Mortgagee's estimate of the next annual Impositions. Mortgagor shall also pay to Mortgagee such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund at least thirty (30) days' prior to the due dates of the next installment of such Impositions for payment of such Impositions. Amounts held hereunder by Mortgagee shall not bear interest and may be commingled with Mortgagee's other funds. Provided that no event has occurred which with the passage of time or the giving of notice or both would constitute an Event of Default hereunder, amounts held by Mortgagee pursuant to this paragraph 7.15 shall be made available to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Loan Documents to pay Impositions. Upon an Event of Default under this Mortgage, Mortgagee may, at its option, without being required so to do, apply any deposits on hand to any of the indebtedness, in such order and manner as Mortgagee may elect. All deposits are hereby pledged as additional security for the indebtedness, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided and shall not be subject to the direction or control of Mortgagor. If Mortgagee elects, Mortgagor shall provide, at its expense, a tax service contract for the term of this Mortgage, issued by a tax reporting agency approved by Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the term of this Mortgage.

7.16 Lien Status. Mortgagor shall protect the lien and security interest of this Mortgage and the Loan Documents and shall not place, or permit to be placed, or otherwise mortgage, pledge, hypothecate or encumber the Mortgaged Property with any other lien, attachment, levy, or security interest of any nature whatsoever (whether mechanics, judgment, tax, statutory, contractual or other) regardless of whether the same is allegedly or expressly subordinate and inferior to the liens and security interest created by this Mortgage and the Loan Documents, except for the Permitted Exceptions and if any such lien or security interest is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its own cost and expense, subject to the provisions of paragraph 10.20 hereof, pay the underlying claim in full, or appear in and defend any action or claim, or take such other action so as to cause the same to be released within thirty (30) days of when asserted, made or filed.

7.17 Restrictions on Transfer and Financing. For the purpose of protecting Mortgagee's security, keeping the Mortgaged Property free from subordinate financing liens, and/or allowing Mortgagee to raise the interest rate and to collect assumption fees, Mortgagor agrees that any sale, conveyance, further encumbrance or other transfer of title to the Mortgaged Property, or any interest therein (whether voluntarily or by operation of law), without Mortgagee's prior written consent, shall be an Event of Default hereunder.

For the purpose of this paragraph 7.17 and without limiting the generality of the foregoing, the occurrence at any time of any of the following events, without Mortgagee's prior written consent, shall be deemed to be an unpermitted transfer of title to the Mortgaged Property and therefore an Event of Default hereunder:

- (a) any sale, conveyance, assignment, or other transfer of, or the mortgage, pledge or grant of a security interest in, all or any part of the legal and/or equitable title to the Mortgaged Property, including, without limitation, all or any part of the beneficial interest of Mortgagor, or all or substantially all of Mortgagor's or Beneficiary's assets, except for Permitted Subordinate Financing and Additional Permitted Subordinate Financing and except as set forth in that certain Subordination Agreement of even date herewith between Mortgagee and Highland Superstores, Inc., a Michigan corporation, recorded simultaneously herewith, and except as set forth in the Highland Lease, to the extent applicable; or
- (b) any sale, conveyance, assignment, or other transfer of, or the mortgage, pledge or the grant of a security interest in, any shares of stock of a corporate Mortgagor, a corporation which is the beneficiary of a trustee Mortgagor, a corporation which is the general partner of a partnership Mortgagor, a corporation which is a general partner of a partnership beneficiary of a trustee Mortgagor, a corporation which is the owner of substantially all of the stock of any corporation described in this subparagraph, or any other corporation having an interest, whether direct or indirect, in Mortgagor, Beneficiary, the General Partner or any other Affiliated Person; or
- (c) any sale, conveyance, assignment or other transfer of, or the mortgage, pledge or grant of a security interest in, any general partnership interest of a partnership Mortgagor or a partnership beneficiary of a trustee Mortgagor, a partnership which is a general partner in a partnership Mortgagor, a partnership which is a general partner in a partnership beneficiary of a trustee Mortgagor, a partnership which is the owner of substantially all of the capital stock of any corporation described in subparagraph 7.17(ii) above, or any other partnership having an interest, whether direct or indirect, in Mortgagor, Beneficiary, the General Partner or any other Affiliated Person; provided, however, in the event the individual General Partner dies, his general partnership interest may be transferred to any one or more of his presently living sons, daughters or wife (collectively the "Heirs"); or
- (d) if Mortgagor, Beneficiary, the General Partner or any other Affiliated Person shall modify, amend, terminate, dissolve or in any way alter its trust, corporate or partnership existence, to the extent applicable, or fall from good standing or convey, transfer, distribute, lease or otherwise dispose of all or substantially all of its property, assets or business.

Any consent by Mortgagee permitting a transaction otherwise prohibited under this paragraph 7.17 shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee to withhold its consent on a subsequent occasion to a transaction not otherwise permitted by the provisions of this paragraph 7.17, and notwithstanding the giving of such consent Mortgagor shall not engage in any "prohibited transaction" with any "party-in-interest" as such terms are defined in the Employee Retirement Income Security Act of 1974, as amended from time to time.

No such consent shall be considered by Mortgagee unless the appropriate service fees and legal fees are paid in advance, and no such consent shall be given unless Mortgagor agrees, inter alia, that immediately upon closing of the subject sale or transfer, Mortgagor will provide Mortgagee with a copy of the deed or other instrument conveying title to the Mortgaged Property to transferee and with an Affidavit and Agreement of Indemnification in the form of Exhibit F attached to the Commitment executed by the transferee under oath.

Any such sale, transfer, assignment, conveyance, lease, lien, pledge, mortgage, hypothecation or any other encumbrance or alienation or contract or agreement to do any of the foregoing shall be null and void and of no force or effect, but the attempted making thereof shall, at the option of Mortgagee, constitute an Event of Default hereunder. Any consent by Mortgagee, or any waiver of an Event of Default under this

paragraph 7.17, shall not constitute a consent to or waiver of any right, remedy, or power of Mortgagee upon a subsequent Event of Default under this paragraph 7.17.

7.18 Existence. Mortgagor, Beneficiary, the General Partner and any other Affiliated Person will preserve and keep in full force and effect its partnership, corporate or trust existence, rights, franchises and trade names, to the extent applicable.

7.19 Use Restrictions. Mortgagor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which would: (a) be dangerous unless safeguarded as required by law; (b) constitute a public or private nuisance; (c) make void, voidable or cancellable, or increase the premium of, any insurance then in force with respect thereto; or (d) alter the current use and occupancy of the Mortgaged Property. Mortgagor will not operate the Mortgaged Property, or permit the same to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Mortgaged Property, or any part thereof, as tenant stockholders or otherwise.

7.20 Alterations. Mortgagor shall not, without the prior written consent of Mortgagee, make or permit to be made any additions or material alterations to the Mortgaged Property.

7.21 Replacement of Fixtures and Personality. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personality to be removed at any time from the Real Estate or Buildings except to the extent permitted under the Security Agreement referred to in paragraph 5.1 above.

7.22 Restoration Following Any Casualty. If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable or condemnation for which the award was obtained or not obtained), shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor shall give notice thereof to Mortgagee and shall promptly, at Mortgagor's sole cost and expense, and regardless of whether any insurance proceeds or condemnation award, or any portion thereof, shall be sufficient or shall be made available by Mortgagee for such purpose, commence and continue diligently to complete the restoration, repair, replacement and rebuilding of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction.

7.23 A. Permitted Subordinate Financing. Mortgagee agrees not to withhold its written consent if Mortgagor places, or permits to be placed, subordinate financing upon the Mortgaged Property, on a one (1) time basis, provided that such financing is expressly made subordinate and inferior to the liens and security interests in favor of Mortgagee, all leases pertaining to the Mortgaged Property and other security for the loan secured hereby, as the same may be subsequently modified or amended, and further provided that all of the following conditions have been fulfilled to Mortgagee's satisfaction ("Permitted Subordinate Financing"):

(a) There shall not then be any default or event of default under this Mortgage or the other Loan Documents;

(b) The holder of the Subordinate Financing must be an affiliate of Highland Superstores, Inc. (the "Subordinate Lender");

(c) Mortgagor shall have given Mortgagee at least thirty (30) days prior written notice of its desire to place Permitted Subordinate Financing on the Mortgaged Property, together with all documents and instruments evidencing and securing the Permitted Subordinate Financing, and such other information requested by Mortgagee regarding the Permitted Subordinate Financing, all of which shall be in form and substance satisfactory to Mortgagee. If the Permitted Subordinate Financing is in place prior to the closing of the loan secured hereby, then said prior written notice shall not be required, but as a condition to the closing of the loan secured hereby, Mortgagee shall have approved the Permitted Subordinate Financing and all documents and instruments evidencing and securing the same;

(d) The principal amount of the Permitted Subordinate Financing shall not exceed One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) and the maturity date thereof shall be no later than the last day of the second Loan Year (as such term is defined in the Note) of the loan secured hereby;

(e) The Subordinate Lender shall have entered into a written subordination agreement with Mortgagee, in form and substance satisfactory to Mortgagee. Mortgagor shall be a party to the subordination agreement for the purpose of consenting to all of the terms and conditions thereof. The subordination agreement shall contain the following special provisions: Mortgagee agrees not to foreclose this Mortgage and shall allow the Subordinate Lender to acquire title to the Mortgaged Property, subject to the lien of this Mortgage, so long as all of the following conditions have been fulfilled to Mortgagee's satisfaction:

(i) The Subordinate Lender shall have commenced the foreclosure of its subordinate mortgage (or negotiations with Mortgagor for a deed-in-lieu of foreclosure) no later than sixty (60) days after the last day of the second Loan Year of the loan secured hereby and shall diligently and continuously prosecute the same.

(ii) The Subordinate Lender shall have cured any and all defaults under the Loan Documents; provided, however, the Subordinate Lender shall only be obligated to cure defaults to the extent said defaults pertain to the Mortgaged Property, and if there are defaults with respect to debt service payments, the Subordinate Lender shall only have to pay its proportionate share thereof (the proportionate share being 7,700,000/11,500,000 or 66.96%).

(iii) The Subordinate Lender shall have entered into a written loan assumption agreement in form mutually acceptable to the Subordinate Lender and Mortgagee in order to evidence the following (and the Subordinate Lender and Mortgagee agree to act in good faith in preparing a loan assumption agreement incorporating the concepts set forth below: (A) the assumption by the Subordinate Lender, from and after the date it acquires title, of the principal balance outstanding under the Note but only for \$7,700,000.00, subject to reduction for insurance proceeds and condemnation awards pertaining to the Mortgaged Property, as hereinafter provided, together with all interest accrued thereon, and all costs and expenses associated therewith (the "Proportionate Share of Debt"); and (B) the assumption by the Subordinate Lender, from and after the date it acquires title to the Mortgaged Property, of all of the other Loan Documents pertaining to the Mortgaged Property. The assumption agreement shall not impose any personal liability on the Subordinate Lender, except for the exceptions to the non-recourse provisions set forth in Paragraph 6(a) of the Commitment; provided, however, from and after the date the Subordinate Lender acquires title to the Mortgaged Property, the Subordinate Lender shall not be liable for any prior act, omission, breach or default by Mortgagor under the Loan Documents. The written loan assumption agreement will confirm that if and when the Subordinate Lender satisfies all of the conditions precedent to its acquiring fee simple title to the Mortgaged Property, subject to this Mortgage, the Loan Documents pertaining to the Mortgaged Property, and those pertaining to the property encumbered by the Theatre-Restaurant Mortgage, shall no longer be cross-collateralized or cross defaulted; it being the intent that the Mortgaged Property shall only secure the Subordinate Lender's liabilities and obligations under the Note for its Proportionate Share of Debt, and the property encumbered by the Theatre-Restaurant Mortgage shall only secure Mortgagor's liabilities and obligations under the Note for its portion of the principal balance thereunder in the amount of \$3,800,000.00, together with interest accrued thereon and costs and expenses associated therewith. Furthermore, to the extent the principal balance outstanding under the Note has been reduced by insurance proceeds or condemnation awards attributable to the Mortgaged Property, then the \$7,700,000.00 of debt assumed by the Subordinate Lender shall be reduced by the amount by which the Note has previously been reduced by said insurance proceeds or condemnation awards, as the case may be, and Mortgagor shall be liable for \$3,800,000.00 of the Note without any reduction for said insurance proceeds or condemnation awards.

(iv) The Subordinate Lender shall have paid to Mortgagee all costs and expenses, including, without limitation, attorneys fees incurred by Mortgagee in connection with the restructuring of the loan secured hereby with the Subordinate Lender, as more specifically provided in subparagraph (iii) immediately above.

(v) The Subordinate Lender shall have agreed, in writing, to deliver to Mortgagee, within five (5) days after acquiring title to the Mortgaged Property, a copy of the executed deed and copies of such other executed documents and instruments pertaining to the acquisition of title by the Subordinate Lender as



Mortgagee may request, including, without limitation, an Affidavit and Agreement of Indemnification in the form of Exhibit F to the Commitment executed by the Subordinate Lender under oath.

(f) A written agreement from both the Subordinate Lender and Mortgagor, in form and substance satisfactory to Mortgagee, shall be delivered to Mortgagee to the effect that the loan documents evidencing and securing the Permitted Subordinate Financing shall not be modified, amended or changed so as to increase the interest rate or the loan amount or extend the maturity date thereof, without the prior written consent of Mortgagee (the foregoing restriction can be included as part of the subordination agreement referred to above);

(g) Mortgagor shall have agreed, in writing, to deliver to Mortgagee, within five (5) days after the Permitted Subordinate Financing, a copy of the executed subordinate mortgage and copies of such other subordinate loan documents as Mortgagee may request;

(h) Mortgagor shall have paid to Mortgagee all costs and expenses, including, without limitation, attorneys fees incurred by Mortgagee in connection with the Permitted Subordinate Financing; and

(i) The Title Company shall have issued an endorsement to the Title Policy insuring the first priority of this Mortgage without raising any additional exceptions thereunder and scheduling the Permitted Subordinate Financing as subordinate to this Mortgage.

The parties hereto acknowledge and agree that Permitted Subordinate Financing in favor of Highland Superstores, Inc., will be in place prior to the closing of the initial advance of the loan secured hereby, and a certain Subordination Agreement of even date herewith between said Subordinate Lender and Mortgagee will be recorded simultaneously with the recording of this Mortgage. The parties further acknowledge and agree that at the closing of the initial advance of the loan secured hereby, the Construction Loan will be repaid, in full, and accordingly, upon repayment of said Construction Loan, all references herein to the Construction Loan and Construction Lender shall be automatically deleted.

B. Additional Permitted Subordinate Financing. In addition to and not in lieu of the Permitted Subordinate Financing allowed with respect to the Mortgaged Property, Mortgagee agrees not to withhold its written consent if Mortgagor places, or permits to be placed, on a one (1) time basis only, subordinate financing encumbering both the Mortgaged Property and the Theatre-Restaurant Property, provided that such financing is expressly made subordinate and inferior and shall at all times be subordinate and inferior to the liens and security interests in favor of Mortgagee, to the full extent of all amounts which are and may become secured by this Mortgage and the Theatre-Restaurant Mortgage and all leases pertaining to the Mortgaged Property and the Theatre-Restaurant Property and other security for the loan secured hereby, as the same may be subsequently modified or amended, and further provided that all of the following conditions have been fulfilled to Mortgagee's satisfaction ("Additional Permitted Subordinate Financing"):

- (a) There shall not then be any default or event of default under this Mortgage or any of the other Loan Documents;
- (b) Mortgagee shall have approved, in writing, the holder of the Additional Permitted Subordinate Financing;
- (c) Mortgagor shall have given Mortgagee at least thirty (30) days prior written notice of its desire to place Additional Permitted Subordinate Financing on the Mortgaged Property and the Theatre-Restaurant Property, together with all documents and instruments evidencing and securing the Additional Permitted Subordinate Financing and such other information requested by Mortgagee regarding the Additional Permitted Subordinate Financing, all of which shall be in form and substance satisfactory to Mortgagee;
- (d) If Mortgagee so requests, the holder of the Additional Permitted Subordinate Financing shall have entered into a written subordination agreement with Mortgagee, in form and substance satisfactory to Mortgagee;

88279651

- (e) A written agreement from both the holder of the Additional Permitted Subordinate Financing and Mortgagor, in form and substance satisfactory to Mortgagee, shall be delivered to Mortgagee to the effect that the loan documents evidencing and securing the Additional Permitted Subordinate Financing shall not be modified, amended or changed without the prior written consent of Mortgagee;
- (f) The holder of the Additional Permitted Subordinate Financing shall have agreed to give Mortgagee notice of and a right but not the duty to cure any default with respect to such Additional Permitted Subordinate Financing, including the right to pay all or any portion of the indebtedness secured thereby, and be subrogated to the rights of such holder thereunder;
- (g) Mortgagor shall have agreed, in writing, to deliver to Mortgagee, within five (5) days after the Additional Permitted Subordinate Financing, a copy of the executed subordinate mortgage and copies of such other subordinate loan documents as Mortgagee may request;
- (h) Mortgagor shall have paid to Mortgagee all costs and expenses, including, without limitation, attorneys' fees, incurred by Mortgagee in connection with the Additional Permitted Subordinate Financing;
- (i) The title company insuring this Mortgage and the Theatre-Restaurant Mortgage shall have issued an endorsement to the title policy insuring the first priority of this Mortgage and the Theatre-Restaurant Mortgage without raising any additional exceptions thereunder and scheduling the Additional Permitted Subordinate Financing as subordinate to this Mortgage and the Theatre-Restaurant Mortgage; and
- (j) The annualized net operating income (calculated in a manner acceptable to Mortgagee) being generated from both the Mortgaged Property and the Theatre-Restaurant Property shall be sufficient (taking into consideration the debt service payments under the loan secured hereby, the Additional Permitted Subordinate Financing and the Permitted Subordinate Financing, to the extent applicable) to provide an anticipated debt service coverage ratio equal to or exceeding 1.05 to 1.00.

This Subparagraph 7.23 (B) is intended to be a repetition of Paragraph 7.23 of the Theatre-Restaurant Mortgage and said paragraphs do not provide cumulative rights for Additional Permitted Subordinate Financing, but rather a one (1) time right only.

**7.24 Tax Service Contract; Annual Tax Searches.** If Mortgagee so elects at any time, Mortgagor shall provide, at its sole expense, a tax service contract for the term of the loan secured hereby issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the term of the loan secured hereby.

**7.25 Hazardous Materials and Environmental Requirements.** Mortgagor shall comply with all laws, governmental standards and regulations applicable to Mortgagor or to the Mortgaged Property with respect to occupational health and safety, Hazardous Materials and environmental matters (collectively the "Applicable Environmental Laws"). Mortgagor shall promptly notify Mortgagee of its receipt of any notice of a violation of any Applicable Environmental Laws. Mortgagor and Beneficiary hereby agree to indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense (including, without limitation, attorneys fees and costs incurred in the investigation, defense and settlement of claims) incurred by Mortgagee on account of Mortgagor's violation of any Applicable Environmental Laws. Mortgagor's failure to pay

all loss, cost, damage, claim and expense incurred by Mortgagee on account of Mortgagor's failure to perform the obligations of this paragraph 7.25 shall constitute a default hereunder and under the Loan Documents.

**7.26 Asbestos.** Mortgagor shall not install or permit to be installed in the Mortgaged Property friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material (collectively, the "Applicable Asbestos Laws"). With respect to any such material currently present in the Mortgaged Property, Mortgagor shall promptly either: (a) remove any such material deemed hazardous and required to be removed under any Applicable Asbestos Laws; or (b) otherwise comply with the Applicable Asbestos Laws, at Mortgagor's sole cost and expense. If Mortgagor shall fail to so remove or otherwise comply, Mortgagee may, after notice to Mortgagor and the expiration of the earlier of (i) the applicable cure period hereunder or (ii) the cure period permitted under the Applicable Asbestos Laws, either declare the Mortgage to be in default, or do whatever was necessary to eliminate said substances from the Mortgaged Property or otherwise comply with the Applicable Asbestos Laws, and the cost thereof incurred by Mortgagee shall be additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate provided for herein and in the Note. Mortgagor shall give to Mortgagee and its agents and employees access to the Mortgaged Property and hereby specifically grants to Mortgagee a license, effective upon expiration of the applicable cure period, to remove said asbestos or substances in order to comply with the Applicable Asbestos Laws. Mortgagor and Beneficiary shall indemnify Mortgagee and hold Mortgagee harmless from and against any and all loss, cost, damage and expense (including, without limitation, attorneys fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur as a result of or in connection with the assertion against Mortgagee of any claim relating to the presence or removal of any asbestos substance referred to in this Paragraph 7.26, or compliance with any of the Applicable Asbestos Laws. Mortgagor's failure to pay all loss, cost, damage claim and expense incurred by Mortgagee on account of Mortgagor's failure to perform the obligations of this Paragraph 7.26 shall constitute a default under the Loan Documents. In addition, Mortgagor and Beneficiary acknowledge that in the event asbestos is caused to be removed from the Mortgaged Property by Mortgagor or by Mortgagee in order to comply with the Applicable Asbestos Laws, that the Environmental Protection Agency number assigned to the asbestos so removed shall not be in the name of Mortgagee, and Mortgagor and Beneficiary shall assume all of Mortgagee's potential and actual liability for such removed asbestos.

**7.27 Modification of Senior and Subordinate Loan Documents.** Neither Mortgagor nor Beneficiary shall amend or modify the loan documents evidencing and/or securing the Construction Loan and/or the Permitted Subordinate Financing the effect of which would be to increase the interest rate, the loan amount or extend the maturity date thereof, without the prior written consent of Mortgagee. Furthermore, neither Mortgagor nor Beneficiary shall enter into any loan agreement respecting the Mortgaged Property without Mortgagee's prior written approval, except for the loan agreement pertaining to the Construction Loan or the Permitted Subordinate Financing.

## Article 8

### EVENTS OF DEFAULT

The term "Event of Default" shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following, without notice to Mortgagor and without any grace period unless otherwise expressly set forth herein.

**8.1 Payment of Indebtedness.** If Mortgagor, Beneficiary, the General Partner or any other Affiliated Person shall default in the due and punctual payment of all or any portion of any installment of the Indebtedness as and when the same shall become due and payable and said default is either incurable or, if curable, shall remain uncured for a period of five (5) days after any applicable payment date.

**8.2 Performance of Obligation.** If Mortgagor, Beneficiary, the General Partner or any other Affiliated Person shall default in the due observance or performance of any of the Obligations as and when required and said default is incurable or, if curable, shall remain uncured for a period of thirty (30) days after written notice thereof from Mortgagee; provided, however, that if any such non-monetary default is curable but requires work to be done, acts to be done or conditions to be remedied which, by their

nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) day period, no event of default shall occur if Mortgagor commences to cure such default within thirty (30) days after written notice thereof and thereafter diligently and continuously prosecutes the same to completion within sixty (60) days after such written notice.

8.3 Bankruptcy, Receivership, Insolvency, etc. If proceedings under the Federal Bankruptcy Code shall be commenced by or against Mortgagor, Beneficiary, the General Partner or any other Affiliated Person, or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against Mortgagor, Beneficiary, the General Partner or any other Affiliated Person with respect to all or any part of any or all of Mortgagor's, Beneficiary's, the General Partner's or any other Affiliated Person's property under the Federal Bankruptcy Code or other law of the United States or of any state or other competent jurisdiction.

8.4 Laws Affecting Obligations and Indebtedness. If subsequent to the date of this Mortgage, any law is passed (a) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor, Beneficiary, the General Partner or any other Affiliated Person unlawful or (b) which prohibits Mortgagee from exercising any of its rights and remedies under the Loan Documents.

8.5 Foreclosure of Other Liens. If the holder of a junior or senior mortgage or other lien on the Mortgaged Property, including, without limitation, the Permitted Subordinate Financing, Additional Permitted Subordinate Financing and the Construction Loan (without hereby implying Mortgagee's consent to any such junior or senior mortgage or other lien), declares a default and Mortgagor fails to cure said default within the applicable grace or cure periods, if any provided thereunder, or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

8.6 Damage or Destruction. If the Mortgaged Property or any material part thereof is demolished, destroyed or damaged by any cause whatsoever and the loss is not adequately covered by insurance actually collected and Mortgagor fails to deposit with Mortgagee the deficiency upon written request.

8.7 Tax on Indebtedness or Mortgage. If any law is passed: (a) which would impose upon Mortgagee the obligation to pay the whole or any part of the Impositions; or (b) which would change in any way the laws relating to the taxation of mortgages, deeds of trust or debts so as to affect this Mortgage or the indebtedness; provided, however, that if in the opinion of Mortgagee's counsel it shall be lawful for Mortgagor to pay such Impositions or to reimburse Mortgagee therefor, then no Event of Default shall be deemed to have occurred if a mutually satisfactory reimbursement agreement is executed by Mortgagor and delivered to Mortgagee and such Impositions or reimbursements are thereafter paid by Mortgagor.

8.8 Failure to Maintain Permits or Licenses. If Mortgagor shall fail to maintain any permits or licenses which are necessary and required for operation of the Mortgaged Property.

8.9 Intentionally Omitted.

8.10 False Representation. If any representation or warranty made by Mortgagor, Beneficiary, the General Partner or any other Affiliated Person or others in, under or pursuant to the Loan Documents shall be false or misleading in any respect on or at any time after the date when made, or if any inaccuracy shall exist in any of the financial statements, operating information or other information furnished to Mortgagee in connection with the Loan Documents.

8.11 Failure to Notify Mortgagee of Default or False Representation. If Mortgagor, Beneficiary, the General Partner or any other Affiliated Person shall fail to notify Mortgagee in writing as soon as it shall be practicable to do so upon learning that any representation or warranty made by Mortgagor, Beneficiary, the General Partner or by any other Affiliated Person to Mortgagee is false or misleading in any material respect, or upon learning of the occurrence of any event which with the passage of time or the giving of notice or both would constitute an Event of Default under the Loan Documents.

8.12 Failure to Obtain Mortgagee's Consent to Transfer or Financing. If Mortgagor shall make any unpermitted transfer or financing in violation of paragraph 7.17 above.

# UNOFFICIAL COPY

0 8 2 7 9 6 5 1

8.13 Levy or Attachment. Subject to the provisions of paragraph 10.20 hereof, if any writ, attachment, levy, citation, lien or distress warrant shall be issued against the Mortgaged Property or any part thereof or interest therein.

8.14 Intentionally Omitted.

8.15 Inability to Pay Impositions and Other Debts. If Mortgagor shall fail to pay any of the Impositions when due, or if Mortgagor shall suffer or permit any other accounts payable in connection with the Mortgaged Property to become past due, or if Mortgagor, Beneficiary, the General Partner or any other Affiliated Person shall generally fail or be unable to pay its debts as they come due, or shall admit in writing its inability to pay its debts as they become due, or shall make a general assignment for the benefit of creditors.

8.16 Intentionally Omitted.

8.17 Default Under Leases. If Mortgagor or Beneficiary shall default in the performance of any obligations required pursuant to the Leases; provided, however, that the determination of whether a default by Mortgagor has occurred under any Leases pertaining to the Mortgage Property shall have been made by a final and unappealable court order.

## Article 9

### DEFAULT AND FORECLOSURE

9.1 Remedies. If an Event of Default shall occur, Mortgagee may, at its option, exercise one or more or all of the following remedies either successively or concurrently:

9.1.1 Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, with interest thereon accruing at the Default Rate, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

9.1.2 Receiver. Apply at any time to a court having jurisdiction for the appointment of a receiver of the Mortgaged Property and of the Rents and Leases; and such appointment shall be made by the court as a matter of strict right to Mortgagee and without reference to the adequacy or inadequacy of the security or value of the Mortgaged Property, or to the solvency or insolvency of Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment. The Rents shall be applied by the receiver to the payment of the Indebtedness, as provided in paragraph 9.5 below, or as otherwise ordered by the court.

9.1.3 Entry on Mortgaged Property. Enter upon the Mortgaged Property, without force or with such force as is permitted by law, and without notice or process or with such notice or process as is required by law, unless such notice or process is waivable, in which case Mortgagor hereby waives such notice and process, and take exclusive possession thereof and of all books, records and accounts relating thereto.

9.1.4 Power of Sale. To the fullest extent permitted and pursuant to the procedures provided by applicable law, exercise such power of sale as may be provided by applicable law, and sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine, with or without having first taken possession of the same, to the highest bidder at public auction. Such sales shall be made in accordance with the Legal Requirements therefor for the state in which the Mortgaged Property is located, including, to the extent there relevant, the Uniform Commercial Code there in effect. Nothing contained in this paragraph 9.1.4 shall be construed to limit in any way Mortgagee's rights to sell the Mortgaged Property by private sale if, and to the extent that, such private sale is permitted under the laws of the state where the Mortgaged Property is located or by public or private sale after entry of a judgment by any court of competent jurisdiction ordering the same.

9.1.5 Full or Partial Foreclosure. Pursuant to the procedures provided by applicable law, institute and prosecute foreclosure proceedings with respect to the Mortgaged Property; or, if Mortgagee so elects, institute foreclosure procedures only with respect to a portion of the Indebtedness or to a portion of the Mortgaged Property (such

partial proceeding being hereinafter referred to as a partial foreclosure). Mortgagor agrees that a sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the remainder of the secured indebtedness, but as to such remainder this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any remainder of the secured indebtedness, it being the purpose hereof to provide for a partial foreclosure sale of the secured indebtedness without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

9.1.4 Other. Exercise any other remedy specifically granted under the Loan Documents now or hereafter existing in equity, at law, by virtue of statute or otherwise.

9.2 Right and Authority of Receiver or Mortgagee in the Event of Default, Power of Attorney. Upon the occurrence of an Event of Default hereunder and entry upon the Mortgaged Property pursuant to paragraph 9.1.3 above, or appointment of a receiver pursuant to paragraph 9.1.2 above, and under such terms and conditions as may be deemed prudent and reasonable, in Mortgagee's or the receiver's opinion under the circumstances, all at Mortgagor's expense, Mortgagee or said receiver, as the case may be, may do or permit any one or more of the following, successively or concurrently: (a) enter upon and take possession and control of the Mortgaged Property; (b) take and maintain possession of all documents, books, records, papers and accounts related to the Mortgaged Property; (c) exclude Mortgagor, its agents and employees wholly from the Mortgaged Property; (d) manage and operate the Mortgaged Property; (e) preserve and maintain the Mortgaged Property; (f) make repairs and alterations to the Mortgaged Property with such changes, additions or modifications to the plans and specifications or intended disposition and use of the improvements under construction on the Mortgaged Property as Mortgagee may deem appropriate or desirable to place the Mortgaged Property in such condition as will, in Mortgagee's sole judgment, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Mortgaged Property, or employ a marketing or leasing agent or agents to do so, directed to the lease or sale of the Mortgaged Property, under such other terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents or other employees, agents, independent contractors or professionals, as Mortgagee may in its sole discretion deem appropriate or desirable, to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Mortgagor as attorney-in-fact and agent of Mortgagor, or in its own name as Mortgagee or receiver, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Mortgagee or receiver may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents from the Mortgaged Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid rents, payments, income or proceeds in the name of Mortgagor or Mortgagee; (o) maintain actions in forcible entry and detainer and actions in distress for rent; (p) compromise or give acquittance for rents, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Mortgagee by this Mortgage; and/or (r) do any acts which Mortgagee or the receiver in its discretion deems appropriate or desirable to protect the security hereof and/or use such measures, legal or equitable, as it may in its discretion deem appropriate or desirable, to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee or other third-party who has heretofore dealt or may hereafter deal with Mortgagor or Mortgagee, at the request of Mortgagee, to pay all amounts owing under any lease or other agreement to Mortgagee without proof of the default relied upon. Any such lessee or third-party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Mortgagor in so doing) any request, notice or demand by Mortgagee for the payment to Mortgagee of any Rents or other sums which may be or thereafter become due under its

lease or other agreement, or for the performance of any undertakings under any such lease or other agreement, and shall have no right or duty to inquire as to whether any default under this Mortgage or any of the other Loan Documents has actually occurred or is then existing, and Mortgagor hereby constitutes and appoints Mortgagee, its assignees, successors, transferees and nominees, as Mortgagor's true and lawful attorney in fact and agent, with full power of substitution in the Mortgaged Property, in Mortgagor's name and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively and concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable.

9.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided herein and in the Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

9.4 Waiver of Redemption, Notice, Marshalling, etc. To the extent permitted by law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any sale pursuant to any statute, order, decree or judgment of any court, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property or any portion thereof. Mortgagor further agrees, to the extent permitted by law, that if a default occurs hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any homestead exemption, appraisal, valuation, stay, extension, moratorium or other laws now or hereafter in force in order to prevent or hinder enforcement or foreclosure of this Mortgage, or absolute sale of the property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives and releases to the full extent that it may lawfully so do the benefit of such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

9.5 Application of Proceeds. The proceeds of any sale or all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in such order as Mortgagee may at its option elect, for the following purposes:

- (a) to the payment of all of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, payment of attorneys fees and fees of a receiver;
- (b) to the payment of accrued and unpaid interest due on the Note;
- (c) to the payment of the balance of the Indebtedness; and
- (d) the balance, if any, to Mortgagor.

9.6 No Conditions Precedent to Exercise of Remedies: Mortgagor shall not be relieved of any Obligation by reason of: (a) the failure of Mortgagee to comply with any request of Mortgagor to foreclose the lien of this Mortgage or to enforce any provision of the other Loan Documents; (b) the release, regardless of consideration, of the Mortgaged Property or any portion thereof, or the addition of any other property to the Mortgaged Property; (c) any agreement or stipulation extending, renewing, rearranging or in any other way modifying the terms of the Loan Documents without first having obtained the consent of, given notice to or paid any consideration to Mortgagor and in such event Mortgagor shall continue to be obligated to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Mortgagee; or (d) by any other act or occurrence save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

9.7 Indemnity. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, and to the extent provided by law and except for Mortgagee's willful misconduct or gross negligence, Mortgagor shall and does hereby agree to protect, indem-

nify, defend and hold Mortgagee harmless of and from any and all liability, loss, cost, expense or damage which it may or might incur in the exercise of its rights, remedies, powers and authority hereunder, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations, undertakings or liabilities. Should Mortgagee incur any such liability, loss, cost or damage of or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand, with interest accruing at the Default Rate.

9.8 Discontinuance of Proceedings. In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right so to do and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourse and powers of Mortgagee shall continue as if the same had never been invoked.

## Article 10

### MISCELLANEOUS

10.1 Future Advances. This Mortgage is given to secure payment of the Note, whether the entire amount thereof shall have been advanced to Mortgagor at the date hereof, or at a later date, and to secure the payment and performance of all other liabilities and obligations of Mortgagor under the Note or the Loan Documents, and any other amount or amounts that may be added to the Indebtedness under the terms of this Mortgage, all of which Indebtedness being equally secured with and having the same priority as any amounts advanced at the date hereof. It is agreed that any future advances made by Mortgagee to or for the benefit of Mortgagor from time to time under this Mortgage or the Loan Documents, whether or not such advances are obligatory or are made at the option of Mortgagee, or otherwise, made at any time from the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and have the same priority as all amounts, if any, advanced as of the date hereof and be subject to all of the terms and provisions of this Mortgage. The total amount of indebtedness that may be so secured may increase or decrease from time to time, but the total unpaid balance so secured at any one time, plus interest thereon, plus any disbursements made for the payment of taxes, levies, insurance or other liens, charges or encumbrances on the Mortgaged Property, plus interest on such disbursements at the Default Rate, shall not exceed Five Hundred Percent (500%) of the face amount of the Note.

10.2 Further Assurances. Mortgagor, upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, a declaration of no set-off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents.

10.3 Recording and Filing. Mortgagor will cause the Loan Documents and all supplements thereto at all times to be recorded and filed in such manner and in such places as Mortgagee shall request, and will pay any recording and filing taxes, fees and other charges.

10.4 Notice. All notices, demands, requests and other communications required under the Loan Documents shall be in writing and shall be deemed to have been properly given if delivered by messenger or if sent by U.S. first class mail, postage prepaid, addressed to the party for whom it is intended at Mortgagor's Address or Mortgagee's Address, as the case may be, and if to Mortgagor, with a copy to Hess, Kaplan & McDowell, Ltd., 180 North LaSalle Street, Suite 2525, Chicago, Illinois 60601, Attention: Peter A. Hess, Esq., and if to Mortgagee, with a copy to Coffield Ungaretti Harris & Slavin, 3500 Three First National Plaza, Chicago, Illinois 60602, Attention: Barbara J. Davis, Esq. Notice will be deemed to have been given upon delivery if delivered by messenger or on the date of mailing if mailed. Any party may designate a change of address by written notice to the other.

10.5 Mortgagee's Right to Perform the Obligations. If Mortgagor fails to make any payment or perform any act required by the Note, the Loan Documents or the Legal Requirements, Mortgagee, without any obligation so to do and without waiving any other right, remedy or recourse, may make such payment or perform such act at the expense of



Mortgagor. All sums so paid by Mortgagee and all costs incurred in connection therewith, together with interest thereon at the Default Rate from the date of payment, shall constitute part of the Indebtedness secured by this Mortgage and the Loan Documents and shall be paid by Mortgagor to Mortgagee on demand or shall be included in any judgment of foreclosure.

10.6 Modification. The Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the parties to the Loan Document being so modified, including Mortgagee, even if Mortgagee has not executed such Loan Document.

10.7 No Waiver. All options and rights of election herein provided for the benefit of Mortgagee are continuing, and the failure to exercise any such option or right of election upon a particular default or breach or upon any subsequent default or breach shall not be construed as waiving the right to exercise such option or election at any later date. No exercise of the rights and powers herein granted and no delay or omissions in the exercise of such rights and powers shall be held to exhaust the same or be construed as a waiver thereof, and every such right and power may be exercised at any time and from time to time.

10.8 Subrogation. If the proceeds of the Note are utilized in whole or in part to take up any existing lien against the Mortgaged Property or any portion thereof, Mortgagee shall be subrogated to any and all rights of the holder of any such lien, whether or not it is assigned to Mortgagee, and said liens are hereby renewed, extended and carried forward in full force and effect for the benefit of Mortgagee.

10.9 Mortgagee's Costs and Expenses. Mortgagor further expressly covenants and agrees to pay Mortgagee all costs and expenses of every kind paid or incurred by Mortgagee in any way in connection with the Note, this Mortgage or other Loan Documents, and the protection of the Mortgaged Property or the maintenance of the lien of this Mortgage, and the security interests under the other Loan Documents or otherwise in connection with the determination and exercise by Mortgagee of any of its rights or remedies under the Loan Documents upon the occurrence of any event which, with the passage of time or the giving of notice or both, could constitute a default or an event of default hereunder, including any and all expenditures for documentary evidence, title insurance, minutes of foreclosure, or any abstract or opinion of title to the Mortgaged Property, and all similar fees, costs, charges and expenses, and including all attorneys fees and stenographer's fees, paid or incurred by Mortgagee in any suit or legal proceeding, or in preparation or in anticipation of declaring a default or event of default, or in preparation or in anticipation of such suit or proceeding, regardless of whether such suit or proceeding is actually instituted, including, without limitation, any bankruptcy or insolvency proceeding, probate proceeding, or other proceeding in which Mortgagee may in its discretion intervene in order to protect its security, or appeal from any of the foregoing, or otherwise paid or incurred by Mortgagee in obtaining legal advice regarding its rights and remedies under the Loan Documents, or in determining whether to declare a default or event of default hereunder. All such fees, costs, charges and expenses shall constitute so much additional indebtedness evidenced by the Note and secured by this Mortgage, regardless of whether the same may cause the Indebtedness secured hereby to exceed the face amount of the Note, and shall be immediately due and payable when incurred, with interest accruing thereon at the Default Rate, and shall be allowed in any decree of foreclosure hereof. No proceeding to foreclose this Mortgage, whether a decree of foreclosure shall have been entered therein or not, shall be dismissed, nor shall a release of this Mortgage be given until all such expenses, charges and costs of Mortgagee shall have been paid in full.

10.10 Usury. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee to at all times comply with applicable law now or hereafter governing the interest payable on the Note or the loan secured hereby. If the applicable law is ever revised, repealed, or judicially interpreted so as to render usurious any amount called for under the Note (or under any other instrument evidencing or relating to any of the secured indebtedness), or contracted for, charged, taken, reserved or received with respect to the loan secured hereby, or if Mortgagee's acceleration of the Note or any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee be credited on the principal balance of the Note (or, if the Note has been paid in full, refunded to Mortgagor), and the provisions of the Note and this Mortgage and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the

8829654

necessity of the execution of any new document, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder.

10.11 Successors and Assigns; Covenants Running with the Land. The terms, provisions, covenants and conditions hereof and of the Loan Documents shall be binding upon Mortgagor, Beneficiary, the General Partner and any other Affiliated Person, their respective heirs, devisees, representatives, successors and assigns, and shall inure to the benefit of Mortgagee and its respective successors, substitutes and assigns, and shall constitute covenants running with the land.

10.12 Conflict of Terms. The terms, provisions, covenants and conditions of the Mortgage shall be construed in such a manner as to be consistent with the terms and any other instruments executed in connection with or as security for the Note; provided, however, in the event of a conflict between the terms of this Mortgage and the terms of the other Loan Documents, the terms of this Mortgage shall control.

10.13 Applicable Law. The rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Illinois, except to the extent that Federal law must preempt the applicability of state usury or other laws.

10.14 Report of Real Estate Transaction. Mortgagor has made or provided for making, or will make or provide for making, on a timely basis, any reports or returns required under Section 6045(e) of the Internal Revenue Code of 1986 (and any similar reports or returns required by state or local law) relating to the Mortgaged Property, notwithstanding the fact that the primary reporting responsibility may fall on Mortgagee, counsel for Mortgagee, or some other third party. Mortgagor's obligations under this paragraph shall be deemed to be satisfied if proper and timely reports and returns required under this paragraph are filed by a title company or real estate broker involved in the real estate transaction relating to the Mortgaged Property, but nothing contained herein shall be construed to require such returns or reports to be filed by Mortgagee or counsel for Mortgagee.

10.15 Business Loan. Mortgagor acknowledges and agrees (a) that the Note, this Mortgage, and the other Loan Documents have been negotiated, executed and delivered in the State of Illinois; (b) that the proceeds of the Note will be used for a "business purpose" as specified in Section 4(1)(c) of Paragraph 407, ch. 17 of the Illinois Revised Statutes, and that accordingly, the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph; and (c) that the Indebtedness and the Obligations secured hereby are an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. §§1601, et seq.

10.16 No Joint Venture; No Third Party Beneficiary. Mortgagor acknowledges and agrees that in no event shall Mortgagee be deemed to be a partner or joint venturer with it. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the Indebtedness or otherwise. No other person shall be deemed to have any right or priority under this Mortgage to any extent or for any purpose whatsoever, nor shall any other person have any claim or right of action with respect to the Mortgaged Property or proceeds of the Indebtedness or be deemed a third-party beneficiary under this Mortgage or under the Loan Documents.

10.17 Severability. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable neither the remainder of the instrument in which such provision is contained, nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law. It is hereby expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee to at all times comply with the usury and all other laws relating to the Loan Documents. If, at any time, the applicable Legal Requirements render usurious any amount called for in any Loan Document, then it is Mortgagor's and Mortgagee's express intent that such document be enforced to the greatest extent permitted by law, so as to comply with the then applicable law so as to permit the recovery of the fullest amount otherwise called for in such Loan Documents.

88279651

10.18 Release Upon Payment and Discharge of Mortgagor's Obligations. If Mortgagor shall fully pay all principal and interest on the Note and all other Indebtedness evidenced and secured hereby, and perform and comply with all of the Obligations to be performed and complied with by Mortgagor, then this Mortgage shall be satisfied, and Mortgagee shall thereupon release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all Indebtedness secured hereby and, if allowed by law, upon payment to Mortgagee of a reasonable fee for the preparation of such release.

10.19 Consent of Mortgagee. Any consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same, nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval (and no third party shall claim any benefit by reason thereof), and shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor whatsoever, nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain the assistance of persons, firms or corporations (including, but not limited to, attorneys, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs incurred in connection with the employment of such persons, firms or corporations.

10.20 Permitted Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Impositions and any mechanics', materialmen's or other liens or claims for lien upon the Mortgaged Property (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if, each of the following terms and conditions is satisfied in full to Mortgagee's satisfaction:

(a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted; and

(b) Mortgagor shall deposit with Mortgagee in cash the full amount of such Contested Lien, together with such additional amount equal to Mortgagee's estimate of interest, penalties or other increases that might arise during the period of contest (hereinafter referred to as the "Lien Amount"), provided, however, in the event of a mechanic lien claim, in lieu of such payment, Mortgagor shall have the right to bond over such lien with the title company which insured this Mortgage; and

(c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Mortgaged Property, and shall permit Mortgagee to be represented in, or review and approve the steps taken by Mortgagor in, any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness secured hereby with interest at the Default Rate until paid); and

(d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee, if, in the opinion of Mortgagee, and notwithstanding any such contest, the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided, that if Mortgagor shall fail so to do, Mortgagee shall have the right and option (but shall not be required or obligated) to pay all such Contested Liens and Lien Amounts, and interest and penalties thereon, and such other sums as may be necessary in the judgment of Mortgagee to obtain the release and discharge of such liens; and any amounts expended by Mortgagee in so doing shall be so much additional Indebtedness secured hereby, with interest at the Default Rate until paid.

10.21 Trustee's Exculpation. This Mortgage is executed by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee

88279651

# UNOFFICIAL COPY

88279651

(and said Trustee hereby represents and warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Note shall be construed as creating any liability on said Trustee personally to perform any covenants, either express or implied, herein contained or with regard to any warranty contained herein (except the warranty relating to the authority of said Trustee to execute this Mortgage) all such personal liability, if any, being expressly waived with respect to said Trustee, but nothing in the preceding portions of this paragraph shall be construed in any way as to affect or impair the lien of this Mortgage, or Mortgagee's right to exercise any of its rights and remedies hereunder, or be construed in any way so as to limit or restrict any of the rights and remedies of Mortgagee hereunder in any proceedings to enforce payment of the indebtedness secured hereby out of and from the security given therefor in the manner provided herein, in the Note and other instruments given to secure the Note, and further shall not in any way be construed to restrict or limit Mortgagee's absolute right to enforce personal liability against any co-maker, guarantor or guarantors or any other instrument given to secure the indebtedness secured hereby.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated August 20, 1986 and known as Trust No. 100677-00

ATTEST: [SEAL]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
S. G. BARKER  
County Secy

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
J. M. Whelan  
VP

Property of Cook County Clerk's Office

88279651

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/10/2009

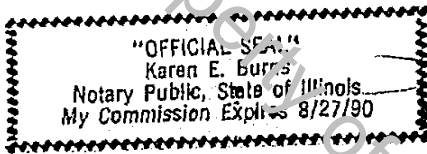
# UNOFFICIAL COPY

## TRUSTEE'S ACKNOWLEDGMENT

STATE OF Ill )  
 COUNTY OF Cook ) SS

I, KAREN E. BURNS, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that J. MICHAEL WHEELAN and SUZANNE G. BAKER, the VICE PRESIDENT and ASSISTANT SECRETARY, respectively, of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers, 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, not personally but as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this JUN 16 1988 day of JUN 16 1988, 1988.



*Karen E. Burns*  
 Notary Public

My Commission Expires:

\_\_\_\_\_, 19\_\_\_\_

This instrument was prepared by and after recording should be mailed to:

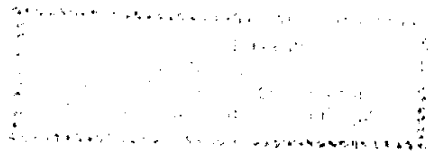
Mark S. Litner, Esq.  
 COFFIELD UNGARETTI HARRIS & SLAVIN  
 3500 Three First National Plaza  
 Chicago, Illinois 60602

Cook County Clerk's Office

88279651

# UNOFFICIAL COPY

Property of Cook County Clerk's Office



10/10/2025

# UNOFFICIAL COPY

## EXHIBIT A

### Highland Legal Description

#### PARCEL 1:

Lots 1 and 2 in the Landings Phase II, being a subdivision of part of the West 1/2 of Section 19, Township 36 North, Range 15, East of the Third Principal Meridian, in Cook County, Illinois, according to the Plat thereof recorded July 7, 1987 as Document 87,372,563.

Permanent Tax Numbers: 30-19-300-011          Volume: 225  
(Affects part of Parcel 1, part of Parcel 2 and other property)

30-19-301-004  
(Affects part of Parcel 1 and other property)

30-19-100-113  
(Affects part of Parcel 1)

Common Address:      North of 170th Street and east of  
                                 the Commonwealth Edison power lines  
                                 Lansing, Illinois

88279651



UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

88279651

## EXHIBIT B

### Highland Permitted Exceptions

1. General Real Estate Taxes not yet due and payable.
2. An easement for public utilities, as disclosed by the Plat of subdivision.

Recorded : July 7, 1987 Document: 87,372,563  
Affects : The West 10 feet of Lots 1 and 2 of Parcel 1

3. Rights of the United States of America, the State of Illinois, the municipality and the public, in and to that part of the land falling in the bed of the LITTLE CALUMET RIVER; also rights of the adjoining property owners in and to the free and unobstructed flow of the water thereof.

DEPT-01 RECORDING \$40.00  
T#2222 TRAN 8069 06/24/88 15:57:00  
#9281 # B \*—68—279651  
COOK COUNTY RECORDER

Property of Cook County Clerk's Office

88279651

88279651

40.00

UNOFFICIAL COPY

Property of Cook County Clerk's Office

① ok

0