

REAL ESTATE MORTGAGE,
AND SECURITY FOR CONSTRUCTION LOAN AGREEMENT
94004557

THIS MORTGAGE is made this 13th day of JANUARY, 1994, between the Mortgagors, C. DAVID ROSE AND JERRY MIRSHAK, individually and as tenants in common, (herein "Borrower"), and the Mortgagee, BANK OF HIGHLAND, of Highland, Indiana, whose address is: 450 W. Lincoln Highway, Schererville, IN 46375, (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of ONE HUNDRED THIRTY TWO THOUSAND SEVEN HUNDRED TWENTY AND NO/100 Dollars (\$132,720.00), which indebtedness is evidenced by Borrower's Note dated JANUARY 13, 1994, (herein "Note"), providing for monthly installments of interest, with the balance of the indebtedness, if not sooner paid, due and payable in full on or before JANUARY 13, 1995.

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions and modifications thereof; (b) the performance of the covenants and agreements of Borrower contained in a Construction Loan Agreement between Lender and Borrower dated JANUARY 13, 1994, as provided in paragraph 27 hereof; (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and (d) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of Lake, State of Indiana:

STOP
This Document is the property of
LOT 4, ROBERT BARTLETT'S MARQUETTE PARK ESTATES, IN THE CITY OF GARY, LAKE COUNTY, INDIANA, PLAT BOOK 27, PAGE 29, IN LAKE COUNTY, INDIANA.

which has the address of 739 MONTGOMERY STREET, GARY, IN 46403 (herein "Property Address"), all in Lake County, Indiana;

TOGETHER with all buildings, improvements, and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents royalties, minerals, oil and gas rights and profits, water, water rights, and all fixtures, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, blinds, shades, mirrors, cabinets, paneling, rugs, attached floor coverings, antennae, and trees and plants; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Mortgage; and all of the foregoing, together with said property are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the property against all claims and demands, subject to any easements or restrictions specifically listed in a schedule of special exceptions to coverage in any Lender's title insurance policy insuring Lender's interest in the Property.

BORROWER AND LENDER COVENANT AND AGREE AS FOLLOWS:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges,

Chicago Title Insurance Company

2200
Ct

as provided in the Note.

2. FUNDS FOR TAXES AND INSURANCE. Borrower shall be responsible for payment of insurance premiums and any and all real estate taxes assessed against the property in accordance with paragraphs 4 and 5 of this Mortgage.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender in the following order of priority: (i) interest payable on the Note, (ii) principal of the Note, and (iii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 7 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

4. CHARGES, LIENS. Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and other impositions. Upon Lender's request, Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Mortgage, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Mortgage to be perfected against the property.

5. HAZARD AND FLOOD INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the property insured by carriers at all times satisfactory to Lender against loss by fire, flood, if applicable, and hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender shall require and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the property, or (b) to apply the balance of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in paragraph 3 hereof.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the property,

the property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architects, certificates, waiver of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of sums secured by this Mortgage, any such application of proceeds to principal shall not exceed or postpone the due dates of the monthly installments referred to in paragraph 1 hereof or change the amounts of such installments. If the property is sold pursuant to paragraph 18 hereof or if Lender acquires title to the property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the property prior to such sale or acquisition.

6. RESERVATION AND MAINTENANCE OF PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the cost of such restoration or repair, (d) shall keep the Property, including improvements, fixtures and appliances thereon in good repair and shall replace fixtures and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

7. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearance, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. In addition, Borrower shall reimburse Lender the cost of any additional appraisals of property required by Lender.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property.

9. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

10. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Mortgage, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefore, modify the terms and time of payment of said indebtedness, release from the lien of this Mortgage any part of the property, take or release other or additional security, reconvey any part of the property, consent to any map or plan of the property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note, or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 10 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sum secured by this Mortgage and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

11. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Lender's receipt of any awards, proceeds or damages, under paragraphs 5 and 9 hereof operate to cure or waive Borrower's default in payment of sums secured by this Mortgage.

12. REMEDIES CUMULATIVE. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity and may be exercised concurrently, independently or successively, in any order whatsoever.

13. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and

agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

14. NOTICE. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail, return receipt requested, addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. GOVERNING LAW; SEVERABILITY. This Mortgage shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

16. BORROWER'S COPY. Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

17. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION. On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower (if Borrower is not a natural person or persons but is a partnership or other legal entity), then the Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 18 of this Mortgage. This option shall not apply in case of:

(a) transfers by devise or descent or by operation of law upon the death of a joint tenant or a partner;

(b) sales or transfers when the transferee's creditworthiness and management ability are satisfactory to Lender and the transferee has (i) executed, prior to the sale or transfer, a written assumption agreement containing such terms as Lender may require, including, a statement that notwithstanding a sale or transfer, that the Borrower will continue to be obligated under the Note and this Mortgage, and (ii) the transferee has paid to the Lender, as an Assumption and Transfer Fee, an amount not to exceed three percent (3%) of the then remaining unpaid balance principal loan balance;

18. ACCELERATION; REMEDIES. Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage or the Note, including, but not limited to, the covenants to pay when due any sums secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees, costs of documentary evidence, abstracts and title reports.

19. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY. If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to

bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower of Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten (10) days, then Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 18 of this Mortgage. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Mortgage pursuant to paragraph 7 hereof.

20. APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Upon acceleration under paragraph 18 hereof and abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

21. RELEASE. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

22. WAIVER OF VALUATION AND APPRAISEMENT LAWS. Borrower hereby waives all right of valuation appraisement.

23. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the property and who has actual or constructive notice hereof waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

24. USE OF PROPERTY. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

25. SECONDARY LIENS AND/OR ENCUMBRANCES. The Borrower further covenants and agrees not to further encumber the property without the written consent of Lender, nor to commit, permit, or suffer any waste, impairment, or depreciation of said property

and, in the event of any breach of this covenant, at any time after such breach, without limiting the foregoing, the Lender may, at its option, declare all of the remainder of the indebtedness immediately due and collectible, whether or not any other default exists; this covenant shall run with the land and remain in full force and effect until said indebtedness is liquidated.

26. LEGISLATION AFFECTING LENDER'S RIGHTS. If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Mortgage unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Mortgage and may invoke remedies permitted by paragraph 18.

27. BORROWER'S REPRESENTATIONS AND WARRANTIES. To induce Lender to fund the Note, Borrower represents, acknowledges and warrants to Lender, and agrees with Lender, as follows:

(a) the construction of the residence is in all respects in compliance with applicable zoning and building codes, regulations and ordinances. The Premises are zoned for residential use;

(b) all utility services necessary for the operation and intended use of the residence are available to the Project, including water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities without further cost or expense;

(c) the improvements located on property do not encroach upon any easements or any adjoining properties;

(d) the residence, and the use and operation thereof, are currently in compliance and will remain in compliance with all applicable laws and regulations (including all environmental, health and safety laws and regulations). All required governmental permits are in effect and will remain in effect.

(e) there are and will be no environmental, health or safety hazards that pertain to any of the Premises or the business or operations conducted thereon. No storage, treatment or disposal of hazardous waste or material (collectively, "Hazardous Materials") has or will occur on the Premises (for purposes of these representations and warranties, the term "Hazardous Materials" shall include substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802 et seq.; The Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and the regulations adopted and publications promulgated pursuant to said laws).

(f) there are no pending or threatened: (i) actions or proceedings from any governmental agency or any other entity regarding the condition or use of the real estate, or regarding any environmental, health or safety law; or (ii) "superliens" or similar governmental actions or proceedings that could impair the value of the Premises, or the priority of the lien of this Mortgage or any of the other Loan Documents (collectively "Environmental Proceedings"). Borrower will promptly notify Lender of any notices, or other knowledge obtained by Borrower hereafter of any pending or threatened Environmental Proceedings, and Borrower will promptly cure and have dismissed with prejudice any such Environmental Proceedings to the satisfaction of Lender.

(g) any fees, costs and expenses imposed upon or incurred by Lender on account of any breach of this Paragraph shall be immediately due and payable by Borrower to Lender upon demand, and shall become part of the Indebtedness. Borrower shall keep, save and protect, defend, indemnify and hold Lender

harmless from and against any and all claims, loss, costs, damages, liability or expense, including reasonable attorneys' fees, sustained or incurred by Lender by reason of any Environmental Proceedings or the breach or default by Borrower of any representation, warranty or covenant contained in this Paragraph.

28. LOAN TO VALUE RATIO. The unpaid loan balance to appraised value ratio used by the Lender in making the loan to Borrowers is seventy-five percent (75%). In the event that a reappraisal of the real estate required by the Lender or its auditors results in a loan to value ratio of greater than seventy-five (75%) computed based on the unpaid principal balance at the time of the reappraisal and the appraised value as determined in the reappraisal, Borrowers covenant and agree, upon demand of Lender, to make additional principal payments to Lender sufficient to reduce the loan to value ratio based on the reappraisal to seventy-five percent (75%) or less.

29. CONSTRUCTION LOAN PROVISIONS. Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, which is hereby incorporated by reference in and made a part of this Instrument. All advances made by Lender pursuant to the Construction Loan Agreement shall be indebtedness of Borrower secured by this Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefor.

From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the property, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may accelerate the sums secured by this Instrument and invoke those remedies provided in paragraph 18 hereof, or (iii) may do both.

