

32

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2003 069734

2003 JUL -7 AM 10:17

### MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement ("Mortgage") is made as of July 3<sup>rd</sup>, 2003, by **RUBLOFF- ROUND LAKE BEACH PARTNERS, L.P.**, an Illinois limited partnership, ("Round Lake") and **RUBLOFF GROUP HOLDINGS, L.P.**, an Illinois limited partnership ("Group Holdings") (Round Lake and Group Holdings are also referred to collectively as, "Mortgagor"), having an address at 4949 Harrison Avenue, Suite 200, Rockford, Illinois 61108, to and for the benefit of **CITIZENS FINANCIAL SERVICES, FSB**, a federally-chartered savings bank ("CFS"), having an address at 5311 Hohman Avenue, Hammond, Indiana 46320.

Mortgagor states as follows:

A. Together Mortgagor is the fee title owner of certain improved real property commonly known as Highland Plaza Shopping Center, 8301 - 8359 Indianapolis Boulevard, Highland, Indiana, containing approximately 9.92 acres, and legally described on Exhibit A, which is attached hereto and made a part hereof, including all improvements thereon and all rights appurtenant thereto (Group Holdings owns fee title to a portion of the Land which is legally described on Exhibit B, and Round Lake owns fee title to a portion of the Land which is legally described on Exhibit C).

B. Mortgagor and CFS entered into that certain Loan Agreement dated as of July 1, 2003 (the "Loan Agreement") pursuant to which CFS has committed to make loans to Mortgagor in the maximum principal amount of \$4,500,154.00.

C. CFS has required and Mortgagor has agreed to grant a security interest in all of its right, title and interest in and to the Premises to secure full payment and performance of all payments to be made and all matters to be performed under and with respect to this Mortgage and the other Loan Documents.

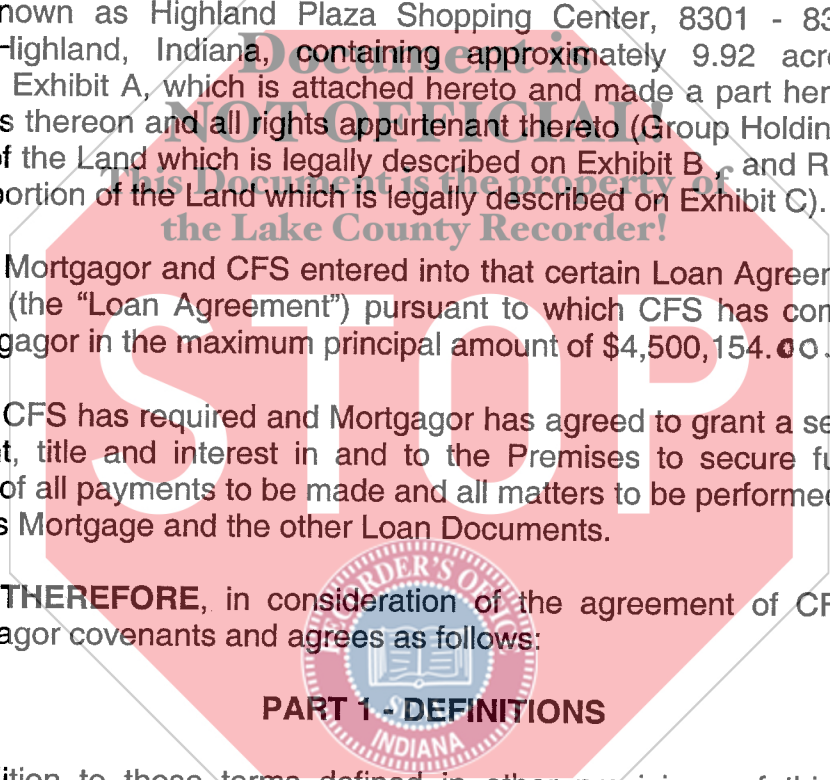
**NOW THEREFORE**, in consideration of the agreement of CFS to make the Loans, Mortgagor covenants and agrees as follows:

#### PART 1 - DEFINITIONS

In addition to those terms defined in other provisions of this Mortgage, the following terms will have the following meanings:

1.1 "Easements" will mean all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and

CHICAGO TITLE INSURANCE COMPANY  
620030187  
FOR BEARER



CT [Signature]

powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity;

1.2 **“Fixtures”** will mean (a) all fixtures and articles of personal property forming a part of or used in connection with the Land or the Improvements, excluding such properties which are, pursuant to written leases, the sole property of tenants on the Premises and which such tenants are permitted or obligated to remove from the Premises upon termination of their respective leases, and (b) all other interests of Mortgagor with respect to any fixtures and/or articles of personal property forming a part of or used in connection with the Land or the Improvements;

1.3 **“Improvements”** will mean all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter located on, or used or intended to be used in connection with, the Land or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest in and to any such personal property or fixtures, together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures; for purposes hereof, “Improvements” will exclude the interests of tenants on the Premises in and to improvements which are, pursuant to written leases, the sole property of tenants on the Premises and which such tenants are permitted or obligated to remove from the Premises upon termination of their respective leases;

1.4 **“Group Holdings Parcel”** will mean the real estate located in Lake County, Indiana, legally described in Exhibit B attached hereto, which is owned in fee simple by Rubloff Group Holdings, L.P..

1.5 **“Land”** will mean the real estate located in Lake County, Indiana, legally described in Exhibit A hereto, which consists of the Group Holdings Parcel and the Round Lake Parcel.

1.6 **“Loan Documents”** will mean the Loan Agreement, this Mortgage, a Term Promissory Note in the amount of \$3,100,000; a Line of Credit Promissory Note in the amount of \$1,400,154; a Continuing Security Agreement; an Assignment of Leases and Rents; an Assignment of Ground Lease; Guaranty Agreement of Guarantors; and such other documents as CFS may direct, all in forms designated by CFS, and all modifications, amendments, supplements, replacements, and restatements thereto or thereof, whether or not contemplated hereby.

1.7 **“Notes”** will mean that certain Term Promissory Note in the amount of \$3,100,000 and that certain Line of Credit Promissory Note in the amount of \$1,400,154, both of which are executed of even date herewith evidencing the Loans,

with a final payment due on the fifth anniversary of the Closing Date and the first anniversary of the Closing Date, respectively. The Notes each provide for a variable interest rate as set forth in each Note.

1.8 “**Premises**” will mean, collectively, the Land, the Improvements, the Fixtures and the Easements.

1.9 “**Permitted Exceptions**” will mean those exceptions set forth on Exhibit D, which is attached hereto and made a part hereof;

1.10 “**Round Lake Parcel**” will mean the real estate located in Lake County, Indiana, legally described in Exhibit C attached hereto, which is owned in fee simple by Rubloff-Round Lake Beach Partners, L.P..

1.11 “**Secured Obligations**” will mean all indebtedness and all obligations evidenced by the Notes and/or any of the other Loan Documents, and/or all future modifications, extensions, and renewals thereof; together with all obligations, liabilities, covenants and agreements of Mortgagor to CFS (and/or any successors or assigns of CFS) arising under or relating to any of the Loan Documents, and all future modifications, extensions, and renewals thereof, whether now existing or hereafter arising, absolute or contingent, whether contemplated herein, or in any of the other Loan Documents or any amendment, modification, extension, renewal, supplement, replacement or restatement thereto or thereof; together with all future obligations of Mortgagor to CFS and all future advances by CFS to Mortgagor, provided that the amount of such future obligations and/or advances (excluding the amount of the Loans and all other amounts payable pursuant to the Notes as presently in effect) will not exceed \$3,000,000, whether made at the option of CFS, made after a reduction to a zero (0) or other balance, or made otherwise.

Any capitalized terms used in this Mortgage but not defined herein will have the same meanings ascribed to them as in the Loan Agreement.

## PART 2 - GRANT

2.1 **Grant to CFS.** In consideration of the agreement of CFS to make the Loans and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to secure the indefeasible payment and performance of all Secured Obligations, Mortgagor **HEREBY MORTGAGES, WARRANTS, GRANTS, HYPOTHECATES, REMISES, RELEASES, ALIENATES AND CONVEYS WITH MORTGAGE COVENANTS** to CFS and its successors and assigns forever, the following described property, rights and interests, all of which property, rights and interests are hereby pledged primarily and on a parity with Mortgagor's interest in the Premises and not secondarily, all of the following (collectively, the “Collateral”):

(a) The Premises and all of Mortgagor's right, title and interest in and to the Premises, and all personal property of Mortgagor relating to the Premises;

(b) All of rights of Mortgagor in any goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of Mortgagor relating to the Premises and/or all accounts, contract rights, instruments, chattel paper and other rights of Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property of Mortgagor related to the Premises or any part thereof, and all accounts and monies held by and/or in the possession of CFS for the benefit of Mortgagor or otherwise held pursuant to any of the Loan Documents (all of the foregoing is herein referred to collectively as the "Intangibles");

(c) All rights of Mortgagor to rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Land, the Improvements, the Leases (defined below), and all proceeds of sale or other disposition of the Collateral or any portion thereof (all of the foregoing is herein collectively called the "Rents");

(d) All rights of Mortgagor as lessor under all subleases, leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, including but not limited to the use or occupancy of hotel rooms on the Premises, or any estate in, the Premises or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any of such items (all of the foregoing is herein referred to collectively as the "Leases");

(e) All rights and interests of Mortgagor in and to any and all service and other agreements relating to the operation, maintenance, and repair of the Premises or the buildings and improvements thereon ("Service Agreements");

(f) All rights and interests of Mortgagor in and to any plans, specifications, architectural renderings, drawings, foundation licenses, building licenses, and all other licenses and permits issued by governmental entities with respect to construction and rehabilitation of Improvements, soil test reports, other reports of examinations or analyses, contracts for services to be rendered to Mortgagor, or otherwise in connection with the Premises and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way

relating to the Premises or the Collateral or construction of additional improvements thereto (the "Plans");

(g) All rights and interests of Mortgagor in and to unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Collateral or any part hereof into cash or liquidated claims, including, without limitation, all proceeds of casualty, liability, hazard and/or title insurance and all awards and compensation hereafter made to the present and all subsequent owners of the Collateral by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Collateral or any easement therein, including awards for any change of grade of streets;

(h) All rights and interests of Mortgagor in and to judgments, awards of damages and settlements which may result from any damage to the Premises or any part thereof or to any rights appurtenant thereto; all rights of Mortgagor to compensation, awards, damages, claims, rights of action and proceeds of, or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises or any part thereof, (ii) any damage to the Premises by reason of the taking, pursuant to the power of eminent domain, of other property or of a portion of the Premises, or (iii) the alteration of the grade of any street or highway on or about the Premises or any part thereof; all rights of Mortgagor in and to any proceeds of any sales or other dispositions of the Premises or any part thereof (collectively "Awards");

(i) All rights and interests of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Premises, hereafter acquired by, or released to, Mortgagor or otherwise constructed, assembled or placed on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, will become subject to the lien of this Mortgage; and

(j) All rights of Mortgagor in and to any proceeds of any of the foregoing, including, without limitation, all judgments, awards, damages and settlements hereafter made resulting from condemnation or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises or proceeds of any sale, option or contract to sell the

Premises or any portion thereof, together with the right, title and interest of Mortgagor whatsoever to receive the foregoing.

2.2 **Extent of CFS' Interests.** CFS and its successors and assigns will have and hold all of Mortgagor's interest in and to the Premises and the other Collateral, subject only to the Permitted Exceptions, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of and during the continuance of any Event of Default (as hereinafter defined) all whether now owned or hereafter acquired or arising, securing the indefeasible payment and performance of the Secured Obligations. Mortgagor hereby **RELEASES AND WAIVES** all rights under and by virtue of the homestead exemption laws of the State of Indiana.

Mortgagor, by this instrument, will have granted a mortgage upon and a security interest in Mortgagor's fee title interest in and to the Premises, and this instrument will be deemed to create a mortgage, security interest in and lien upon such fee title. As to any part of the Collateral which does not form a part and parcel of Mortgagor's fee title interest in the Premises, this Mortgage is hereby deemed to be, as well, a security agreement under the Uniform Commercial Code as enacted in Indiana for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to CFS as Secured Party (as said term is defined in the Uniform Commercial Code), securing the indefeasible payment and performance of all Secured Obligations.

2.3 **Release upon Full Payment and Performance.** At such time as the Secured Obligations are indefeasibly paid in full and all items to have been performed under or with respect to this Mortgage, and all of the other Loan Documents have been fully performed, and provided no Event of Default has occurred and is then continuing hereunder or thereunder, then the lien of this Mortgage and the interest of CFS in the Premises will be released at the cost of Mortgagor.

### **PART 3 - ADDITIONAL COVENANTS AND AGREEMENTS OF MORTGAGOR**

3.1 **Payment of Secured Obligations and Performance of Covenants.** Mortgagor will pay all liabilities under the Notes and all of the other Loan Documents and punctually perform and observe all of the requirements thereunder.

3.2 **Maintenance, Repair, Compliance with Law, Use, etc.** Mortgagor will (a) promptly repair or restore any portion of the Improvements which may become damaged, whether or not proceeds of insurance are available or sufficient for that purpose; (b) maintain the Premises and keep the Premises in reasonable condition and free from waste; (c) pay all operating costs of the Premises; (d) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (e) refrain from any action and correct any condition which would increase the

risk of fire or other hazard to the Improvements; (f) comply with any restrictions of record with respect to the Premises and the use thereof; and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises and are necessary for its use and occupancy; and (g) cause the Premises to be operated and/or managed in a competent and professional manner. Without the prior written consent of CFS, Mortgagor will not cause, suffer or permit any: (w) use of the Premises other than for a retail shopping center and other uses incidental thereto; (x) change in the identity of the firm responsible for managing the Premises; (y) zoning reclassification with respect to the Premises; or (z) unlawful use of, waste with respect to, or nuisance to exist upon, the Premises.

### 3.3 Liens.

3.3.1 **Prohibition.** Mortgagor will not create or suffer or permit any encumbrance or lien to attach to or be filed against the Premises or any other Collateral or any part thereof, other than the Permitted Exceptions.

3.3.2 **Contest of Mechanic's Liens Claims.** Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien and defer payment and discharge thereof during the pendency of such contest, provided that Mortgagor may contest in good faith and with reasonable diligence the validity of any such claim of lien upon furnishing to CFS such security or indemnity as CFS may in its discretion require, including but not limited to deposits and/or other assurances necessary to induce a title insurance company to issue title insurance insuring against all such claims or liens.

3.4 **Taxes and Assessments; Monthly Deposits.** Mortgagor will pay or cause to be paid, when due, all real property taxes, all assessments, all applicable personal property taxes, and all insurance premiums with respect to the Premises before penalty accrues thereon.

3.5 **Insurance Coverage.** Mortgagor will, at all times during which the Loans or any portion thereof is outstanding, maintain such insurance in such amounts as CFS may from time to time require in its reasonable discretion. CFS' insurance requirements may change from time to time throughout the term of the Loans. All policies will be in forms approved by CFS and will be issued by insurers approved by CFS. Unless otherwise directed by CFS, CFS will be included as a named insured on all such policies as its interests may appear. The insurance required by CFS will be obtained and maintained, and amounts received under or with respect to such policies will be disposed of, as provided in the Loan Agreement.

If the Premises are sold at a foreclosure sale or CFS acquires title to the Premises, CFS will automatically succeed to all rights of Mortgagor in and to any

insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Premises prior to such sale or acquisition.

### 3.6 Condemnation and Eminent Domain.

3.6.1 Acknowledgment of Security Interest in Awards. Pursuant to the terms of this Mortgage, Mortgagor has granted to CFS a security interest in all of Mortgagor's rights to any and all Awards.

3.6.2 Notice to CFS. Borrower will promptly notify CFS of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Premises, whether direct or indirect (a "Condemnation"). Borrower will appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by CFS in writing. Borrower authorizes and appoints CFS as attorney-in-fact for Borrower to commence, appear in and prosecute, in CFS' or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 3.6 will require CFS to incur any expense or take any action.

3.6.3 Application of Awards. CFS may apply an Award or any portion thereof, after the deduction of CFS' expenses incurred in the collection of such amounts, at CFS' option, to the restoration or repair of the Premises or, if the conditions provided in Section 3.6.4 hereof are not fully met, to the payment of the Secured Obligations with the balance, if any, to Borrower. Unless CFS otherwise agrees in writing, any application of any Award to the Secured Obligations will not extend or postpone the due date of any installments referred to in the Notes, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any Awards or proceeds as CFS may require.

3.6.4 Application of Proceeds. CFS will apply all Award amounts, after the deduction of CFS' expenses incurred in the collection of such amounts to the restoration or repair of the Premises, up to the full amount of all costs therefor, if all of the following conditions are met: (a) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (b) CFS determines, in its discretion, that there will be sufficient funds to complete the applicable restoration; (c) CFS determines, in its discretion, that the rental income from the Premises after completion of the restoration will be sufficient to meet all operating costs and other expenses, deposits to reserves and loan repayment obligations relating to the Premises; and (d) CFS determines, in its discretion, that the restoration will be completed before the earlier of: (i) the date which is one year before the Maturity Date, or (ii) the date which is one year after the date of the loss of the applicable portion of the Premises.



**3.7 Security Agreement.** Mortgagor and CFS agree that this Mortgage will constitute a security agreement within the meaning of the Indiana Uniform Commercial Code (the "Code") with respect to (i) all sums at any time on deposit for the benefit of CFS or held by CFS (whether deposited by or on behalf of Mortgagor or any other person on behalf of Mortgagor, or any other parties to the Loans) pursuant to any of the provisions of this Mortgage and/or any of the other Loan Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises and/or may not constitute a "fixture" (within the meaning of Section 9.1-102(41) of the Code) (which property, together with all replacements thereof, substitutions therefor, additions thereto and the proceeds thereof being sometimes hereafter collectively referred to as the "**Personal Property Collateral**"), and that a security interest in and to the Personal Property Collateral is hereby granted to CFS, and the Personal Property Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to CFS, subject to the Permitted Exceptions, all to secure payment of the Secured Obligations. All of the provisions contained in this Mortgage pertain and apply to the Personal Property Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section will not limit the applicability of any other provision of this Mortgage but will be in addition thereto.

**3.7.1 Title to Personal Property Collateral.** Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Personal Property Collateral, subject to no liens, charges or encumbrances other than the Permitted Exceptions.

**3.7.2 Use.** The Personal Property Collateral is to be used by Mortgagor solely and for business purposes.

**3.7.3 Location.** The Personal Property Collateral will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of CFS (being the Secured Party as that term is used in the Code). The Personal Property Collateral may be affixed to the Land but will not be affixed to any other real estate.

**3.7.4 Interests in Personal Property Collateral.** The only persons having any interest in the Personal Property Collateral are Mortgagor, CFS and holders of the Permitted Exceptions.

**3.7.5 Financing Statements.** No Financing Statement (other than Financing Statements showing CFS as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Personal Property Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to CFS such further information and will execute and deliver to CFS such financing statements and other documents in form satisfactory to CFS and will do all such acts as CFS may at any time or from time to time request or as may be necessary or appropriate to

establish and maintain a perfected security interest in the Personal Property Collateral as security for the Secured Obligations, subject to no other liens or encumbrances, other than the Permitted Exceptions; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by CFS to be desirable.

**3.7.6 Remedies.** Upon the occurrence of an Event of Default hereunder and during the continuation thereof, CFS will have the remedies of a secured party under the Code, and CFS will be entitled to hold, maintain, preserve and prepare the Personal Property Collateral for sale, until disposed of, or may propose to retain the Personal Property Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. CFS will give Mortgagor at least twenty (20) days notice of the time and place of any public sale of the Personal Property Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice will be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor set forth herein at least twenty (20) days before the time of the sale or disposition. CFS may buy at any public sale. CFS may buy at private sale if the Personal Property Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If CFS so elects, the Premises and the Personal Property Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the attorney's fees and legal expenses incurred by CFS, will be applied against the Secured Obligations then due and owing, by acceleration or otherwise, in such order or manner as CFS will select. CFS will account to Mortgagor for any surplus on such disposition.

**3.7.7 Definitions.** The terms and provisions contained in this Section 3.7 will, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

**3.7.8 Mortgage as Financing Statement.** This Mortgage is intended to be a financing statement within the purview of Section 9.1-502(b) of the Code with respect to the Personal Property Collateral and the goods described herein, which goods are or may become Fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and CFS (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record in the office of the Recorder of Deeds of LaPorte County, Indiana.

### 3.8 Restrictions on Transfer.

3.8.1 Mortgagor will not, without the prior written consent of CFS, effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests and/or any portions thereof and/or any interests therein will constitute a "Prohibited Transfer":

- (a) the Premises, and/or
- (b) the Personal Property Collateral or any part thereof or interest therein, excepting only sales or other dispositions of Personal Property Collateral (herein called "**Obsolete Collateral**") no longer useful in connection with the operation of the Premises; provided that if the Obsolete Collateral is necessary for the operation of the Premises, prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Personal Property Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral, unless Mortgagor will substitute additional property or collateral acceptable to CFS, in CFS' discretion;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including pursuant to a nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section 3.8.1 will not apply (i) to liens securing the Secured Obligations, or (ii) to the lien of current taxes and assessments not in default, or (iii) the Permitted Exceptions, or (iv) to any leases with respect to the Premises or any portion thereof entered into in the ordinary course of business.

3.8.2 Company Transactions. Mortgagor will not merge into or consolidate with any person or dissolve, terminate or liquidate, in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case CFS' consent.

### 3.9 Events of Default.

3.9.1 Definition. The occurrence of any one of the following events will constitute an "Event of Default", and the occurrence of two or more of the following events will collectively constitute "Events of Default", hereunder:

(a) any failure on the part of Mortgagor to make any payment under or with respect to the Notes within fifteen (15) days after the due date thereof;

(b) the occurrence of a Prohibited Transfer;

(c) Mortgagor fails to maintain insurance as required pursuant to Section 3.5 of this Mortgage;

(d) except as expressly provided in any other provision of this Section 3.9.1 or any other provision of this Mortgage or any other Loan Document, failure by Mortgagor to promptly perform any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under or with respect to this Mortgage within fifteen (15) days after written notice thereof; provided that: (i) if such default, in the discretion of CFS, creates a hazardous condition or materially, adversely and imminently affects the value of the Premises, such default will constitute an Event of Default if not cured immediately after notice thereof is given by CFS to Mortgagee; and (ii) subject to the provisions of subsection (i) above, to the extent that such default is of such a character which reasonably requires additional time to cure the default, such default will not constitute an Event of Default if Mortgagor has commenced to cure the same within said fifteen (15) day period and is diligently and continuously pursuing such cure, and such default is cured within ninety (90) days after delivery of the above required written notice;

(e) the occurrence of any Prohibited Activities or Conditions (as defined in the Loan Agreement); and/or

(f) any other occurrence which constitutes an Event of Default under any of the other Loan Documents.

3.9.2 **Acceleration.** Upon the occurrence of an Event of Default CFS may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of CFS hereunder, declare, without further notice, all Secured Obligations immediately due with interest thereon at the default rate provided in the Notes, whether or not such Event of Default is thereafter remedied by Mortgagor, and CFS may immediately proceed to foreclose this Mortgage and to exercise any right and/or remedy provided by this Mortgage and/or any of the other Loan Documents.

3.10 **Foreclosure.** When the Secured Obligations become due, whether by acceleration or otherwise, CFS will have the right to foreclose the lien hereof in accordance with the laws of Indiana and to exercise any other remedies of CFS provided in this Mortgage and/or any of the other Loan Documents or which CFS may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there will be

allowed and included as additional Secured Obligations in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of CFS for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as CFS may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of CFS and permitted by the laws of Indiana to be included in such decree. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by CFS in any litigation or proceedings affecting this Mortgage or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, will be so much additional Secured Obligations and will be immediately due and payable by Mortgagor, with interest thereon at the applicable default rate until paid.

**3.11 Right of Possession.** When the Secured Obligations become due, whether by acceleration or otherwise, or if CFS has a right to institute foreclosure proceedings, Mortgagor will, forthwith upon demand of CFS, surrender to CFS, and CFS will be entitled to be placed in possession of, the Premises and the other Collateral as provided in the statutes relating to the foreclosure of mortgages, and CFS, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises and the other Collateral, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises and the other Collateral relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as CFS and under the powers herein granted:

3.11.1 hold, operate, manage and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents;

3.11.2 make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as may seem judicious to CFS, to insure and reinsure the Premises and all risks incidental to CFS' possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom; and/or

3.11.3 apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the

payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Secured Obligations in such order and manner as CFS will select.

Without limiting the generality of the foregoing, CFS will have all power, authority and duties as provided in the statutes relating to the foreclosure of mortgages. Nothing herein contained will, be construed as constituting CFS a mortgagee in possession in the absence of the actual taking of possession of the Premises. The foregoing will be subject to the rights of any tenant on the Premises (other than Mortgagee and/or any affiliate thereof) granted pursuant to any agreement executed or acknowledged by CFS.

3.12 **Receiver.** Upon the institution of a foreclosure proceeding or at such later time as required by law, if any, or at any time thereafter, the court in which such proceeding is instituted may appoint upon petition of CFS, and at CFS' sole option, a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same will be then occupied as a homestead or not; and CFS hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver will have all powers and duties prescribed by law, including the power to make leases to be binding upon all parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure. In addition, such receiver will also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the final date for payment of liabilities and performance of obligations set forth in the Notes, this Mortgage and the other Loan Documents and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, will be binding on Mortgagor and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Secured Obligations, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver will have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver will have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Secured Obligations or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such

decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

3.13 **Foreclosure Sale.** Except to the extent otherwise required by the statutes relating to the foreclosure of mortgages, the proceeds of any foreclosure sale of the Premises will be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Secured Obligations in such order as CFS will elect with interest thereon as herein provided; and lastly any surplus to Mortgagor and its successors and assigns, as their rights may appear.

3.14 **Insurance During Foreclosure.** All rights and powers of CFS under Section 3.12 of this Mortgage will, from and after the entry of judgment of foreclosure, continue in the CFS as decree creditor until confirmation of sale. In case of an insured loss after foreclosure has been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, will be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, will be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, CFS may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as CFS may deem advisable to protect the interest of such purchaser.

3.15 **Waiver of Right of Redemption.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to redemption provided by law or equity on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and will be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to CFS, but will permit the exercise of

every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof will be subject to any defense which would not be good and valid in an action at law upon the other Loan Documents to which Mortgagor is a party. Mortgagor acknowledges that the Premises do not constitute residential real estate.

**3.16 CFS' Performance of Mortgagor's Obligations.** Upon the occurrence of an Event of Default and during the continuation thereof, either before or after acceleration of the Secured Obligations or the foreclosure of the lien hereof, CFS may, but will not be required to, make any payment or perform any act herein required of Mortgagor in any manner deemed expedient to CFS. CFS may, but will not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises will be useable for their intended purposes. All such monies paid and expenses incurred, including attorney's fees, will be so much additional Secured Obligations, whether or not the Secured Obligations, as a result thereof, will exceed the face amount of the Notes, and will become immediately due with interest thereon at the applicable default rate. Inaction of CFS will never be considered as a waiver of any right accruing to it on account of any Event of Default nor will the provisions of this Section or any exercise by CFS of its rights hereunder prevent any default from constituting an Event of Default. CFS, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as CFS may deem appropriate. Nothing contained herein will be construed to require CFS to advance monies for any purpose.

**3.17 Environmental Hazards.** Mortgagor will not cause or permit any of the following:

- (a) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Premises or any other property of Mortgagor that is adjacent to the Premises;
- (b) the transportation of any Hazardous Materials to, from, or across the Premises;



(c) any occurrence or condition on the Premises or any other property of Mortgagor that is adjacent to the Premises, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

(d) any violation of or noncompliance with the terms of any permit, license, or other authorization relating to Hazardous Materials and/or Hazardous Materials Laws with respect to the Premises or any property of Mortgagor that is adjacent to the Premises.

### **3.18 Payment of Fees and Expenses.**

**3.18.1 Payment of Fees, Costs and Expenses.** Mortgagor will pay or reimburse CFS for all of CFS' out-of-pocket expenses related to making, monitoring, performing and enforcing the Loans, including but not limited to all costs of or relating to: (i) title insurance, (ii) surveys, (iii) recording costs, (iv) appraisals, (v) environmental inspections, reports, reviews, testing, investigations, and other matters; (vi) construction and building inspections, reviews, and reports, including but not limited to all charges and fees of the Inspector and any other reviewing architects and engineers, (vii) filing fees and charges for UCC searches; (viii) fees, costs, expenses and charges for CFS' legal counsel, including but not limited to legal fees and costs relating to document preparation, closing of the Loans, monitoring of the Loans, and defaults under or with respect to the Loans, regardless of whether or not suit is filed. All such charges will be paid by Mortgagor immediately upon receiving notice thereof from CFS.

**3.19 Rights Cumulative.** Each right and each remedy herein or in any of the other Loan Documents conferred upon CFS is cumulative and in addition to every other right provided by the other Loan Documents and/or at law or in equity, and CFS may exercise each such right in any manner deemed expedient to CFS. CFS' exercise or failure to exercise any right will not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, CFS is not required to give notice of its exercise of any right given to it by this Mortgage.

### **3.20 Successors and Assigns.**

**3.20.1 Holder of Notes and Other Loan Documents.** This Mortgage and each provision hereof will be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Collateral or any other person having an interest therein), and will inure to the benefit of CFS and its successors and assigns. Wherever herein CFS is referred to, such reference will be deemed to include the holder from time to time of the rights of CFS provided in the Notes and/or the other Loan Documents; and each such holder will have all of the rights afforded hereby, and may enforce the provisions hereof, as fully as if CFS had designated such holder of the Notes and/or the other Loan Documents herein by name.

**3.20.2 Covenants Run with Land; Successor Owners.** All of the covenants of this Mortgage will run with the Land and be binding on any successor owners of the Land. If the ownership of the Premises or any portion thereof becomes vested in a person other than Mortgagor, CFS may, without notice to Mortgagor, deal with such person with reference to this Mortgage in the same manner as with Mortgagor without in any way releasing Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to CFS of any conveyance, transfer or change of ownership of the Premises, but nothing in this paragraph will vary the effectiveness of the provisions of Section 3.8 hereof.

**3.21 Effect of Extensions and Amendments.** If the payment of the Secured Obligations, or any part thereof, is extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, will be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, will continue in full force and effect; the right of recourse against all such persons being expressly reserved by CFS, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, will take the said lien subject to the rights of CFS to amend, modify, extend or release the Notes, this Mortgage or any other Loan Document, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

**3.22 Future Advances.** At all times, this Mortgage secures as part of the Secured Obligations, the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by CFS in connection with the Secured Obligations, all in accordance with the Loan Agreement, this Mortgage and the other Loan Documents, provided, however, that in no event will the total amount of the Secured Obligations, including loan proceeds disbursed, future advances (if any) plus any additional charges, exceed \$7,500,154.

**3.23 Execution of Separate Security Agreements, Financing Statements, etc; Estoppel Letter.** Mortgagor will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as CFS may reasonably require assuring, conveying, mortgaging, assigning and confirming to CFS all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. From time to time, Mortgagor will furnish within five (5) Business Days after CFS' request a written and duly acknowledged statement of the Secured Obligations and whether any alleged offsets or defenses exist against the Secured Obligations.

**3.24 Subrogation.** If any part of the Secured Obligations is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Collateral or any part thereof, then CFS will be subrogated to the rights of the holder thereof in and to

such other encumbrance and any additional security held by such holder, and will have the benefit of the priority of the same.

3.25 **Option to Subordinate.** At the option of CFS, this Mortgage will become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation), to any and all leases of all or any part of the Premises, or other documents pursuant to which a third party occupies all or any part of the Premises, upon the execution by CFS and recording at any time, in the Office of the Recorder of Deeds of LaPorte County, Indiana, of a unilateral declaration to that effect.

3.26 **No Joint Ventures.** Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event will CFS be deemed to be a partner or joint venturer with Mortgagor. CFS will not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

3.27 **Time of the Essence.** Time is of the essence.

3.28 **Captions and Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confirming or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular will include the plural, the plural will include the singular, and the masculine, feminine and neuter will be freely interchangeable.

3.29 **Severability.** If all or any portion of any provision of this Mortgage or the other Loan Documents will be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision hereof or thereof, and such provision will be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

3.30 **Notices.** Any notice or other communication which any person may desire or may be required to give to any other person pursuant or with respect to this Mortgage and/or any of the other Loan Documents will be served upon the parties in the manner provided in the Loan Agreement.

3.31 **Anti-Forfeiture.** Mortgagor hereby expressly represents and warrants to CFS that there has not been committed by Mortgagor or, to the best of the knowledge of Mortgagor, by any other person involved with the Premises any act or omission affording the federal government or any state or local government the right of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Guaranty, this Mortgage or any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to CFS (at Mortgagor's sole cost) and hold

CFS harmless from and against any claim or other cost (including, without limitation, attorneys' fees and costs incurred by CFS), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the prior sentence, excluding only such matters arising from the sole negligence or intentional misconduct of CFS. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, CFS or all or any part of the Premises under any federal or state law in which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Guaranty Agreement, this Mortgage or any of the other Loan Documents is a potential result will, at the election of CFS, constitute an Event of Default hereunder without notice or opportunity to cure.

3.32 **Jury Trial Waiver.** Mortgagor waives, to the extent permitted by law, trial by jury in any actions brought by either the Mortgagor or CFS in connection with the Secured Obligations.

3.33 **Return of Payments.** Mortgagor agrees that, if at any time all or any part of the payments theretofore applied by CFS to any Secured Obligation is rescinded or returned by CFS or CFS is required to pay any amount thereof to any other party for any reason whatsoever (including, without limitation, the insolvency, bankruptcy, liquidation or reorganization of any party or the determination that such payment is held to constitute a preference under the bankruptcy laws), such Secured Obligation will, for the purposes of this Mortgage, be deemed to have continued in existence to the extent of such payment, notwithstanding such application by CFS, and this Mortgage and the liens, security interests, rights and remedies created hereby will continue to be effective or be reinstated, as the case may be, as to such Secured Obligation, whether or not released of record or a satisfaction and release has been delivered by CFS, all as though such application and release by CFS had not been made and Mortgagor agrees to pay such amount to CFS upon demand and to execute any and all documents required to effect the provisions of this Section.

3.34 **No Merger.** It is the desire and intention of the parties hereto that this Mortgage and the lien hereof will not merge in fee simple title to the Premises, unless a contrary intent is ever manifested by CFS as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should CFS acquire any additional or other interests in or to the Premises or the ownership thereof, then this Mortgage and the lien hereof will not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

3.35 **Advances.** This Mortgage is given to secure, in part, future advances under or with respect to the Notes and/or the other Loan Documents, and will secure not only the initial advance under the Notes and the other Loan Documents, but also any subsequent advances and/or other payments made under or with respect to the Notes and/or the other Loan Documents. This Mortgage will be valid and will, to the fullest extent permitted by law, have priority over any and all liens and encumbrances arising

after this Mortgage is recorded in the recorder's office in the county in which the Land is located, including (to the extent permitted by applicable law) statutory liens except taxes and assessments levied on the Collateral.

3.36 **Further Assurances.** Mortgagor will execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as CFS may require from time to time in order to better assure, grant, and convey to CFS the rights intended to be granted, now or in the future, to CFS under this Mortgage and/or under any of the other Loan Documents.

3.37 **Governing Law; Jurisdiction.**

(a) **Governing Law.** THE SUBSTANTIVE INTERNAL LAWS OF THE STATE OF INDIANA WILL APPLY FOR ALL PURPOSES (EXCEPT THE CREATION AND ENFORCEMENT OF LIENS ON COLLATERAL LOCATED IN OTHER JURISDICTIONS) WITH RESPECT TO THIS MORTGAGE, INCLUDING, WITHOUT LIMITATION, ACTIONS HEREUNDER AND/OR WITH RESPECT HERETO.

(b) **Jurisdiction and Venue.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS PROVIDED IN SECTION 3.37 BELOW, MORTGAGOR AND CFS EACH HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE WILL BE TRIED AND DETERMINED ONLY IN THE FEDERAL COURT LOCATED IN THE NORTHERN DISTRICT OF INDIANA, OR THE STATE COURT LOCATED IN THE COUNTY OF LAKE, STATE OF INDIANA, OR, AT THE SOLE OPTION OF CFS, IN ANY OTHER COURT IN WHICH CFS INITIATES LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND CFS EACH HEREBY EXPRESSLY WAIVE ANY RIGHT THEY MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION. MORTGAGOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF INDIANA AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA FOR THE PURPOSE OF SUCH LITIGATION AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. MORTGAGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY CERTIFIED OR REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE AT THE ADDRESS OF MORTGAGOR STATED HEREIN. TO THE EXTENT THAT MORTGAGOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF

OR ITS PROPERTY, MORTGAGORS HEREBY IRREVOCABLY WAIVE SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS MORTGAGE.

3.37 **Other Jurisdictions.** MORTGAGOR AGREES THAT CFS WILL HAVE THE RIGHT TO PROCEED AGAINST MORTGAGOR OR ITS PROPERTY IN A COURT IN ANY LOCATION TO ENABLE CFS TO REALIZE ON SUCH PROPERTY, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF CFS. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY PERMISSIVE COUNTERCLAIMS IN ANY PROCEEDING BROUGHT IN ACCORDANCE WITH THIS PROVISION BY CFS TO REALIZE ON SUCH PROPERTY, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF CFS. MORTGAGOR WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT IN WHICH CFS HAS COMMENCED A PROCEEDING DESCRIBED IN THIS SECTION.

\*\*\*\*\*

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage and Security Agreement to be duly signed and delivered as an instrument under seal as of the day and year first above written.

Mortgagor:

**Document is NOT OFFICIAL!**  
This Document is the property of the Lake County Recorder!

**RUBLOFF-ROUND LAKE BEACH PARTNERS, L.P.**  
an Illinois limited partnership

By: Rubloff Development Group, Inc.  
Its: General Partner

By: Robert S. Braun  
Its: Vice President

**STOP**

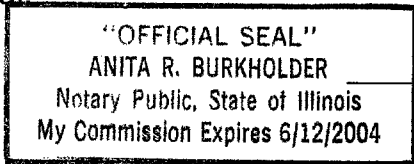
RECORDER'S OFFICE  
SS:  
SEAL

STATE OF Illinois )  
COUNTY OF Winnebago )

BEFORE ME, the undersigned, a Notary Public, on June 30, 2003, personally appeared Robert S. Braun, personally known to me to be the same person whose name is subscribed to the foregoing Mortgage and Security Agreement as a Vice President of Rubloff Development Group, Inc., as general partner of Rubloff-Round Lake Beach Partners, L.P., and being first duly sworn by me upon oath, acknowledged that he has read and understands the foregoing Mortgage and

Security Agreement and that he has affixed his name as his own free and voluntary act and as the free and voluntary act of said corporation and said limited partnership for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



Anita R Burkholder  
Notary Public

Commission Expires: \_\_\_\_\_

County of Residence: Winnebago

Mortgagor:

**RUBLOFF GROUP HOLDINGS, L.P.**  
an Illinois limited partnership

By: Rubloff Development Group, Inc.  
Its: General Partner

By: Robert S Brown  
Its: Vice President

**NOT OFFICIAL!**

**This Document is the property of the Lake County Recorder!**

STATE OF Illinois

COUNTY OF Winnebago

SS:

BEFORE ME, the undersigned, a Notary Public, on July 30, 2003, personally appeared Robert S Brown, personally known to me to be the same person whose name is subscribed to the foregoing Mortgage and Security Agreement as a Vice President of Rubloff Development Group, Inc., as general partner of Rubloff Group Holdings, L.P., and being first duly sworn by me upon oath, acknowledged that he has read and understands the foregoing Mortgage and Security Agreement and that he has affixed his name as his own free and voluntary act and as the free and voluntary act of said corporation and said limited partnership for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



Anita R Burkholder

Notary Public

Commission Expires: \_\_\_\_\_

County of Residence: Winnebago

*This instrument was prepared by:*

**Marco A. Molina**  
**Kopko Genetos & Retson LLP**  
**8585 Broadway, Suite 480**  
**Merrillville, Indiana 46410**  
**219-755-0400**  
**fax: 219-755-0410**





## EXHIBIT A

Parcel 1: A part of the Northwest 1/4 of Section 21, Township 36 North, Range 9 West of the 2nd Principal Meridian, Lake County, Indiana, lying East of the Easterly right-of-way line of U.S. Highway No. 41, Southwest of the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company and North of the South line of the Northwest 1/4 of said Section 21, more particularly described as follows:

Commencing at the Southwest corner of the Northwest 1/4 of said Section 21; thence East along the South line of the Northwest 1/4 of said Section 21.50 feet to the point of beginning, being a point on the East right-of-way line of U.S. Highway No. 41; thence North along the East right-of-way line of U.S. Highway No. 41, 54.1 feet to a point of tangency of a circular curve; thence Northeasterly, along the Easterly right-of-way line of U.S. Highway 41, along a curve concaved to the East having a radius of 2,815.12 feet, an arc length of 444.49 feet and a central angle of 9 degrees 02 minutes 24 seconds to a point of tangency; thence Northeasterly along the Easterly right-of-way line of U.S. highway 41, 592.36 feet, to the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company; thence Southeasterly along the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 1,321.45 feet to a point 21.51 feet North of the South line of the Northwest 1/4 of said Section 21; thence South along a line parallel to the West line of said Section 21, 21.51 feet, to the South line of the Northwest 1/4 of said Section 21; thence West along the South line of the Northwest 1/4 of said Section 21, 1006.0 feet, to the point of beginning, excepting therefrom the following described real estate:

That part of the East 12 chains of the West 16 chains of the Southwest 1/4 of the Northwest 1/4 lying Southwest of the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, in Section 21, Township 36 North, Range 9 West of the 2nd Principal Meridian, in the Town of Highland, Lake County, Indiana, more particularly described as: Beginning at a point on the South line of the Northwest 1/4 of said Section, 1056 feet East of the West line of the Northwest 1/4 of said Section; thence North 89 degrees 01 minutes 30 seconds West, along the South line of said Northwest 1/4, 526.0 feet to a point on the South line of said Northwest 1/4 which is 530.00 feet East of the Southwest corner of said Northwest 1/4; thence North 00 degrees 00 minutes 00 seconds West, parallel with the West line of said Northwest 1/4, 196.34 feet; thence North 53 degrees 10 minutes 00 seconds East, to the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 310.90 feet; thence South 36 degrees 49 minutes 00 seconds East, along the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 462.38 feet to a point 1056 feet East of the West line of said Northwest 1/4; thence South 00 degrees 00 minutes 00 seconds East, parallel with the West line of said Northwest 1/4, 21.51 feet, to the point of beginning; and further excepting those parts appropriated by the State of Indiana through Appropriation of Real Estate filed in Cause No. 45D04-0108-CP-00269 and Cause No. 45D04-0108-CP-00270.

Parcel 2: Easement for the benefit of Parcel 1 as created by Indenture of Easement dated October 22, 1963, and recorded December 26, 1963, in Miscellaneous Record 884, page

57, as Document No. 534457, in the Recorder's Office of Lake County, Indiana, made by and between Lake County Trust Company, not personally, but as Trustee under the Trust Agreement dated February 21, 1961, and known as Trust No. 782, et al, for the purpose of ingress and egress upon, over and across the following described property, to wit:

Part of the North 670 feet of Lot 1; in Park Addition to Highland as shown in Plat Book 28, page 22, more particularly described as beginning at the Northwest corner of Lot 1; thence East 462.0 feet; thence South 46 degrees 1 minute 34 seconds East a distance of 31.96 feet; thence South 73.13 feet; thence West 65.0 feet; thence North on a curve convex to the Northeast and having a radius of 65.0 feet a distance of 118.55 feet; thence South 75 degrees 30 minutes West a distance of 292.37 feet; thence Southwesterly on a curve convex to the Northwest and having a radius of 50.0 feet a distance of 60.56 feet; thence South 6 degrees 10 minutes West a distance of 176.38 feet to the West line of said Lot 1 of Park Addition; thence North 0 degrees 5 minutes East a distance of 324 feet to the point of beginning.

Parcel 3: A perpetual non-exclusive easement for the benefit of Parcel 1, as created by a Declaration of Cross Easements made by Highland Associates Limited Partnership, dated March 1, 1984, and recorded March 16, 1984, as Document No. 749275, and re-recorded March 27, 1984, as Document No. 750449, over and across those areas reserved for vehicular and pedestrian traffic, for vehicular parking and for ingress, egress and access to and from Parcel 1, within the following described parcel of real estate:

That part of the East 12 chains of the West 16 chains of the Southwest 1/4 of the Northwest 1/4 lying Southwest of the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, in Section 21, Township 36 North, Range 9 West of the 2nd Principal Meridian, in the Town of Highland, Lake County, Indiana, more particularly described as follows: Beginning at a point on the South line of the Northwest 1/4 of said Section 1056 feet East of the West line of the Northwest 1/4 of said Section; thence North 89 degrees 01 minute 30 seconds West, along the South line of said Northwest 1/4, 526.0 feet to a point on the South line of said Northwest 1/4 which is 530.00 feet East of the Southwest corner of said Northwest 1/4; thence North 00 degrees 00 minutes 00 seconds West, parallel with the West line of said Northwest 1/4, 196.34 feet; thence North 53 degrees 10 minutes 00 seconds East, to the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 310.90 feet; thence South 36 degrees 49 minutes 00 seconds East, along the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 462.38 feet to a point 1056 feet East of the West line of said Northwest 1/4; thence South 00 degrees 00 minutes 00 seconds East, parallel with the West line of said Northwest 1/4, 21.51 feet, to the point of beginning.

**EXHIBIT B**  
**RUBLOFF GROUP HOLDINGS, L.P. PARCEL**

A PART OF THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, LYING EAST OF THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41 NORTH OF THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 21, MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 21; THENCE EAST ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 21, A DISTANCE OF 50 FEET TO THE POINT OF BEGINNING, BEING A POINT ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41; THENCE NORTH ALONG THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41 A DISTANCE OF 54.1 FEET TO A POINT OF TANGENCY OF A CIRCULAR CURVE TO THE RIGHT, THENCE ALONG SAID CURVE A DISTANCE OF 146.88 FEET, SAID CURVE HAVING A RADIUS OF 2815.12 FEET AND A CHORD THAT BEARS NORTH 06 DEGREES 10 MINUTES 37 SECONDS EAST, A DISTANCE OF 146.88 FEET; THENCE NORTH 58 DEGREES 28 MINUTES 37 SECONDS EAST A DISTANCE OF 24.45 FEET; THENCE NORTH 77 DEGREES 52 MINUTES 56 SECONDS EAST A DISTANCE OF 40.44 FEET; THENCE SOUTH 87 DEGREES 34 MINUTES 24 SECONDS EAST A DISTANCE OF 24.07 FEET; THENCE SOUTH 72 DEGREES 25 MINUTES 55 SECONDS EAST A DISTANCE OF 18.46 FEET; THENCE SOUTH 49 DEGREES 25 MINUTES 40 SECONDS EAST A DISTANCE OF 42.45 FEET; THENCE SOUTH 42 DEGREES 17 MINUTES 59 SECONDS EAST A DISTANCE OF 42.83 FEET; THENCE SOUTH 30 DEGREES 10 MINUTES 21 SECONDS EAST A DISTANCE OF 19.12 FEET; THENCE SOUTH 01 DEGREES 23 MINUTES 05 SECONDS WEST A DISTANCE OF 22.04 FEET; THENCE SOUTH 85 DEGREES 58 MINUTES 24 SECONDS EAST A DISTANCE OF 139.09 FEET; THENCE SOUTH 04 DEGREES 44 MINUTES 23 SECONDS WEST A DISTANCE OF 9.58 FEET; THENCE ALONG A CIRCULAR CURVE TO THEIR RIGHT, A DISTANCE OF 101.02 FEET, SAID CURVE HAVING A RADIUS OF 85.0 FEET AND A CHORD THAT BEARS SOUTH 38 DEGREES 47 MINUTES 16 SECONDS WEST A DISTANCE OF 95.18 FEET; THENCE SOUTH 72 DEGREES 50 MINUTES 09 SECONDS WEST A DISTANCE OF 89.47 FEET; THENCE NORTH 89 DEGREES 01 MINUTES 30 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 21, A DISTANCE OF 185.26 FEET TO THE POINT OF BEGINNING.



**EXHIBIT C**  
**RUBLOFF-ROUND LAKE BEACH PARTNERS, L.P. PARCEL**

Parcel 1: A part of the Northwest 1/4 of Section 21, Township 36 North, Range 9 West of the 2nd Principal Meridian, Lake County, Indiana, lying East of the Easterly right-of-way line of U.S. Highway No. 41, Southwest of the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company and North of the South line of the Northwest 1/4 of said Section 21, more particularly described as follows:

Commencing at the Southwest corner of the Northwest 1/4 of said Section 21; thence East along the South line of the Northwest 1/4 of said Section 21.50 feet to the point of beginning, being a point on the East right-of-way line of U.S. Highway No. 41; thence North along the East right-of-way line of U.S. Highway No. 41, 54.1 feet to a point of tangency of a circular curve; thence Northeasterly, along the Easterly right-of-way line of U.S. Highway 41, along a curve concaved to the East having a radius of 2,815.12 feet, an arc length of 444.49 feet and a central angle of 9 degrees 02 minutes 24 seconds to a point of tangency; thence Northeasterly along the Easterly right-of-way line of U.S. highway 41, 592.36 feet, to the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company; thence Southeasterly along the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 1,321.45 feet to a point 21.51 feet North of the South line of the Northwest 1/4 of said Section 21; thence South along a line parallel to the West line of said Section 21, 21.51 feet, to the South line of the Northwest 1/4 of said Section 21; thence West along the South line of the Northwest 1/4 of said Section 21, 1006.0 feet, to the point of beginning, excepting therefrom the following described real estate:

That part of the East 12 chains of the West 16 chains of the Southwest 1/4 of the Northwest 1/4 lying Southwest of the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, in Section 21, Township 36 North, Range 9 West of the 2nd Principal Meridian, in the Town of Highland, Lake County, Indiana, more particularly described as: Beginning at a point on the South line of the Northwest 1/4 of said Section, 1056 feet East of the West line of the Northwest 1/4 of said Section; thence North 89 degrees 01 minutes 30 seconds West, along the South line of said Northwest 1/4, 526.0 feet to a point on the South line of said Northwest 1/4 which is 530.00 feet East of the Southwest corner of said Northwest 1/4; thence North 00 degrees 00 minutes 00 seconds West, parallel with the West line of said Northwest 1/4, 196.34 feet; thence North 53 degrees 10 minutes 00 seconds East, to the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 310.90 feet; thence South 36 degrees 49 minutes 00 seconds East, along the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 462.38 feet to a point 1056 feet East of the West line of said Northwest 1/4; thence South 00 degrees 00 minutes 00 seconds East, parallel with the West line of said Northwest 1/4, 21.51 feet, to the point of beginning; and further excepting those parts appropriated by the State of Indiana through Appropriation of Real Estate filed in Cause No. 45D04-0108-CP-00269 and Cause No. 45D04-0108-CP-00270 and further excepting the following: A PART OF THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, LYING EAST OF THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY

NO. 41 NORTH OF THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 21, MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 21; THENCE EAST ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 21, A DISTANCE OF 50 FEET TO THE POINT OF BEGINNING, BEING A POINT ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41; THENCE NORTH ALONG THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41 A DISTANCE OF 54.1 FEET TO A POINT OF TANGENCY OF A CIRCULAR CURVE TO THE RIGHT, THENCE ALONG SAID CURVE A DISTANCE OF 146.88 FEET, SAID CURVE HAVING A RADIUS OF 2815.12 FEET AND A CHORD THAT BEARS NORTH 06 DEGREES 10 MINUTES 37 SECONDS EAST, A DISTANCE OF 146.88 FEET; THENCE NORTH 58 DEGREES 28 MINUTES 37 SECONDS EAST A DISTANCE OF 24.45 FEET; THENCE NORTH 77 DEGREES 52 MINUTES 56 SECONDS EAST A DISTANCE OF 40.44 FEET; THENCE SOUTH 87 DEGREES 34 MINUTES 24 SECONDS EAST A DISTANCE OF 24.07 FEET; THENCE SOUTH 72 DEGREES 25 MINUTES 55 SECONDS EAST A DISTANCE OF 18.46 FEET; THENCE SOUTH 49 DEGREES 25 MINUTES 40 SECONDS EAST A DISTANCE OF 42.45 FEET; THENCE SOUTH 42 DEGREES 17 MINUTES 59 SECONDS EAST A DISTANCE OF 42.83 FEET; THENCE SOUTH 30 DEGREES 10 MINUTES 21 SECONDS EAST A DISTANCE OF 19.12 FEET; THENCE SOUTH 01 DEGREES 23 MINUTES 05 SECONDS WEST A DISTANCE OF 22.04 FEET; THENCE SOUTH 85 DEGREES 58 MINUTES 24 SECONDS EAST A DISTANCE OF 139.09 FEET; THENCE SOUTH 04 DEGREES 44 MINUTES 23 SECONDS WEST A DISTANCE OF 9.58 FEET; THENCE ALONG A CIRCULAR CURVE TO THEIR RIGHT, A DISTANCE OF 101.02 FEET, SAID CURVE HAVING A RADIUS OF 85.0 FEET AND A CHORD THAT BEARS SOUTH 38 DEGREES 47 MINUTES 16 SECONDS WEST A DISTANCE OF 95.18 FEET; THENCE SOUTH 72 DEGREES 50 MINUTES 09 SECONDS WEST A DISTANCE OF 89.47 FEET; THENCE NORTH 89 DEGREES 01 MINUTES 30 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 21, A DISTANCE OF 185.26 FEET TO THE POINT OF BEGINNING.

Parcel 2: Easement for the benefit of Parcel 1 as created by Indenture of Easement dated October 22, 1963, and recorded December 26, 1963, in Miscellaneous Record 884, page 57, as Document No. 534457, in the Recorder's Office of Lake County, Indiana, made by and between Lake County Trust Company, not personally, but as Trustee under the Trust Agreement dated February 21, 1961, and known as Trust No. 782, et al, for the purpose of ingress and egress upon, over and across the following described property, to wit:

Part of the North 670 feet of Lot 1; in Park Addition to Highland as shown in Plat Book 28, page 22, more particularly described as beginning at the Northwest corner of Lot 1; thence East 462.0 feet; thence South 46 degrees 1 minute 34 seconds East a distance of 31.96 feet; thence South 73.13 feet; thence West 65.0 feet; thence North on a curve convex to the Northeast and having a radius of 65.0 feet a distance of 118.55 feet; thence South 75 degrees 30 minutes West a distance of 292.37 feet; thence Southwesterly on a curve convex to the Northwest and having a radius of 50.0 feet a distance of 60.56 feet; thence South 6 degrees 10 minutes West a distance of 176.38 feet to the West line of said Lot 1 of Park Addition; thence North 0 degrees 5 minutes East a distance of 324 feet to the point

of beginning.

Parcel 3: A perpetual non-exclusive easement for the benefit of Parcel 1, as created by a Declaration of Cross Easements made by Highland Associates Limited Partnership, dated March 1, 1984, and recorded March 16, 1984, as Document No. 749275, and re-recorded March 27, 1984, as Document No. 750449, over and across those areas reserved for vehicular and pedestrian traffic, for vehicular parking and for ingress, egress and access to and from Parcel 1, within the following described parcel of real estate:

That part of the East 12 chains of the West 16 chains of the Southwest 1/4 of the Northwest 1/4 lying Southwest of the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, in Section 21, Township 36 North, Range 9 West of the 2nd Principal Meridian, in the Town of Highland, Lake County, Indiana, more particularly described as follows: Beginning at a point on the South line of the Northwest 1/4 of said Section 1056 feet East of the West line of the Northwest 1/4 of said Section; thence North 89 degrees 01 minute 30 seconds West, along the South line of said Northwest 1/4, 526.0 feet to a point on the South line of said Northwest 1/4 which is 530.00 feet East of the Southwest corner of said Northwest 1/4; thence North 00 degrees 00 minutes 00 seconds West, parallel with the West line of said Northwest 1/4, 196.34 feet; thence North 53 degrees 10 minutes 00 seconds East, to the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 310.90 feet; thence South 36 degrees 49 minutes 00 seconds East, along the Westerly right-of-way line of the Chesapeake and Ohio Railroad Company, 462.38 feet to a point 1056 feet East of the West line of said Northwest 1/4; thence South 00 degrees 00 minutes 00 seconds East, parallel with the West line of said Northwest 1/4, 21.51 feet; to the point of beginning.



**EXHIBIT D**  
**PERMITTED EXCEPTIONS**

1. Taxes for the year 2002 due and payable in 2003 are a lien not yet due and payable.
2. Taxes for the year 2003 due and payable in 2004 are a lien not yet due and payable.
3. Rights of way for drainage tiles, ditches, dikes, feeders and laterals.
4. Rights of the public, the State of Indiana and/or the municipality, and others entitled thereto, in and to that part of the land taken or used for U.S. Highway No. 41.
5. Terms and provisions of the documents creating and conveying the easements described as Parcels 2 and 3 of the Land herein.
6. Easement for utilities in favor of Northern Indiana Public Service Company, a corporation, and Illinois Bell Telephone Company, a corporation, to each thereof severally, and to their respective successors and assigns, dated February 18m, 1959, and recorded February 21, 1959, in Miscellaneous Record 736, page 491, as Document No. 158906.
7. Terms and provisions of an Indenture Easement recorded December 26, 1963, in Miscellaneous Record 884, page 57, as Document No. 5344457.
8. Easement for utilities in favor of Northern Indiana public Service Company, an Indiana corporation, its successors and assigns, dated June 20, 1983, and recorded July 28, 1983, as Document No. 718383.
9. Declaration of Cross Easements dated March 1, 1984, and recorded March 16, 1984, as Document No. 749275, and re-recorded March 27, 1984, as Document No. 750449, made by Highland Associates Limited Partnership, an Indiana limited partnership.
10. Easement for utilities in favor of Northern Indiana Public Service Company, an Indiana corporation, and to its successors and assigns, dated January 14, 1985, and recorded February 22, 1985, as Document No. 793082.
11. Declaration of Cross Easements dated July 25, 1997, and recorded August 7, 1997, as Document No. 97051650, made by Rubloff Round Lake Beach Partners, L.P., an Illinois limited partnership.
12. Temporary right of way for purposes of constructing a driveway for service in favor of the State of Indiana as described in Appropriation of Real Estate filed under Cause No. 45D04-0108-CP-00269.

13. Temporary right of way for purposes of constructing a driveway for service in favor of the State of Indiana as described in Appropriation of Real Estate filed under Cause No. 45D04-0108-CP-00270.
14. Encroachment of asphalt pavement and parking spaces located on the land over and upon real estate lying to the West of the land, as indicated on the ALTA/ACSM Land Title Survey dated June 1, 2003, made by Radu M.S. Irimescu, an Indian Registered Land Surveyor, of Zarko Sekerez and Associates, Inc., as Job No. 13961.
15. Encroachment of "Building B", a 1-story concrete block building, lying mostly on land lying to the east of Parcel 1, onto the easterly side of Parcel 1 of the land, as indicated on the ALTA/ACSM Land Title Survey dated June 1, 2003, made by Radu M.S. Irimescu, an Indiana Registered Land Surveyor, of Zarko Sekerez and Associates, Inc., as Job No. 13981.
16. Lease by and between Highland Associates Limited Partnership, an Indiana limited partnership, as successor to Community Family Centers, Inc., a Delaware corporation, Lessor(s), and Marshalls of Highland, IN., Inc., an Indiana corporation, Lessee(s), as evidenced in Memorandum of Lese dated July 18, 1984, and recorded August 9, 1984, as Document No. 768061, demising part of the land for the term of years ending on the last day of January, 1993.
17. Ground Lease by and between Highland Associates, Lessors(s), and Taco Bell, Lessee(s), recorded December 2, 1986, as Document No. 888770.
18. Short Form Lese by and between Rubloff Round Lake Beach Partners, L.P, an Illinois limited partnership, Lessor(s), and Family Dollar Stores of Indiana, Inc., Lessee(s), dated June 6, 1996, and recorded June 24, 1996, as Document No. 96042168, demising prat of the land for an initial term ending on the 31st day of December, 2001.
19. Short Form Lease by and between Rubloff Round Lake Beach Partners, L.P., an Illinois limited partnership, Lessor(s), and Family Dollar Stores of Indiana, Inc., Lessee(s), dated June 6, 1996, and recorded November 1, 1996, as Document No. 96073065, demising part of the land for an initial term ending on the 31st day of December, 2001.
20. Rights of tenants under unrecorded leases.
21. Orders approving the Appropriation of Real Estate and proof of payment to the Clerk of the court under Cause No. 45D04-0108-CP-00269 and Cause No. 45D04-0108-CO-00270 should be filed in the Auditor's and Recorder's Office of Lake County, Indiana.