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10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION (LOS ANGELES)**

12  
13  
14 SECURITIES AND EXCHANGE  
COMMISSION,

15 Plaintiff,

16 v.

17 CHARLES P. COPELAND, COPELAND  
WEALTH MANAGEMENT, A FINANCIAL  
ADVISORY CORPORATION, and  
18 COPELAND WEALTH MANAGEMENT, A  
REAL ESTATE CORPORATION,

19 Defendants.  
20

CASE NO.: 2:11-cv-08607-R -DTB

**RESPONSE OF FLAGSTAR BANK,  
FSB, TO RECEIVER'S PRELIMINARY  
REPORT AND REQUEST FOR ORDER  
(A) CLARIFYING SCOPE OF THE  
RECEIVERSHIP, AND (B) AIDING  
ADMINISTRATION OF THE  
RECEIVERSHIP**

Date: January 23, 2012  
Time: 10:00 a.m.  
Ctrm: 8  
Judge: Hon. Manuel L. Real

**INTRODUCTION**

Flagstar Bank, FSB (“Flagstar”) is a secured lender of Copeland Properties Ten, LP and Copeland Properties Eleven, LP (“CP Ten and CP Eleven” also referred to collectively as “Borrower”) with a first mortgage lien on the property owned by them. Each entity is a limited partnership with limited partners who have not been accused of any wrongdoing. These limited partnerships are two of twenty-three limited partnerships listed in the Complaint (DN 1). The twenty three limited partnerships are listed in the Complaint as investment vehicles for Charles Copeland on behalf of Copeland Wealth Management, A Financial Advisory Corporation (“CWM”) and Copeland Wealth Management, A Real Estate Corporation (“CWMRE”). Paragraph 15 of the Complaint. CWMRE was Borrower’s general partner. The Complaint goes on to say that there is “substantial investor overlap among the limited partnerships”. (Paragraph 16 of the Complaint).

Plaintiff and Defendants entered into a consent Judgment of Permanent Injunction and Other Relief as to the named Defendants (DN 3). The Judgment contains various relief including appointment of Thomas C. Hebrank as permanent Receiver and other specific relief, not requested in the complaint, directed to creditors. See. e.g. paragraph VIII of the Judgment. (DN 3). The Judgment does not in fact list the twenty-three partnerships, including CP Ten and CP 11 Eleven, as being subject to, or assets of, the Receivership. Rather, the Judgment appoints Mr. Hebrank as the permanent receiver of Defendants CWM and CWMRE (and does not name Defendant Copeland) and their “subsidiaries and affiliates”. See Paragraph V of DN 3. There is no explanation of, if the Borrower is somehow an “affiliate, whether, considering the balance of harm to the parties in interest, it is fair and equitable that the Borrower should be subject to the Receivership. The meaning of the term “subsidiary” is well known and Plaintiff does not contend that CP Ten and CP Eleven are subsidiaries. Plaintiff and the Receiver have made no showing that the Borrower should be an asset of the Receivership, only, at best, that the former general partner should be subject to the Receivership. Plaintiff has only shown that there are investors who have invested in more than one limited partnership. Indeed, the Receiver has demonstrated there is a serious question whether Borrower, CP Ten and CP Eleven, should even be and/or are

1 subject to the Receivership because the Receiver felt the need to request clarification that such  
2 entities should be included as assets of the Receivership. See DN 14 (Receiver's Preliminary  
3 Report and Request for Order (A) Clarifying Scope of the Receivership and (B) Aiding  
4 Administration of the Receivership) On balance, the interests and rights of Flagstar and the  
5 limited partners of CP Ten and CP Eleven are harmed and outweigh the interest of the Receiver.  
6 The power to appoint a receiver is a harsh and dangerous equitable power of the Court and should  
7 not be exercised as to CP Ten and CP Eleven. See e.g. Goodman v. DeAzoulay, 539 F.Supp. 10,  
8 17 (E.D. Pa. 1981).

### 9 THE LOAN DOCUMENTS

10 On March 3, 2006, Copeland Properties Ten, L.P. and Copeland Properties Eleven, L.P.  
11 (collectively the "Borrower") borrowed money from Flagstar in the amount of \$9,450,000.00 (the  
12 "Loan" and "Loan Amount"). In connection with the loan, the Borrower signed a mortgage loan  
13 agreement (**Exhibit 1**), a mortgage (**Exhibit 2**) for property located in Troy, Michigan, a  
14 promissory note (**Exhibit 3**), and an assignment of rents and leases (**Exhibit 4**) (the "Loan  
15 Documents"), among other documents. The mortgage and assignment of rents and leases were  
16 duly recorded. The monthly payments are \$64,116.06 and the maturity date is March 3, 2016. The  
17 loan balance as of December 1, 2011 is \$8,827,269.97. It is believed the property value is  
18 significantly less than the debt and about \$5,000,000.00.

19 While the monthly payments required by the Loan Documents are current as of December,  
20 2011, the mortgage loan agreement provides that, upon the application for permission for  
21 appointment of a receiver or the appointment of a receiver of the Borrower, which has not been  
22 discharged within sixty days after the date of appointment, such receivership shall be an event of  
23 default. See **Exhibit 1**, paragraph 6.1(i), page 12. Because the Receiver is not sure whether the  
24 Borrower and the Borrower's property is an asset of the Receivership, Borrower and its property  
25 should not be deemed to be subject to the Receivership. If it was determined by this Court that  
26 Borrower is subject to this Receivership or Borrower's property is subject to the Receivership,  
27 then a default will have occurred and Flagstar is entitled to exercise all of the remedies to which it  
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1 is entitled under its Loan Documents which include, among other things, acceleration of the loan  
2 amount and exercise of its rights under the assignment of rents and leases. This Receivership  
3 cannot interfere with Flagstar's rights under its Loan Documents in the event of a default. The  
4 general rule is that the Receiver has no better rights as to the Bank than the Borrower and stands in  
5 the Borrower's shoes. See Kaercher v Citizen's Nat. Bank of Ortonville, Minn., 57 F. 2d 58, 59  
6 (8<sup>th</sup> Cir. 1932).

7 **A Single Tenant Lease with Faurecia Automotive Seating, Inc**

8 The Borrower's property, which is subject to Flagstar's mortgage, is further subject to a  
9 lease with Faurecia Automotive Seating, Inc., a Delaware corporation, as the tenant. In 2004, the  
10 lease was amended to include additional property and to extend the term of the lease to December  
11 31, 2014. There are no other tenants for the property subject to Flagstar's mortgage.

12 The monthly rent, until November 1, 2012, is \$100,287.70, together with payment of taxes,  
13 insurance, maintenance, among other operating costs. The lease payments have historically  
14 exceeded the amount of Loan Payments due Flagstar. The monthly payments to Flagstar are  
15 \$64,116.06 with a maturity date of March 3, 2016.

16 **Discussion**

17 Flagstar has attempted to engage the Receiver in discussions to find a compromise to allow  
18 for the rent to be submitted on a lock box basis to Flagstar, with Flagstar accounting to the  
19 Receiver for all revenues and expenses. The revenue would be used as it has been before the  
20 Receivership was created, to pay Loan Payments and any other expenses to be paid to maintain  
21 and operate the property and the excess of such funds above the loan payments would be held by  
22 Flagstar pending further order of this Court and accounting by the Receiver. While Flagstar  
23 believes that Borrower CP Ten and CP Eleven should not be subject to the Receivership at all, it is  
24 amenable to a compromise, which will provide security to Flagstar, the Receiver and to the limited  
25 partners who claim an interest in cash in excess of the rental payments. The Receiver has refused  
26 to engage in a discussion with Flagstar by flatly refusing such an arrangement and proposing no  
27 other option. If the Borrower or the property is the subject of the Receivership, an event of default  
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1 will have occurred, the loan will be placed in the special asset group and internal accounting  
2 procedures will begin that could lead to a write down of the loan. As for the limited partners and  
3 the guarantors, Flagstar will have no choice but to look at its default remedies. This will also  
4 create a detriment to the Receivership estate. Flagstar will be entitled to declare a default,  
5 accelerate the loan balance and seek its remedies against the property including collection of the  
6 rent. This harmful result can be avoided if it is determined that the Borrower and the property are  
7 not subject to the receivership. There is no additional benefit to the Receiver to argue that the  
8 Borrower and property are subject to the Receivership when Flagstar can collect the revenue and  
9 account to the Receiver for all revenue and expenses.

10 The limited partners filed an objection to the request of the Receiver on December 12,  
11 2011 [DN16] for clarification, in which the limited partners provided facts that demonstrate (i)  
12 that money is due CP Ten. from other partnerships and Borrower is more likely to be a creditor  
13 rather than a debtor in this Receivership proceeding, (ii) that the inclusion of the Borrower in the  
14 Receivership will cause harm to the limited partners and, (iii) also, provided facts and law that  
15 demonstrate that CWMRE is no longer the general partner of Borrower (See pages 6 and 7 of DN  
16 16). The inclusion of Borrower CP Ten and CP Eleven in the Receivership creates more harm to  
17 both Flagstar and the investors than a benefit to the Receiver, particularly when Flagstar has  
18 offered a compromise that would in all respects protect the integrity of the property, provide for an  
19 accounting to the Receiver of funds received from the single tenant property and prevent

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unnecessary harm to the Receivership estate limited partners and the Bank which would result if the property and the Borrower are included in the receivership.

WHEREFORE, Flagstar Bank, FSB requests that this Court determine and so rule that either:

- A. Borrower Copeland Properties Ten, L.P. and Copeland Properties Eleven, L.P. are not subject to the Receivership, or, alternatively, that, although not included in the Receivership, Flagstar Bank shall collect funds on a lock box basis from the single tenant, make loan payments from those funds, including debt service, insurance costs and taxes and other operating expenses as may be required, hold the rent received in excess of such loan payments in a segregated fund and, further, account monthly to the Receiver for income and expenses each month.
- B. Award such further relief as is equitable under the circumstances.

DATED: January 9, 2012

MADDIN, HAUSER, WARTELL, ROTH &  
HELLER, P.C.

BY: /s/ Michael S. Leib  
MICHAEL S. LEIB (P30470)  
*Attorneys for Flagstar Bank, FSB*

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MORTGAGE LOAN AGREEMENT

BETWEEN

**COPELAND PROPERTIES TEN, L.P.,**

A CALIFORNIA LIMITED PARTNERSHIP,

AND

**COPELAND PROPERTIES ELEVEN, L.P.,**

A CALIFORNIA LIMITED PARTNERSHIP

AND

FLAGSTAR BANK, FSB

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## MORTGAGE LOAN AGREEMENT

This Agreement is made on March 3, 2006, by and between **COPELAND PROPERTIES TEN, L.P.**, a California limited partnership, and **COPELAND PROPERTIES ELEVEN, L.P.**, a California limited partnership, each of 25809 Business Center Drive, Suite F, Redlands, California 92374 (individually and collectively, the "Borrower") and **FLAGSTAR BANK, FSB**, 5151 Corporate Drive, Troy, Michigan 48098 ("Lender");

WITNESSETH:

### 1. TERMS AND DEFINITIONS

In addition to the other terms hereinafter defined, the following terms shall have the meanings set forth in this Article. References to documents and other materials shall include those documents and materials as they may be revised, amended and modified, from time to time, with the prior written approval of Lender.

"Event of Default" means the occurrence of any event described in section 6, below, and the expiration of any grace or cure period described therein.

"Guarantor" means, collectively, Charles P. Copeland, Donald E. Copeland, Vellore G. Muraligopal, Klaus Kuehn and James D. Powell.

"Loan Amount" means the lesser of (i) \$9,450,000.00, (ii) 80% of the purchase price of the Premises or (iii) 80% of the appraised value of the Premises.

"Loan Documents" means this Agreement, the Mortgage, the Note, and any other document required under this Agreement to evidence, secure or support the Loan.

"Loan" means the loan made pursuant to this agreement.

"Maturity Date" means March 3, 2016.

"Monetary Cure Period" means a period ending five (5) days after written notice from Lender to Borrower.

"Mortgage" means the first mortgage described in Section 3.1(c) hereof.

"Mortgaged Property" is defined in the Mortgage.

"Non Monetary Cure Period" means a period of thirty (30) days after written notice by Lender to Borrower.

"Note" means a promissory note dated of even date herewith evidencing and securing the Loan.

"Permitted Encumbrances" means those encumbrances listed on Exhibit "B" attached hereto.



"Premises" means the land particularly described in Exhibit "A" attached hereto and the improvements on the land.

"Title Company" means the title insurance company described in Section 3.2(a).

"Title Policy" means the policy of mortgage title insurance described in Section 3.2(a).

## 2. TERMS OF CREDIT

2.1 Loan. Lender agrees to loan to Borrower and Borrower agrees to borrow and to repay to Lender on or before the Maturity Date when the entire unpaid balance of principal and interest shall be due and payable, the Loan Amount. The Loan shall be evidenced by the Note.

2.2 Interest Rate. The principal amount of the Loan from time to time outstanding shall bear interest at a per annum rate of interest equal to a fixed rate of 7.09% per annum which rate will be fixed from the date of this Agreement until the Maturity Date. Upon an Event of Default, interest shall accrue at four (4%) percentage points plus the otherwise effective interest rate.

2.3 Payments. Principal and interest shall be payable monthly in payments of \$64,116.06, commencing on April 3, 2006, and on the same day of each month thereafter until the Maturity Date, when all unpaid principal and accrued interest shall be paid. Interest shall be computed on the basis of a 360 day year and assessed for the actual number of days elapsed. Payments of principal and interest shall be in an amount calculated to fully amortize the Loan over a period ending on March 3, 2036. Lender may adjust the payment amount from time to time, if necessary to maintain that amortization.

2.4 Prepayment. Upon any prepayment of principal, there will be prepayment penalty in accordance with the following schedule:

<u>If Prepayment Occurs Between:</u>	<u>% of Principal Amount of Loan Prepaid</u>
March <u>3</u> , 2006 and March <u>2</u> , 2009	3%
March <u>3</u> , 2009 and March <u>2</u> , 2012	2%
March <u>3</u> , 2012 and March <u>2</u> , 2016	1%

Notwithstanding the foregoing, there will be no prepayment premium for any prepayment of principal during the ninety (90) day period prior to the Maturity Date.

2.5 Use of Proceeds. The proceeds of the Loan shall be used by Borrower only for acquisition of the Premises and payment of closing costs.



- 2.6 Fees. Prior to the execution of this Agreement, Borrower shall have paid to Lender a commitment fee of \$47,250.00 and an underwriting fee of \$300.

### 3. CONDITIONS AND SECURITY

- 3.1 The execution and delivery to Lender of the following Loan Documents in form satisfactory to Lender is a condition to Lender's obligation to disburse the Loan.
- (a) This Loan Agreement setting forth the terms and conditions of the Loan.
  - (b) The Note in the Loan Amount, executed by Borrower and payable to the order of Lender, evidencing the Loan.
  - (c) The Mortgage executed by Borrower for the benefit of Lender securing this Loan Agreement, the Note and all obligations of Borrower in connection with the Loan, granting a first priority lien on Borrower's fee interest in the Mortgaged Property.
  - (d) An Environmental Indemnity from the Borrower indemnifying Lender with regard to all matters related to hazardous material and other environmental matters.
  - (e) An Assignment of Leases and Rents made by Borrower in favor of Lender assigning all leases, subleases and other agreements relating to the use and occupancy of all or any portion of the Premises, and all present and future leases, rents, issues and profits therefrom.
  - (f) Such UCC financing statements as Lender's counsel determines are advisable or necessary to perfect or notify third parties of the security interests to be created by the Loan Documents.
  - (g) A Loan Commitment Letter.
  - (h) A Borrower's Certification, executed by Borrower, certifying to the Lender among other things its authority to enter into the loan transaction and execute the Loan Documents.
  - (i) A Disbursement Order and Borrower's Authorization executed by Borrower authorizing Lender to make expenditures and disbursements listed therein.
  - (j) A Site Inspection Questionnaire to be completed by Borrower.
  - (k) A Guaranty, executed by Guarantors. The Guaranty will be limited to \$4,725,000.00 plus (i) interest and collection expenses, including reasonable attorney fees, and (ii) all losses, damages costs, expenses and liabilities, incurred by Lender as a result of any one or more of the following (the "Limited Recourse Exceptions"):



- (i) Loss or damage suffered or incurred by Lender as a result of fraud or material misrepresentation made by Borrower or its members or any party acting on behalf of Borrower, or by any Guarantor, in or in connection with obtaining the Loan, including the application and financial statements submitted therewith;
  - (ii) Failure to pay taxes or assessments prior to delinquency, or to pay charges for labor, materials or other charges which can create liens on any portion of the of the subject property;
  - (iii) Costs incurred by Lender to protect and preserve the subject property and/or to prevent waste;
  - (iv) The misappropriation of (a) proceeds of insurance covering any portion of the subject property; or (b) proceeds arising from the sale or condemnation of any portion of the subject property; the term misappropriation shall mean that the proceeds are not used as required by the terms and conditions of the Loan Documents;
  - (v) All court costs and reasonable attorney fees incurred by Lender which are provided for in the Guaranty and other Loan Documents for the collection of the Loan; and
  - (vi) Any indemnity or other agreement of Borrower to hold Lender harmless from and against losses, liabilities, damages, injuries, costs and expenses, including reasonable attorney fees, of any and every kind arising under any environmental indemnification agreement to be delivered to Lender at closing and/or arising as a result of the breach of any representation, warranty, covenant or agreement of Borrower concerning the environmental condition of the Premises.
- (l) A Commercial Loan Application and Statement of Cooperation.
  - (m) Such other documents, instruments or certificates as Lender and its counsel may reasonably require, to effectuate the liens and security interests contemplated by this Loan Agreement and the Loan Documents, and to comply with the laws of the State of Michigan.

3.2 Delivery to Lender of the following items, in form satisfactory to Lender, is a condition to Lender's obligation to disburse the Loan.

- (a) An ALTA mortgage title insurance commitment from a title insurance company satisfactory to Lender, without standard exceptions, in the amount of the Loan Amount, insuring the mortgage securing the Loan to be a first lien on the Premises, subject only to those exceptions acceptable to Lender. Lender must receive either a title policy or marked-up commitment effective as of closing. The policy shall contain



comprehensive, deletion of creditor's rights and any other endorsements required by Lender.

- (b) An ALTA Survey of the Premises by a registered land surveyor, satisfactory to Lender and title insurance company.
- (c) A satisfactory written environmental assessment report regarding the Premises prepared by a consultant acceptable to Lender. Borrower acknowledges that the Phase I environmental assessment conducted by NTH noted certain environmental conditions and recommended further testing. It is not feasible to complete such testing by the closing date of the Loan. Accordingly, Borrower and Bank agree as follows: (i) anything in this Loan Agreement to the contrary notwithstanding, a sum equal to 125% of the Phase II testing cost, as estimated by NTH, will be held back from the Loan proceeds until such testing is completed, (ii) Borrower shall arrange for the Phase II testing as recommended by NTH as soon as possible, and (iii) if as a result of the Phase II testing, further testing and/or remediation work is recommended, Borrower will complete and pay for such further testing and/or remediation, as recommended, as soon as possible. The amount of Loan proceeds held back as provided above will be disbursed to Borrower, provided no Event of Default has occurred and is continuing, to reimburse Borrower for Phase II testing and/or remediation cost upon completion of such work. If Borrower fails to arrange for testing and/or remediation as provided herein, Bank may but will not be obligated to, arrange for such testing and/or remediation at Borrower's expense, and apply the Loan holdback to pay for the cost, provided that Borrower will remain liable for any excess cost.
- (d) An appraisal indicating a loan-to-value ratio of not more than eighty percent (80%), including a full narrative written opinion of value made by the appraiser. This appraisal must be reviewed, approved and found acceptable to Flagstar Bank, FSB policy. This appraisal report must be ordered by the Lender. This appraisal must also be prepared in accordance with the standards of the professional appraisal society of which he or she is a member, and which appraisal shall include the three traditional approaches to value (i.e., income, comparable sales and replacement costs).
- (e) An opinion of Borrower's counsel in form and substance satisfactory to Lender, which shall include the following opinions and any other opinion reasonably requested by Lender:
  - (i) All documents evidencing or securing the Loan (A) have been duly authorized, executed and delivered by Borrower and Guarantors; (B) constitute the legal valid and binding obligations of Borrower and Guarantors; and (C) are enforceable in accordance with their respective terms,



- (ii) The execution and delivery of the Loan Documents does not constitute an event of default under any agreement to which Borrower or any Guarantor is a party, and
  - (iii) Borrower is duly organized and validly existing and qualified to do business in the State of California and has authority to execute the Loan Documents.
- (f) Casualty and liability insurance as required by the Mortgage.
  - (g) Flood insurance if required by the Flood Disaster Protection Act of 1973, or any amendment thereto insuring against loss due to flood hazards in an amount at least equal to the lesser of (a) the Loan Amount; or (b) the maximum limit of coverage made available with respect to the Premises.
  - (h) Appropriate copies of organization documents and authorizing resolutions of Borrower and any entity Guarantors.
  - (i) Copies of all leases for the Premises, and Subordination Agreements and Estoppel Certificates satisfactory to Lender signed by each tenant.
  - (j) A certified rent roll of the Premises.

#### 4. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender and such representations and warranties shall be deemed to be continuing representations and warranties during the entire life of this Agreement that:

- 4.1 Organization. It is a limited partnership duly organized and validly existing under the laws of the State of California, and the execution, delivery and performance of this Agreement, the issuance of the Note and the granting of security by Borrower are within its powers, have been duly authorized, are not in contravention of law or the terms of Borrower's Certificate of Limited Partnership or Partnership Agreement, and do not require the consent or approval of any governmental body, agency, authority or principal. The Loan Documents, when issued and delivered under this Agreement, will be valid and binding obligations of Borrower and/or Guarantor, as the case may be, in accordance with their terms.
- 4.2 Title to Property. That Borrower has good and indefeasible fee simple title to the Premises, subject to no liens, security interests, charges or encumbrances in favor of any person other than Lender except for the Permitted Exceptions.
- 4.3 Absence of Conflicts. That the execution and delivery of the Loan Documents by Borrower and any Guarantor do not, and the performance and observance by Borrower and any Guarantor of their obligations thereunder will not, contravene or result in a breach of any decree or judgment binding on Borrower or any



Guarantor, or any agreement or instrument binding on Borrower or any Guarantor.

- 4.4 Pending Litigation. That there are no actions, suits, investigations or proceedings pending, or, to the knowledge of Borrower, threatened in writing, against or affecting Borrower Guarantor or the Premises, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereof, or which will affect Borrower's ability to repay the Loan.
- 4.5 Violations of Requirements. That Borrower has no knowledge of any violations or notices of violations of law, ordinance, order, rule or regulation relating to the Premises.
- 4.6 Availability of Utilities. All utility services reasonably necessary and sufficient for the operation of the Premises for its intended purposes are presently available through dedicated public rights of way or through perpetual private easements, including, but not limited to, water, storm and sanitary sewer, gas, electric and telephone facilities, and drainage.
- 4.7 Condition of Property. That neither the Premises nor any portion thereof is now damaged or injured as result of any fire, explosion, accident, flood or other casualty or has been the subject of any condemnation, and to the knowledge of Borrower, no condemnation is pending or contemplated.
- 4.8 Brokerage Commissions. That any brokerage commissions due in connection with the transactions contemplated hereby have been paid in full and that any such commissions coming due in the future will be promptly paid by Borrower. Borrower agrees to and shall indemnify Lender from any liability, claims or losses arising by reason of any such brokerage commissions. Lender confirms that Lender has not engaged any broker in connection with the Loan. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists.
- 4.9 Financial Statements. That the financial statements of Borrower and Guarantor previously delivered to Lender are true and correct in all material respects, and fairly present the respective financial conditions of Borrower and Guarantor as of the respective dates thereof and the results of their operations for the periods covered thereby; that no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof which, would have a material adverse affect on Borrower or Guarantor's ability to perform its obligations under the Loan Documents.
- 4.10 Taxes. That all federal, state and other tax returns of Borrower and Guarantor required by law to be filed have been filed or valid extensions obtained, that all federal, state and other taxes, assessments and other governmental charges upon Borrower and Guarantor or their respective properties which are due and payable have been paid.



- 4.11 Other Contracts. That Borrower has made no contract or arrangement of any kind or type whatsoever (whether oral or written, formal or informal), the performance of which by the other party thereto could give rise to a lien or encumbrance on the Premises.
- 4.12 No Event of Default. That no Event of Default exists and no event which but for the passage of time, the giving of notice or both would constitute an Event of Default has occurred.
- 4.13 Governmental Approvals. That Borrower has obtained all governmental approvals from, and has given all such notices to, and has taken all such other actions with respect to such governmental authority as may be required for the occupancy of the Premises.
- 4.14 Principal Place of Business. That Borrower's principal office is 25809 Business Center Drive, Suite F, Redlands, California 92374 and that Borrower shall not change its principal office unless and until it has given Lender at least thirty (30) days written notice.

## 5. COVENANTS

Borrower covenants and agrees with Lender as follows:

- 5.1 Application of Loan Proceeds. To use the proceeds of the Loan solely for the purposes described in section 2.5, above.
- 5.2 Costs and Expenses. To pay all costs and expenses of Lender incurred through the date hereof with respect to the Loan, including but not limited to, appraisal fees, inspection fees, surveying costs, legal fees (including legal fees incurred by Lender subsequent to the closing of the Loan in connection with the disbursement, administration, collection or transfer of the Loan), advances, recording expenses, surveys, intangible taxes, expenses of foreclosure (including attorney's fees) and similar items.
- 5.3 Right of Lender to Inspect Property. To permit Lender and its representatives and agents to enter upon the Premises and to inspect the Premises and to cooperate with Lender and its representatives and agents during such inspections (including making available to Lender working copies of the plans and specifications together with all related supplementary materials); provided, however, that this provision shall not be deemed to impose upon Lender any obligation to undertake such inspections.
- 5.4 Books and Records. To keep and maintain complete proper and accurate books, records and accounts reflecting all items of income and expense of Borrower in connection with the Premises and the results of the operation thereof; and, upon the request of Lender, to make such books, records and accounts promptly available to Lender for inspection or independent audit.



5.5 Additional Documents. To perform hereunder as follows:

- (a) Regarding Preservation of Security. To execute and deliver to Lender such documents, instrument, assignments and other writings, and to do such other acts reasonably necessary, to preserve and protect the collateral at any time securing or intended to secure the Loan, as Lender may reasonably require.
- (b) Regarding this Agreement. To do and execute all and such further lawful and reasonable acts, conveyances and assurances as Lender shall reasonably require from time to time.

5.6 Financing Publicity. To permit Lender to obtain publicity in connection with the Loan.

5.7 Easements and Restrictions. To submit to Lender for Lender's approval prior to the execution thereof by Borrower all proposed easements, restrictions, covenants, permits, licenses, and other instruments which affect the title to the Premises, accompanied by a survey showing the exact proposed location thereof and such other information as Lender shall reasonably require. Borrower shall not subject the Premises or any part thereof to any easement, restriction or covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior approval of Lender, which consent Lender shall not unreasonably withhold.

5.8 Compliance with Requirements. To comply in all material respects promptly with all requirements and governmental approvals and to furnish Lender, within ten (10) days after demand, with independent evidence of such compliance.

5.9 Compliance with Restrictions, Covenants and Easements. To comply in all material respects with all restrictions, covenants and easements affecting the Premises.

5.10 No Transfers or Encumbrances. To cause or permit no sale, conveyance, transfer, assignment or encumbering of the Premises or any interest therein without the prior approval of Lender.

5.11 Debt Service Coverage Ratio. To maintain a minimum debt service ratio of [1.20:1.00] or greater during the entire term of the Loan. "Debt Service Coverage Ratio" shall mean the ratio of Net Operating Income to debt service on the Loan. "Net Operating Income" shall mean the sum of annualized gross revenue from leases of the Premises which are in full force and effect and under which the tenants are in occupancy and are paying full rent and are not in default under their leases less all annualized operating, fixed and other expenses of whatever nature incurred in connection with the use, operation and maintenance of the Premises (including, without limitation, a deemed market rate management fee if a below



market management fee is then being paid) and less reasonable reserves as determined by Lender for expenses not paid on an annual basis.

5.12 Financial Statements. Deliver to Lender the following:

- (a) As soon as available, but in no event later than one hundred twenty (120) days after the end of each fiscal year-end, a signed balance sheet and income statement of Borrower for the year ended.
- (b) As soon as available, but in no event later than thirty (30) days after the end of each fiscal year-end, and upon Lender's request, a signed, updated Rent Roll for the Premises.
- (c) As soon as available, but in no event later than ten (10) days of when tax returns are due to the Internal Revenue Service, a copy of Borrower's and each Guarantor's signed Tax Return, prepared by Borrower or such Guarantor or a certified public accountant satisfactory to Lender, on an annual basis.
- (d) As soon as available, but in no event later than one hundred twenty (120) days after tax year end a signed balance sheet and income statement of each Guarantor in the form of a Guarantor Financial Statement (on Lender's form), prepared by such Guarantor or a certified public accountant satisfactory to Lender, on an annual basis.

The Borrower and all Guarantors hereby acknowledge that the receipt of accurate, current financial information from the Borrower and all Guarantors in a regular and timely manner is of critical importance to Lender in evaluating the ongoing creditworthiness of the Borrower and in evaluating the adequacy of any collateral or support for the Loan. The Borrower and all Guarantors further acknowledge that Lender would not have agreed to make the Loan, or advance any Loan proceeds in the absence of the Borrower's and Guarantor's agreement to provide accurate, current financial information in a regular and timely manner without a request or demand for such information. The Borrower and the Guarantors hereby acknowledge and agree that in the event that the Borrower or any other person or entity who is required to provide financial or other information to Lender pursuant to this Agreement or any of the other Loan Documents fails to provide all of the information so required in an accurate and timely manner in full compliance with the terms and conditions of this Agreement, and the Loan Documents, then in any such event, such failure or failures shall constitute an Event of Default under this Agreement and the Loan Documents, unless cured within the Non Monetary Cure Period, which will permit Lender to exercise any and all legal or equitable remedies available to it under this Agreement, the Loan Documents or otherwise available pursuant to applicable law. These remedies include, but are not limited to the acceleration of the Maturity Date for the Loan, the termination of any available advances under the Loan, the liquidation of any collateral for the Loan, the collection of any and all amounts owed by any Guarantor under any applicable Guaranty



and the imposition of interest at the default rate of interest as provided in the applicable Note.

## 6. EVENTS OF DEFAULTS

6.1 Events of Default. The occurrence of any of following shall be an Event of Default:

- (a) Non-payment of any installment of the principal or interest of the Loan when due, which is not cured within the Monetary Cure Period, provided however, that the Monetary Cure Period shall not apply to any nonpayment that occurs in a calendar year after which Lender has previously given two notices of default to Borrower.
- (b) Default in the observance or performance of any of the other covenants or agreements of Borrower set forth in this Agreement or in any other agreement or collateral documents of security given in connection therewith, and failure to cure such default within the Non Monetary Cure Period, provided however, that the Non Monetary Cure Period shall not apply to (i) an event under subsections (e), (f), (g), (h), (j), (k), (m) or (o), below, (ii) any event, as to which a grace or cure period is otherwise provided under the Loan Documents, and (iii) Borrower's failure to maintain insurance as required under the Mortgage.
- (c) Default in the payment of any obligation of Borrower or any Guarantor pursuant to any Loan Document.
- (d) Default in the payment of any other obligation of Borrower to Lender, whether joint or several, contingent or absolute, now existing or later arising and however evidenced, and the expiration of any applicable grace or cure period under the documents evidencing such obligation.
- (e) Default in the payment of any other obligation of Borrower or any Guarantor for borrowed money (other than to Lender), or in the observance or performance of any of the covenants or agreements given with respect thereto and the expiration of any applicable grace or cure period under the documents evidencing such obligation.
- (f) Any change in the ownership or control of Borrower.
- (g) Any representation or warranty made by Borrower herein, or in any instrument submitted pursuant hereto proves untrue in any material respect.
- (h) The sale or encumbrance of all or any portion of the Premises, or of any interest in Borrower, except as permitted by the Mortgage.



- (i) A creditors' committee shall have been appointed for the business of Borrower or any Guarantor; or Borrower or any Guarantor shall have made a general assignment for the benefit of creditors or shall have been adjudicated Bankrupt, or shall have filed a voluntary petition in Bankruptcy or for reorganization or to effect a plan or arrangement with creditors or shall file an answer to a creditor's petition or other petition filed against it, admitting the material allegations thereof for an adjudication in Bankruptcy or for a reorganization; or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of its property or assets; or such receiver, trustee or custodian shall have been appointed for any of its property or assets (otherwise than upon application or consent of Borrower or Guarantor) and such receiver, trustee or custodian so appointed shall not have been discharged within sixty (60) days after the date of his appointment; or an order shall be entered and shall not be dismissed or stayed within sixty (60) days from its entry, approving any petition for reorganization of Borrower or any Guarantor.
- (j) Title to the Premises is or becomes unsatisfactory to Lender by reason of any lien, charge, encumbrance, title condition or exception (including without limitation, any construction or similar statutory common law lien or notice thereof), and such matter causing title to be or become unsatisfactory is not cured or removed (including by bonding) within the Non Monetary Cure Period.
- (k) Any Guarantor denies that the Guarantor has any liability or obligations under the Guaranty, or shall notify Lender of the Guarantor's intention to cancel, revoke or terminate the Guaranty, or shall fail to observe or comply with any term, covenant, condition and agreement under the Guaranty.
- (l) Any dissolution, termination, partial or complete liquidation, merger or consolidation of the Borrower, or any sale, transfer or other disposition of all or substantially all of the assets of the Borrower or any Guarantor, other than as permitted under the terms of this Agreement.
- (m) Any suit or proceeding shall be filed against the Borrower, any Guarantor or the Premises which, if adversely determined, would have a materially adverse affect on the ability of the Borrower or the Guarantor to perform each and every one of their respective obligations under and by virtue of the Loan Documents, and such suit is not dismissed within the Non Monetary Cure Period;
- (n) The death or mental incapacity of any Guarantor;
- (o) Any uninsured final judgment in excess of \$100,000 shall be rendered against the Borrower or any Guarantor and shall remain in force,



undischarged, unsatisfied and unstayed, beyond the Non Monetary Cure Period;

- (p) Any of the Loan Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or with the express prior approval of Lender, or any action at law, suit in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of the Borrower or any Guarantor which is a party thereto or any of their respective stockholders, members, partners or beneficiaries, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof;
- (q) Borrower or any Guarantor shall be indicted for a federal crime, a punishment for which could include the forfeiture of any of its assets.

## 7. REMEDIES

7.1 Remedies. Upon the occurrence of an Event of Default or upon maturity of this Agreement at the stated maturity date or upon acceleration, in addition to all other remedies which may be available under any Loan Document, or by law, Lender may, at its option, in such order as Lender shall determine, exercise any or all of the following remedies:

- (a) Accelerate the time for payment of the Loan by declaring the entire principal balance of the Loan which has been disbursed to Borrower to be immediately due and payable together with all accrued interest thereon at the rates provided for in this Agreement;
- (b) Exercise any and all rights and remedies provided herein or in the Mortgage or in any other Loan Document or provided by law, including appointment of a receiver;
- (c) Draw upon and/or setoff against any deposit, escrow, impound account, letter of credit or other deposit or account of the Borrower, and apply the proceeds as Lender shall determine.

## 8. MISCELLANEOUS

8.1 Successors; Assignment. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto, provided however, that this Agreement shall not be assigned or transferred by Borrower except with the written consent of Lender. Lender may transfer participation interests in the Loan to other financial institutions without notice to or consent by Borrower. Borrower agrees that Lender may deliver any



and all information, including financial information, in Lender's possession concerning Borrower, Guarantors or the Premises, to any prospective participant.

8.2 No Third Party Benefit. This Agreement is only for the benefit of the parties hereto, and is not intended to create and rights in favor of any may not be relied upon by any third party.

8.3 Waiver. No delay or failure of Lender in exercising any right, power or privilege hereunder shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof, or the exercise of any other power, right or privilege. The rights of Lender under this Agreement are cumulative and not exclusive of any right or remedies which Lender would otherwise have.

8.4 Notices. All notices with respect to this Agreement shall be deemed to be completed upon mailing by certified mail, return receipt requested, to the following:

If to Borrower:

Copeland Properties Ten, L.P.  
-and-  
Copeland Properties Eleven, L.P.  
25809 Business Center Drive  
Suite F  
Redlands, California 92374  
Attn: Donald Copeland

If to Lender:

Flagstar Bank, FSB  
Attn: Kevin McFarland  
5151 Corporate Drive, Mail Code W-205-2  
Troy, Michigan 48098-2639

8.5 Effective Date. This Agreement shall become effective upon the execution hereof by Lender and Borrower.

8.6 Costs. It is understood and agreed that Borrower shall pay, now or hereafter, all closing costs as listed in a Closing Statement approved by Borrower at closing, including by way of description and not limitation, reasonable attorney fees incurred by Lender in connection with the consummation and closing of this Agreement. All of said amounts required to be paid by Borrower as aforesaid may, at Lender's option, be charged by Lender as an Advance against the proceeds available under this Agreement. All reasonable costs, including attorney fees, incurred in connection with the enforcement of the terms and provisions of



this Agreement, including by way of description and not limitation, such charges in any court or Bankruptcy proceeding shall also be paid by Borrower.

- 8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
- 8.8 Entire Agreement. This Agreement, and the documents and instruments executed by such parties concurrently herewith or pursuant hereto implement this Agreement, and the transactions contemplated hereby, constitute the entire agreement among the parties as of the date hereof concerning the subject matter of this Agreement and there are no promises or agreements, either oral or written, between them other than those which are set forth or referred to herein. This Agreement may not be amended or modified, and no waiver of any of the terms and conditions shall be granted, except by a written instrument signed by the parties hereto.
- 8.9 Headings. The headings of the Articles, Paragraphs and subparagraphs of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.
- 8.10 Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto at the time performance of such provisions shall be due, shall involve exceeding the limit of validity presently prescribed by law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.
- 8.11 Number and Gender. Whenever the singular or plural number, or the masculine, feminine or neuter gender is used herein, it shall equally include the other.
- 8.12 Loan Agreement Controls. The provisions of this Agreement will control over any contrary or inconsistent provisions in any of the other Loan Documents.
- 8.13 Patriot Act Notice. The Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and the Lender's policies and practices, the Lender is required to obtain, verify and record certain information and documentation that identifies the Borrower, which information includes the name and address of the Borrower and such other information that will allow the Lender to identify the Borrower in accordance with the Act.
- 8.14 Jury Waiver. BORROWER AND LENDER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING

HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.

*Signatures on following page*



WITNESS the due execution hereof as of the day and year first above written.

**COPELAND PROPERTIES TEN, L.P.,**  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner

By:   
Donald E. Copeland

Its: President

-and-


**COPELAND PROPERTIES ELEVEN, L.P.,**  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner

By:   
Donald E. Copeland

Its: President

**FLAGSTAR BANK, FSB**

By:   
Kevin M. McFarland

Its: Vice President

EXHIBIT A  
PREMISES

Situated in the State of Michigan, County of Oakland and in the City of Troy.

Land in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 32, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan, described as: Commencing at the North  $\frac{1}{4}$  corner of said Section; thence along the South line South 89 degrees 53 minutes 40 seconds East 1333.55 feet; thence South 00 degrees 11 minutes 30 seconds West 2274.16 feet; thence North 88 degrees 10 minutes 50 seconds West 714.54 feet to the POINT OF BEGINNING; thence South 00 degrees 11 minutes 30 seconds West 555.88 feet; thence North 88 degrees 20 minutes 19 seconds West 351.48 feet; thence 130.90 feet along the arc of a curve to the left, radius 500.00 feet, chord bearing South 84 degrees 09 minutes 40 seconds West 130.53 feet; thence South 76 degrees 39 minutes 41 seconds West 158.28 feet; thence North 00 degrees 30 minutes 00 seconds East 615.45 feet; thence South 88 degrees 10 minutes 50 seconds East 632.51 feet to the point of beginning.

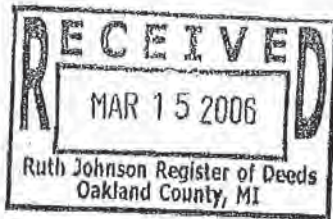
Commonly known as: 2350-2500 Meijer Dr.  
Tax Id: 20-32-200-018

EXHIBIT B  
PERMITTED ENCUMBRANCES

1. Subject to the Terms and conditions of an Agreement, Easement and Restrictions with the Detroit Edison Company and Michigan Bell Telephone Company, now known as SBC regarding easements for the installation and maintenance of equipment to provide electric and telephone services to all lots in recorded subdivision plat as set forth in liber 9483, page 573, and re-recorded in liber 9728, page 77, Oakland County Records.
2. Subject to an Easement in favor of City of Troy to construct, operate and maintain sanitary sewer across and through the land as recorded in liber 9333, page 62 and liber 9333, page 49, Oakland County Records.
3. Subject to an Easement in favor of the County of Oakland to lay, construct, and maintain water supply system as recorded in liber 6254, page 63, Oakland County Records.
4. Subject to the Rights of the public and of any governmental unit in any part of the southerly portion of subject property thereof taken, used or deeded for Meijer Drive.
5. Subject to an Easement in favor of City of Troy to lay, construct and maintain water main, as recorded in liber 9333, page 52, Oakland County Records.
6. Subject to an Easement in favor of City of Troy to lay, construct and maintain storm sewer, as recorded in liber 9333, page 46, Oakland County Records.
7. Subject to the Reservation of Easements for storm drain and sanitary sewer for the benefit of adjoining land as recited in Deed recorded in liber 8775, page 519, Oakland County Records.
8. Subject to the Terms and conditions of Easement and Subordination Agreement recorded in liber 9853, page 780, Oakland County Records.



LIBER 37261 PG 345



68875  
LIBER 37261 PAGE 345  
\$94.00 MORTGAGE  
\$4.00 REINDEMENTATION  
03/16/2006 02:46:37 P.M. RECEIPT# 31248  
PAID RECORDED - OAKLAND COUNTY  
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

MORTGAGE

THIS MORTGAGE ("Mortgage") is made as of this 3<sup>rd</sup> day of March, 2006 by **COPELAND PROPERTIES TEN, L.P.**, a California limited partnership and **COPELAND PROPERTIES ELEVEN, L.P.**, a California limited partnership (individually and collectively, the "Mortgagor") having its mailing address at 25809 Business Center Drive, Suite F, Redlands, California 92374, in favor of **FLAGSTAR BANK, F.S.B.**, a federally chartered savings bank ("Mortgagee"), having an address at 5151 Corporate Drive, Troy, Michigan 48098-2639.

RECITALS:

A. Mortgagor is the owner in fee simple of certain real property located in the City of Troy, Oakland County, Michigan, as more particularly described on Exhibit "A" attached hereto (the "Premises").

More Commonly Known As: 2350-2500 Meijer Dr.

Parcel Identification No.: 20-32-200-018.

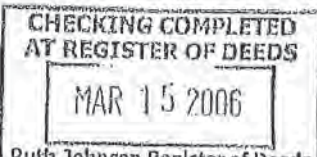
B. Mortgagee has made a loan to Mortgagor (the "Loan") in the amount of NINE MILLION FOUR HUNDRED FIFTY THOUSAND AND NO/100 U.S. DOLLARS (\$9,450,000.00) (the "Loan Amount"), in accordance with a Mortgage Loan Agreement (the "Agreement") and Mortgagor has executed and delivered a certain Promissory Note of even date herewith, in the principal sum of the Loan Amount made payable to the order of Mortgagee (the "Note"); and

C. Mortgagor is required to execute and deliver this Mortgage as a condition to obtaining the Loan.

NOW, THEREFORE, MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

1. Granting Clause. As security for the payment of certain indebtedness defined in Section 3 below, Mortgagor does hereby mortgage and warrant to Mortgagee, its successors and assigns, the Premises, and all of Mortgagor's estate, right, title and interest therein;

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the ways, easements, streets, alleys, passages, water, water courses, riparian rights, oil, gas and other mineral rights, gaps, gores, rights, hereditaments, liberties and privileges thereof, if any, and in any way appertaining to the Premises;



1

O.K. - LG

GRECO

EXHIBIT 2  
Troy 395244 2  
Page 27

ad



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TOGETHER with all rents, income, royalties, issues, receipts, revenues, proceeds and profits accruing and to accrue under present or future leases of or otherwise from the Premises or any part thereof or any other portion of the Mortgaged Property (as hereinafter defined), including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance, operation, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following an Event of Default (as hereinafter defined), royalties, the premium payable by any lessee upon the exercise of a cancellation, privilege originally provided in any leases, and, except as may be otherwise provided for in the Loan Documents (as hereinafter defined), all proceeds payable under any policy of insurance for loss of rents, together with any and all rights and claims of any kind which Mortgagor may have against any lessee under such leases or any subtenants or occupants of the Premises (the "Rents"), together with any and all security deposits, guaranties, letters of credit and other assurances of the tenants' performance under such leases (the "Assurances");

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed on the Premises, including, without limitation all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises, and all fixtures and articles of personal property now or hereafter attached to or contained in or used in connection with the Premises, including, without limitation, all furniture, apparatus, machinery, equipment, motors, elevators, fittings, radiators, furnaces, stoves, microwave ovens, awnings, shades, screens, blinds, office equipment, trash and garbage removal equipment, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning, conveyor, security, sprinkler and other equipment, and all fixtures and appurtenances thereof, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to such improvements in any manner; it being intended that all the above-described property shall, so far as permitted by law, be deemed to be a part of the realty, and security for the indebtedness of Mortgagor to Mortgagee hereinafter described and secured by this Mortgage, and as to the balance of the above-described property as well as the portion thereof constituting fixtures, this Mortgage is hereby deemed to be as well a security agreement for the purpose of creating hereby a security interest in such property, under the Michigan Uniform Commercial Code, as now existing or hereafter amended, or any other statute which may hereafter be substituted in place of it (the "UCC"), securing such indebtedness, for the benefit of Mortgagee; all of the property described in this paragraph is hereinafter sometimes collectively called the "Improvements";

TOGETHER with any and all existing and future warranty claims, maintenance contracts, leases and other contract rights, instruments, documents, chattel papers, accounts and general intangibles with respect to or arising from the Premises, the Improvements, or any other portion of the Mortgaged Property, and all cash and non-cash proceeds and products thereof, and

TOGETHER with all payments, awards and other compensation, heretofore or hereafter to be made with respect to any of the Mortgaged Property as a result of (i) any taking by eminent domain, either permanent or temporary (a "Taking"), including severance and consequential damage and change in grade of streets (collectively, "Taking Proceeds"), (ii) any loss or damage to any Improvements, (iii) any other injury to or decrease in the value of the Mortgaged Property or (iv) any and all refunds of impositions or other charges relating to the Mortgaged Property or the indebtedness secured by this Mortgage.



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TOGETHER with all rights, title and interest of Mortgagor in and to all options or contracts to purchase or lease the property or any portion of, or any interest in, the real estate, now owned or subsequently acquired and any greater estate in the real estate owned or subsequently acquired,

TOGETHER, with all of Mortgagor's interest in and to all operating accounts, the reserve account described in the Loan Agreement, rent deposit and lockbox accounts, escrow accounts, tenant security deposit accounts, capital improvement reserves and impounds, and any other bank accounts or deposit accounts of Mortgagor;

TOGETHER, with all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

TOGETHER, with all proceeds and products or, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

The property described above is hereafter called the "Collateral." The Premises and the Collateral are hereafter collectively called the "Mortgaged Property."

2. Liens and Encumbrances. Mortgagor does hereby covenant with Mortgagee, its successors and assigns, that Mortgagor owns good and marketable indefeasible fee simple title to the Premises and good and marketable title to the Collateral, and has the right, power and authority to grant a lien on and a security interest in the Mortgaged Property in the manner and form as above written; that title to the Mortgaged Property is free and clear of all defects, liens and encumbrances except for the lien and security interest created hereby and the matters identified in a schedule of exceptions to coverage in the title insurance policy insuring Mortgagee's interest in the Premises (the "Permitted Exceptions"). Mortgagor agrees that it shall maintain this Mortgagee's lien as a first lien and shall not create or grant any other lien or encumbrance against the Mortgaged Property which purports to take priority over the lien of this Mortgage, without the prior written consent of Mortgagee.

3. Security for Payment of Indebtedness, Including Future Advances. Mortgagor has executed and delivered this Mortgage to secure the following, including all of the following which constitute future advances:

- (a) Payment of principal, interest and all other charges under the Note, as the same may be amended, extended, supplemented, modified and/or renewed, and all replacements and substitutions therefore, together with interest thereon at a rate or rates which may vary from time to time as specified in the Note, with principal and interest payable in accordance with the terms of the Note, and all accrued but unpaid interest and the entire unpaid principal amount being due and payable, in the absence of acceleration in accordance with the terms of the Note;
- (b) payment of any and all amounts or charges required to be paid by Mortgagor pursuant to this Mortgage or any of the other Loan Documents;
- (c) payment by Mortgagor to Mortgagee of all sums now or hereafter expended or advanced by Mortgagee pursuant to this Mortgage or any of the other Loan Documents;



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- (d) payment of any and all amounts advanced by Mortgagee with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums or costs incurred in the protection and/or maintenance of the Mortgaged Property;
- (e) performance and observance of each covenant and agreement of Mortgagor contained herein or in any of the other Loan Documents; and
- (f) payment by Mortgagor to Mortgagee of any and all other liabilities and indebtedness of Mortgagor to Mortgagee, direct or contingent, now or hereafter owing by Mortgagor to Mortgagee, including all future advances made by Mortgagee, other than as provided in subparagraphs (a) through (e) above.

This Mortgage secures future advances and constitutes a future advance mortgage under Michigan law.

PROVIDED, HOWEVER, that if Mortgagor shall pay or cause to be paid to Mortgagee the principal, interest and all other charges under the Note on or before the Maturity Date in accordance with the terms of the Note, and in the manner stipulated therein and herein, all without deduction or credit for taxes or other charges paid by Mortgagor, and if Mortgagor shall have kept, performed and observed all of the covenants and conditions contained in this Mortgage and all of the other Loan Documents, then Mortgagee shall execute and deliver to Mortgagor a discharge of this Mortgage.

4. Mortgagor's Covenants. Mortgagor further covenants and agrees as follows:

4.1 Payment of Indebtedness. Mortgagor shall pay promptly the indebtedness evidenced by the Note at the time and in the manner provided herein and in the Note, the terms and provisions of which are incorporated herein by reference as if fully set forth herein, and all other sums and charges payable when due by Mortgagor and pursuant to the Note, this Mortgage or any of the other Loan Documents.

4.2 Tax and Insurance Escrows.

- (a) Subject to the terms and conditions of subsection 4.2(c) below, Mortgagor shall pay to Mortgagee, in addition to the monthly payments under the Note and concurrently therewith in a single payment monthly until the Note is fully paid, a sum equal to annual real estate taxes, general and special assessments and premiums for insurance required hereunder (all as estimated by Mortgagee) less all sums previously paid therefore, divided by the number of full calendar months to elapse before the date which is one (1) month prior to the date when such taxes and assessments and insurance premiums will become due. If one month prior to the due date of any such taxes, assessments or insurance premiums any sums then held by Mortgagee pursuant to this subparagraph (a) shall be insufficient to fully pay any such taxes, assessments or insurance premiums, Mortgagor shall, within ten (10) days after written notice from Mortgagee, pay to Mortgagee the amount of such deficiency. Such sums shall be held by Mortgagee for payment of such taxes and assessments and insurance premiums as and when due; provided, however, that upon the occurrence of an Event of Default, Mortgagee may apply all or any portion of such sums to the reduction of the indebtedness secured hereby,



LIDER 37261 PG349

in such manner as Mortgagee shall determine. Mortgagee shall have the right to commingle and hold such sums with its general funds, no interest shall accrue thereon in favor of Mortgagor, and such funds shall not be, nor be deemed to be, trust funds.

- (b) Without limiting the rights of Mortgagee hereunder, including, without limitation, those provided in Paragraph 7 hereof, in the event of a sale of the Premises or any other part of the Mortgaged Property, any funds then on deposit with the Mortgagee shall, at Mortgagee's option, and thereupon automatically and without the necessity of further notice or written assignment be transferred to and held thereafter for the account of the new owner, to be applied in accordance with the foregoing.
- (c) Mortgagee hereby waives the requirement for deposit by Mortgagor of the sums described in subsection 4.2(a) above, for so long as (i) no Event of Default has occurred, and no event has occurred which, with the giving of notice, passage of time or both, would constitute an Event of Default, and (ii) Mortgagor delivers to Mortgagee, no later than five (5) days prior to the last day for payment of such sums without penalty or interest (or in the case of an insurance premium five (5) days prior to the date payment of such insurance premium is due), evidence satisfactory to Mortgagee in Mortgagee's sole and absolute discretion, that all sums described in subsection 4.2(a) above have been paid in full. Upon failure of either of the foregoing conditions, the waiver set forth in this subsection 4.2(c) shall immediately and automatically become null and void, without notice from Mortgagee to Mortgagor.
- (d) The failure of Mortgagor to pay any taxes or assessments assessed against the Mortgaged Property, or any installment thereof, or any premiums payable with respect to any insurance policy covering the Mortgaged Property, shall constitute waste, as provided by Act No. 236 of the Michigan Public Acts of 1961, as amended heretofore or hereafter (MCLA §600.2927). Mortgagor further hereby consents to the appointment of a receiver under such statute should Mortgagee elect to seek such relief thereunder.

4.3 Protection Against Charges. Except for the Permitted Exceptions, Mortgagor shall keep the Mortgaged Property free from liens of every kind, except only for real estate taxes and general and special assessments which are not yet due and payable, and mortgage taxes, if any, as provided in Paragraph 4.7 hereof, and shall pay, before delinquency and before any penalty for non-payment attaches thereto, all taxes, assessments, and other governmental or municipal or public dues, charges, fines or impositions which are or hereafter may be levied against the Mortgaged Property or any part thereof. Mortgagor shall promptly deliver to Mortgagee receipted bills evidencing each such payment, together with any other evidence of payment required by Mortgagee in its sole and absolute discretion, no later than five (5) days prior to the last day upon which such payment can be made without penalty or interest.

4.4 Insurance and Casualty Damage.



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- (a) Mortgagor shall keep, or cause to be kept, all of the following insurance policies with respect to the Mortgaged Property in companies, forms, amounts and coverage satisfactory to Mortgagee, containing waiver of subrogation and first mortgagee clauses in favor of Mortgagee and providing for thirty (30) days written notice to Mortgagee in advance of cancellation of said policies for nonpayment of premiums or any other reason or for material modification of said policies, and ten (10) days written notice to Mortgagee in advance of payment of any insurance claims under said policies to any person:
- (i) insurance against loss or damage by fire and such other hazards, casualties and contingencies (including, without limitation, so-called all risk coverages) as Mortgagee reasonably may require, in an amount equal to the full replacement cost of the Mortgaged Property, with a replacement cost endorsement and in such amounts so as to avoid the operation of any coinsurance clause, for such periods and otherwise as Mortgagee reasonably may require from time to time.
  - (ii) comprehensive general public liability, property damage and indemnity insurance, including, without limitation, water damage, so-called assumed and contractual liability coverage and claims for bodily injury, death or property damage, naming Mortgagee as an additional insured, in such amounts as Mortgagee reasonably may from time to time require,
  - (iii) insurance against rent loss or abatement of rent, covering payment of rent and like charges from the Mortgaged Property over a term of not less than twelve (12) months, in an amount at least equal to the aggregate annual amount payable from time to time under the Note.
  - (iv) if the Mortgaged Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), as amended, the Mortgagor will keep the Mortgaged Property covered by flood insurance up to the maximum limit of coverage available under the Act, but not in excess of the amount of the Note.
  - (v) Mortgagor shall deliver renewal certificates of all insurance required above, together with written evidence of full payment of the annual premiums therefore at least thirty (30) days prior to the expiration of the existing insurance. Any such insurance may be provided under so called "blanket" policies, so long as the amounts and coverages thereunder will, in Mortgagee's sole judgment, provide protection equivalent to that provided under a single policy meeting the requirements hereinabove.
- (b) Notice. In case of any material damage or destruction of the Mortgaged Property, or any part thereof, or any interest therein or right accruing thereto, Mortgagor shall



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promptly give to the insurance carrier and Mortgagee written notice generally describing the nature and extent of such damage or destruction which has resulted or which may result therefrom. Mortgagee may make proof of loss if not made promptly by Mortgagor. Mortgagee may appear in any such proceedings and negotiations and Mortgagor shall promptly deliver to Mortgagee copies of all notices and pleadings in any such proceedings. Mortgagor will in good faith, file and prosecute all claims necessary for any award or payment resulting from such damage or destruction. All costs and expenses incurred by Mortgagee in exercising its rights under this section shall constitute indebtedness secured by this Mortgage.

- (c) Application of Insurance Proceeds. Upon occurrence of any loss or damage to all or any portion of the Mortgaged Property resulting from fire, vandalism, malicious mischief or any other casualty or physical harm (a "Casualty"), Mortgagee hereby agrees to allow the proceeds of any insurance policies collected or claimed as a result of such Casualty to be used for the restoration of the Mortgaged Property (the "Restoration") and to release such insurance proceeds to Mortgagor as such Restoration progresses, provided:
- (i) Mortgagor is not in default under any of the terms, covenants and conditions of this Mortgage;
  - (ii) The plans and specifications for the Restoration are approved in writing by Mortgagee and a building permit is issued for the Restoration;
  - (iii) At all times during the Restoration, Mortgagor has deposited with Mortgagee, cash, letters of credit, surety bonds or equivalent assurances of the availability of funds which, when added to such insurance proceeds, are sufficient to complete the Restoration, and further, that the sufficiency of such funds is certified to Mortgagee by Mortgagee's inspecting architect/engineer;
  - (iv) Mortgagor provides builders' all risk insurance for the Restoration in form and amount acceptable to Mortgagee;
  - (v) The insurance proceeds held by Mortgagee shall be disbursed no more often than once per month. Mortgagee's obligation to make any such disbursement shall be conditioned upon Mortgagee's receipt of written certification from Mortgagee's inspecting architect/engineer that all construction and work for which such disbursement is requested has been completed in accordance with the approved plans and specifications and, further, that Mortgagor has deposited with Mortgagee sufficient funds to complete the Restoration in accordance with subparagraph (iii) above;
  - (vi) Mortgagee shall have the option, upon completion of the Restoration to apply any surplus insurance proceeds remaining after the completion of such Restoration, at par, to the reduction of the indebtedness secured by the Mortgage to Mortgagee; notwithstanding



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the fact that the amount owing thereon may not then be due and payable or that said indebtedness is otherwise adequately secured; and

- (vii) Mortgagee shall be entitled to require and to impose such other conditions to the release of such insurance proceeds for the Restoration as would be customarily or reasonably required and imposed by a construction lender for a project of similar nature and cost.

4.5 Maintenance of Mortgaged Property.

- (a) No part of the Mortgaged Property shall be structurally or otherwise materially altered, removed or demolished, nor shall any fixtures or any portion of the Collateral on, in or about the Premises be severed, removed, sold, mortgaged or otherwise encumbered, without the prior written consent of Mortgagee in each case; except, however, that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage such Collateral as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal, such Collateral shall be replaced with other new Collateral of like kind and quality, and by such removal, the Mortgagor shall be deemed to have subjected the replacement Collateral to the lien and security interest of this Mortgage. Any improvements or any of the Collateral which are demolished or destroyed in whole or in part shall be replaced promptly by similar Improvements and articles of personal property of comparable quality, condition and value as those demolished or destroyed, thereupon becoming part of the Mortgaged Property free from any other lien or security interest or encumbrance on or reservation of title to such property. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof and shall keep and maintain (or cause to be kept and maintained) the same in good repair and condition. Mortgagor shall make (or cause to be made) all necessary and proper repairs and replacements so that all components of the Mortgaged Property will, at all times, be in good condition, fit and proper for the respective purposes for which they were erected or installed, other than for matters of health and safety prior to the demolition thereof. In the event that Mortgagor shall fail fully to comply with any of the requirements of this Paragraph 4.5, without prejudice to any other right or remedy that may be available to Mortgagee in such event, Mortgagee shall have the right to recover, as damages for such failure, an amount equivalent to the cost required to restore the Mortgaged Property to the condition hereby required.
- (b) In its reasonable discretion, Mortgagor hereby grants to Mortgagee and its agents, the right but not the obligation, to enter upon the Premises at any time for the purpose of inspecting and appraising the Mortgaged Property and conducting tests and surveys thereof.
- (c) Mortgagor hereby covenants and agrees to comply with, and to cause all occupants of all or any portion of the Mortgaged Property to comply with, all



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applicable zoning, building, use and environmental restrictions and all laws, rules, statutes, ordinances, regulations, orders and requirements, including, without limitation, environmental matters and notices of violation of all governmental authorities having jurisdiction over the Mortgaged Property or the maintenance, use or operation thereof, and all applicable restrictions, agreements and requirements, whether or not of record, including but not limited to the requirements of the National Fire Protection Association or any successor thereto, or any other similar body exercising similar functions (collectively, "Laws"). Mortgagor shall not initiate, join in or consent to any change in any private restriction, covenant, zoning ordinance or other public or private restrictions affecting the Mortgaged Property, without the prior written consent of Mortgagee, which shall not be unreasonably withheld. Mortgagor will deliver to Mortgagee within ten (10) days after receipt thereof any permits, licenses or other governmental approvals, authorizations or renewals thereof, issued and, approved or disapproved with respect to the Mortgaged Property. Mortgagor hereby indemnifies Mortgagee and its officers, directors, shareholders, employees, agents, partners and their respective heirs, personal representatives, successors and assigns (collectively, "Indemnified Parties") and agrees to defend and hold the Indemnified Parties harmless from and against any and all claims, demands, losses, costs, damages, liabilities or expenses, including but not limited to attorneys' fees, incurred or suffered by the Indemnified Parties arising from any failure of the Mortgaged Property or the maintenance, use or operation thereof to comply with Laws, or from any failure of Mortgagor to obtain, maintain or renew, or to have obtained, maintained or renewed, any permit or approval required with respect to the Mortgaged Property or the maintenance, use or operation thereof. The foregoing indemnification and agreement shall survive the discharge of this Mortgage and the payment or other satisfaction of the indebtedness secured hereby.

Mortgagor shall not make, suffer or permit any use of the Mortgaged Property, or any part thereof, for any purposes other than that for which the same are not used or intended to be used, without the prior written consent of Mortgagee.

4.6 Hazardous Materials and Wetlands.

- (a) Without limiting the Generality of any provision herein or in any of the Loan Documents, Mortgagor hereby represents and warrants to Mortgagee that neither Mortgagor nor, to the best knowledge and belief of Mortgagor, any previous owner or user of the Mortgaged Property has used, generated, stored or disposed of, discharged or emitted in, on, under, around or above the Mortgaged Property any Hazardous Materials except as such may be required to be used, stored, or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefore (as hereinafter defined), and that to the best knowledge and belief of Mortgagor, the Mortgaged Property is not currently in violation of any Environmental Laws (as hereinafter defined). Mortgagor shall cause all employees, agents, contractors and subcontractors of Mortgagor and any other persons present on or



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occupying the Mortgaged Property to, (i) keep and maintain the Mortgaged Property, including, without limitation, the soil and ground water thereof, in compliance with all federal, state and local laws, ordinances and regulations relating to industrial hygiene or to the environmental conditions thereon (including but not limited to any Environmental Laws), and (ii) not cause or knowingly permit the Mortgaged Property, including the soil and groundwater thereof, to be in violation of any such laws, ordinances or regulations. Neither Mortgagor nor any employees, agents, contractors or subcontractors of Mortgagor or any other persons occupying or present on the Mortgaged Property shall (A) use, generate, manufacture, store or dispose of, discharge or emit on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" or which are otherwise regulated under any Environmental Laws (collectively referred to hereinafter as "Hazardous Materials"), except as such may be required to be used, stored, or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefore; or (B) perform, cause to be performed or permit any fill activities or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with, or otherwise affect any Wetlands, as defined in 33 C.F.R. § 328.3 or in any comparable state and/or local law, statute, ordinance, rule or regulation ("Wetlands"), in violation of any Environmental Laws.

- (b) Mortgagor shall immediately advise Mortgagee in writing of: (i) any notices (whether such notices are received from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of any violation or potential violation which are received by Mortgagor of any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, Emergency Planning and Community Right-to-Know Act and the Michigan Natural Resources and Environmental Protection Act (collectively, "Environmental Laws"); (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws; (iii) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials or Wetlands (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Environmental Claims"); and (iv) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be classified as in violation of the provisions of any Environmental Laws, or to be otherwise subject to any restrictions on



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the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Laws.

- (c) Mortgagee shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Claims and to have its reasonable attorneys' and consultants' fees in connection therewith paid by Mortgagor upon demand.
- (d) Mortgagor shall be solely responsible for and shall indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability, including but not limited to reasonable attorneys' fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, emission, disposal, or presence (whether prior to, on or after the date hereof) of Hazardous Materials or Wetlands on, under or about the Mortgaged Property (whether such use, generation, storage, release, threatened release, discharge, emission, disposal or presence is by or caused by Mortgagor or any of its employees, agents, contractors or subcontractors or any other person or entity), including, without limitation: (i) all consequential damages; (ii) the cost of any required or necessary repair, cleanup or detoxification of the Mortgaged Property, including the soil and ground water thereof, and the preparation and implementation of any closure, remedial or other required plans; (iii) damage to any Wetlands or natural resources; and (iv) all reasonable costs and expenses incurred by Mortgagee in connection with clauses (i), (ii) and (iii), including, but not limited to reasonable attorney's fees and consultant's fees; provided, however, that nothing contained in this paragraph shall be deemed to (x) create or give any rights to any person other than Mortgagee and its successors and assigns, it being intended that there shall be no third party beneficiary of such provisions, or (y) preclude Mortgagor from seeking indemnification from, or otherwise proceeding against, any third party, including but not limited to any tenant or predecessor in title to the Mortgaged Property. Notwithstanding the foregoing, Mortgagor shall not be responsible for or be liable to indemnify or hold harmless Mortgagee or any of its directors, officers, employees, agents, successors or assigns from and against any loss, damage, cost, expense or liability which arises out of the use, generation, storage, release, threatened release, discharge, emission, disposal or presence of any Hazardous Materials which are first introduced on, under or about the Mortgaged Property by the Mortgagee subsequent to the date Mortgagee has received possession of the Mortgaged Property following the foreclosure of this Mortgage or a deed in lieu of foreclosure of this Mortgage.
- (e) Any costs or expenses reasonably incurred by Mortgagee for which Mortgagor is responsible or for which Mortgagor has indemnified Mortgagee shall be paid to Mortgagee on demand, and failing prompt reimbursement, shall be added to the indebtedness secured by this Mortgage and earn interest at the Default Rate (as defined in the Note) until paid in full.



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- (f) Mortgagor shall take any and all remedial action in response to the presence of any Hazardous Materials or Wetlands on, under, or about the Mortgaged Property required pursuant to any settlement agreement, consent decree or other governmental proceeding or any Environmental Laws; provided, however, that Mortgagor shall take such additional steps as may be necessary to preserve the value of Mortgagee's security under the Loan Documents.
- (g) Upon Mortgagee's reasonable request, Mortgagor shall retain, at Mortgagor's sole cost and expense, a licensed geologist, industrial hygienist or an environmental consultant ("Consultant") reasonably acceptable to Mortgagee to conduct a Phase I, Phase II investigation and or any additional investigation desired to complete a Baseline Environmental Report of the Mortgaged Property for the presence of Hazardous Materials or Wetlands ("Environmental Audit"). The Environmental Audit shall be performed in a manner reasonably calculated to discover the presence of Hazardous Materials contamination or Wetlands; provided, however, such investigation shall be of a scope and intensity no greater than a Phase I, Phase II investigation and or any additional investigation desired to complete a Baseline Environmental Report whichever is applicable, taking into consideration the known uses of the Mortgaged Property and property in the vicinity of the Mortgaged Property and any factors unique to the Mortgaged Property. The Consultant shall concurrently deliver the results of any such investigation in writing directly to Mortgagor and Mortgagee. Such results shall be kept confidential by both Mortgagor and Mortgagee unless legally compelled or required to disclose such results, or disclosure is reasonably required in order to pursue rights or remedies provided under this Mortgage or any of the other Loan Documents or at law or in equity.
- (h) If Mortgagor fails to pay for or obtain an Environmental Audit as provided for herein, Mortgagee may, but shall not be obligated to, obtain the Environmental Audit, and either demand reimbursement from Mortgagor or add the cost thereof to the indebtedness secured by this Mortgage, in which case interest shall accrue on such sum at the Default Rate.
- (i) Mortgagor covenants to reasonably cooperate with the Consultant and to allow entry and reasonable access to all portions of the Mortgaged Property for the purpose of the Consultant's investigation. Mortgagor covenants to comply, at its sole cost and expense, with all recommendations contained in the Environmental Audit reasonably required to bring the Mortgaged Property into compliance with all Environmental Laws, including any reasonable recommendation for additional testing and studies to detect the quantity and types of Hazardous Materials or Wetlands present, if Mortgagee requires the implementation of same.

4.7 Mortgage Tax. If at any time any governmental authority, whether federal, state or municipal, or any agency or subdivision of any of them, shall require Internal Revenue or other documentary stamps on the Note, this Mortgage or any of the other Loan Documents, or upon the passage of any law of the State of Michigan deducting from the value of land for the purposes of real estate taxation the amount of any lien thereon, or



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changing in any way the laws for the taxation of mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes so as to impose, in any such event, a tax (other than an income tax) upon or otherwise to substantially and adversely affect the value of this Mortgage, then all indebtedness secured hereby shall become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor; provided, however, this Mortgage, the Note and the other Loan Documents shall be and remain in effect if Mortgagor lawfully may pay, and does in fact pay, when payable, for such stamps and taxes, including interest and penalties thereon, to or for Mortgagee. Mortgagor further agrees to deliver to Mortgagee, at any time, upon demand, such evidence as may be required by any government agency having jurisdiction in order to determine whether the obligation secured hereby is subject to or exempt from any such tax.

4.8 Indemnification for Costs. Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against all costs, liabilities and expenses, including but not limited to attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, and costs of any Environmental Audit, title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body, including an action to foreclose or to collect any indebtedness or obligation secured hereby, or incurred in connection with any extra-judicial collection procedure, in and to which Mortgagee may be or become a party by reason hereof, including, without limitation, any Taking, bankruptcy, probate and administration proceedings, as well as any other proceeding wherein proof of claims are required to be filed by law or in which it becomes necessary to defend or uphold the terms of, or any lien or security interest created by, this Mortgage or any of the other Loan Documents.

4.9 Taking.

- (a) In the event all or any part of the Mortgaged Property shall be damaged or taken as a result of a Taking, either temporarily or permanently, Mortgagor shall assign, transfer and set over unto Mortgagee the Taking Proceeds or any claim for damages for any of the Premises taken or damaged under the power of eminent domain, and agrees that in the event the whole or any part of the Premises is taken by eminent domain proceedings, then all sums awarded as damages for the Taking shall be applied in reduction of the indebtedness secured by this Mortgage. Any and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, incurred by Mortgagee by reason of any condemnation, threatened condemnation or proceedings thereunder shall be secured hereby and Mortgagor shall reimburse Mortgagee therefore immediately, or Mortgagee shall have the right, at its option, to deduct such costs and expenses from any Taking Proceeds paid to Mortgagee hereunder. In the event that the Premises is wholly condemned, and the indebtedness secured hereby is not fully discharged by the application of the Taking Proceeds, the balance of the indebtedness secured hereby which remains unpaid after the application of the Taking Proceeds shall become immediately due and payable, without execution or other process and without notice or demand, all of which are hereby waived. Thereafter, the unpaid principal



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balance secured by this Mortgage shall, at the option of the Mortgagee, bear interest at the Default Rate, payable on demand.

- (b) Subject to paragraph (a) of this Section, Mortgagor will immediately notify Mortgagee of the actual or threatened commencement of any Taking proceedings affecting all or any part of the Premises, including any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, from time to time upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments or other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning the Taking Proceeds and all other awards and compensation heretofore and hereafter to be made to Mortgagor, including the assignment of any award from the United States Government at any time after the allowance of the claim therefore, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof, for any Taking, either permanent or temporary, under any such proceedings. In the event of a Taking, Mortgagee shall not be limited to the rate of interest paid on the award by the condemning authority but shall be entitled to receive out of the Taking Proceeds interest on the entire unpaid principal sum under the Note and the other Loan Documents at the applicable rate(s) provided therein.
- (c) Subject to paragraph (a) of this Section, Mortgagor hereby irrevocably authorizes and appoints Mortgagee its attorney-in-fact, coupled with an interest, to collect and receive any such Taking Proceeds from the authorities making the same, to appear in any proceeding therefore, to give receipts and acquittances therefore, to settle and compromise all claims relating to a Taking and to apply all Taking Proceeds to payment on account of the indebtedness secured hereby whether then matured or not. Mortgagor shall execute and deliver to Mortgagee on demand such assignments and other instruments as Mortgagee may require for such purposes.
- (d) However nothing contained herein shall be deemed to deprive the Mortgagor of the right to contest the necessity of any condemnation proceedings, the exercise of the right of eminent domain or the value placed upon the Mortgaged Property in connection with such proceedings. Mortgagee may deduct from the amount of any Taking Proceeds all costs and expenses incurred by Mortgagee in connection with the adjustment or collection thereof and the balance of the Taking Proceeds may, in Mortgagee's sole discretion be applied by Mortgagee to repairing any damage to the Mortgaged Property, or any remaining portion thereof, resulting from any taking, conveyance or injury. Any application of Taking Proceeds upon the indebtedness shall not operate to cure or waive any Event of Default.

4.10 Estoppel Certificate. Within ten (10) days after request by Mortgagee, Mortgagor shall furnish to Mortgagee a written statement, duly acknowledged, of the aggregate amount of indebtedness secured by this Mortgage, confirming (to the extent true)



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that no right of offset exists under the Loan Documents or otherwise, and stating either that no defenses exist against the indebtedness secured hereby, or, if such defenses are alleged to exist, the nature thereof, and any other information which Mortgagee may reasonably request.

4.11 Title Warranty; Title Evidence. Mortgagor hereby confirms the warranties and representations as to title to the Mortgaged Property made in the granting clause of this Mortgage, and agrees to pay the costs of title evidence satisfactory to Mortgagee showing title to the Mortgaged Property to be as herein warranted. In the event of any subsequent change in title to the Mortgaged Property, other than a change expressly permitted by the Loan Documents, Mortgagor agrees to pay the cost of (i) an extension or endorsement to such title evidence showing such change in title, and (ii) changing any and all insurance and other records in connection with the servicing of the Loan made necessary by such change in title.

5. Mortgagee's Reliance. Mortgagee, in advancing any payment relating to taxes, assessments and other governmental or municipal charges, fines, impositions or liens asserted against the Mortgaged Property, shall have the right to do so according to any bill, statement, invoice or estimate procured from the appropriate public office without inquiry into the accuracy or validity thereof. Mortgagee shall have the right to make any such payment whenever Mortgagee, in its sole discretion, shall deem such payment to be necessary or desirable to protect the security intended to be created by this Mortgage. In connection with any such advance, Mortgagee, at its option, shall have the right to and is hereby authorized to obtain, at Mortgagor's sole cost and expense, a down-date endorsement to the title insurance policy issued in favor of the Mortgagee in connection with the Loan.

6. Event of Default. An Event of Default under the Loan Agreement will be an Event of Default under this Mortgage.

Upon the occurrence of an Event of Default, the entire amount of the indebtedness hereby secured, shall, at the option of Mortgagee, become immediately due and payable, without execution or other process and without further notice or demand, all of which are hereby expressly waived. Thereafter, the unpaid principal balance secured shall, at the option of Mortgagee, bear interest at the Default Rate, payable on demand. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

7. Additional Rights upon Event of Default. Without limiting the generality of the foregoing, and after applicable cure periods, Mortgagee shall have the following additional rights during the continuance of any Event of Default:

- (a) Mortgagee shall have the immediate right to collect and receive, personally or through a receiver, so long as such Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, as the same becomes due, any and all unearned insurance premiums or refunds of insurance premiums, due or to become due, and all proceeds and other benefits to be received under insurance policies of every nature affecting or covering the Mortgaged Property, any and all refunds of taxes, assessments and other charges heretofore or



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hereafter paid on or with respect to the Mortgaged Property, together with all Rents and Assurances, all of which having been hereby assigned to Mortgagee. Mortgagor agrees to consent to a receiver if this is believed necessary or desirable by Mortgagee to enforce its right to collect and receive the Rents, Assurances and other sums described in the preceding sentence. Mortgagee shall be entitled to all of the rights and benefits conferred by Act No. 210 of the Michigan Public Acts of 1953, as amended by Act No. 151 of the Michigan Public Acts of 1966 (MCLA §554.231 § et seq.) In addition, Mortgagee shall have the right, but shall not be obligated, without notice or demand, to enter immediately upon and take possession of the Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor relating to the Mortgaged Property or any portion thereof without further consent or assignment by Mortgagor and shall have the right to cause to be conducted environmental investigations and analyses, to operate, manage, lease and control the Mortgaged Property and conduct the business thereof, if any, either personally or by its agents, and terminate any management agreements, contracts, agents or managers responsible for the management of the Mortgaged Property, and with full power to use such measures, legal or equitable, as Mortgagee may deem proper or necessary to enforce the payment of Rents and Assurances.

- (b) Mortgagor hereby grants full power and authority to Mortgagee as follows: to exercise each and every one of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor and without incurring any obligation so to continue to do or releasing the Mortgagor from any obligation and without thereby waiving or curing any default or Event of Default; to make all alterations, additions, improvements, renovations, replacements and repairs as Mortgagee may deem proper; to demolish any part or all of the Improvements which, in the judgment of Mortgagee, may be in an unsafe condition and dangerous to life or property; to remodel any or all of the Improvements so as to make the same available in whole or in part for business, commercial, retail, multiple dwelling or other purposes; to lease the Mortgaged Property, or any part thereof to Mortgagor or any other person or persons, on such terms and for such periods of time as Mortgagee may deem proper, and the provisions of any lease made by Mortgagee pursuant hereto shall be valid and binding upon Mortgagor, notwithstanding the fact that Mortgagee's right of possession may terminate or this Mortgage may be satisfied of record prior to the expiration of the term of such lease; and to collect and receive all of the Rents and Assurances and to apply the same in such order of priority as Mortgagee may determine to all (i) charges and expenses arising in connection with the Mortgaged Property (including but not limited to taxes, water charges and assessments, and insurance premiums), (ii) a reserve for repairs and replacements, (iii) advances made by Mortgagee for improvements, alterations or repairs or otherwise pursuant to this Mortgage or on account of the indebtedness hereby secured, (iv) costs and expenses incurred by Mortgagee in exercising any rights or remedies available to Mortgagee under this Mortgage or any of the other Loan Documents or at law or in equity, including but not limited to all expenses incurred by Mortgagee in entering, taking possession of, managing or operating the Mortgaged Property or collecting and receiving the Rents and Assurances, including but not limited to management, brokerage and attorney's fees, and (v) interest, principal, whether matured or not and other indebtedness secured hereby. Mortgagee shall be the sole judge of the necessity for any such actions and the amount to be paid. Neither



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the taking of possession, nor the collection of Rents and Assurances by Mortgagee as described above shall be construed to be an affirmation of any lease of the Mortgaged Property or any part thereof, and Mortgagee or any other purchaser at any foreclosure sale shall have the right to exercise the right to terminate any such lease as though such taking of possession and collection of rents had not occurred, subject, however, to the terms of any subordination, nondisturbance and attornment agreement which may be in effect from time to time with respect to any part of the Mortgaged Property.

- (c) Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact, coupled with an interest, upon an Event of Default, to institute summary proceedings against any lessee of the Mortgaged Property who fails to comply with the provisions of such lessee's lease. If Mortgagor is occupying all or any part of the Mortgaged Property upon an Event of Default, it is hereby agreed that Mortgagor will either (i) immediately surrender possession of the Mortgaged Property to Mortgagee and vacate the Mortgaged Property so occupied by Mortgagor, or (ii) pay a reasonable rental, determined by Mortgagee, for the use thereof, monthly in advance, to Mortgagee, and, in default of so doing, may be dispossessed by summary proceedings or otherwise.
- (d) To the extent permitted by law, Mortgagee shall be entitled to the appointment of a receiver of the, Mortgaged Property as a matter of right and without notice, which is hereby expressly waived, with power to collect and receive the Rents and Assurances without regard to the value of the Mortgaged Property and regardless of whether Mortgagee has an adequate remedy at law. Mortgagor, for itself and its successors and assigns, hereby waives any and all defenses to the application for a receiver as set forth above and hereby specifically consents to such appointment without notice, but nothing herein contained is to be construed to deprive Mortgagee of any other right, remedy or privilege it may now have, or may hereafter obtain, to have a receiver appointed.
- (e) Mortgagee shall have the right to commence foreclosure proceedings against the Mortgaged Property, as an entirety (including personal property) or otherwise as Mortgagee may determine, through judicial proceedings, pursuant to Chapter 31 of the Revised Judicature Act of 1961, as now existing or amended, or any other statute which may hereafter be substituted for it, or by advertisement, pursuant to Chapter 32 of the Revised Judicature Act of 1961, as now existing or amended, or any other statute which may hereafter be substituted for it, at the option of the Mortgagee, pursuant to the aforementioned statutes and may sell the Mortgaged Property or cause the same to be sold at public sale and convey the same to the purchaser, in accordance with such statutes, in a single parcel or in several parcels at the option of Mortgagee. Mortgagee is hereby granted the power to sell any or all of the Mortgaged Property at public sale as provided herein.
- (f) Mortgagee may, at its sole option and without notice, exercise any and all rights and remedies afforded to Mortgagee by law or equity, in addition to any and all rights and remedies afforded to Mortgagee under the Note, this Mortgage or any of the other Loan Documents. All of the aforesaid rights and remedies shall be considered



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cumulative and the exercise of any one of these rights or remedies shall not preclude Mortgagee from exercising any of its other rights or remedies.

8. Right of Mortgagee to Perform Obligations of Mortgagor. If Mortgagor shall fail to perform or observe any of its obligations or covenants under this Mortgage or any of the other Loan Documents, Mortgagee may, at its sole option, in addition to and not in lieu of or substitution of all other rights and remedies provided under this Mortgage or any of the other Loan Documents or at law or in equity, without notice, perform or observe such obligation or covenant and pay any sums in any manner and to any extent as Mortgagee in its sole discretion deems advisable, without incurring any obligation so to continue to do or releasing Mortgagor from any obligation or covenant and without thereby waiving or curing Mortgagor's failure to perform or observe such obligation or covenant; and in this event Mortgagee shall be entitled to subrogation in any claim or security held by the party to whom performance is made. All expenditures made by Mortgagee pursuant to this Paragraph 8 shall be secured by this Mortgage and shall bear interest at the Default Rate from the date such expenditure is incurred to the date of repayment. Mortgagor shall, upon demand by Mortgagee, immediately reimburse Mortgagee for all such expenditures, together with interest thereon as provided above. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such obligations or covenants without thereby becoming liable to Mortgagor or any person in possession holding under the Mortgagor.

9. Waiver. Mortgagor shall not, and anyone claiming through or under Mortgagor shall not, set up, claim or seek to take advantage of any appraisalment, valuation, minimum bid or upset price, stay, extension or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the final and absolute sale of the Mortgaged Property, or the final and absolute placing into possession thereof, immediately after such sale, of the purchaser or purchasers thereof, and Mortgagor, for itself and all who may claim through or under it, waive, if and to the fullest extent not prohibited by applicable law, all benefits and protections under such appraisalment, valuation, stay, extension and redemption laws.

10. Marshalling of Assets. Mortgagor hereby waives for itself and, to the fullest extent not prohibited by applicable law, for any subsequent lienor, any right to apply for an order, decree, judgment, or ruling requiring or providing for a marshaling of assets which would require Mortgagee to proceed against certain of the Mortgaged Property before proceeding against any of the other Mortgaged Property. Mortgagee shall have the right to proceed, in its sole discretion, against the Mortgaged Property in such order and in such portions as Mortgagee may determine, without regard to the adequacy of value or other liens on any such Mortgaged Property. No such action shall in any way be considered as a waiver of any of the rights, benefits, liens or security interests created hereby or by any of the Loan Documents.

11. Subrogation. If the indebtedness hereby secured or any part thereof, including any amounts advanced by Mortgagee, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is discharged upon such payment or advancement or otherwise, and in addition to the security afforded by this Mortgage and the other Loan Documents.



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12. Sale or Transfer. Mortgagor, without the prior written consent of Mortgagee, shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, encumbrance, mortgage, security interest or alienation of all or any portion of, or any interest in, the Mortgaged Property or the Mortgagor, whether effected directly, indirectly, voluntarily, involuntarily, by operation of law or otherwise. If any of the foregoing shall occur without Mortgagee's prior written consent, then the same shall immediately constitute an Event of Default hereunder.

13. Mortgagee's Cost of Collection or Performance. If any action or proceeding is commenced by or against Mortgagee, including, without limitation, condemnation proceedings, proceedings involving the foreclosure of this Mortgage or of any other liens or encumbrances, the enforcement or interpretation of contracts, leases or other documents relating to the Mortgaged Property, or any other proceeding of any nature, legal or otherwise, affecting the Mortgaged Property or any part thereof, or the title thereto, or the validity or priority of the lien of this Mortgage, Mortgagee shall have the right to appear, defend, prosecute, retain counsel, and take such action as Mortgagee shall determine. Mortgagor shall pay to Mortgagee, promptly upon demand, all reasonable costs, including, without limitation, "late charges" payable under the Note, out-of-pocket expenses and attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and the costs of any environmental examination and analysis, title examination and supplemental examination of title or title insurance, that may be incurred by Mortgagee in connection with any proceedings affecting the Mortgaged Property, or any part thereof, or exercising any rights or remedies available to Mortgagor under this Mortgage or any of the other Loan Documents or at law or in equity (regardless of whether any action or proceeding is instituted), or that may otherwise be incurred by Mortgagee in the performance of any other action by Mortgagee authorized by this Mortgage. All such costs, expenses and attorneys' fees and expenses, and any other moneys advanced by Mortgagee to protect and maintain the Mortgaged Property shall, to the fullest extent not prohibited by applicable law, bear interest from the date of payment thereof at the Default Rate until repaid by Mortgagor, and shall be repaid by Mortgagor to Mortgagee immediately upon demand. Notwithstanding that the indebtedness secured hereby shall not have been declared due and payable upon any Event of Default, Mortgagor hereby agrees that if a default is made in the payment of the indebtedness secured hereby when due, pursuant to the terms hereof, Mortgagee shall be entitled to receive interest on the unpaid principal balance of the indebtedness secured hereby at the Default Rate, to be computed from the due date through actual receipt and collection of the amount then in default. The preceding sentence shall not be construed as an agreement or privilege to extend the time for performance of any obligation under the Mortgage or any of the other Loan Documents, nor as a waiver, of any other right or remedy accruing to Mortgagee by reason of any such default.

14. Partial Release. Mortgagee, without notice, and without regard to any consideration paid therefor, and notwithstanding the existence at the time of any inferior liens thereon, shall have the right to release (a) any part of the security for the indebtedness secured hereby, including, without limitation, the lien and security interest created pursuant to this Mortgage in and to any of the Mortgaged Property, or (b) any person liable for any indebtedness secured hereby, without affecting the priority of any part of the security and the obligations of any person not expressly released, and shall have the right to agree with any party remaining liable for such indebtedness or having any interest therein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against all parties having any interest in such security.



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15. Non-Waiver. In the event Mortgagee (a) releases, as aforesaid, any part of such security or any person liable for any indebtedness secured hereby; (b) grants an extension of time for any payments of the indebtedness secured hereby; (c) takes other or additional security for the payment thereof; (d) accepts partial payments; or (e) otherwise exercises or waives or fails to exercise any right granted herein or in any of the other Loan Documents, no such act or omission shall constitute a waiver of any default, or extend or affect the grace period, if any, release Mortgagor, subsequent owners of the Mortgaged Property or any part thereof, or makers or guarantors of the Note, this Mortgage, or any of the other Loan Documents, or preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted for any Event of Default.

16. No Merger of Estates. There shall be no merger of the lien, security interest or other estate or interest created by this Mortgage with the fee estate in the Mortgaged Property by reason that any such lien, security or other estate or interest created by this Mortgage may be held, directly or indirectly, by or for the account of any person who shall own the fee estate or any other interest in the Mortgaged Property. No such merger shall occur unless and until all persons at the time having such concurrent interests shall join in a written instrument effecting such merger, and such instrument shall be duly recorded.

17. Further Assurances. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver to Mortgagee, in form satisfactory to Mortgagee, financing statements covering as Collateral any personal property owned by the Mortgagor, which, in the sole opinion of Mortgagee, is essential to the operation of any of the Mortgaged Property, and any supplemental mortgage, security agreement, financing statement, assignment of leases, rents, income and profits from the Mortgaged Property, affidavit, continuation statement or certification as Mortgagee may request in order to protect, preserve, maintain, continue and extend the lien and security interest hereunder or the priority hereof. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact coupled with an interest, and authorizes, directs and empowers such attorney, at its option, to execute, acknowledge and deliver on behalf of Mortgagor, its successors and assigns, any such documents if Mortgagor shall fail to do so within five (5) days after the request by Mortgagee. Mortgagor shall pay to Mortgagee on demand, all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording and filing of any such documents.

18. Application of Proceeds. All payments made by Mortgagor under the Note, this Mortgage or any of the other Loan Documents and received by Mortgagee shall be applied by Mortgagee to the following items and in such order as Mortgagee may determine in its sole discretion: (a) advances by Mortgagee for payment of taxes, assessments, insurance premiums and other costs and expenses, as set forth in this Mortgage, the Note or any of the other Loan Documents; (b) any amounts which may be overdue under the Note, this Mortgage or any of the other Loan Documents; (c) interest on the indebtedness secured hereby; (d) outstanding principal under the Note; and (e) any other indebtedness secured by this Mortgage.

19. Mortgagee's Subordination Right. At the option of Mortgagee, this Mortgage shall become subject and subordinate, but not with respect to the priority of entitlement to or application of Casualty Proceeds or any Taking Proceeds, to any and all leases of all or any part of the Mortgaged Property, upon the execution by Mortgagee and recording of a unilateral declaration to that effect at any time hereafter, with the Register of Deeds of the county in which the Premises is located.



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20. UCC Security Agreement. This Mortgage is intended to be a security agreement pursuant to the Michigan Uniform Commercial Code ("UCC"). As additional security for the Indebtedness, Mortgagor hereby grants and creates a security interest in and to all of the following property now existing or hereafter arising and also all that property mentioned in the Security Agreement executed between Mortgagor and Mortgagee (the "Collateral").

- (a) all of the Mortgaged Property;
- (b) all monies and funds now or hereafter on deposit in any account consisting of or relating to the Mortgaged Property maintained at the banking offices of Mortgagee by or for the benefit of Mortgagor;
- (c) any and all "goods" and "equipment" (as such term is defined in the UCC) of Mortgagor used or intended to be used in connection with operation or maintenance of all or any part of the Mortgaged Property or all or any part of the Improvements, and all other articles of personal property now or hereafter located in or upon, attached to or used or intended to be used in connection with all or any part of the Mortgaged Property or all or any part of the Improvements, and all replacements thereof;
- (d) all "accounts" and "general intangibles" (as such terms are defined in the UCC) of Mortgagor arising from the operation of the all or any part of the Real Estate or all or any part of the Improvements;
- (e) all construction contracts, architectural contracts, plans and specifications, and building permits and licenses for any Improvements, now existing or hereafter arising, and all "goods" (as such term is defined in the UCC), including without limitation building materials, inventory, and supplies now owned or hereafter acquired by Mortgagor to be incorporated in or used or intended to be used in connection with the construction of any Improvements;
- (f) all additions, substitutions and "proceeds" (as such term is defined in the UCC) of any and all of the foregoing.

Without derogating any of the provisions of this instrument, Mortgagor to the extent permitted by law hereby:

- (a) grants to Mortgagee a security interest in and to all Collateral, including without limitation the items referred to above, together with all additions, accessions and substitutions and all similar property hereafter acquired and used or obtained for use on or in connection with the Mortgaged Property. The proceeds of the Collateral are intended to be secured hereby; however, such intent shall never constitute an expressed or implied consent on the part of Mortgagee to the sale of any or all Collateral;
- (b) agrees that the security interest hereby granted shall secure the payment of the indebtedness specifically described herein together with payment of any future debt or advancement owing by Mortgagor to Mortgagee with respect to the Mortgaged Property;



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- (c) except as otherwise provided herein, agrees not to remove from the Mortgaged Property, sell, convey, mortgage or grant a security interest in, or otherwise dispose of or encumber, any of the Collateral or any of the Mortgagor's right, title or interest therein, without first obtaining Mortgagee's written consent; Mortgagee shall have the right, at its sole option, to require Mortgagor to apply the proceeds from the disposition of Collateral in reduction of the indebtedness secured hereby;
- (d) agrees that if Mortgagor's rights in the Collateral are voluntarily or involuntarily transferred, whether by sale, creation of a security interest, attachment, levy, garnishment or other judicial process, without the prior written consent of Mortgagee, such transfer shall constitute an Event of Default hereunder;
- (e) agrees that upon or after the occurrence of any Event of Default, Mortgagee shall have all rights and remedies contemplated hereunder and under the UCC, including, without limitation, the right to take possession of the Collateral, and for this purpose Mortgagee shall have the right to enter upon any premises on which any or all of the Collateral is situated without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate the Collateral or remove it therefrom. Mortgagor shall, upon demand by Mortgagee, assemble and deliver to Mortgagee at a reasonably convenient place designated by Mortgagee all or such portion of the Collateral as Mortgagee may designate. Mortgagee shall have the further right, as Mortgagee may determine, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition, and to sell at public or private sale or otherwise dispose of, lease or utilize the Collateral and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses incurred by Mortgagee including, to the fullest extent not prohibited by applicable law, attorneys' fees and expenses, and toward payment of the indebtedness secured hereby, in such order and manner as Mortgagee may determine. To the fullest extent not prohibited by applicable law, Mortgagor expressly waives any notice of sale or other disposition of the Collateral and any other rights or remedies of a debtor or formalities prescribed by law relative to a sale or disposition of the Collateral or to exercise any other right or remedy existing after an Event of Default. To the extent any notice is required and cannot be waived, Mortgagor agrees that if such notice is deposited for mailing, postage prepaid, certified or registered mail, to the owner of record of the Mortgaged Property, directed to the such owner at the last address actually furnished to Mortgagee at least ten (10) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of such notice;
- (f) agrees, to the extent not prohibited by law and without limiting any rights and privileges herein granted to Mortgagee, that Mortgagee shall have the right to dispose of any or all of the Collateral at the same time and place upon giving the same notice and in the same manner as a nonjudicial foreclosure sale pursuant to this Mortgage;



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- (g) authorizes Mortgagee to file, in the jurisdiction where this agreement will be given effect, financing statements covering the Collateral and the proceeds of the Collateral. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more such financing statements and renewals thereof pursuant to this Mortgage. To the extent permitted by law, a carbon, photographic or other reproduction of this instrument or any financing statement executed in accordance herewith shall be sufficient as a financing statement. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to prepare, sign and file any continuation statements necessary to continue the perfection of all financing statements filed to perfect this grant of security interest. At the expense of Mortgagor, Mortgagee may cause the statements and assurances to be recorded and re-recorded, or filed and re-filed, at the times and places as may be required or permitted by law to so create, perfect and to continue the perfection of the security interest; and
- (h) represents and warrants to Mortgagee that Mortgagor's principal place of business is at 25809 Business Center Drive, Suite F, Redlands, California 92374 and that Mortgagor shall not relocate the same without giving Mortgagee at least sixty (60) days prior written notice thereof.

21. Management. Mortgagee shall have the right to give or withhold its prior consent to any contract or other arrangement for the management of all or any part of the Mortgaged Property. Mortgagee shall have the right, exercisable at its option upon an Event of Default or an event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default, to terminate the rights of any party engaged to manage the Mortgaged Property and any and all other agreements or contracts relating to the operation or management of the Mortgaged Property, if, in Mortgagee's sole discretion, the management and/or operation of the Mortgaged Property is unsatisfactory.

22. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if hand delivered, or if sent by telecopy, effective upon receipt, or (ii) if delivered by overnight courier service, effective on the day following delivery to such courier service or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, (effective two (2) days after deposit in the United States mails) addressed as follows:

If to Mortgagor:

Copeland Properties Ten, L.P.  
-and-  
Copeland Properties Eleven, L.P.  
25809 Business Center Drive  
Suite F  
Redlands, California 92374

If to Mortgagee:

Flagstar Bank, FSB  
5151 Corporate Drive



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Troy, Michigan 48098-2639  
Mail Code: W-205-2  
Attention: Commercial Real Estate Loan Division

or at such other address or to such other addressee as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

23. Anti-Forfeiture. Mortgagor hereby further expressly represents and warrants to Mortgagee that to the best of Mortgagor's knowledge there has not been committed by Mortgagor or any other person involved with the Mortgaged Property or the Mortgagor any act or omission affording the federal government or any state or local government the right and/or remedy of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of its obligations under the Note or under 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 and/or remedy of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or other injury, including without limitation, attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by Mortgagee in preserving its lien, security interest and other rights and interests in the Mortgaged Property and any additional collateral under any of the Loan Documents in any proceeding or other governmental action asserting forfeiture thereof, by reason of, or in any manner resulting from, the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Mortgagee, any guarantor, any additional collateral under any of the Loan Documents or all or any part of the Mortgaged Property under any federal, state or local laws, ordinances or regulations in respect of which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result shall, at the election of the Mortgagee in its absolute discretion, constitute an Event of Default hereunder without notice or, opportunity to cure.

24. Excessive Interest. Notwithstanding any provisions in the Note, this Mortgage or any other Loan Documents, in no event shall the amount of interest paid or agreed to be paid to Mortgagee exceed an amount computed at the highest lawful rate of interest permissible under applicable law (the "Maximum Rate"). If, from any circumstances whatsoever, fulfillment of any provision of the Note, this Mortgage, or any other Loan Documents, at the time performance of such provision shall be due, shall involve exceeding the Maximum Rate, then the interest rate provided for in such instrument shall be reduced to the Maximum Rate for such period during which such interest rate would have exceeded such Maximum Rate; provided, however, that in the event of a subsequent adjustment of the interest rate provided for in any such instrument, the calculation shall be based upon such interest rate before reduction to the Maximum Rate. If for any reason whatsoever the Mortgagee shall ever receive as interest an amount which would be deemed unlawful under such applicable law, such interest shall be automatically applied to the payment of the unpaid principal amount secured hereby, whether or not then due and payable, and not to the payment of interest, or, if the principal amount secured hereby has been paid in full, shall be refunded to the Mortgagor.

25. Books and Records. With respect to the Mortgaged Property and the operations thereof, Mortgagor shall keep or cause to be kept proper books of record and account in accordance with generally accepted accounting principles consistently applied. Leases for the Mortgaged



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Property shall be subject to and submitted for Mortgagee's review and approval. Additionally, Mortgagee shall have the right to examine the books of record and account at reasonable times and intervals such as Mortgagee may elect.

26. Limitation. In the event of any breach of the Loan Documents by Mortgagee, Mortgagor's sole remedy shall be limited to an action at law for actual, compensatory damages and shall not include any claim for consequential, exemplary or punitive damages.

27. No Partnership or Third Party Beneficiary. This Mortgage and the other Loan Documents are entitled only to benefit the parties thereto and are not entitled to create third party beneficiary rights on the part of any person or entity which is not a party thereto. The relationship between Mortgagor and Mortgagee is that of debtor and creditor. Nothing contained herein or in any of the other Loan Documents will be deemed to create a partnership or joint venture between Mortgagee or Mortgagor, or to cause Mortgagee to be liable or responsible in any way for the actions, liabilities, debts or obligations of Mortgagor.

28. Definitions. All capitalized terms used in this Mortgage and not otherwise defined are defined in the Loan Agreement.

29. Applicable Law, Jurisdiction and Ambiguities. The Mortgaged Property is located in the State of Michigan, and this Mortgage and the rights and indebtedness secured hereby shall, without regard to the place of contract or payment, be construed and enforced according to the laws of Michigan. Nothing herein contained nor any transaction related hereto shall be construed or so operate as to require Mortgagor to do any act contrary to law.

30. Invalidity of Provisions. If any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage, in whole or in part, or any of the Mortgagor's obligations hereunder, such clauses and provisions only shall be held void and of no force or effect as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

31. Ambiguity. In the event any provision hereof is deemed to be ambiguous by any court of competent jurisdiction, then it is the intent of the Mortgagor and Mortgagee that the provision shall be construed by that court in the manner that will best preserve the security of Mortgagee under the Mortgage.

32. Successors and Assigns. All of the obligations, rights and covenants herein contained shall run with the land, and shall bind and inure to the benefit of Mortgagor, respective heirs, personal representatives, executors, administrators, its successors and permitted assigns, and Mortgagee and any subsequent holder of the Note.

33. Numbers and Captions. Whenever used, the singular number shall include the plural and the plural numbers shall include the singular, and the use of any gender shall include all genders, all as the context may reasonably require.

34. Jury Waiver. MORTGAGOR HEREBY, AND MORTGAGEE BY ITS ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF



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FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER, MORTGAGOR HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF COURTS OF THE STATE OF MICHIGAN AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED.

35. Survival. The covenants, agreements, indemnifications and warranties in this Mortgage will survive the release hereof and shall remain in full force and effect as between Mortgagee and Mortgagor.



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

**MORTGAGOR:**

***COPELAND PROPERTIES TEN, L.P.,***  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner

By:   
Donald E. Copeland

Its: President

-and-

***COPELAND PROPERTIES TEN, L.P.,***  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner

By:   
Donald E. Copeland

Its: President

*Acknowledgment on Following Page*

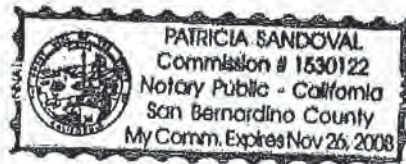


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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF San Bernardino )

On March 2, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald E. Copeland, the President of Copeland Realty, Inc., a California corporation, the General Partner of Copeland Properties Ten, L.P., a California limited partnership, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

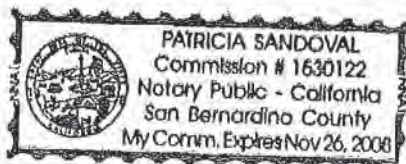


Patricia Sandoval  
NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF San Bernardino )

On March 2, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald E. Copeland, the President of Copeland Realty, Inc., a California corporation, the General Partner of Copeland Properties Eleven, L.P., a California limited partnership, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Patricia Sandoval  
NOTARY PUBLIC



LIBER 37261 PG 373

EXHIBIT A

Legal Description

Situated in the City of Troy, Oakland County, State of Michigan,  
described as:

Land in the Southeast 1/4 of the Northeast 1/4 of Section 32, Town  
2 North, Range 11 East, City of Troy, Oakland County, Michigan,  
described as: Commencing at the North 1/4 corner of said Section,  
thence along the South line South 89 degrees 53 minutes 40  
seconds East, 1333.55 feet, thence South 00 degrees 11 minutes 30  
seconds West, 2274.16 feet, thence North 88 degrees 10 minutes  
50 seconds West 714.54 feet to the point of beginning, thence  
South 00 degrees 11 minutes 30 seconds West, 555.88 feet; thence  
North 88 degrees 20 minutes 19 seconds West, 351.48 feet; thence  
130.90 feet along the arc of a curve to the left Radius 500.00 feet,  
chord bearing South 84 degrees 09 minutes 40 seconds West,  
130.53 feet; thence South 76 degrees 39 minutes 41 seconds West,  
158.28 feet; thence North 00 degrees 30 minutes 00 seconds East  
615.45 feet; thence South 88 degrees 10 minutes 50 seconds East  
632.51 feet to the point of beginning.



## PROMISSORY NOTE

March 3, 2006  
Troy, Michigan

U. S. \$9,450,000.00

FOR VALUE RECEIVED, the undersigned **COPELAND PROPERTIES TEN, L.P.**, a California limited partnership and **COPELAND PROPERTIES ELEVEN, L.P.**, a California limited partnership (individually and collectively, the "Borrower"), promise to pay, in lawful money of the United States of America, to the order of Flagstar Bank, F.S.B., a federally chartered savings bank, its successors, assigns or any holder hereof ("Bank") at its office at 5151 Corporate Drive, Troy, Michigan 48098-2639, or at such other place as Bank may designate in writing, the principal sum of Nine Million Four Hundred Fifty Thousand and 00/100 U.S. Dollars (\$9,450,000.00) or such lesser sum as may actually be advanced by Bank (the "Loan") pursuant to the Mortgage Loan Agreement ("Loan Agreement") executed contemporaneously herewith, with interest from the date hereof on the outstanding principal balance, all at the rates and on the dates hereinafter set forth. All capitalized terms used herein and not otherwise defined are defined in the Loan Agreement.

1. Loan Agreement. The terms and conditions of the Loan Agreement are incorporated herein.

2. Interest Rate. The principal amount of the Loan from time to time outstanding shall bear interest at a per annum rate of interest equal to a fixed rate of 7.09% per annum fixed from the date of this Note until March 3, 2016 (the "Maturity Date"). This rate will be computed on the basis of the actual number of days elapsed in a year of 360 days. Upon an Event of Default, interest shall accrue at four (4%) percentage points plus the otherwise effective interest rate.

Nothing herein contained, nor any transaction relating thereto, or hereto, shall be construed or so operate as to require the Borrower to pay, or be charged, interest at a greater rate than the maximum allowed by the applicable law relating to this Note. Should any interest or other charges, charged, paid or payable by Borrower in connection with this Note, or any other document delivered in connection herewith, result in the charging, compensation, payment or earning of interest in excess of the maximum allowed by the applicable law as aforesaid, then any and all such excess shall be and the same is hereby waived by Bank, and any and all such excess paid shall be automatically credited against and in reduction of the principal due under this Note.

3. Payments. Principal and interest payments of \$64,116.06 shall be payable monthly commencing on April 3, 2006, and on the same day of each month thereafter until the Maturity Date, when all unpaid principal and accrued interest shall be paid. Interest shall be computed on the basis of a 360 day year and assessed for the actual number of days elapsed. Payments were calculated to fully amortize the Loan over a period ending on March 3, 2036.



In any event, if not sooner paid, all unpaid principal, all accrued and unpaid interest, and all other sums due and payable under this Note or any of the other Loan Documents shall be due and payable in full on the Maturity Date.

4. Upon any prepayment of principal of the Loan, Borrower shall pay Bank a prepayment premium in accordance with the following schedule:

<u>If Prepayment Occurs Between:</u>	<u>% of Principal Amount of Loan Prepaid</u>
March <u>3</u> , 2006 and March <u>2</u> , 2009,	3%
March <u>3</u> , 2009 and March <u>2</u> , 2012,	2%
March <u>3</u> , 2012 and March <u>2</u> , 2016,	1%

Notwithstanding the foregoing, there will be no prepayment premium for any prepayment of principal during the ninety (90) day period prior to the Maturity Date.

5. Default Interest. Borrower hereby agrees that in the event any payment due hereafter is not paid when due, or the entire indebtedness evidenced by this Note is not paid when due, then the rate of interest on the unpaid principal balance of this Note, at the election of Bank, without notice or demand, which is hereby expressly waived, shall be increased to be equal to the sum of four (4) percentage points plus the interest rate otherwise applicable on the Loan (the "Default Rate"). Borrower shall be obligated thereafter to pay interest on the then unpaid principal balance of this Note at the Default Rate, to be computed from the due date through and including the date of actual receipt of the overdue payment, whether a monthly payment or the entire Indebtedness. Nothing herein shall be construed as an agreement or privilege to accelerate or extend the date of the payment of any installment of, or the entire Indebtedness, nor as a waiver of any other right or remedy accruing to Bank by reason of an Event of Default.

6. Late Charge. In the event that any regularly scheduled monthly payment of interest or principal and interest, as herein provided, shall not be received by Bank within fifteen (15) days after the date such payment is due as herein provided, Bank shall have the right, at its sole option and without notice to Borrower, such notice being expressly waived hereby, to assess Borrower a late payment charge in the amount of four percent (4%) of such overdue monthly installment, which shall become immediately due to Bank as agreed compensation to Bank for the additional costs and expenses reasonably expected to be incurred by Bank by reason of such nonpayment, such as in contacting Borrower and arranging for and processing remedial payment. Borrower acknowledges that the exact amount of such costs and expenses may be difficult, if not impossible, to determine with certainty, and further acknowledges and confesses the amount of such charge to be a consciously considered, good faith estimate of the actual damage to Bank by reason of such default. The payment of such late charge shall be secured by the Loan Documents, shall be payable on demand, but in any event not later than the due date of the next regularly scheduled monthly payment hereunder, and shall apply only to monthly installments due and payable hereunder prior to any acceleration by Bank of the Indebtedness evidenced hereby. Whether or not expressed, this election shall not impair the Bank's further right to interest on the



unpaid amount at the Default Rate from the date such payment was due through the date of actual payment.

7. Event of Default. Upon the occurrence of an Event of Default under the Loan Agreement, at the election of Bank, the entire unpaid Indebtedness evidenced hereby, shall become immediately due and payable. Notice of such election by Bank is hereby expressly waived as part of the consideration for this Loan. Nothing contained herein shall be construed to restrict the exercise of any other rights or remedies available to Bank hereunder or under any of the other Loan Documents or at law or in equity upon the failure of Borrower to perform any provision hereof or of any of the other Loan Documents. No failure by Bank to exercise any right or remedy hereunder or under any of the other Loan Documents shall be construed as a waiver of the right to exercise the same or any other right or remedy at any time or from time to time thereafter.

8. Bank's Cost. If any payment under this Note is not paid when due, whether at maturity, by acceleration or otherwise, Borrower promises to pay all costs of collection incurred by Bank, including without limitation reasonable attorneys' fees to the fullest extent not prohibited by applicable law, and all expenses incurred by Bank in connection with the protection and realization of any collateral, whether or not suit is filed hereon or on any instrument granting a security interest.

9. Additional Security. Borrower hereby grants to Bank a security interest in Bank's own indebtedness or liability to Borrower, if any, however evidenced, including a security interest in all of Borrower's deposits, instruments, negotiable documents and chattel paper which at any time are in the possession or control of Bank, as further security for repayment of the indebtedness evidenced by this Note; and Borrower hereby grants to Bank all rights and privileges afforded a secured party under the Michigan Uniform Commercial Code.

10. Waiver. Borrower hereby waives demand, presentment for payment, protest, notice of protest, notice of nonpayment and any and all lack of diligence or delays in collection or enforcement of this Note or the other Loan Documents, and expressly consents to any extension of time of payment hereof, release of any party primarily or secondarily liable hereunder or of any of the security for this Note, acceptance of other parties to be liable for any of the Indebtedness evidenced hereby or under the other Loan Documents or of other security therefor, or any other indulgence or forbearance which may be made, without notice to any party and without in any way affecting the liability of any party. Borrower hereby waives, in favor of the holder hereof, any and all rights of contribution, subrogation, exoneration and any similar rights and interests so long as any amount evidenced by this Note, together with any additional amount secured by any of the loan Documents, remains unpaid.

11. Governing Law. This Note shall be construed and enforced according to, and governed by, the laws of the State of Michigan.

12. WAIVER OF JURY TRIAL. BORROWER HEREBY, AND BANK BY ITS ACCEPTANCE HEREOF, EACH WAIVE THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS PROMISSORY NOTE OR ANY OF THE OTHER LOAN



DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER, BORROWER HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF COURTS OF THE STATE OF MICHIGAN, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE PROPERTY ENCUMBERED BY THE LOAN DOCUMENTS IS LOCATED.

13. Cumulative Rights. No delay on the part of the holder of this Note in the exercise of any power or right under this Note, under the Mortgage, under any of the other Loan Documents or under any other instrument executed pursuant hereto, shall operate as a waiver thereof, nor shall a single or partial exercise of any other power or right. Enforcement by the holder of this Note or any security for the payment thereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to it.

14. Liability; Binding Effect. This Note, if executed by more than one (1) Borrower, shall be the joint and several obligation of all of the Borrowers, and shall be binding upon each Borrower and its heirs, personal representatives, successors and assigns, whether expressed or not. The liability of the Bank shall be absolute and unconditional, without regard to the liability of any other party hereto.

15. Severability. If any provision of this Note is in conflict with any statute or rule of law or is otherwise unenforceable for any reason, then that provision shall be deemed null and void to the extent of the conflict or unenforceability and shall be deemed severable, but shall not invalidate any other provision of this Note.


*[signatures page follows]*



**BORROWER:**

***COPELAND PROPERTIES TEN, L.P.,***  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner


By:   
Donald E. Copeland

Its: President

-and-

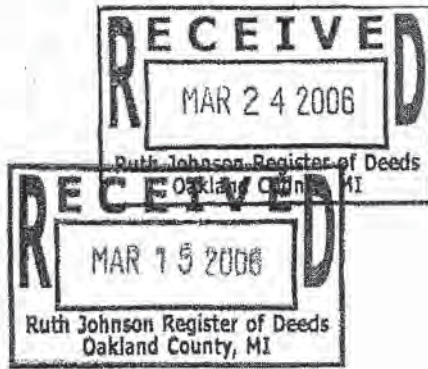
***COPELAND PROPERTIES ELEVEN, L.P.,***  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner


By:   
Donald E. Copeland

Its: President





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LIBER 37309 PAGE 811  
\$34.00 MISC RECORDING  
\$4.00 REMONUMENTATION  
03/27/2006 02:26:26 P.M. RECEIPT# 35353  


PAID RECORDED - OAKLAND COUNTY  
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

### ASSIGNMENT OF LEASES AND RENTS

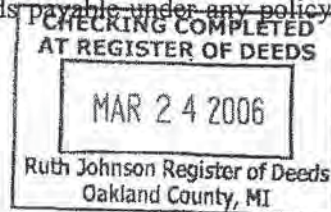
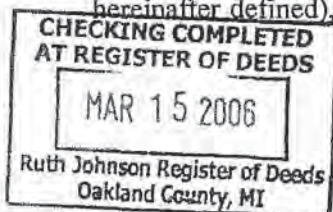
THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of March 3, 2006, by **COPELAND PROPERTIES TEN, L.P.**, a California limited partnership, and **COPELAND PROPERTIES ELEVEN, L.P.**, a California limited partnership, each having an address at 25809 Business Center Drive, Suite F, Redlands, California 92374 (individually and collectively, the "Assignor") and **FLAGSTAR BANK, F.S.B.**, a federally chartered savings bank, having an address at 5151 Corporate Drive, Troy, Michigan 48098-2639 ("Assignee").

### WITNESSETH:

FOR VALUE RECEIVED, Assignor does hereby ASSIGN and TRANSFER to the Assignee, as additional security and GRANTS to Assignee a security interest in the leases and tenancies, whether written or oral, now or hereafter existing, on all or any portion of the premises as more particularly described in Exhibit A attached as a part hereof, and all buildings and improvements now or hereafter located thereon (collectively called "Premises"), as such leases and tenancies may now or hereafter be modified, extended or renewed, together with any and all other and further licenses, concession contracts and other agreements, whether written or oral, now or hereafter existing, granting a right or privilege of use or occupancy (including subleases and tenancies following attornment) of all or any part of the Premises, as such licenses, contracts, guarantees and agreements may now or hereafter be modified, extended or renewed (all of the foregoing leases, tenancies, licenses, contracts and agreements, as the same may now or hereafter be modified, extended or renewed, are collectively, the "Leases");

TOGETHER with any and all guarantees, security deposits, letters of credit and other assurances of lessees' performance under the Leases (collectively, the "Assurances"); and

TOGETHER with all of the rents, income, royalties, receipts, revenues, issues and profits now due or which may become due or to which Assignor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim (all such moneys, rights and clauses described in this paragraph are hereafter collectively called "Rents"), arising or issuing from or out of the Leases or from or out of the Premises or any part thereof or any other portion of the Mortgaged Property (as defined in the Mortgage), including, without limitation: minimum Rents, additional Rents, percentage Rents, parking, maintenance, operation, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency Rents and liquidated damages following default, royalties, the premium payable by any lessee upon the exercise of a cancellation privilege originally provided in any of the Leases, and, except as may be otherwise provided for in the Loan Documents (as hereinafter defined), all proceeds payable under any policy of insurance for loss of Rents, together



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EXHIBIT 2  
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with any and all rights and claims of any kind which Assignor may have against any lessee under such Leases or any subtenants or occupants of the Premises;

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns forever, or for such shorter period as hereinafter may be indicated.

FOR THE PURPOSE OF SECURING the payment of the indebtedness in the original principal amount of Nine Million Four Hundred Fifty Thousand and no/100 Dollars U.S. (\$9,450,000.00) as evidenced by that certain Promissory Note, of even date herewith, executed and delivered by Assignor in favor of Assignee, as the same may be amended, extended, supplemented, modified and/or renewed, and all replacements and substitutions therefor (alternatively and collectively, the "Note"), as well as the payment, observance, performance and discharge of all other obligations, covenants, conditions and warranties contained in the Mortgage covering the Premises and securing the Note, executed and delivered by Assignor in favor of Assignee, recorded concurrently herewith, and any amendments, modifications, extensions, supplements and/or consolidations thereof (the "Mortgage") and all of the other Loan Documents as therein defined (the "Loan Documents").

TO PROTECT THE SECURITY OF THIS ASSIGNMENT, IT IS COVENANTED AND AGREED AS FOLLOWS:

1. Assignor's Warranties. Assignor represents and warrants that (a) Assignor is the owner in fee simple of the Premises, and has good title to the Leases and Rents hereby assigned and good right to assign the same, and that no other person or entity has any right, title or interest therein; (b) Assignor has or will perform all of the terms, covenants, conditions and warranties of the Leases on Assignor's part to be kept, observed and performed; (c) the Leases are valid and unmodified except as indicated herein and in full force and effect; (d) Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due; (e) none of the Rents due for any period subsequent to the month in which this Assignment is made have been collected by Assignor and that payment of any of such Rents has not otherwise been anticipated, waived, released, discounted, setoff, or otherwise discharged or compromised by Assignor, nor does Assignor have knowledge thereof; (f) Assignor has not received any funds or deposits from any lessee, other than security deposits pursuant to the terms of the applicable leases, for which credit has not already been made on account of accrued Rents; and (g) to the knowledge of Assignor, neither Assignor nor any of the lessee(s) under the Leases is in default of any of the terms thereof.
2. Covenants of Assignor. Assignor covenants and agrees as follows: (a) to observe, perform and discharge, duly and punctually, all obligations, terms, covenants, conditions and warranties of the Loan Documents, and of the Leases, on the part of the Assignor to be kept, observed and performed, and to give prompt notice to Assignee of any failure on the part of Assignor to observe, perform and discharge the same; (b) to notify and direct in writing each and every present or future lessee or occupant of the Premises or any part thereof that any security or other deposit heretofore delivered to Assignor has been retained by Assignor or assigned and delivered to Assignee as the case may be; (c) to enforce or secure in the name of Assignee the performance of each and every obligation, term, covenant, condition



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and agreement in the Leases to be performed by any lessee; (d) to appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Assignor and any lessee thereunder, and, upon request by Assignee, will do so in the name and on behalf of the Assignee but at the expense of the Assignor, and to pay all costs and expenses of the Assignee, including attorney's fees to the fullest extent not prohibited by applicable law, in any action or proceeding in which the Assignee may appear.

3. Negative Covenants of Assignor. That Assignor further covenants and agrees as follows: (a) not to receive or collect any Rents from any present lessee of the Premises or any part thereof in advance of the rent requirement set forth in such lessee's Lease, or from any future lessee more than one (1) month in advance of the due date thereof (whether in cash or by promissory note); (b) not to waive, excuse, condone, discount, set-off, compromise, or in any manner release or discharge any lessee of and from any obligations, covenants, conditions or agreements by the lessee to be kept, observed or performed under such lessee's Lease, except in accordance with reasonable business practice, including the obligation to pay the Rents thereunder, in the manner and at the place and time specified therein, (c) not to cancel, terminate or consent to any surrender of any of the Leases, nor materially (in Assignee's determination) modify or alter the terms thereof; (d) not to consent, without the prior written consent of Assignee, to any subletting of the Premises or any part thereof, or to any assignment of any of the leases by any lessee thereunder, unless the lessee has the right under the terms of the Lease (i) to assign or sublet to specified assignees or sublessees, in which event Assignor shall provide Assignee with written notice of any such assignment or subletting, or (ii) to generally assign or sublet to unspecified assignees or sublessees with the prior consent of Assignor or Ground Lessor as the case may be, as Landlord, not to be unreasonably withheld, in which event the consent of Assignee as required herein shall not be unreasonably withheld; (e) not to enter into, without the prior written consent of Assignee, which such written consent shall not be unreasonably withheld, (i) any renewal or extension of any of the Leases, other than upon exercise of an express option therefor contained in such Lease, or (ii) into any new Lease; and (f) not to make any other assignment, pledge or other disposition of the Leases, or any of them, or of the Rents. Any of the above acts done without the prior written consent of the Assignee shall be null and void at the option of Assignee.

4. Collection of Rents.

(a) So long as there shall exist no Event of Default (as defined in the Loan Documents) after the passage of the applicable notice and cure periods, (as defined in the Mortgage), Assignor shall have the right, to collect upon and use for its own account, but not prior to one (1) month in advance of the due date thereof with respect to future lessees, all of the Rents, and Assignor shall receive and apply such Rents, subject to any obligation to escrow same with Assignee, to the payment of taxes and assessments upon the Premises before penalty or interest are due thereon, to the cost of such insurance, maintenance and repairs as may be required by the terms of the Mortgage, to satisfy all of Assignor's obligations under the Leases, and pay interest and principal and other charges becoming due, as and when due and payable,



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under the Loan Documents. All Rents received by Assignor subsequent to the occurrence of an Event of Default shall belong to and be the property of Assignee, shall be held in trust by Assignor for the benefit of Assignee, and may be applied by Assignor solely for the purposes described in the immediately preceding sentence. Assignor shall account for all such Rents.

(b) Upon the occurrence of an Event of Default and to the extent permitted by law, Assignee may thereafter receive and collect the Rents and Assurances personally or through a receiver so long as such default or Event of Default shall exist and during the pendency of any foreclosure proceedings and its respective redemption period; Assignor agrees to consent to a receiver if this is believed necessary or desirable by Assignee to enforce its rights under this Assignment. Assignee shall be entitled to all of the rights and benefits conferred by the applicable laws of the State of Michigan. The collection of the Rents and Assurances by Assignee shall in no way waive the right of Assignee to foreclose the Mortgage or exercise any other right or remedy available to Assignee in the event of such Event of Default.

5. Rights Upon Event of Default.

(a) At any time after the occurrence of an Event of Default and to the extent permitted by law, Assignee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies: (i) without taking or being deemed to have taken possession of the Premises, in Assignee's own name, to demand, collect, receive, sue for, attach and levy the Rents and Assurances, to give proper receipts, releases and acquittances therefore, and to apply same in such order of priority as Assignee may determine to all (A) charges and expenses arising in connection with the Mortgaged Property (including but not limited to taxes, water charges and assessments, and insurance premiums), (B) a reserve for repairs and replacements, (C) advances made by Assignee for improvements, alterations or repairs or otherwise pursuant to this Assignment or the Mortgage or on account of the indebtedness hereby secured, (D) costs and expenses incurred by Assignee in exercising any rights or remedies available to Assignee under this Assignment or any of the other Loan Documents or at law or in equity, including but not limited to all expenses incurred by Assignee in entering, taking possession of, managing or operating the Mortgaged Property or collecting and receiving the Rents and Assurances, including but not limited to management, brokerage and attorney's fees, and (E) interest, principal, whether matured or not, and other indebtedness secured hereby; and (ii) without regard to the adequacy of the security, to the fullest extent not prohibited by applicable law, through any receiver, person or agent, then or thereafter (1) to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof, (2) make, modify or enforce any of the Leases; (3) remove and evict any lessee; (4) increase or decrease Rents; (5) decorate, clean and repair the Premises; and (6) otherwise do any act or incur any costs or expenses as Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession.



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(b) The acceptance by Assignee of this Assignment, and the exercise of any or all of the rights, powers, privileges and authority herein created, shall not be deemed or construed to constitute Assignee a mortgagee in possession, or at any time or in any event obligate Assignee (i) to appear in or defend any action or proceeding relating to any of the Leases or the Premises; (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any of the Leases; or (iv) to assume any obligation or responsibility for any security or other deposits delivered to Assignor by any of the lessee(s) thereunder and not assigned and delivered to Assignee. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or entity in or about the Premises.

(c) Collection and application of the Rents and Assurances by Assignor or their agents, as set forth in the Mortgage and/or the entry upon and taking possession of the Premises, shall not cure or waive any Event of Default, or waive, modify or affect any notice of Event of Default or invalidate any act done pursuant to such notice. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent Event of Default.

6. Subordination. Assignor hereby warrants that Assignor has not, at any time prior to the date hereof, exercised any right, and covenants not to exercise any right, to subordinate any of the Leases to any other mortgage or lien except, upon Assignee's request, only those which exist under this Assignment or any of the other Loan Documents.
7. Indemnification. Assignor hereby indemnifies Assignee and agrees to defend and hold Assignee harmless from and against any and all liability, loss, damage or expense, including but not limited to attorney's fees, which Assignee may incur under or by reason of this Assignment, or for any action taken by the Assignee as contemplated herein, (other than Assignee's negligence or willful misconduct) or by reason or in defense of any and all claim and demands whatsoever which may be asserted against Assignee arising out of any of the Leases, including, without limitation, any claim by any lessee of credit for rental paid to and received by Assignor but not delivered to Assignee for any period under any of the Leases more than one (1) month in advance of the due date thereof. Should Assignee incur any such liability, loss, damage or expense, the amount thereof (including attorneys' fees to the fullest extent not prohibited by applicable law), with interest thereon at the Default Rate (as defined in the Note), shall be payable by Assignor immediately without demand, and shall be secured hereby and by the other Loan Documents.
8. Lease Copies and Further Assurances. Until the indebtedness secured by the Loan Documents is paid in full, Assignor will deliver to the Assignee photocopies certified by Assignor as true, correct and complete, of executed originals of (a) any and all existing Leases, and (b) all other and future Leases upon all or any part of the Premises. Upon request of Assignee, Assignor will specifically transfer and assign to Assignee such other and future Leases upon the same terms and conditions as herein



LIBER37309 PG816

contained. Assignor hereby covenants and agrees to make, execute and deliver to Assignee, upon demand and at any time or times, any and all further assignments and other instruments as Assignee may determine to be necessary or desirable for carrying out the purposes and intent of this Assignment.

9. Direction To Pay. To the extent permitted by law, Assignor irrevocably consents that any lessee or lessees under any of the Leases, upon demand and notice from Assignee of Assignor's default under the Loan Documents, shall pay all Rents under said Lease or Leases to Assignee without any obligation under any such Lease or Leases for the determination of the actual existence of any such default.
10. Assignment By Assignee. Assignee shall have the right to assign the Assignor's right, title and interest in the Leases to any subsequent holder of the Mortgage or the Note, and to assign the same to any person acquiring title to the Mortgaged Property through foreclosure or otherwise.
11. Non-Waiver. The failure of Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times, shall not be continued or deemed to be a waiver of any such right, an amendment to any of the Loan Documents, or an estoppel against Assignee in any respect, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies under the Loan Documents or under the laws of the State of Michigan. The right of the Assignee to collect the indebtedness and to enforce any other security therefore may be exercised by Assignee, either prior to, simultaneously with, or subsequent to any action taken hereunder.
12. Non-Merge. So long as any of the indebtedness evidenced or secured by the Loan Documents shall remain unpaid, unless the Assignee shall otherwise consent in writing, the fee title and the leasehold estate(s) in the Premises shall not merge, but shall always be kept separate and distinct, notwithstanding the union of both such estates in the Assignor, any lessee or a third party by purchase or otherwise.
13. Discharges. Upon payment in full of the unpaid balance of the principal, interest, advances and other charges evidenced or secured by the Loan Documents, Assignee shall, upon Assignor's request, execute and deliver to Assignor a discharge of this Assignment; provided, however, that an affidavit, certificate, letter or statement of Assignee showing any part of the indebtedness remaining unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person or entity may and is hereby authorized to rely thereon.
14. Binding Effect. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of Assignee and its successors and assigns, including all subsequent holders of the Loan Documents, and bind Assignor and its heirs, executors, administrators, successors and assigns, and all lessees, subtenants, assigns, and all subsequent owners of the Premises. This Assignment shall terminate upon payment in full of the Note.



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15. Miscellaneous. The captions and headings in this instrument are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this instrument or the intent of any provision thereof. Whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case.
16. Governing Law. This Assignment shall be construed and enforced according to, and governed by the laws of the State of Michigan.


ASSIGNOR HEREBY, AND ASSIGNEE BY ITS ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS ASSIGNMENT OF LEASES AND RENTS OR ANY OF THE OTHER LOAN DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER ASSIGNOR HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF COURTS OF THE STATE OF MICHIGAN AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE PREMISES IS LOCATED.

IN WITNESS WHEREOF, this Assignment of Leases and Rents has been duly executed by the Assignor as of the date first above written.

ASSIGNOR:

**COPELAND PROPERTIES TEN, L.P.,**  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner

By:   
Donald E. Copeland

Its: President

-and-

**COPELAND PROPERTIES TEN, L.P.,**  
a California limited partnership

By: Copeland Realty, Inc.  
Its: General Partner

By:   
Donald E. Copeland

Its: President



LIBER 37309 PG 818

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF San Bernardino )

On March 2, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald E. Copeland, the President of Copeland Realty, Inc., a California corporation, the General Partner of Copeland Properties Ten, L.P., a California limited partnership, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Patricia Sandoval  
NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF San Bernardino )

On March 2, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald E. Copeland, the President of Copeland Realty, Inc., a California corporation, the General Partner of Copeland Properties Eleven, L.P., a California limited partnership, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Patricia Sandoval  
NOTARY PUBLIC

This instrument prepared by:  
David W. Hipp, Esq.  
Bodman LLP  
201 W. Big Beaver Road, Suite 500  
Troy, MI 48084

When recorded return to:  
Bodman LLP  
201 W. Big Beaver Road, Suite 500  
Troy, MI 48098  
Attention: Nancy Willson (10762-69)



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EXHIBIT A

Legal Description

Situated in the City of Troy, Oakland County, State of Michigan,  
described as:

Land in the South<sup>\*</sup>East 1/4 of the Northeast 1/4 of Section 32, Town  
2 North, Range 11 East, City of Troy, Oakland County, Michigan,  
described as: Commencing at the North 1/4 corner of said Section,  
thence along the South line South 89 degrees 53 minutes 40  
seconds East, 1333.55 feet, thence South 00 degrees 11 minutes 30  
seconds West, 2274.16 feet, thence North 88 degrees 10 minutes  
50 seconds West 714.54 feet to the point of beginning, thence  
South 00 degrees 11 minutes 30 seconds West, 555.88 feet; thence  
North 88 degrees 20 minutes 19 seconds West, 351.48 feet; thence  
130.90 feet along the arc of a curve to the left Radius 500.00 feet,  
chord bearing South 84 degrees 09 minutes 40 seconds West,  
130.53 feet; thence South 76 degrees 39 minutes 41 seconds West,  
158.28 feet; thence North 00 degrees 30 minutes 00 seconds East  
615.45 feet; thence South 88 degrees 10 minutes 50 seconds East  
632.51 feet to the point of beginning.

\* west

20-32-200-018