

# HIGHWOODS PROPERTIES INC

## FORM 8-K

(Unscheduled Material Events)

Filed 4/24/1998 For Period Ending 4/20/1998

Address	3100 SMOKETREE CT STE 600 RALEIGH, North Carolina 27604
Telephone	919-872-4924
CIK	0000921082
Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 8-K

### CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 20, 1998

## HIGHWOODS PROPERTIES, INC.

(Exact name of registrant specified in its charter)

Maryland

1-13100

56-1871668

-----  
(State of Incorporation)

-----  
(Commission File Number)

-----  
(IRS Employer Identification No.)

3100 Smoketree Court, Suite 600, Raleigh, North  
Carolina 27604 (Address of principal executive offices, zip code)

Registrant's telephone number, including area code: (919) 872-4924

## Item 5. OTHER EVENTS

The purpose of this filing is to set forth certain exhibits in connection with (i) the issuance by the Registrant on April 23, 1998 of 4,000,000 Depositary Shares, each representing 1/10 of an 8% Series D Cumulative Redeemable Preferred Share, par value \$.01 per share (liquidation preference equivalent to \$25 per Depositary Share), and (ii) the issuance by Highwoods/Forsyth Limited Partnership (the "Operating Partnership") on April 20, 1998 of \$200,000,000 of 7 1/2% Notes due April 15, 2018.

Item 7(c).

### EXHIBITS

Item	Description
3.1	Articles Supplementary of the Registrant
4.1	Form of certificate representing 8% Series D Cumulative Redeemable Preferred Shares
4.2	Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership
4.3	Deposit Agreement dated April 23, 1998 between the Registrant and First Union National Bank, as preferred share depositary
4.4	Form of Depositary Receipt evidencing the Depositary Shares
4.5	Form of Notes due April 15, 2018

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

### **HIGHWOODS PROPERTIES, INC.**

*By: /s/ Carman J. Liuzzo  
Carman J. Liuzzo  
Vice President and Chief Financial Officer*

*Date: April 23, 1998*

**ARTICLES SUPPLEMENTARY**  
**OF**  
**HIGHWOODS PROPERTIES, INC.**

**I.**

The name of the corporation is Highwoods Properties, Inc. (the "Corporation").

**II.**

The purpose of these Articles Supplementary (the "Articles") is to add the following as a new Section 5.11 of the Corporation's Articles of Incorporation, to determine the terms of a series of the Preferred Stock:

"Section 5.11. 8% Series D Cumulative Redeemable Preferred Shares.

(a) Title. The series of Preferred Stock is hereby designated as the "8% Series D Cumulative Redeemable Preferred Shares" (the "Series D Preferred Shares").

(b) Number. The maximum number of authorized shares of the Series D Preferred Shares shall be 400,000.

(c) Relative Seniority. In respect of rights to receive dividends and to participate in distributions of payments in the event of any liquidation, dissolution or winding up of the Corporation, the Series D Preferred Shares shall rank (i) senior to the Common Stock and any other class or series of shares of the Corporation ranking, as to dividends and upon liquidation, junior to the Series D Preferred Shares (collectively, "Junior Shares") and (ii) pari passu with the Corporation's 8 5/8% Series A Cumulative Redeemable Preferred Shares, the Corporation's 8% Series B Cumulative Redeemable Preferred Shares and any other class or series of shares of the Corporation ranking, as to dividends and upon liquidation, pari passu with the Series D Preferred Shares.

(d) Dividends.

(i) The holders of the then outstanding Series D Preferred Shares shall be entitled to receive, when and as declared by the Board of Directors out of any funds legally available therefor, cumulative dividends at the rate of 8% of the \$250.00 per share liquidation preference per

annum of the Series D Preferred Shares (equivalent to \$20.00 per share). Such dividends shall accrue and be cumulative from the date of original issuance and shall be payable quarterly in arrears in cash on or about the last day of January, April, July and October of each year or, if not a Business Day (as hereinafter defined), the next succeeding Business Day, commencing July 31, 1998 (each such day being hereafter called a "Dividend Payment Date" and each period beginning on the day next following a Dividend Payment Date and ending on the next following Dividend Payment Date being hereinafter called a "Dividend Period"). Dividends shall be payable to holders of record as they appear in the share records of the Corporation at the close of business on the applicable record date (the "Record Date"), which shall be the first day of the calendar month in which the applicable Dividend Payment Date falls on or such other date designated by the Board of Directors of the Corporation for the payment of dividends that is not more than 30 nor less than 10 days prior to such Dividend Payment Date. The amount of any dividend payable for any Dividend Period shorter than a full Dividend Period shall be prorated and computed on the basis of a 360-day year of twelve 30- day months.

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

(ii) The amount of any dividends accrued on any Series D Preferred Shares at any Dividend Payment Date shall be the amount of any unpaid dividends accumulated thereon, to and including such Dividend Payment Date, whether or not earned or declared, and the amount of dividends accrued on any Series D Preferred Shares at any date other than a Dividend Payment Date shall be equal to the sum of the amount of any unpaid dividends accumulated thereon, to and including the last preceding Dividend Payment Date, whether or not earned or declared, plus an amount calculated on the basis of the annual dividend rate for the period after such last preceding Dividend Payment Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months. When dividends are not paid in full upon the Series D Preferred Shares (or a sum sufficient for such full payment is not set apart therefor), all dividends declared upon Series D Preferred Shares and any other series of preferred stock ranking on a parity as to dividends with the Series D Preferred Shares shall be declared pro rata so that the amount of dividends declared per share on the Series D Preferred Shares and such other series of preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of Series D Preferred Shares and such other series of preferred stock bear to each other.

Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series D Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment of the Series D Preferred Shares for all past dividend periods and the then current dividend period, (A) no dividends shall be declared or paid or set apart for payment on the preferred stock of the Corporation ranking, as to dividends, on a parity with or junior to the Series D Preferred Shares for any period, and (B) no dividends (other than in Junior Shares) shall be declared or paid or set aside for payment or other distribution or shall be declared or made upon the Junior Shares or any other capital stock of the

corporation ranking on a parity with the Series D Preferred Shares as to dividends or upon liquidation ("Parity Shares"), nor shall any Junior Shares or any Parity Shares be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any Junior Shares or Parity Shares) by the Corporation (except by conversion into or exchange for Junior Shares).

(iii) Except as provided in this paragraph (d), the Series D Preferred Shares will not be entitled to any dividends in excess of full cumulative dividends as described above and shall not be entitled to participate in the earnings or assets of the Corporation, and no interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series D Preferred Shares which may be in arrears.

(iv) Any dividend payment made on the Series D Preferred Shares shall be first credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable.

(v) If, for any taxable year, the Corporation elects to designate as "capital gain dividends" (as defined in Section 857 of the Internal Revenue Code of 1986, as amended (the "Code")), any portion (the "Capital Gains Amount") of the dividends, within the meaning of Section 316 of the Code, paid or made available for the year to holders of all classes of shares (the "Total Dividends"), then the portion of the Capital Gains Amount that shall be allocated to the holders of the Series D Preferred Shares shall equal (A) the Capital Gains Amount multiplied by (B) a fraction that is equal to (1) the total dividends paid, within the meaning of Section 316 of the Code, or made available to the holders of the Series D Preferred Shares for the year over (2) the Total Dividends.

(vi) No dividends on the Series D Preferred Shares shall be authorized by the Board of Directors or be paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibit such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law. Notwithstanding the foregoing, dividends on the Series D Preferred Shares will accrue and be cumulative from the date of original issue thereof whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are authorized.

(e) Liquidation Rights.

(i) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the holders of the Series D Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Corporation legally available for distribution to its stockholders, before any payment or distribution shall be made to the holders of Common Stock or any other capital stock of the Corporation ranking junior to the Series D Preferred Shares as to

liquidation rights, a liquidation preference of \$250.00 per share, plus accrued and unpaid dividends thereon to the date of such liquidation, dissolution or winding up.

(ii) After the payment to the holders of the Series D Preferred Shares of the full liquidating distributions provided for in this paragraph (e), no holder of the Series D Preferred Shares, as such, shall have any right or claim to any of the remaining assets of the Corporation.

(iii) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Corporation, the amounts payable with respect to the preference value of the Series D Preferred Shares and any other shares of the Corporation ranking as to any such distribution on a parity with the Series D Preferred Shares are not paid in full, the holders of the Series D Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Corporation in proportion to the full respective liquidating distributions to which they are entitled.

(iv) Neither the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Corporation, nor the merger or consolidation of the Corporation into or with any other entity or the merger or consolidation of any other entity into or with the Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph (e).

(f) Redemption.

(i) The Series D Preferred Shares are not redeemable prior to April 23, 2003. On and after April 23, 2003, the Corporation may, at its option, redeem at any time all or, from time to time, part of the Series D Preferred Shares at a price per share (the "Redemption Price"), payable in cash, of \$250.00, together with all accrued and unpaid dividends to and including the date fixed for redemption (the "Redemption Date"), without interest, to the full extent the Corporation has funds legally available therefor. The Series D Preferred Shares have no stated maturity and will not be subject to any sinking fund or mandatory redemption provisions.

(ii) Procedures of Redemption.

(A) Notice of any redemption will be mailed by the registrar, postage prepaid, not less than 30 nor more than 60 days prior to the Redemption Date, addressed to each holder of record of the Series D Preferred Shares to be redeemed at the address set forth in the share transfer records of the registrar. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series D Preferred Shares except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series D Preferred Shares (or depositary shares or receipts representing fractional interests in Series D Preferred Shares) may be listed or admitted to trading, such notice shall state: (1) the Redemption Date; (2) the Redemption Price; (3) the number of Series D Preferred Shares to be redeemed; (4) the place or places where certificates for such shares are to be surrendered



for payment of the Redemption Price; and (5) that dividends on the Series D Preferred Shares to be redeemed will cease to accrue on the Redemption Date. If fewer than all of the Series D Preferred Shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of Series D Preferred Shares to be redeemed from such holder.

(B) If notice has been mailed in accordance with subparagraph

(f)(ii)(A) above and provided that on or before the Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Corporation, separate and apart from its other funds in trust for the benefit of the holders of the Series D Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Redemption Date, dividends on the Series D Preferred Shares so called for redemption shall cease to accrue, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series D Preferred Shares and all rights of the holders thereof as holders of such shares (except the right to receive the Redemption Price) shall cease. Upon surrender, in accordance with such notice, of the certificates for any Series D Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such Series D Preferred Shares shall be redeemed by the Corporation at the Redemption Price. In case fewer than all the Series D Preferred Shares represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed Series D Preferred Shares without cost to the holder thereof.

(C) Any funds deposited with a bank or trust company for the purpose of redeeming Series D Preferred Shares shall be irrevocable except that:

(1) the Corporation shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and (2) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series D Preferred Shares entitled thereto at the expiration of two years from the applicable Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(D) Except for any portion of the Redemption Price consisting of accrued and unpaid dividends, no Series D Preferred Shares may be redeemed except from proceeds from the sale of other capital stock of the Corporation, including but not limited to Common Stock, preferred stock, depository shares, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(E) Unless full cumulative dividends on all Series D Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, no Series D Preferred Shares shall be redeemed or purchased or otherwise acquired directly or indirectly

(except by conversion into or exchange for Junior Shares); provided, however, that the foregoing shall not prevent the redemption of Series D Preferred Shares to preserve the Corporation's REIT status or the purchase or acquisition of Series D Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series D Preferred Shares.

(F) If the Redemption Date is after a Record Date and before the related Dividend Payment Date, the dividend payable on such Dividend Payment Date shall be paid to the holder in whose name the Series D Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Dividend Payment Date or the Corporation's default in the payment of the dividend due. Except as provided above, the Corporation will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series D Preferred Shares to be redeemed.

(G) In case of redemption of less than all Series D Preferred Shares at the time outstanding, the Series D Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series D Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Corporation.

(g) Voting Rights. Except as required by law, and as set forth below, the holders of the Series D Preferred Shares shall not be entitled to vote at any meeting of the stockholders for election of Directors or for any other purpose or otherwise to participate in any action taken by the Corporation or the stockholders thereof, or to receive notice of any meeting of stockholders.

(i) Whenever dividends on any Series D Preferred Shares shall be in arrears for six or more quarterly periods, whether or not such quarterly periods are consecutive, the holders of such Series D Preferred Shares (voting separately as a class with all other series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional Directors of the Corporation at a special meeting called by the holders of record of at least ten percent (10%) of the Series D Preferred Shares or the holders of any other series of preferred stock so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders) or at the next annual meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on such Series D Preferred Shares for the past Dividend Periods and the then current Dividend Period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Directors of the Corporation will be increased by two Directors.

(ii) So long as any Series D Preferred Shares remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least two-thirds of the Series D Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (A) authorize or create, or increase the authorized or issued amount of, any class or series of shares of capital stock ranking prior to the Series D Preferred Shares with respect to the payment of dividends or the distribution of assets upon

liquidation, dissolution or winding up or reclassify any authorized capital stock of the Corporation into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (B) amend, alter or repeal the provisions of the Corporation's Articles of Incorporation, including this Amendment, whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series D Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any of the Events set forth in (B) above, so long as the Series D Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Corporation may not be the surviving entity, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series D Preferred Shares and provided further that (x) any increase in the amount of the authorized preferred stock or the creating or issuance of any other series of preferred stock, or (y) any increase in the amount of authorized Series D Preferred Shares or any other series of preferred stock, in each case ranking on a parity with or junior to the Series D Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series D Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(iii) On each matter submitted to a vote of the holders of Series D Preferred Shares in accordance with this paragraph (g), or as otherwise required by law, each Series D Preferred Share shall be entitled to ten (10) votes, each of which ten (10) votes may be directed separately by the holder thereof. With respect to each Series D Preferred Share, the holder thereof may designate up to ten (10) proxies, with each such proxy having the right to vote a whole number of votes (totaling ten (10) votes per Series D Preferred Share).

(h) Conversion. The Series D Preferred Shares are not convertible into or exchangeable for an other property or securities of the Corporation.

### **III.**

These Articles were adopted on April 16, 1998 without stockholder approval, as such approval was not required.

### **IV.**

These Articles were duly adopted by the Board of Directors under authority contained in the Corporation's charter.

IN WITNESS WHEREOF, Highwoods Properties, Inc. has caused these Articles Supplementary to be executed and sealed by its duly authorized officers this 22nd day of April, 1998.

**HIGHWOODS PROPERTIES, INC.**

By: */s/ Mack D. Pridgen, III*  
-----  
*Mack D. Pridgen, III*  
*Vice President and General Counsel*

*[CORPORATE SEAL]*

*Attest:*

*/s/ Edward J. Fritsch*  
-----  
*Edward J. Fritsch*  
*Secretary*

THE UNDERSIGNED, Vice President and General Counsel of HIGHWOODS PROPERTIES, INC., who executed on behalf of the Corporation the Articles Supplementary of which this certificate is made a part, hereby acknowledges in the name and on behalf of said Corporation the foregoing Articles Supplementary to be the corporate act of said Corporation and hereby certifies that to the best of his knowledge, information and belief the matters and facts set forth therein with respect to the authorization and approval thereof are true in all material respects under the penalties of perjury.

*/s/ Mack D. Pridgen, III*  
-----  
*Mack D. Pridgen, III*

8% Series D Cumulative  
Redeemable Preferred Shares

400,000 Shares

Number  
1

CUSIP 431284 40 5  
See Reverse for Certain  
Definitions and Restrictions

HIGHWOODS PROPERTIES, INC.

Incorporated under the Laws of the State of Maryland

This Certifies that

FIRST UNION NATIONAL BANK, as Preferred Share Depositary

is the owner of 400,000 fully paid and non-assessable 8% SERIES D CUMULATIVE REDEEMABLE PREFERRED SHARES, \$.01 par value (\$250.00 liquidation preference), of Highwoods Properties, Inc. transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby are issued and shall be subject to all of the provisions of the Amended and Restated Articles of Incorporation and Bylaws of the Corporation, each as from time to time amended (copies of which are on file with the Transfer Agent), to all of which the holder by acceptance hereof assents. This Certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.

Witness the seal of the Corporation and the signatures of its duly authorized officers.

Dated: April 23, 1998

[Seal]

Authorized Signatures:

\_\_\_\_\_  
Edward J. Fritsch  
Executive Vice President, Chief  
Operating Officer and Secretary

\_\_\_\_\_  
Ronald P. Gibson  
President and Chief Executive Officer

Countersigned and Registered:  
First Union National Bank (Charlotte, North Carolina)  
Transfer Agent and Registrar

By: \_\_\_\_\_  
Authorized Signatory

HIGHWOODS PROPERTIES, INC.

The shares of capital stock represented by this certificate are subject to restrictions on transfer for the purpose of the Corporation's maintenance of its status as a Real Estate Investment Trust under the Internal Revenue Code of 1986, as amended. No Person may Beneficially Own shares of capital stock in excess of 9.8% of the outstanding capital stock of the Corporation. Any Person who attempts to Beneficially Own shares of capital stock in excess of the above limitation must immediately notify the Corporation; any shares of capital stock so held may be subject to mandatory redemption or sale in certain events, and acquisitions of shares of capital stock in excess of such limitation shall be void ab initio. A Person who attempts to Beneficially Own shares of the Corporation's capital stock in violation of the ownership limitations set forth in Section 6.2 of the Amended and Restated Articles of Incorporation shall have no claim, cause of action, or any other recourse whatsoever against a transferor of such shares. All capitalized terms in this legend have the meanings defined in the Corporation's Amended and Restated Articles of Incorporation, a copy of which, including the restrictions on transfer, will be sent without charge to each stockholder who so requests. The Corporation is authorized to issue more than one class of capital stock. The Corporation will furnish to any stockholder upon request and without charge a full statement of the designations, and any preferences, conversions and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of the shares of each class authorized to be issued and, with respect to the classes of capital stock which may be issued in series, the differences in the relative rights and preferences between the shares of each such series, so far as the same have been fixed and determined, and the authority of the Board of Directors to fix and determine the relative rights and preferences of subsequent series. Such requests may be made to the Secretary of the Corporation at its principal office or to the Corporation's transfer agent.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

		UNIF GIFT MIN ACT --		
TEN COM	--	as tenants in common	_____	Custodian _____
TEN ENT	--	as tenants by the entirety	(Cust)	(Minor)
JT TEN	--	as joint tenants with right of	under Uniform Gifts to Minors	
		survivorship and not as tenants	Act _____	
		in common		(State)

For value received, \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ (Please insert social security or other identifying number of assignee) \_\_\_\_\_ (Please print or typewrite name and address, including zip code, of assignee) \_\_\_\_\_ shares of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated \_\_\_\_\_

NOTICE:

-----  
The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement or any change whatever.

Signature(s) Guaranteed:

\_\_\_\_\_  
The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

KEEP THIS CERTIFICATE IN A SAFE PLACE. IF IT IS LOST, STOLEN, MUTILATED OR DESTROYED, THE CORPORATION WILL REQUIRE A BOND OF INDEMNITY AS A CONDITION TO THE ISSUANCE OF A REPLACEMENT CERTIFICATE.

**AMENDMENT TO  
FIRST AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHWOODS/FORSYTH LIMITED PARTNERSHIP**

As of this 23rd day of April, 1998, the First Amended and Restated Agreement of Limited Partnership of Highwoods/Forsyth Limited Partnership dated June 14, 1995, as amended (the "Agreement"), is hereby amended pursuant to Sections 4.2.A and 14.1.B thereof as follows:

Section 1. Definitions.

Article 1 is hereby amended to add the following new definitions:

"Series D Preferred Partnership Unit" means a Partnership Unit issued by the Partnership to the General Partner in consideration of the contribution by the General Partner to the Partnership of the entire net proceeds received by the General Partner from the issuance of the Series D Preferred Shares. The Series D Preferred Partnership Units shall constitute Preferred Partnership Units. The Series D Preferred Partnership Units shall have the voting powers, designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions as are set forth in Exhibit I, attached hereto. It is the intention of the General Partner, in establishing the Series D Preferred Partnership Units, that each Series D Preferred Partnership Unit shall be substantially the economic equivalent of a Series D Preferred Share.

"Series D Preferred Shares" means the 8% Series D Cumulative Redeemable Preferred Shares, par value \$0.01 per share, having a liquidation preference equivalent to \$250.00 per share, issued by the General Partner.

Section 2. Exhibit to the Agreement.

The Agreement is hereby amended by attaching thereto as Exhibit I the Exhibit I attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the date first written above.

**HIGHWOODS PROPERTIES, INC.,**  
as General Partner of  
Highwoods/Forsyth Limited Partnership

*By: /s/ Ronald P. Gibson  
Ronald P. Gibson, President*

*[CORPORATE SEAL]*



## **EXHIBIT I**

### **HIGHWOODS/FORSYTH LIMITED PARTNERSHIP**

#### **DESIGNATION OF THE VOTING POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS AND QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF THE SERIES D PREFERRED PARTNERSHIP UNITS**

The following are the terms of the Series D Preferred Partnership Units established pursuant to this Amendment:

(a) Number. The maximum number of authorized Series D Preferred Partnership Units shall be 400,000.

(b) Relative Seniority. In respect of rights to receive quarterly distributions and to participate in distributions of payments in the event of any liquidation, dissolution or winding up of the Partnership, the Series D Preferred Partnership Units shall rank (i) senior to the Common Partnership Units and any other class or series of Partnership Units of the Partnership ranking, as to quarterly distributions and upon liquidation, junior to the Series D Preferred Partnership Units (collectively, "Junior Partnership Units") and (ii) *pari passu* with the Series A Preferred Partnership Units, the Series B Preferred Partnership Units and any other class or series of Partnership Units of the Partnership ranking, as to quarterly distributions and upon liquidation, *pari passu* with the Series D Preferred Partnership Units.

(c) Quarterly Distributions.

(1) The General Partner, in its capacity as the holder of the then outstanding Series D Preferred Partnership Units, shall be entitled to receive, when and as declared by the General Partner out of any funds legally available therefor, cumulative quarterly distributions at the rate of \$20.00 per Series D Preferred Partnership Unit per year, payable quarterly in arrears in cash on or about the last day of January, April, July and October of each year or, if not a Business Day (as hereinafter defined), the next succeeding Business Day, commencing July 31, 1998 (each such day being hereafter called a "Quarterly Distribution Date" and each period beginning on the day next following a Quarterly Distribution Date and ending on the next following Quarterly Distribution Date being hereinafter called a "Distribution Period"). Quarterly distributions on each Series D Preferred Partnership Unit shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) quarterly distributions on such Series D Preferred Partnership Units are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of quarterly distributions. Quarterly distributions paid on the Series D Preferred Partnership

Units in an amount less than the total amount of such quarterly distributions at the time accrued and payable on such Partnership Units shall be allocated pro rata on a per unit basis among all such Series D Preferred Partnership Units at the time outstanding.

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

(2) The amount of any quarterly distributions accrued on any Series D Preferred Partnership Units at any Quarterly Distribution Date shall be the amount of any unpaid quarterly distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of quarterly distributions accrued on any Series D Preferred Partnership Units at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid quarterly distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months. When distributions are not paid in full upon the Series D Preferred Partnership Units (or a sum sufficient for such full payment is not set apart therefor), all distributions declared upon Series D Preferred Partnership Units and any other series of Preferred Partnership Units ranking on a parity as to distributions with the Series D Preferred Partnership Units shall be declared pro rata so that the amount of distributions declared per unit on the Series D Preferred Partnership Units and such other series of Preferred Partnership Units shall in all cases bear to each other the same ratio that accrued distributions per unit on the Series D Preferred Partnership Units and such other series of Preferred Partnership Units bear to each other.

(3) Except as provided in the immediately preceding paragraph, unless full cumulative distributions on the Series D Preferred Partnership Units have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment of the Series D Preferred Partnership Units for all past distribution periods and the then current distribution period, (A) no distributions shall be declared or paid or set apart for payment on the Preferred Partnership Units ranking, as to distributions, on a parity with or junior to the Series D Preferred Partnership Units for any period, and (B) no distributions (other than in Junior Partnership Units) shall be declared or paid or set aside for payment or other distribution or shall be declared or made upon the Junior Partnership Units or any other Preferred Partnership Units ranking on a parity with the Series D Preferred Partnership Units as to distributions or upon liquidation ("Parity Units"), nor shall any Junior Partnership Units or any Parity Units be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any Junior Partnership Units or Parity Units) by the Partnership (except by conversion into or exchange for Junior Partnership Units).

(4) Except as provided herein, the Series D Preferred Partnership Units shall not be entitled to participate in the earnings or assets of the Partnership, and no interest, or sum of money

in lieu of interest, shall be payable in respect of any distribution or distributions on the Series D Preferred Partnership Units which may be in arrears.

(5) Any distribution made on the Series D Preferred Partnership Units shall be first credited against the earliest accrued but unpaid quarterly distribution due with respect to such Partnership Units which remains payable.

(6) No quarterly distributions on the Series D Preferred Partnership Units shall be authorized by the General Partner or be paid or set apart for payment by the Partnership at such time as the terms and provisions of any agreement of the General Partner or the Partnership, including any agreement relating to its indebtedness, prohibit such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law. Notwithstanding the foregoing, quarterly distributions on the Series D Preferred Partnership Units will accrue whether or not the Partnership has earnings, whether or not there are funds legally available for the payment of such quarterly distributions and whether or not such quarterly distributions are authorized.

(d) Liquidation Rights.

(1) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Partnership, the General Partner, in its capacity as the holder of the Series D Preferred Partnership Units then outstanding, shall be entitled to receive and to be paid out of the assets of the Partnership available for distribution to its partners, before any payment or distribution shall be made on any Junior Partnership Units, the amount of \$250.00 per Series D Preferred Partnership Unit, plus accrued and unpaid quarterly distributions thereon.

(2) After the payment to the holders of the Series D Preferred Partnership Units of the full preferential amounts provided for herein, the General Partner, in its capacity as the holder of the Series D Preferred Partnership Units as such, shall have no right or claim to any of the remaining assets of the Partnership.

(3) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Partnership, the amounts payable with respect to the preference value of the Series D Preferred Partnership Units and any other Preferred Partnership Units of the Partnership ranking as to any such distribution on a parity with the Series D Preferred Partnership Units are not paid in full, the holders of the Series D Preferred Partnership Units and of such other Preferred Partnership Units will share ratably in any such distribution of assets of the Partnership in proportion to the full respective preference amounts to which they are entitled.

(4) Neither the sale, lease or conveyance of all or substantially all of the property or business of the Partnership, nor the merger or consolidation of the Partnership into or with any other entity or the merger or consolidation of any other entity into or with the Partnership, shall be deemed

to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes hereof.

(e) Redemption.

(1) The Series D Preferred Partnership Units are not redeemable prior to April 23, 2003. On and after April 23, 2003, the General Partner may, at its option, cause the Partnership to redeem at any time all or, from time to time, part of the Series D Preferred Partnership Units at a price per unit (the "Redemption Price"), payable in cash, of \$250.00, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Redemption Date"). The Series D Preferred Partnership Units have no stated maturity and will not be subject to any sinking fund or mandatory redemption provisions.

(2) Procedures of Redemption.

(i) At any time that the General Partner exercises its right to redeem all or any of the Series D Preferred Shares, the General Partner shall exercise its right to cause the Partnership to redeem an equal number of Series D Preferred Partnership Units in the manner set forth herein.

(ii) No Series D Preferred Partnership Units may be redeemed except from proceeds from the sale of capital stock of the General Partner, including but not limited to common stock, preferred stock, depository shares, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing. The proceeds of such sale of capital stock of the General Partner shall be contributed by the General Partner to the Partnership pursuant to the requirements of Section 4.2 of the Partnership Agreement.

(f) Voting Rights. Except as required by law, the General Partner, in its capacity as the holder of the Series D Preferred Partnership Units, shall not be entitled to vote at any meeting of the Partners or for any other purpose or otherwise to participate in any action taken by the Partnership or the Partners, or to receive notice of any meeting of Partners.

(g) Conversion. The Series D Preferred Partnership Units are not convertible into or exchangeable for any other property or securities of the Partnership.

(h) Restrictions on Ownership. The Series D Preferred Partnership Units shall be owned and held solely by the General Partner.

(i) General. The rights of the General Partner, in its capacity as holder of the Series D Preferred Partnership Units, are in addition to and not in limitation of any other rights or authority of the General Partner, in any other capacity, under the Partnership Agreement. In addition, nothing contained herein shall be deemed to limit or otherwise restrict any rights or authority of the General

Partner under the Partnership Agreement, other than in its capacity as the holder of the Series D Preferred Partnership Units.

**DEPOSIT AGREEMENT**

DEPOSIT AGREEMENT, dated as of April 23, 1998, among HIGHWOODS PROPERTIES, INC., a Maryland corporation (the "Company"), and First Union National Bank, a North Carolina banking corporation, as Depositary, and all holders from time to time of Receipts (as hereinafter defined) issued hereunder.

**W I T N E S S E T H:**

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of the Company's Series D Preferred Shares (as hereinafter defined) with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of the Receipts evidencing Depositary Shares representing a fractional interest in the Series D Preferred Shares deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the premises contained herein, it is agreed by and among the parties hereto as follows:

**ARTICLE I**

**DEFINITIONS**

The following definitions shall apply to the respective terms (in the singular and plural forms of such terms) used in this Deposit Agreement and the Receipts:

Section 1.1 "Articles of Incorporation" shall mean the Amended and Restated Articles of Incorporation, as amended from time to time, of the Company.

Section 1.2 "Company" shall mean Highwoods Properties, Inc., a Maryland corporation, and its successors.

Section 1.3 "Corporate Office" shall mean the corporate office of the Depositary at which at any particular time its business in respect of matters governed by this Deposit Agreement shall be administered, which at the date of this Deposit Agreement is located at 1525 West W. T. Harris Blvd., 3C3, Charlotte, North Carolina 28262-1153.

Section 1.4 "Deposit Agreement" shall mean this agreement, as the same may be amended, modified or supplemented from time to time.

Section 1.5 "Depository" shall mean First Union National Bank, a company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000, and any successor as depository hereunder.

Section 1.6 "Depository Share" shall mean a fractional interest of 1/10 of a Series D Preferred Share deposited with the Depository hereunder and the same proportionate interest in any and all other property received by the Depository in respect of such Series D Preferred Share and held under this Deposit Agreement, all as evidenced by the Receipts issued hereunder. Subject to the terms of this Deposit Agreement, each owner of a Depository Share is entitled, proportionately, to all the rights, preferences and privileges of the Series D Preferred Share represented by such Depository Share, including the dividend, voting, redemption, conversion and liquidation rights contained in the Designating Amendment.

Section 1.7 "Depository's Agent" shall mean an agent appointed by the Depository as provided, and for the purposes specified, in Section 7.5.

Section 1.8 "Designating Amendment" shall mean the Articles Supplementary to the Articles of Incorporation filed with the Secretary of State of the State of Maryland establishing the Series D Preferred Shares as a series of preferred stock of the Company.

Section 1.9 "Series D Preferred Shares" shall mean the Company's 8% Series D Cumulative Redeemable Preferred Shares, par value \$0.01 per share, heretofore validly issued, fully paid and nonassessable.

Section 1.10 "Receipt" shall mean a Depository Receipt issued hereunder to evidence one or more Depository Shares, whether in definitive or temporary form, substantially in the form set forth as Exhibit A hereto.

Section 1.11 "Record Date" shall mean the date fixed pursuant to Section 4.4.

Section 1.12 "Record Holder" or "Holder" as applied to a Receipt shall mean the person in whose name a Receipt is registered on the books maintained by the Depository for such purpose.

Section 1.13 "Registrar" shall mean First Union National Bank or any bank or trust company appointed to register ownership and transfers of Receipts or the deposited Series D Preferred Shares, as the case may be, as herein provided.

Section 1.14 "Securities Act" shall mean the Securities Act of 1933, as amended.

Section 1.15 "Transfer Agent" shall mean First Union National Bank or any bank or

trust company appointed to transfer the Receipts or the deposited Series D Preferred Shares, as the case may be, as herein provided.

## **ARTICLE II**

### **FORM OF RECEIPTS, DEPOSIT OF SERIES D PREFERRED SHARES, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS**

Section 2.1 Form and Transferability of Receipts. Definitive Receipts shall be engraved or printed or lithographed with steel-engraved borders and underlying tint and shall be substantially in the form set forth in Exhibit A annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Company, delivered in compliance with Section 2.2, shall execute and deliver temporary Receipts, which may be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine, as evidenced by their execution of such Receipts. If temporary Receipts are issued, the Company and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Corporate Office or such other offices, if any, as the Depositary may designate, without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Company's expense and without any charge therefor. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Series D Preferred Shares deposited, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual or facsimile signature of a duly authorized signatory of the Depositary, provided that if a Registrar (other than the Depositary) shall have been appointed then such Receipts shall also be countersigned by manual signature of a duly authorized signatory of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed as provided in the preceding sentence. The Depositary shall record on its books each Receipt executed as provided above and delivered as hereinafter provided.

Except as the Depositary may otherwise determine, Receipts shall be in denominations of any number of whole Depositary Shares. All Receipts shall be dated the date of their issuance.



Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary or required to comply with any applicable law or regulation or with the rules and regulations of any securities exchange upon which the Series D Preferred Shares, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

Title to any Receipt (and to the Depositary Shares evidenced by such Receipt), that is properly endorsed or accompanied by a properly executed instrument of transfer or endorsement shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until a Receipt shall be transferred on the books of the Depositary as provided in Section 2.4, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distribution of dividends or other distributions, the exercise of any conversion rights or to any notice provided for in this Deposit Agreement and for all other purposes.

Section 2.2 Deposit of Series D Preferred Shares; Execution and Delivery of Receipts in Respect Thereof. Concurrently with the execution of this Deposit Agreement, the Company is delivering to the Depositary a certificate or certificates, registered in the name of the Depositary and evidencing 400,000 Series D Preferred Shares, properly endorsed or accompanied, if required by the Depositary, by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement and (ii) a written order of the Company directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts for the Depositary Shares representing such deposited Series D Preferred Shares. The Depositary acknowledges receipt of the deposited Series D Preferred Shares and related documentation and agrees to hold such deposited Series D Preferred Shares in an account to be established by the Depositary at the Corporate Office or at such other office as the Depositary shall determine. The Company hereby appoints the Depositary as the Registrar and Transfer Agent for Series D Preferred Shares deposited hereunder and the Depositary hereby accepts such appointment and, as such, will reflect changes in the number of shares (including any fractional shares) of deposited Series D Preferred Shares held by it by notation, book-entry or other appropriate method.

If required by the Depositary, Series D Preferred Shares presented for deposit by the Company at any time, whether or not the register of shareholders of the Company is closed, shall also be accompanied by an agreement or assignment, or other instrument satisfactory to the Depositary, that will provide for the prompt transfer to the Depositary or its nominee of any dividend or right to subscribe for additional Series D Preferred Shares or to receive other property that any person in whose name the Series D Preferred Shares is or has been registered may thereafter receive upon or in respect of such deposited Series D Preferred Shares, or in lieu thereof such agreement of indemnity or other agreement as shall be satisfactory to the Depositary.

Upon receipt by the Depositary of a certificate or certificates for Series D Preferred Shares deposited hereunder, together with the other documents specified above, and upon registering such Series D Preferred Shares in the name of the Depositary, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to, or upon the order of, the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.2, a Receipt or Receipts for the number of whole Depositary Shares representing the Series D Preferred Shares so deposited and registered in such name or names as may be requested by such person or persons. The Depositary shall execute and deliver such Receipt or Receipts at the Corporate Office, except that, at the request, risk and expense of any person requesting such delivery, such delivery may be made at such other place as may be designated by such person.

Other than in the case of splits, combinations or other reclassifications affecting the Series D Preferred Shares, or in the case of dividends or other distributions of Series D Preferred Shares, if any, there shall be deposited hereunder not more than the number of shares constituting the Series D Preferred Shares as set forth in the Designating Amendment, as such may be amended.

The Company shall deliver to the Depositary from time to time such quantities of Receipts as the Depositary may request to enable the Depositary to perform its obligations under this Deposit Agreement.

Section 2.3 Optional Redemption of Series D Preferred Shares for Cash. Whenever the Company shall elect to redeem deposited Series D Preferred Shares for cash in accordance with the provisions of the Designating Amendment, it shall (unless otherwise agreed in writing with the Depositary) give the Depositary not less than 60 days' prior written notice of the date of such proposed redemption and of the number of such Series D Preferred Shares held by the Depositary to be redeemed and the applicable redemption price, as set forth in the Designating Amendment, including the amount, if any, of accrued and unpaid dividends to the date of such redemption. The Depositary shall mail, first-class postage prepaid, notice of the redemption of Series D Preferred Shares and the proposed simultaneous redemption of the Depositary Shares representing the Series D Preferred Shares to be redeemed, not less than 30 and not more than 60 days prior to the date fixed for redemption of such Series D Preferred Shares and Depositary Shares (the "cash redemption date"), to the holders of record on the record date fixed for such redemption pursuant to

Section 4.4 hereof of the Receipts evidencing the Depositary Shares to be so redeemed, at the addresses of such holders as the same appear on the records of the Depositary; but neither failure to mail any such notice to one or more such holders nor any defect in any such notice shall affect the sufficiency of the proceedings for redemption as to other holders. The Company shall provide the Depositary with such notice, and each such notice shall state: the cash redemption date; the cash redemption price; the number of deposited Series D Preferred Shares and Depositary Shares to be redeemed; if fewer than all the Depositary Shares held by any holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; the place or places where Receipts evidencing Depositary Shares to be redeemed are to be surrendered for payment of the cash redemption price; and that from and after the cash redemption date dividends in respect of the Series D Preferred

Shares represented by the Depositary Shares to be redeemed will cease to accrue. If fewer than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional Depositary Shares) or by any other equitable method determined by the Company. The Company shall also cause notice of redemption to be published in a newspaper of general circulation in The City of New York at least once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the cash redemption date.

In the event that notice of redemption has been made as described in the immediately preceding paragraph and the Company shall then have paid in full to the Depositary the cash redemption price (determined pursuant to the Designating Amendment) of the Series D Preferred Shares deposited with the Depositary to be redeemed (including any accrued and unpaid dividends to the date of redemption), the Depositary shall redeem the number of Depositary Shares representing such Series D Preferred Shares so called for redemption by the Company and from and after the cash redemption date (unless the Company shall have failed to redeem the Series D Preferred Shares to be redeemed by it as set forth in the Company's notice provided for in the preceding paragraph), all dividends in respect of the Series D Preferred Shares called for redemption shall cease to accrue, the Depositary Shares called for redemption shall be deemed no longer to be outstanding and all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the cash redemption price and any money or other property to which holders of such Receipts were entitled upon such redemption) shall, to the extent of such Depositary Shares, cease and terminate. Upon surrender in accordance with said notice of the Receipts evidencing such Depositary Shares (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed at a cash redemption price of \$25.00 per Depositary Share plus any other money and other property payable in respect of the related Series D Preferred Shares. The foregoing shall be further subject to the terms and conditions of the Designating Amendment.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with payment of the cash redemption price for and all other amounts payable in respect of the Depositary Shares called for redemption, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption.

**Section 2.4 Registration of Transfers of Receipts.** The Company hereby appoints the Depositary as the Registrar and Transfer Agent for the Receipts and the Depositary hereby accepts such appointment and, as such, shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder in person or by a duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer or endorsement, together with evidence of the payment of any transfer taxes as may be required by law. Upon such surrender, the Depositary shall execute a new Receipt or Receipts and deliver the same to or upon the order of the person entitled thereto evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

Section 2.5 Combinations and Split-ups of Receipts. Upon surrender of a Receipt or Receipts at the Corporate Office or such other office as the Depositary may designate for the purpose of effecting a split-up or combination of Receipts, subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denominations requested evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

Section 2.6 Surrender of Receipts and Withdrawal of Series D Preferred Shares. Any holder of a Receipt or Receipts may withdraw any or all of the deposited Series D Preferred Shares represented by the Depositary Shares evidenced by such Receipt or Receipts and all money and other property, if any, represented by such Depositary Shares by surrendering such Receipt or Receipts at the Corporate Office or at such office as the Depositary may designate for such withdrawals, provided that a holder of a Receipt or Receipts may not withdraw such Series D Preferred Shares (or money and other property, if any, represented thereby) which has previously been called for redemption. After such surrender, without unreasonable delay, the Depositary shall deliver to such holder, or to the person or persons designated by such holder as hereinafter provided, the number of whole or fractional shares of such Series D Preferred Shares and all such money and other property, if any, represented by the Depositary Shares evidenced by the Receipt or Receipts so surrendered for withdrawal, but holders of such whole or fractional Series D Preferred Shares will not thereafter be entitled to deposit such Series D Preferred Shares hereunder or to receive Depositary Shares therefor. If the Receipt or Receipts delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of whole or fractional shares of deposited Series D Preferred Shares to be withdrawn, the Depositary shall at the same time, in addition to such number of whole or fractional Series D Preferred Shares and such money and other property, if any, to be withdrawn, deliver to such holder, or (subject to Section 2.4) upon his order, a new Receipt or Receipts evidencing such excess number of Depositary Shares. Delivery of such Series D Preferred Shares and such money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which, if required by the Depositary, shall be properly endorsed or accompanied by proper instruments of transfer.

If the deposited Series D Preferred Shares and the money and other property being withdrawn are to be delivered to a person or persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Series D Preferred Shares, such holder shall execute and deliver to the Depositary a written order so directing the Depositary and the Depositary may require that the Receipt or Receipts surrendered by such holder for withdrawal of such Series D Preferred Shares be properly endorsed in blank or accompanied by a properly executed instrument of transfer or endorsement in blank.

The Depositary shall deliver the deposited Series D Preferred Shares and the money and other property, if any, represented by the Depositary Shares evidenced by Receipts surrendered for withdrawal at the Corporate Office, except that, at the request, risk and expense of the holder

surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

Section 2.7 Limitations on Execution and Delivery, Transfer, Split-Up, Combination, Surrender and Exchange of Receipts. As a condition precedent to the execution and delivery, transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require any or all of the following: (i) payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any tax or other governmental charge with respect thereto (including any such tax or charge with respect to the Series D Preferred Shares being deposited or withdrawn); (ii) the production of proof satisfactory to it as to the identity and genuineness of any signature (or the authority of any signature); and (iii) compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement as may be required by any securities exchange upon which the deposited Series D Preferred Shares, the Depositary Shares or the Receipts may be included for quotation or listed.

The deposit of Series D Preferred Shares may be refused, the delivery of Receipts against Series D Preferred Shares may be suspended, the transfer of Receipts may be refused, and the transfer, split-up, combination, surrender, exchange or redemption of outstanding Receipts may be suspended (i) during any period when the register of shareholders of the Company is closed or (ii) if any such action is deemed reasonably necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission, or under Article VI of the Articles of Incorporation or under any provision of this Deposit Agreement.

Section 2.8 Lost Receipts, etc. In case any Receipt shall be mutilated or destroyed or lost or stolen, the Depositary, in its discretion, may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt or in lieu of and in substitution for such destroyed, lost or stolen Receipt, provided that the holder thereof provides the Depositary with (i) evidence reasonably satisfactory to the Depositary of such destruction, loss or theft of such Receipt, of the authenticity thereof and of his ownership thereof and (ii) reasonable indemnification satisfactory to the Depositary and the Company.

Section 2.9 Cancellation And Destruction of Surrendered Receipts. All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy such Receipts so cancelled.

### **ARTICLE III**

#### **CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY**

Section 3.1 Filing Proofs, Certificates and Other Information. Any person presenting

Series D Preferred Shares for deposit or any holder of a Receipt may be required from time to time to file such proof of residence or other information, to execute such certificates and to make such representations and warranties as the Depositary or the Company may reasonably deem necessary or proper. The Depositary or the Company may withhold or delay the delivery of any Receipt, the transfer, redemption or exchange of any Receipt, the withdrawal of the deposited Series D Preferred Shares represented by the Depositary Shares evidenced by any Receipt, the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof, until such proof or other information is filed, such certificates are executed or such representations and warranties are made.

Section 3.2 Payment of Fees and Expenses. Holders of Receipts shall be obligated to make payments to the Depositary of certain fees and expenses, as provided in Section 5.7, or provide evidence reasonably satisfactory to the Depositary that such fees and expenses have been paid. Until such payment is made, transfer of any Receipt or any withdrawal of the Series D Preferred Shares or money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused, any dividend or other distribution may be withheld, and any part or all of the Series D Preferred Shares or other property represented by the Depositary Shares evidenced by such Receipt may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder a reasonable number of days prior to such sale). Any dividend or other distribution so withheld and the proceeds of any such sale may be applied to any payment of such fees or expenses, the holder of such Receipt remaining liable for any deficiency.

Section 3.3 Representations and Warranties as to Series D Preferred Shares. In the case of the initial deposit of the Series D Preferred Shares hereunder, the Company and, in the case of subsequent deposits thereof, each person so depositing Series D Preferred Shares under this Deposit Agreement shall be deemed thereby to represent and warrant that such Series D Preferred Shares and each certificate therefor are valid and that the person making such deposit is duly authorized to do so. The Company hereby further represents and warrants that such Series D Preferred Shares, when issued, will be validly issued, fully paid and nonassessable. Such representations and warranties shall survive the deposit of the Series D Preferred Shares and the issuance of Receipts.

Section 3.4 Representation and Warranty as to Receipts and Depositary Shares. The Company hereby represents and warrants that the Receipts, when issued, will evidence legal and valid interests in the Depositary Shares and each Depositary Share will represent a legal and valid 1/10 fractional interest in a deposited Series D Preferred Share. Such representation and warranty shall survive the deposit of the Series D Preferred Shares and the issuance of Receipts evidencing the Depositary Shares.

## **ARTICLE IV**

### **THE SERIES D PREFERRED SHARES; NOTICES**

Section 4.1 Cash Distributions. Whenever the Depositary shall receive any cash

dividend or other cash distribution on the deposited Series D Preferred Shares, including any cash received upon redemption of any Series D Preferred Shares pursuant to Section 2.3, the Depositary shall, subject to Section 3.2, distribute to record holders of Receipts on the record date fixed pursuant to

Section 4.4 such amounts of such sum as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to and shall withhold from any cash dividend or other cash distribution in respect of the Series D Preferred Shares represented by the Receipts held by any holder an amount on account of taxes, the amount made available for distribution or distributed in respect of Depositary Shares represented by such Receipts subject to such withholding shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be, only such amount, however, as can be distributed without attributing to any holder of Receipts a fraction of one cent, and any balance not so distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next sum received by the Depositary for distribution to record holders of Receipts then outstanding.

Section 4.2 Distributions Other Than Cash. Whenever the Depositary shall receive any distribution other than cash on the deposited Series D Preferred Shares, the Depositary shall, subject to Section 3.2, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary and the Company may deem equitable and practicable for accomplishing such distribution. If, in the opinion of the Depositary after consultation with the Company, such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes), the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Depositary may, with the approval of the Company, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received or any part thereof, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Section 3.2, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of Receipts as provided by Section 4.1 in the case of a distribution received in cash. The Company shall not make any distribution of such securities or property to the holders of Receipts unless the Company shall have provided to the Depositary an opinion of counsel stating that such securities or property have been registered under the Securities Act or do not need to be registered.

Section 4.3 Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names deposited Series D Preferred Shares are registered on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of Receipts in such manner as the Company shall instruct (including by the issue to

such record holders of warrants representing such rights, preferences or privileges); provided, however, that (a) if at the time of issue or offer of any such rights, preferences or privileges the Company determines upon advice of its legal counsel that it is not lawful or feasible to make such rights, preferences or privileges available to the holders of Receipts (by the issue of warrants or otherwise) or (b) if and to the extent instructed by holders of Receipts who do not desire to exercise such rights, preferences or privileges, the Depositary shall then, if so instructed by the Company, and if applicable laws or the terms of such rights, preferences or privileges so permit, sell such rights, preferences or privileges of such holders at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Section 3.1 and Section 3.2, be distributed by the Depositary to the record holders of Receipts entitled thereto as provided by Section 4.1 in the case of a distribution received in cash. The Company shall not make any distribution of such rights, preferences or privileges, unless the Company shall have provided to the Depositary an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act or do not need to be registered.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees that it will promptly file a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such a registration statement shall have become effective or unless the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act and the Company shall have provided to the Depositary an opinion of counsel to such effect.

If any other action under the law of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees to use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

Section 4.4 Notice of Dividends; Fixing of Record Date for Holders of Receipts. Whenever any cash dividend or other cash distribution shall become payable, any distribution other than cash shall be made, or any rights, preferences or privileges shall at any time be offered, with respect to the deposited Series D Preferred Shares, or whenever the Depositary shall receive notice of (i) any meeting at which holders of such Series D Preferred Shares are entitled to vote or of which holders of such Series D Preferred Shares are entitled to notice or (ii) any election on the part of the Company to redeem any such Series D Preferred Shares, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Company with respect



to the Series D Preferred Shares) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, to give instructions for the exercise of voting rights at any such meeting or to receive notice of such meeting or whose Depositary Shares are to be so redeemed.

**Section 4.5 Voting Rights.** Upon receipt of notice of any meeting at which the holders of deposited Series D Preferred Shares are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice, which shall be provided by the Company and which shall contain (i) such information as is contained in such notice of meeting, (ii) a statement that the holders of Receipts at the close of business on a specified record date fixed pursuant to Section 4.4 will be entitled, subject to any applicable provision of law, to instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Series D Preferred Shares represented by their respective Depositary Shares and (iii) a brief statement as to the manner in which such instructions may be given. Upon the written request of a holder of a Receipt on such record date, the Depositary shall vote or cause to be voted the amount of Series D Preferred Shares represented by the Depositary Shares evidenced by such Receipt in accordance with the instructions set forth in such request. To the extent such instructions request the voting of a fractional interest of a share of deposited Series D Preferred Shares, the Depositary shall aggregate such interest with all other fractional interests resulting from requests with the same voting instructions and shall vote the number of whole votes resulting from such aggregation in accordance with the instructions received in such requests. Each Series D Preferred Share is entitled to 10 votes and, accordingly, each Depositary Share is entitled to one vote. The Company hereby agrees to take all reasonable action that may be deemed necessary by the Depositary in order to enable the Depositary to vote such Series D Preferred Shares or cause such Series D Preferred Shares to be voted. In the absence of specific instructions from the holder of a Receipt, the Depositary will abstain from voting to the extent of the Series D Preferred Shares represented by the Depositary Shares evidenced by such Receipt. The Depositary shall not be required to exercise discretion in voting any Series D Preferred Shares represented by the Depositary Shares evidenced by such Receipt.

**Section 4.6 Changes Affecting Series D Preferred Shares and Reclassifications, Recapitalization, etc.** Upon any change in par or stated value, split-up, combination or any other reclassification of Series D Preferred Shares, or upon any recapitalization, reorganization, merger, amalgamation or consolidation affecting the Company or to which it is a party or sale of all or substantially all of the Company's assets, the Depositary shall, upon the instructions of the Company: (i) make such adjustments in (a) the fraction of an interest represented by one Depositary Share in one Series D Preferred Share and (b) the ratio of the redemption price per Depositary Share to the redemption price of a Preferred Share, in each case as may be required by or as is consistent with the provisions of the Designating Amendment to reflect fully the effects of such change in liquidation value, split-up, combination or other reclassification of Shares, or of such recapitalization, reorganization, merger, consolidation or sale and (ii) treat any shares or other securities or property (including cash) that shall be received by the Depositary in exchange for or upon conversion of or in respect of the Series D Preferred Shares as new deposited property under this Deposit Agreement, and Receipts then outstanding shall thenceforth represent the proportionate

interests of holders thereof or the new deposited property so received in exchange for or upon conversion or in respect of such Series D Preferred Shares. In any such case the Depositary may, in its discretion, with approval of the Company, execute and deliver additional Receipts, or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited property. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par or stated value, split-up, combination or other reclassification of the Series D Preferred Shares or any such recapitalization, reorganization, merger, amalgamation or consolidation or sale of substantially all the assets of the Company to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Series D Preferred Shares represented thereby only into or for, as the case may be, the kind and amount of shares and other securities and property and cash into which the deposited Series D Preferred Shares evidenced by such Receipts might have been converted or for which such Series D Preferred Shares might have been exchanged or surrendered immediately prior to the effective date of such transaction. The Company shall cause effective provision to be made in the charter of the resulting or surviving corporation (if other than the Company) for protection of such rights as may be applicable upon exchange of the deposited Series D Preferred Shares for securities or property or cash of the surviving corporation in connection with the transactions set forth above. The Company shall cause any such surviving corporation (if other than the Company) expressly to assume the obligations of the Company hereunder.

**Section 4.7 Inspection of Reports.** The Depositary shall make available for inspection by holders of Receipts at the Corporate Office and at such other places as it may from time to time deem advisable during normal business hours any reports and communications received from the Company that are both received by the Depositary as the holder of deposited Series D Preferred Shares and made generally available to the holders of the Series D Preferred Shares. In addition, the Depositary shall transmit certain notices and reports to the holders of Receipts as provided in Section 5.5.

**Section 4.8 Lists of Receipt Holders.** Promptly upon request from time to time by the Company, the Depositary shall furnish to the Company a list, as of a recent date specified by the Company, of the names, addresses and holdings of Depositary Shares of all persons in whose names Receipts are registered on the books of the Depositary.

**Section 4.9 Tax and Regulatory Compliance.** The Depositary shall be responsible for (i) preparation and mailing of form 1099s for all open and closed accounts, (ii) foreign tax withholding, (iii) withholding 31% (or any withholding as may be required at the then applicable rate) of dividends from eligible holders of Receipts if directed to do so by the Company or required to do so by applicable law, (iv) mailing W-9 forms to new holders of Receipts without a certified taxpayer identification number, (v) processing certified W-9 forms, (vi) preparation and filing of state information returns and (vii) escheatment services.

**Section 4.10 Withholding.** Notwithstanding any other provision of this Deposit Agreement, in the event that the Depositary determines that any distribution in property is subject

to any tax that the Depositary is obligated by law to withhold, the Depositary may dispose of all or a portion of such property in such amounts and in such manner as the Depositary deems necessary and practicable to pay such taxes, by public or private sale, and the Depositary shall distribute the net proceeds of any such sale or the balance of any such property after deduction of such taxes to the holders of Receipts entitled thereto in proportion to the number of Depositary Shares held by them respectively.

## **ARTICLE V**

### **THE DEPOSITARY AND THE COMPANY**

Section 5.1 Maintenance of Offices, Agencies and Transfer Books by the Depositary and the Registrar. The Depositary shall maintain at the Corporate Office facilities for the execution and delivery, transfer, surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Series D Preferred Shares and at the offices of the Depositary's Agents, if any, facilities for the delivery, transfer, surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Series D Preferred Shares, all in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books at the Corporate Office for the registration and transfer of Receipts, which books at all reasonable times shall be open for inspection by the record holders of Receipts as provided by applicable law. The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

If the Receipts or the Depositary Shares evidenced thereby or the Series D Preferred Shares represented by such Depositary Shares shall be listed on the New York Stock Exchange, Inc. or any other stock exchange, the Depositary may, with the approval of the Company, appoint a Registrar (acceptable to the Company) for registration of such Receipts or Depositary Shares in accordance with the requirements of such Exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of such Exchange) may be removed and a substitute registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, such Depositary Shares or such Series D Preferred Shares are listed on one or more other stock exchanges, the Depositary will, at the request and expense of the Company, arrange such facilities for the delivery, transfer, surrender, redemption and exchange of such Receipts, such Depositary Shares or such Series D Preferred Shares as may be required by law or applicable stock exchange regulations.

Section 5.2 Prevention or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company. Neither the Depositary, any Depositary's Agent, any Registrar nor the Company shall incur any liability to any holder of any Receipt, if by reason of any provision of any present or future law or regulation thereunder of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by

reason of any provision, present or future, of the Articles of Incorporation or the Designating Amendment or, in the case of the Company, the Depositary, the Depositary's Agent or the Registrar, by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing that the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Company incur any liability to any holder of a Receipt by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing that the terms of this Deposit Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement.

Section 5.3 Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company. Neither the Depositary, any Depositary's Agent, any Registrar nor the Company assumes any obligation or shall be subject to any liability under this Deposit Agreement or any Receipt to holders of Receipts other than from acts or omissions arising out of conduct constituting bad faith, negligence (in the case of any action or inaction with respect to the voting of the deposited Series D Preferred Shares), gross negligence or willful misconduct in the performance of such duties as are specifically set forth in this Deposit Agreement.

Neither the Depositary, any Depositary's Agent, any Registrar nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding with respect to the deposited Series D Preferred Shares, Depositary Shares or Receipts that in its reasonable opinion may involve it in expense or liability unless indemnity reasonably satisfactory to it against all expense and liability be furnished as often as may be required.

Neither the Depositary, any Depositary's Agent, any Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the written advice of legal counsel or accountants, or information provided by any person presenting Series D Preferred Shares for deposit, any holder of a Receipt or any other person believed by it in good faith to be competent to give such information. The Depositary, any Depositary's Agent, any Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

In the event the Depositary shall receive conflicting claims, requests or instructions from any holders of Receipts, on the one hand, and the Company, on the other hand, the Depositary shall be entitled to act on such claims, requests or instructions received from the Company, and shall be entitled to the full indemnification set forth in Section 5.6 hereof in connection with any action so taken.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the deposited Series D Preferred Shares or for the manner or effect of any such vote made, as long as any such action or non-action is in good faith and does not result from negligence or

willful misconduct of the Depositary. The Depositary undertakes, and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Agreement against the Depositary or any Registrar.

The Depositary, its parent, affiliate, or subsidiaries, any Depositary's Agent, and any Registrar may own, buy, sell or deal in any class of securities of the Company and its affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Company or its affiliates may be interested or contract with or lend money to or otherwise act as fully or as freely as if it were not the Depositary or the Depositary's Agent hereunder. The Depositary may also act as transfer agent or registrar of any of the securities of the Company and its affiliates or act in any other capacity for the Company or its affiliates.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Series D Preferred Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

The Company agrees that it will register the deposited Series D Preferred Shares and the Depositary Shares if required by the applicable securities laws.

Section 5.4 Resignation and Removal of the Depositary; Appointment of Successor Depositary. The Depositary may at any time resign as Depositary hereunder by notice of its election to do so delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor depositary, which shall be a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least \$50,000,000. If a successor depositary shall not have been appointed in 60 days, the resigning Depositary may petition a court of competent jurisdiction to appoint a successor depositary. Every successor depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall

promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all rights, title and interest in the deposited Series D Preferred Shares and any moneys or property held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation into or with which the Depositary may be merged, consolidated or converted shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor depositary may execute the Receipts either in the name of the predecessor depositary or in the name of the successor depositary.

**Section 5.5 Notices, Reports and Documents.** The Company agrees that it will deliver to the Depositary, and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the address recorded in the Depositary's books, copies of all notices and reports (including financial statements) required by law, by the rules of any national securities exchange upon which the Series D Preferred Shares, the Depositary Shares or the Receipts are included for quotation or listed or by the Articles of Incorporation and the Designating Amendment to be furnished by the Company to holders of the deposited Series D Preferred Shares and, if requested by the holder of any Receipt, a copy of this Deposit Agreement, the form of Receipt, the Designating Amendment and the form of Series D Preferred Shares. Such transmission will be at the Company's expense and the Company will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request. In addition, the Depositary will transmit to the record holders of Receipts at the Company's expense such other documents as may be requested by the Company.

**Section 5.6 Indemnification by the Company.** The Company agrees to indemnify the Depositary, any Depositary's Agent and any Registrar against, and hold each of them harmless from, any liability, costs and expenses (including reasonable attorneys' fees) that may arise out of, or in connection with, its acting as Depositary, Depositary's Agent or Registrar, respectively, under this Deposit Agreement and the Receipts, except for any liability arising out of the willful misconduct, gross negligence, negligence (in the case of any action or inaction with respect to the voting of the deposited Series D Preferred Shares) or bad faith on the part of any such person or persons. The obligations of the Company set forth in this Section 5.6 shall survive any succession of any Depositary, Registrar or Depositary's Agent or termination of this Deposit Agreement.

**Section 5.7 Fees, Charges and Expenses.** No charges and expenses of the Depositary or any Depositary's Agent hereunder shall be payable by any person, except as provided in this Section 5.7. The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of this Deposit Agreement. The Company shall also pay all fees and expenses of the Depositary in connection with the initial deposit of the Series D Preferred Shares and the initial issuance of the Depositary Shares evidenced by the Receipts, any redemption of the Series D Preferred Shares at the option of the Company and all withdrawals of the Series D Preferred Shares by holders of Depositary Shares. If a holder of Receipts requests the Depositary to perform

duties not required under this Deposit Agreement, the Depositary shall notify the holder of the cost of the performance of such duties prior to the performance thereof. Such holder will be liable for the charges and expenses related to such performance. All other fees and expenses of the Depositary and any Depositary's Agent hereunder and of any Registrar (including, in each case, fees and expenses of counsel) incident to the performance of their respective obligations hereunder will be promptly paid as previously agreed between the Depositary and the Company. The Depositary shall present its statement for fees and expenses to the Company every month or at such other intervals as the Company and the Depositary may agree.

## **ARTICLE VI**

### **AMENDMENT AND TERMINATION**

Section 6.1 Amendment. The form of the Receipts and any provision of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect that they may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees of any Depositary, Registrar or Transfer Agent) which (i) shall materially and adversely alter the rights of the holders of Receipts or (ii) would be materially and adversely inconsistent with the rights granted to the holders of the Series D Preferred Shares pursuant to the Designating Amendment shall be effective unless such amendment shall have been approved by the holders of at least two-thirds of the Depositary Shares then outstanding. In no event shall any amendment impair the right, subject to the provisions of Section 2.6 and Section 2.7 and Article III, of any holder of any Depositary Shares to surrender the Receipt evidencing such Depositary Shares with instructions to the Depositary to deliver to the holder the deposited Series D Preferred Shares and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by this Deposit Agreement as amended thereby.

Section 6.2 Termination. This Deposit Agreement may be terminated by the Company upon not less than 30 days' prior written notice to the Depositary if (i) such termination is necessary to preserve the Company's status as a real estate investment trust under the Internal Revenue Code of 1986, as amended (or any successor provisions) or (ii) the holders of a majority of the Series D Preferred Shares consent to such termination, whereupon the Depositary shall deliver or make available to each holder of a Receipt, upon surrender of the Receipt held by such holder, such number of whole or fractional shares of deposited Series D Preferred Shares that are represented by the Depositary Shares evidenced by such Receipt, together with any other property held by the Depositary in respect of such Receipt. In the event that this Deposit Agreement is terminated pursuant to clause (i) of the immediately preceding sentence, the Company hereby agrees to use its best efforts to list the Series D Preferred Shares issued upon surrender of the Receipt evidencing the Depositary Shares represented thereby on a national securities exchange. This Deposit Agreement will automatically terminate if (i) all outstanding Depositary Shares shall have been redeemed

pursuant to Section 2.3 or (ii) there shall have been made a final distribution in respect of the deposited Series D Preferred Shares in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the holders of Receipts entitled thereto.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent and any Registrar under Section 5.6 and Section 5.7.

## **ARTICLE VII**

### **MISCELLANEOUS**

Section 7.1 Counterparts. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Deposit Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Deposit Agreement. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Corporate Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

Section 7.2 Exclusive Benefit of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

Section 7.3 Invalidity of Provisions. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

Section 7.4 Notices. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to the Company at:

Highwoods Properties, Inc. 3100 Smoketree Court  
Suite 600  
Raleigh, North Carolina 27604 Attention: Mack D. Pridgen, III Telephone No.: (919) 872-4924



or at any other address of which the Company shall have notified the Depositary in writing.

Any notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or telex or telecopier confirmed by letter, addressed to the Depositary at the Corporate Office.

Any notices given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or telex or telecopier confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary or, if such holder shall have filed with the Depositary in a timely manner a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail, or by telegram or telex or telecopier shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or telex or telecopier message) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company may, however, act upon any telegram or telex or telecopier message received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or telex or telecopier message shall not subsequently be confirmed by letter as aforesaid.

**Section 7.5 Depositary's Agents.** The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Company of any such action.

**Section 7.6 Holders of Receipts are Parties.** The holders of Receipts from time to time shall be deemed to be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

**Section 7.7 Governing Law.** This Deposit Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the law of the State of North Carolina applicable to agreements made and to be performed in said State.

**Section 7.8 Inspection of Deposit Agreement and Designating Amendment.** Copies of this Deposit Agreement and the Designating Amendment shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Corporate Office and the respective offices of the Depositary's Agents, if any, by any holder of any Receipt.

**Section 7.9 Headings.** The headings of articles and sections in this Deposit Agreement

and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as part of this Deposit Agreement or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, Highwoods Properties, Inc. and First Union National Bank have duly executed this Deposit Agreement as of the day and year first above set forth and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

**HIGHWOODS PROPERTIES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FIRST UNION NATIONAL BANK**

By: \_\_\_\_\_  
Name:  
Title:

# EXHIBIT A

[FORM OF FACE OF RECEIPT]

DEPOSITARY RECEIPT FOR DEPOSITARY SHARES  
EACH REPRESENTING A 1/10 INTEREST IN ONE  
8% SERIES D CUMULATIVE REDEEMABLE PREFERRED SHARE  
OF

DR-\_\_\_\_\_

DEPOSITARY SHARES

-----  
THIS CERTIFICATE IS TRANSFERABLE  
IN CHARLOTTE, NORTH CAROLINA  
OR IN NEW YORK CITY

**SEE REVERSE FOR CERTAIN DEFINITIONS  
CUSIP 431284 50 4**

**[LOGO] HIGHWOODS PROPERTIES, INC.**  
(a Maryland corporation)

First Union National Bank, as Depositary (the "Depositary"), hereby certifies that \_\_\_\_\_ is the registered owner of \_\_\_\_\_ DEPOSITARY SHARES ("Depositary Shares"), each Depositary Share representing 1/10 of one 8% Series D Cumulative Redeemable Preferred Share, \$0.01 par value per share, of Highwoods Properties, Inc., a Maryland corporation (the "Corporation"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement, dated as of April 23, 1998 (the "Deposit Agreement"), among the Corporation, the Depositary and the holders from time to time of Receipts for Depositary Shares. By accepting this Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized officer or, if a Registrar in respect of the Receipts (other than the Depositary) shall have been appointed, by the manual signature of a duly authorized officer of such Registrar.

Dated:

FIRST UNION NATIONAL BANK,  
Depositary, Registrar & Transfer Agent

By: \_\_\_\_\_  
Authorized Signatory

**FURTHER CONDITIONS AND AGREEMENTS FORMING PART OF THIS DEPOSITARY RECEIPT APPEAR ON THE REVERSE SIDE.**

[FORM OF REVERSE RECEIPT]

HIGHWOODS PROPERTIES, INC.

THE SHARES OF CAPITAL STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. NO PERSON MAY BENEFICIALLY OWN SHARES OF CAPITAL STOCK IN EXCESS OF 9.8% OF THE OUTSTANDING CAPITAL STOCK OF THE CORPORATION. ANY PERSON WHO ATTEMPTS TO BENEFICIALLY OWN SHARES OF CAPITAL STOCK IN EXCESS OF THE ABOVE LIMITATION MUST IMMEDIATELY NOTIFY THE CORPORATION; ANY SHARES OF CAPITAL STOCK SO HELD MAY BE SUBJECT TO MANDATORY REDEMPTION OR SALE IN CERTAIN EVENTS, AND ACQUISITIONS OF SHARES OF CAPITAL STOCK IN EXCESS OF SUCH LIMITATION SHALL BE VOID AB INITIO. A PERSON WHO ATTEMPTS TO BENEFICIALLY OWN SHARES OF THE CORPORATION'S CAPITAL STOCK IN VIOLATION OF THE OWNERSHIP LIMITATIONS SET FORTH IN SECTION 6.2 OF THE AMENDED AND RESTATED ARTICLES OF INCORPORATION SHALL HAVE NO CLAIM, CAUSE OF ACTION, OR ANY OTHER RECOURSE WHATSOEVER AGAINST A TRANSFEROR OF SUCH SHARES. ALL CAPITALIZED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CORPORATION'S AMENDED AND RESTATED ARTICLES OF INCORPORATION, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS.

THE CORPORATION WILL FURNISH TO THE REGISTERED HOLDER OF THIS DEPOSITARY RECEIPT, UPON REQUEST AND WITHOUT CHARGE, A STATEMENT OF ALL THE POWERS, DESIGNATIONS, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK ISSUED BY THE CORPORATION AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR OTHER SPECIAL RIGHTS, AND A COPY OF THE DEPOSIT AGREEMENT AND THE DESIGNATING AMENDMENT WITH RESPECT TO THE 8% SERIES D REDEEMABLE PREFERRED SHARES. REQUESTS FOR SUCH COPIES MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION OR TO THE DEPOSITARY NAMED ON THE FACE OF THIS RECEIPT.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenant in common

UNIF GIFT MIN ACT - \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
Under Uniform Gifts to Minors  
Act \_\_\_\_\_  
(State)

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of  
survivorship and not as tenants  
in common

Additional abbreviations may also be used though not in the above list.

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto

**PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE**

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING ZIP CODE OF ASSIGNEE)

\_\_\_\_\_ Depositary Shares represented by the within Receipt, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Depositary Shares on the books of the within named Depositary with full power of substitution in the premises.

Dated\_\_\_\_\_

NOTICE:

THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE  
NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY  
PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY  
CHANGE WHATEVER.

SIGNATURE(S) GUARANTEED:

-----

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN  
ELIGIBLE GUARANTOR INSTITUTION (BANKS,  
STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS  
AND CREDIT UNIONS WITH MEMBERSHIP IN AN  
APPROVED SIGNATURE GUARANTEE MEDALLION  
PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

[FORM OF FACE OF RECEIPT]

**DEPOSITARY RECEIPT FOR DEPOSITARY SHARES  
EACH REPRESENTING A 1/10 INTEREST IN ONE**

**8% SERIES D CUMULATIVE REDEEMABLE PREFERRED SHARE**

**OF  
DEPOSITARY SHARES**

DR-\_\_\_\_\_

-----  
THIS CERTIFICATE IS TRANSFERABLE  
IN CHARLOTTE, NORTH CAROLINA  
OR IN NEW YORK CITY

**SEE REVERSE FOR CERTAIN DEFINITIONS  
CUSIP 431284 50 4**

**[LOGO] HIGHWOODS PROPERTIES, INC.**  
(a Maryland corporation)

First Union National Bank, as Depositary (the "Depositary"), hereby certifies that \_\_\_\_\_ is the registered owner of \_\_\_\_\_ DEPOSITARY SHARES ("Depositary Shares"), each Depositary Share representing 1/10 of one 8% Series D Cumulative Redeemable Preferred Share, \$0.01 par value per share, of Highwoods Properties, Inc., a Maryland corporation (the "Corporation"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement, dated as of April 23, 1998 (the "Deposit Agreement"), among the Corporation, the Depositary and the holders from time to time of Receipts for Depositary Shares. By accepting this Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized officer or, if a Registrar in respect of the Receipts (other than the Depositary) shall have been appointed, by the manual signature of a duly authorized officer of such Registrar.

**Dated: FIRST UNION NATIONAL BANK,**

**Depositary, Registrar & Transfer Agent**

By: \_\_\_\_\_  
Authorized Signatory

**FURTHER CONDITIONS AND AGREEMENTS FORMING PART OF THIS DEPOSITARY RECEIPT APPEAR ON THE REVERSE SIDE.**

[FORM OF REVERSE RECEIPT]

HIGHWOODS PROPERTIES, INC.

THE SHARES OF CAPITAL STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. NO PERSON MAY BENEFICIALLY OWN SHARES OF CAPITAL STOCK IN EXCESS OF 9.8% OF THE OUTSTANDING CAPITAL STOCK OF THE CORPORATION. ANY PERSON WHO ATTEMPTS TO BENEFICIALLY OWN SHARES OF CAPITAL STOCK IN EXCESS OF THE ABOVE LIMITATION MUST IMMEDIATELY NOTIFY THE CORPORATION; ANY SHARES OF CAPITAL STOCK SO HELD MAY BE SUBJECT TO MANDATORY REDEMPTION OR SALE IN CERTAIN EVENTS, AND ACQUISITIONS OF SHARES OF CAPITAL STOCK IN EXCESS OF SUCH LIMITATION SHALL BE VOID AB INITIO. A PERSON WHO ATTEMPTS TO BENEFICIALLY OWN SHARES OF THE CORPORATION'S CAPITAL STOCK IN VIOLATION OF THE OWNERSHIP LIMITATIONS SET FORTH IN SECTION 6.2 OF THE AMENDED AND RESTATED ARTICLES OF INCORPORATION SHALL HAVE NO CLAIM, CAUSE OF ACTION, OR ANY OTHER RECOURSE WHATSOEVER AGAINST A TRANSFEROR OF SUCH SHARES. ALL CAPITALIZED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CORPORATION'S AMENDED AND RESTATED ARTICLES OF INCORPORATION, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS.

THE CORPORATION WILL FURNISH TO THE REGISTERED HOLDER OF THIS DEPOSITARY RECEIPT, UPON REQUEST AND WITHOUT CHARGE, A STATEMENT OF ALL THE POWERS, DESIGNATIONS, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK ISSUED BY THE CORPORATION AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR OTHER SPECIAL RIGHTS, AND A COPY OF THE DEPOSIT AGREEMENT AND THE DESIGNATING AMENDMENT WITH RESPECT TO THE 8% SERIES D REDEEMABLE PREFERRED SHARES. REQUESTS FOR SUCH COPIES MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION OR TO THE DEPOSITARY NAMED ON THE FACE OF THIS RECEIPT.

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TEN COM - as tenant in common

UNIF GIFT MIN ACT - \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

TEN ENT - as tenants by the entireties

Under Uniform Gifts to Minors  
Act \_\_\_\_\_  
(State)

JT TEN - as joint tenants with right of  
survivorship and not as tenants  
in common

Additional abbreviations may also be used though not in the above list.

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto

**PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE**

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING ZIP CODE OF ASSIGNEE)

\_\_\_\_\_ Depositary Shares represented by the within Receipt, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Depositary Shares on the books of the within named Depositary with full power of substitution in the premises.



Dated \_\_\_\_\_

NOTICE:

THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE  
NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY  
PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY  
CHANGE WHATEVER.

SIGNATURE(S) GUARANTEED:

-----  
THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN  
ELIGIBLE GUARANTOR INSTITUTION (BANKS,  
STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS  
AND CREDIT UNIONS WITH MEMBERSHIP IN AN  
APPROVED SIGNATURE GUARANTEE MEDALLION  
PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

**Exhibit 4.5**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (the "Depository"), to the Issuer (as defined below) or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of the Depository (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED  
No.: 1  
CUSIP No: 431282 AF9

PRINCIPAL AMOUNT  
\$200,000,000

**HIGHWOODS/FORSYTH LIMITED PARTNERSHIP  
7 1/2% NOTE DUE APRIL 15, 2018**

HIGHWOODS/FORSYTH LIMITED PARTNERSHIP, a North Carolina limited partnership (hereinafter called the "Issuer," which term shall include any successor partnership or entity under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, upon presentation, the principal sum of TWO HUNDRED MILLION DOLLARS (\$200,000,000) on April 15, 2018, and to pay interest on the outstanding principal amount thereon from April 15, 1998, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually in arrears on April 15 and October 15, in each year, commencing October 15, 1998, at the rate of 7 1/2% per annum, until the entire principal amount hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest, which shall be 15 calendar days (whether or not a Business Day) preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date, and may either be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, which shall not be more than 15 days and not less than 10 days prior to the date of the proposed payment, notice whereof shall be given to Holders not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon exchange, all as more fully provided in the Indenture. Payment of the principal of and interest on this Note or the Redemption Price (as defined below), if any, will be made at the Office or Agency of the Issuer maintained for that purpose in the City of New York, State of New York, currently located c/o First Union National Bank of New York, 40 Broad Street, 5th Floor, Suite 550,

New York, New York 10004, or elsewhere as provided in the Indenture, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Issuer payment of interest may be made by (i) check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register kept for the Notes pursuant to Section 305 of the Indenture (the "Note Register") or (ii) transfer to an account of the Person entitled thereto located inside the United States.

This Note is one of a duly authorized issue of securities of the Issuer (herein called the "Notes"), issued and to be issued in one or more series under an Indenture, dated as of December 1, 1996 (herein called the "Indenture"), among the Issuer, Highwoods Properties, Inc. and First Union National Bank (herein called the "Trustee," which term includes any successor trustee under the Indenture with respect to the Notes), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuer, the Trustee, Highwoods Properties, Inc. and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. This Note is one of the series designated as the "7 1/2% Notes due April 15, 2018," limited in aggregate principal amount to \$200,000,000.

The Notes will be redeemable, in whole or from time to time in part, at the option of the Issuer on any date (a "Redemption Date"), at a redemption price (the "Redemption Price") equal to the greater of (i) 100% of the principal amount of the Notes to be redeemed and (ii) the sum of the present values of the remaining scheduled payments of principal and interest thereon (exclusive of interest accrued to such Redemption Date) discounted to such Redemption Date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 25 basis points, plus, in either case, accrued and unpaid interest on the principal amount being redeemed to such Redemption Date; provided that installments of interest on Notes which are due and payable on an Interest Payment Date falling on or prior to the relevant Redemption Date shall be payable to the Holders of such Notes, or one or more Predecessor Notes, registered as such at the close of business on the relevant Regular Record Date according to their terms and the provisions of the Indenture.

The following definitions apply with respect to any redemption of the Notes:

"Treasury Rate" means, with respect to any Redemption Date for the Notes, (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities," for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the Maturity Date, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate

per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date. The Treasury Rate shall be calculated on the third Business Day preceding the Redemption Date.

"Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Notes.

"Independent Investment Banker" means Morgan Stanley & Co. Incorporated or, if such firm is unwilling or unable to select the Comparable Treasury Issue, an independent investment banking institution of national standing appointed by the Trustee after consultation with the Issuer.

"Comparable Treasury Price" means with respect to any Redemption Date for the Notes (i) the average of four Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (ii) if the Trustee obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

"Reference Treasury Dealer" means each of Morgan Stanley & Co. Incorporated, Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities Inc. and NationsBanc Montgomery Securities LLC and their respective successors; provided, however, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a "Primary Treasury Dealer"), the Issuer will substitute therefor another Primary Treasury Dealer.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.

If notice has been given as provided in the Indenture and funds for the redemption of any Notes (or any portion thereof) called for redemption shall have been made available on the redemption date referred to in such notice, such Notes (or any portion thereof) will cease to bear interest on the date fixed for such redemption specified in such notice and the only right of the Holders of such Notes will be to receive payment of the Redemption Price.

Notice of any optional redemption of any Notes (or any portion thereof) will be given to Holders at their addresses, as shown in the security register for such Notes, not more than 60 nor less than 30 days prior to the date fixed for redemption. The notice of redemption will specify, among other items, the Redemption Price and the principal amount of the Notes held by such Holder to be redeemed.

The Issuer will notify the Trustee at least 60 days prior to giving notice of redemption (or such shorter period as is satisfactory to the Trustee) of the aggregate principal amount of such Notes to be redeemed and their redemption date. If less than all of the Notes are to be redeemed at the option of the Issuer, the Trustee shall select, in such manner as it shall deem fair and appropriate, such Notes to be redeemed in whole or in part.

The Indenture contains provisions for defeasance at any time of (a) the entire indebtedness of the Issuer on this Note and (b) certain restrictive covenants and the related defaults and Events of Default applicable to the Issuer, in each case, upon compliance by the Issuer with certain conditions set forth in the Indenture, which provisions apply to this Note.

If an Event of Default with respect to the Notes of this series shall occur and be continuing, the principal of the Notes may be declared due and payable in the manner and with the effect provided in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder of this Note shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Notes of this series, the Holders of not less than 25% in principal amount of the Notes of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity and the Trustee shall not have received from the Holders of a majority in principal amount of the Notes of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of principal hereof or any interest on or after the respective due dates expressed herein.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the Holders of the Notes under the Indenture at any time by the Issuer and the Trustee with the consent of the Holders of not less than a majority in principal amount of the Outstanding Notes. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time Outstanding, on behalf of the Holders of all Notes, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of and interest on this Note or the Redemption Price of this Note at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Note Register, upon surrender of this Note for registration of transfer at the Office or Agency of the Issuer in any Place of Payment where the principal of and interest on this Note or the Redemption Price of this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Security Registrar for the Notes (the "Note Registrar") duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Notes of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Notes of this series are exchangeable for a like aggregate principal amount of Notes of this series of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Trustee or the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Issuer, the Trustee and any agent of the Issuer or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Issuer, the Trustee nor any such agent shall be affected by notice to the contrary.

All terms used in this Note which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

THE INDENTURE AND THE NOTES, INCLUDING THIS NOTE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE OR INSTRUMENTS ENTERED INTO AND, IN EACH CASE, PERFORMED IN SAID STATE.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused "CUSIP" numbers to be printed on the Notes as a convenience to the Holders of the Notes. No representation is made as to the correctness or accuracy of such CUSIP numbers as printed on the Notes, and reliance may be placed only on the other identification numbers printed hereon.

Unless the certificate of authentication hereon has been executed by or on behalf of the Trustee by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed this 20th day of April, 1998.

**HIGHWOODS/FORSYTH LIMITED PARTNERSHIP**

By: Highwoods Properties, Inc., its General  
Partner

By: \_\_\_\_\_  
Ronald P. Gibson  
President and Chief Executive Officer

**Attest:**

By: \_\_\_\_\_  
Edward J. Fritsch  
Secretary

[SEAL]

**TRUSTEE' S CERTIFICATE OF AUTHENTICATION:**

This is one of the Notes of the series designated "7 1/2% Notes due April 15, 2018" referred to in the within-mentioned Indenture.

**FIRST UNION NATIONAL BANK,  
as Trustee**

By: \_\_\_\_\_  
Authorized Officer



## ASSIGNMENT FORM

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

**PLEASE INSERT SOCIAL  
SECURITY OR OTHER IDENTIFYING  
NUMBER OF ASSIGNEE**

[Box appears here to insert information]

.....  
(Please Print or Typewrite Name and Address, including  
Zip Code, of Assignee)

.....  
the within Note of Highwoods/Forsyth Limited Partnership and \_\_\_\_\_ hereby does irrevocably  
constitute and appoint

.....  
Attorney to transfer said Note on the books of the within-named Issuer with full power of substitution in the  
premises.

Dated: .....  
Signature: .....  
NOTICE: The signature to this assignment must correspond with the name as it appears on the first  
page of the within Note in every particular, without alteration or enlargement or any change  
whatever.

Signature  
Guaranteed: .....

NOTICE Signature(s) must be guaranteed by an "eligible guarantor institution" that is a member or participant in a  
"signature guarantee program" (e.g., the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion  
Program or the New York Stock Exchange, Inc. Medallion Signature Program).

-8-

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**End of Filing**

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