



0030423390

ABOVE SPACE FOR RECORDING

ASSIGNMENT OF LEASES AND RENTS

THIS INDENTURE WITNESSETH, that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Basswood Road, L.L.C., an Illinois limited liability company, having its principal office 1261 Wiley Road, Unit L, Schaumburg, Illinois 60173 ("Borrower"), grants, transfers, sets over and assigns to SOUTHERN FARM BUREAU LIFE INSURANCE COMPANY, a Mississippi corporation, having an office at 1401 Livingston Lane, Jackson, Mississippi 39213 ("Lender"), Borrower's entire interest in and to any and all leases (including all extensions and renewals thereof), now or hereafter existing (individually, "Lease" and collectively, the "Leases") in and to that certain real estate located in Cook County, Illinois, and more particularly described in Exhibit A, attached hereto and made a part hereof, and all buildings, structures and improvements now or hereafter erected thereon (the "Premises"), and to any and all rents, issues, income and profits ("Rents") therefrom.

RECITALS:

A. Lender has agreed to make a loan to Borrower in the amount of Two Million Two Hundred Sixty Thousand Dollars (\$2,260,000) as evidenced by that certain Promissory Note in the principal amount of even date herewith in said amount executed by Borrower in favor of Lender (the "Note"); a certain Mortgage, Security Agreement and Assignment of Leases of even date herewith by and between Borrower and Lender (the "Mortgage"); and this Assignment. (The Note, the Mortgage, and the Assignment, together with all other documents executed in conjunction therewith are referred to herein as the "Loan Documents" and the loan evidenced by the Loan Documents is hereinafter referred to as the "Loan").

B. Lender will not agree to make the Loan to Borrower unless Borrower collaterally assigns its interest in the Leases and Rents as set forth below.

C. Borrower is willing and desires to collaterally assign the Leases and Rents as set forth below in order to induce Lender to make the Loan to Borrower.

NOW, THEREFORE, for valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Borrower agrees:

CC 7731 PA/UM
292 DEC

13

UNOFFICIAL COPY

30423390

1. Security. This Assignment is given to secure:

(a) Payment by Borrower of the indebtedness evidenced by, and observance and performance by Borrower of each and every of the covenants, terms, conditions and agreements contained in, the Loan Documents;

(b) Reimbursement of Lender for and of all sums expended or advanced by Lender pursuant to the terms and provisions of or constituting additional indebtedness under or secured by (with interest thereon as provided therein), and observance and performance by Borrower of each and every of the covenants, terms, conditions and agreements contained in, the Loan Documents;

(c) Reimbursement of Lender for and of all costs, expenses and damages incurred or suffered by Lender after the occurrence of an event of default under the provisions of paragraph 5 of this Assignment for or in respect of taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income and profits thereon, including, but not limited to, salaries, fees and wages of a managing agent and such other employees as Lender may deem necessary or desirable, and reasonable attorneys' fees, operating and maintaining the Premises, including, but not limited to, taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance which Lender may deem necessary or desirable; and making any alterations, renovations, repairs or replacements of or to the Premises which Lender may deem necessary or desirable, together with interest thereon as provided herein; and

(d) Reimbursement of Lender for and of sums with respect to which Lender is indemnified pursuant to paragraph 8 hereof, together with interest thereon, as provided herein.

2. Representations and Warranties of Borrower. Borrower represents and warrants to Lender that:

(a) This Assignment, as executed by Borrower, constitutes a legal and binding obligation of Borrower enforceable in accordance with its terms and provisions;

(b) Borrower has heretofore delivered to Lender a certified rent roll dated March 6, 2003 identifying all existing leases in the Premises, and Borrower hereby warrants that there has been no change to that list except deletions or additions occurring since that date in the ordinary course of business;

(c) As to such leases, except as reflected in the tenant estoppel certificates delivered by Borrower to Lender:

UNOFFICIAL COPY

30423390

(i) such leases are in full force and effect and are valid and enforceable according to their terms, and the tenant(s) thereunder are duly bound thereby;

(ii) the tenants under the leases have accepted and are now in possession of their Premises demised thereunder;

(iii) there is now accruing, and the tenants under the leases are now paying, the full rent thereunder;

(iv) to the best of Borrower's knowledge, such leases have not been modified, amended or supplemented and constitute the entire agreement between Borrower and the tenants thereunder with respect to the use and occupancy of the Premises demised thereunder;

(v) Borrower has completed its obligations to date under such leases and is not now in default thereunder;

(vi) to the best of Borrower's knowledge, the tenants under such leases do not now have any defenses or offsets to the payment of rent or other covenants or obligations undertaken by the tenants thereunder;

(vii) the tenants under such leases have not made, nor has Borrower accepted, any payments of rent more than thirty (30) days in advance thereunder;

(viii) to the best of Borrower's knowledge, the tenants under such leases have performed all of their obligations to date under the terms thereof and are not now in default thereunder;

(ix) to the best of Borrower's knowledge, no event has occurred and is continuing, and no condition exists, which, after passing of time or giving of notice, or both, would constitute a default under such leases by Borrower or the tenants thereunder; and

(x) Borrower has not waived, reduced, excused, discounted or otherwise discharged or compromised any obligation, including, but not limited to, the obligation to pay rent, under such leases.

(d) Borrower has an indefeasible estate in fee simple to the Premises, subject only to the security interest evidenced by the Loan Documents and those items listed as Permitted Exceptions in Exhibit B of the Mortgage;

(e) Borrower has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the leases, or any or all of the rents, issues,

UNOFFICIAL COPY
30423390

income or profits, assigned hereunder which is now outstanding or enforceable, or entered into any agreement to subordinate any of the leases, or Borrower's right to receive any of the rents, issues, income or profits, assigned hereunder which is now outstanding or enforceable; and

(f) Borrower has not heretofore executed any instrument or performed any act which may or might prevent Lender from operating under any of the terms and provisions thereof or which would limit Lender in such operation.

3. Covenants of Borrower. Borrower covenants and agrees that, except in accordance with Section 7 of the Mortgage, so long as this Assignment shall be in effect:

(a) Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by Borrower, and shall not do or suffer to be done anything to impair the security thereof, or to release the liability of any tenant thereunder, or to permit any tenant thereunder to withhold the payment of rent or to make monetary advances and off-set the same against future rentals, or to permit any tenant thereunder to claim a total or partial eviction, or to permit any tenant thereunder to terminate or cancel any Lease;

(b) Borrower shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due except for security or similar deposits;

(c) Borrower shall not make any other assignment of its entire interest or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits, assigned hereunder;

(d) Borrower shall not agree to subordinate any of the Leases or its right to receive any of the rents, issues, income or profits assigned hereunder to any mortgage or other encumbrance now or hereafter affecting the Premises except as provided in the Loan Documents;

(e) Borrower shall not alter, modify or change the terms and provisions of any Lease or give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, or exercise any option, required or permitted by such terms and provisions without the prior written consent of Lender, or grant any concession in connection with any Lease, or cancel or terminate any Lease, or accept a surrender of any Lease, or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder. Nothing contained in the foregoing, however, shall prohibit Borrower from amending, modifying or terminating leases due to tenant rule violation, delinquent rent, job transfer, job loss, or

other customary reasons in the ordinary course of business, except as provided for in the Mortgage;

(f) Borrower shall furnish rental insurance to Lender, such insurance to have been issued by an insurance company which has a Best's rating reasonably acceptable to Lender, in an amount not less than twelve (12) months' rentals and in a form as shall be reasonably satisfactory to Lender;

(g) Borrower shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty, or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Lender;

(h) Borrower shall not waive, reduce, excuse, discount or otherwise discharge or compromise any obligation, including, but not limited to, the obligation to pay rent, under any Lease;

(i) Borrower shall enforce the Leases and all rights and remedies of Borrower thereunder in case of default thereunder by any tenant;

(j) Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Borrower or any tenant, and shall pay all costs and expenses of Lender, including reasonable attorneys' fees, in any such action or proceeding in which Lender may appear;

(k) Borrower shall give prompt notice to Lender of any notice of material default on the part of Borrower with respect to any Lease received from any tenant; and

(l) Borrower shall enforce, short of termination, or secure the observance and performance of, each and every covenant, term, condition and agreement contained in each and every lease to be observed and performed by the tenants thereunder.

4. Rights Prior to Default. So long as Borrower is not in default hereunder, Borrower shall have the right to collect at the time, but not in advance of the date provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same.

5. Events of Default. The following shall constitute events of default for purposes of this Assignment:

(a) Failure by Borrower to pay any installment of the principal sum of the Note and/or any interest thereon within ten (10) days after the same becomes due;

(b) Failure by Borrower to pay any other sum payable by Borrower to Lender pursuant to the terms and provisions of the Loan Documents within ten (10) days after the same becomes due;

(c) Failure by Borrower to observe or perform any one or more of the other covenants, terms, conditions and agreements contained in the Loan Documents to be observed or performed by Borrower which is not cured by Borrower within the applicable cure period, if any;

(d) Discovery by Lender that any representation or warranty made by Borrower in Paragraph 2 hereof was, at the time this Assignment was executed by Borrower and delivered to Lender or at any time thereafter, inaccurate or untrue in any material respect and the same is not cured within thirty (30) days after written notice thereof from Lender; and

(e) Occurrence of any one or more events of default under the terms and provisions of the Loan Documents.

6. Rights and Remedies Upon Default. At any time upon or following the occurrence of any one or more events of default under the provisions of paragraph 5 of this Assignment, if such event or events of default are then continuing, Lender may, at its option and without any obligation to do so, without in any way waiving such event or events of default, without notice or demand on Borrower, without regard to the adequacy of the security for the obligations secured hereby, without releasing Borrower from any obligation hereunder, and with or without bringing any action or proceeding:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Lender deems proper;

(c) Either with or without taking possession of the Premises, in its own name or the name of Borrower, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all Borrower's rights therein and thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Lender, without proof of default hereunder, upon

receipt from Lender of written notice to thereafter pay all such rents and other amounts to Lender and to comply with any notice or demand by Lender for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Borrower will facilitate Lender's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Lender; and

(d) Make any payment or do any act required herein of Borrower in such manner and to such extent as Lender may deem necessary, and any amount so paid by Lender shall become immediately due and payable by Borrower with interest thereon at the rate of ten and 80/100 (10.80%) (the "Default Rate") per annum until paid and shall be secured by this Assignment.

7. Application of Proceeds. All sums collected and received by Lender out of the rents, issues, income and profits of the Premises following the occurrence of any one or more events of default under the provisions of paragraph 5 of this Assignment shall be applied as follows:

(a) First, to reimbursement of Lender for and of all expenses of taking and retaining possession of the Premises, of managing the Premises and collecting the rents, issues, income and profits thereof, including, but not limited to, salaries, fees and wages of a managing agent and such other employees as Lender may deem necessary or desirable, and reasonable attorneys' fees; of operating and maintaining the Premises, including, but not limited to, taxes, charges, claims assessments, water rents, sewer rents, other liens, and premiums for any insurance which Lender may deem necessary or desirable; and of all alterations, renovations, repairs or replacements of or to the Premises which Lender may deem necessary or desirable, with interest thereon at the Default Rate;

(b) Second, to the reimbursement of Lender for and of all sums expended by Lender pursuant to paragraph 6(d) hereof to make any payment or do any act required herein of Borrower, together with interest thereon at the Default Rate;

(c) Third, to reimbursement of Lender for and of all sums with respect to which Lender is indemnified pursuant to paragraph 8 hereof, together with interest thereon at the Default Rate;

(d) Fourth, to reimbursement of Lender for and of all other sums expended or advanced by Lender pursuant to the terms and provisions of or constituting additional indebtedness under or secured by the Loan Documents, with interest thereon as provided therein;

(e) Fifth, to payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to payment of the unpaid balance of the principal sum of the Note; and

(g) Seventh, any balance remaining to Borrower, its legal representatives, successors and assigns, provided that the application of the rents, issues, income and profits of the Premises as provided herein shall not be considered a waiver of, or to cure, any event or events of default under the provisions hereof.

8. Limitation of Lender's Liability. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Premises following the occurrence of any one or more events of default under the provisions hereof or from any other act or omission of Lender in managing, operating or maintaining the Premises following the occurrence of any one or more events of default under the provisions thereof unless such loss is caused by the willful and wanton acts of Lender or its bad faith. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge, any covenant, term, condition or agreement contained in any Leases to be observed or performed by Borrower under or by reason of this Assignment, and Borrower shall and does hereby agree to indemnify Lender for, and to hold Lender harmless of and from, any and all liability, loss or damage which Lender may or might incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Borrower with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

9. Non-Waiver. Nothing contained in this Assignment and no act done or omitted to be done by Lender pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Lender under the terms and provisions of such instruments; and Lender may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Lender may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or

UNOFFICIAL COPY

30423390

secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

10. Further Assurances. Borrower shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Lender may designate) and shall do or cause to be done such further acts, as Lender may reasonably request, in order to permit Lender to perfect, protect, preserve and maintain the assignment made to Lender by this Assignment.

11. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

12. Benefit. This Assignment is binding upon Borrower and its legal representatives, successors and assigns, jointly and severally, and the rights, powers and remedies of Lender under this Assignment shall inure to the benefit of Lender and its legal representatives, successors and assigns.

13. Construction. Whenever used in this Assignment, the singular shall also include the plural, the plural shall also include the singular, and the gender shall include the other genders unless the context shall require otherwise.

14. Written Modifications. This Assignment shall not be amended, modified or supplemented without the written agreement of Borrower and Lender at the time of such amendment, modification or supplement and, in the case of Lender signed by the Vice President of Lender.

15. Duration. This Assignment shall become null and void at such time as Borrower shall have paid the principal sum of the Note, together with any interest thereon, and shall have fully paid and performed all of the other obligations secured hereby.

16. Governing Law. This Assignment shall be governed by and subject to the laws of the State of Illinois.

UNOFFICIAL COPY

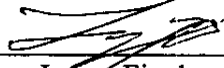
30423390

17. Captions. The captions in this Assignment are for convenience and identification purposes only, are not an integral part of this Assignment and are not to be considered in the interpretation of any part hereof.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the 20th day of march, 2003.

Basswood Road, L.L.C.

By: Finch & Barry Realty, L.L.C.
Its: Manager

By: 
Leroy Finch
Its: Manager

This instrument prepared by:

Tracie R. Porter
Barnes & Thornburg
2600 Chase Plaza
10 South LaSalle Street
Chicago, Illinois 60603

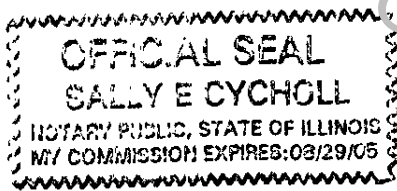
Property of Cook County Clerk's Office

ACKNOWLEDGMENTS

STATE OF)
) ss
COUNTY OF)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Leroy Finch, personally known to me to be the Manager of Finch and Barry Realty, L.L.C., an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10 day of March, 2003.



Sally Cychohl
Notary Public

[SEAL]

UNOFFICIAL COPY

30423390

17. Captions. The captions in this Assignment are for convenience and identification purposes only, are not an integral part of this Assignment and are not to be considered in the interpretation of any part hereof.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the 20th day of March, 2003.

Basswood Road, L.L.C.

By: Finch & Barry Realty, L.L.C.
Its: Manager

By: _____
Leroy Finch
Its: Manager

This instrument prepared by:

Tracie R. Porter
Barnes & Thornburg
2600 Chase Plaza
10 South LaSalle Street
Chicago, Illinois 60603



EXHIBIT A

Legal Description

PARCEL 1

Lots 44 and 45 in Woodfield Business Center Unit No. 15, being a resubdivision of part of Lot 13 in Woodfield Business Center and of Lot 39 in Woodfield business Center Unit No. 12, a subdivision of part of the Southwest Quarter of Section 11, Township 41 North, Range 10 East of the Third Principal Meridian, According to the plat thereof recorded December 5, 1983 as Document No. 26883640, in Cook County, Illinois.

PARCEL 2

Easement for the benefit of Parcel 1 for dumpster pad with wood fence, concrete walk and concrete patio as contained in instrument recorded May 17, 2002 as Document 0020569829.

Address: 1333-1339 Basswood Road
Schaumburg, IL

P.I.N.: 07 11 301 028 0000
07 11 301 029 0000

158168v1