



Doc#: 0333027009
Eugene "Gene" Moore Fee: \$118.00
Cook County Recorder of Deeds
Date: 11/26/2003 09:47 AM Pg: 1 of 20

CONSTRUCTION MORTGAGE

THIS MORTGAGE made as of the 17th day of November, 2003, by and between Orchard Properties, Inc., an Illinois corporation having an office at 711 Shermer Road, Glenview, Illinois 60025 (hereinafter referred to as the "Mortgagor") and Stephen P. Sullivan, of 457 East Wisconsin Avenue, Lake Forest, Illinois 60045 (hereinafter referred to as the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is the owner of the premises described in Exhibit A attached hereto (hereinafter referred to as the "Premises"); and,

WHEREAS, to secure the payment of an indebtedness in the sum of Six Hundred, Seventy-Seven Thousand and No/100's Dollars (\$677,000.00), lawful money of the United States, or so much thereof as may be advanced to Sullivan Builders, Inc., to be paid in accordance with a note of even date herewith (hereinafter referred to as the "Note"), the Mortgagor is contemporaneously executing and delivering to the Mortgagee this Mortgage covering certain lands, with improvements thereon, located in the Village of Glenview, County of Cook, State of Illinois, which are more fully described in Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, to secure the payment of such indebtedness and in consideration of the sum of Ten and No/100's Dollars (\$10.00) paid to the Mortgagor by the Mortgagee and other valuable consideration, receipt of which is hereby acknowledged, the Mortgagor hereby mortgages, warrants and conveys to the Mortgagee, its successors and assigns the following property, rights, privileges and franchises (collectively hereinafter called the "Mortgaged Property"):

The real property described in Exhibit A annexed hereto and made a part hereof, together with the building and improvements thereon erected or to be erected, said real property together with the building and improvements thereon erected or to be erected with the appurtenances are hereinafter referred to as the "Premises";

TOGETHER with all interest, estate or other claims, both in law and in equity which Mortgagor now has or may hereafter acquire in the Premises;

TOGETHER with all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights;

TOGETHER with any and all buildings, structures and improvements now or hereafter erected thereon, including, but not limited to the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings, structures and improvements (sometimes hereinafter referred to as the "Improvements");

TOGETHER with all right, title and interest of the Mortgagor in and to any streets and roads abutting said premises to the center lines thereof and in and to any strips or gores of land therein;

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TOGETHER with all fixtures, machinery, equipment and articles of personal property now or hereafter affixed to, placed upon or used in connection with the operation of any of said properties (sometimes hereinafter referred to as the Personal Property). Whenever requested by Mortgagee, Mortgagor will execute and record at Mortgagor's expense such financing statements and other instruments as Mortgagee may reasonably require in order to insure that all personal property now or hereafter owned by Mortgagor and used in connection with the operation of the Premises covered hereby shall be subject to the lien claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Premises;

TOGETHER with all estate, right, title and interest of Mortgagor in and to all leases covering the Premises or any portion thereof now or hereafter existing or entered into, and rents, deposits, issues and profits of the Premises and all the estate, right, title and interest of every nature whatsoever of the Mortgagor in and to the same. Mortgagor will execute evidences of such assignment and such further evidences of such assignment as Mortgagee may from time to time reasonably request, which evidences shall include, but not be limited to, such assignments of rents, issues and profits, in reasonable form, as Mortgagees may from time to time request. Mortgagor shall pay the cost of recording any such assignments. Until the occurrence of a default as hereinafter provided, Mortgagor may use and occupy the Premises and receive all rents, issues and profits thereof. Notwithstanding any provision herein to the contrary, this assignment is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest.

To protect the security of this Mortgage, the Mortgagor further covenants, warrants and agrees with the Mortgagee as follows:

ARTICLE I COVENANTS AND AGREEMENTS OF MORTGAGOR

1.01 **Payment of Secured Obligations.** Mortgagor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees, and the principal of, and interest on, any further advances secured by this Mortgage and shall otherwise comply with all the terms of the Note and this Mortgage.

1.02 **Warranties and Representations.** Mortgagor warrants and represents that it is the owner of the Premises, free and clear of any liens or encumbrances, except for those specifically set forth in Exhibit B attached hereto and made a part hereof.

1.03 **Required Insurance.** Mortgagor will, at Mortgagor's sole cost and expense, maintain or cause to be maintained with respect to the Mortgaged Property, and each part thereof, the following insurance:

- (a) Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage," in an amount not less than the original amount of the Note.. The policies of insurance carried in accordance with this subparagraph (a) shall contain replacement cost coverage (excluding transit cost);

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(b) During the course of any construction of Improvements on the Premises, comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury" including without limitation bodily injury, death or property damage occurring on, in, or about the premises and the adjoining streets, sidewalks, and passageways, such insurance to afford immediate minimum protection to a limit of not less than that required by Mortgagee with respect to personal injury or death to any one or more persons or damage to property;

(c) During the course of construction of Improvements on the Premises, workmen's compensation insurance (including employer's liability insurance, if requested by Mortgagee) for all employees of Mortgagor engaged on or with respect to the Premises in such amount is as reasonably satisfactory to Mortgagee, or, if such limits are established by law, in such amounts;

(d) During the course of construction of Improvements on the Premises, builder's complete value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such Improvements, with deductibles not to exceed One Thousand and No/100's Dollars (\$1,000.00) in non-reporting form, covering the total value of work performed and equipment, supplies, and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement; and

(e) Such other insurance, and in such amounts, as may from time to time be required by Mortgagee against the same or other hazards.

All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim, or deductions against Mortgagor.

Mortgagor may effect for its own account any insurance not required under this Section 1.03, but any such insurance effected by Mortgagor on the Premises, whether or not so required, shall be for the mutual benefit of Mortgagor and Mortgagee and shall be subject to the other provisions of this Mortgage.

1.04 Delivery of Policies, Payment of Premiums. All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Mortgagee. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with an original policy of all policies of required insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one location, the Mortgagor shall furnish Mortgagee with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of premium and the reissuance

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of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least fifteen (15) days' prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the then current interest rate charged under the Note shall be secured by this Mortgage.

1.05 **Insurance Proceeds.** After the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

(a) In the event of any damage to or destruction of the Improvements, Mortgagee shall have the option in its sole discretion of applying or paying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine, or (ii) to the restoration of the Improvements, or (iii) to Mortgagor.

(b) In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy or policies of insurance.

(c) Except to the extent that insurance proceeds are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in this Mortgage or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

(d) Notwithstanding anything to the contrary contained in this Section 1.05, if any insurance claim does not exceed One Hundred Thousand and No/100's Dollars (\$100,000.00) in the aggregate, such insurance proceeds shall be paid to Mortgagee for application to the cost of the repair and restoration of the Premises, provided that the following conditions are first fulfilled to the satisfaction of the Mortgagee:

(i) Upon the occurrence of any partial or total damage or loss by fire or other casualty whatsoever to the Improvements on the

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Premises, the Mortgagor shall have given immediate notice thereof to the Mortgagee.

(ii) Within thirty (30) days of the occurrence of any such casualty, the Mortgagor shall have delivered to the Mortgagee a written undertaking to repair, restore, or reconstruct the damaged Improvements at its sole cost and expense.

(iii) There are sufficient sums available to complete the repair, restoration, or reconstruction of the damaged Improvements, which sums can be composed of a combination of insurance proceeds, cash deposited by the Mortgagor with the Mortgagee, or other security satisfactory to the Mortgagee deposited by Mortgagor.

(iv) The Mortgagor shall have submitted plans and specifications relating to the repair, restoration, or reconstruction of the damaged Improvements, which plans and specifications shall have been prepared by a licensed architect reasonably satisfactory to the Mortgagee, for the approval of the Mortgagee, which approval shall not be unreasonably withheld.

(v) The Mortgagor shall have submitted to Mortgagee evidence of sufficient insurance coverage in accordance with Sections 1.03 and 1.04 hereof and performance and payment bonds issued by a company satisfactory to the Mortgagee, and naming Mortgagee as a co-obligee thereon.

(e) In the event the Mortgagee elects to apply the insurance proceeds to the restoration of the improvements pursuant to Section 1.05(a)(ii) such proceeds shall be disbursed by the Mortgagee from time to time as work progresses, provided that prior to any disbursement, Mortgagee is in receipt of proof reasonably satisfactory to it, that the work has been completed, and further provided that the Mortgagee is in receipt of proof, reasonably satisfactory to it, that there are no outstanding mechanics' liens or materialmen's liens and that all charged costs and expenses incurred with respect to work completed have been paid for in full. Repair, restoration, or reconstruction of the damages or destroyed Improvements must be substantially equal in size, quality and value to the Improvements on the Premises immediately before the loss or damage. Any funds or insurance proceeds remaining after the completion of such repair, restoration, or replacement may, at the option of the Mortgagee, be applied by the Mortgagee to the installments of principal on the Note in the inverse order of their maturity; provided, however, that if the Mortgagor shall have deposited cash with the Mortgagee in addition to the insurance proceeds, any remaining funds shall be returned to the Mortgagor to the extent of the amounts of cash so deposited by the Mortgagor.

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1.06 *Assignment of Policies Upon Foreclosure.* In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of the Mortgagor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Property. Mortgagor hereby appoints Mortgagee its attorney-in-fact to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise.

1.07 *Taxes, Utilities and Impositions.* Mortgagor will pay, or cause to be paid and discharged, on or before the last day on which they may be paid without penalty or interest, all such duties, taxes, sewer rents, charges for water, or for setting or repairing meters, and all other utilities in the Improvements or on the Premises or any part thereof, and any assessments and payments, usual or unusual, extraordinary or ordinary, which shall be imposed upon or become due and payable or become a lien upon the Premises or any part thereof and the sidewalks or streets in front thereof and any vaults therein by virtue of any present or future law of the United States or of the State, County, or City wherein the Premises are located (all of the foregoing being herein collectively called "Impositions"). In default of any such payment of any Imposition, Mortgagee may pay the same and the amount so paid by Mortgagee shall, at the Mortgagee's option, become immediately due and payable with interest at the then current interest rate charged under the Note and shall be deemed part of the indebtedness secured by this Mortgage.

If at any time there shall be assessed or imposed (a) a tax or assessment on the Premises in lieu of or in addition to the Impositions payable by Mortgagor pursuant to this Section or (b) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Imposition;" as defined in this Section, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Mortgagee, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Mortgagee or on the obligations secured hereby.

Mortgagor will pay all mortgage recording taxes payable with respect to this Mortgage or other mortgage or transfer taxes due on account of this Mortgage or the Note secured hereby.

Mortgagor will exhibit to Mortgagee the original receipts or other reasonably satisfactory proof of the payment of all Impositions which may affect the Mortgaged Property or any part thereof or the lien of the Mortgage promptly following the last date on which each such Imposition is payable hereunder.

Notwithstanding the foregoing, Mortgagor shall have the right, after prior written notice to Mortgagee, to contest the amount and validity of any Imposition affecting the Mortgaged Property by appropriate proceedings conducted in good faith and with due diligence and to postpone or defer payment thereof, if and so long as:

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(a) Such proceedings shall operate to suspend the collection of such Imposition from Mortgagor or the Mortgaged Property; or

(b) Neither the Mortgaged Property nor any part thereof would be in immediate danger of being forfeited or lost by reason of such proceedings, postponement, or deferment; and

(c) In the case of any Imposition affecting the Mortgaged Property which might be or become a lien, encumbrance, or charge upon or result in any forfeiture or loss of the Mortgaged Property or any part thereof, or which might result in loss or damage to Mortgagor or Mortgagee, Mortgagor, prior to the date such Imposition would become delinquent, shall have furnished Mortgagee with security satisfactory to Mortgagee, and, in the event that such security is furnished, Mortgagee shall not have the right during the period of the contest to pay, remove, or discharge the Imposition.

1.08 **Deposits of Taxes.** In order to more fully protect the security of this Mortgage and the fulfilment by the Mortgagor of the obligations and undertakings contained in Section 1.07 hereof and, solely as additional security to Mortgagee, in addition to the payments of interest and principal as provided herein, at the request and option of the Mortgagee, the Mortgagor shall pay to the Mortgagee or to its designated representative, on the date set in this Mortgage for the payment of principal and interest, an amount which shall be equal to 1/12th of the annual Impositions that may become due during the year. Mortgagor shall cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to the Mortgagee or its designated representative. Upon receipt of such bills, statements, or other documents, and, providing Mortgagor has deposited sufficient funds with the Mortgagee or its designated representative pursuant to the provisions of this Section, the Mortgagee or its designated representative shall pay such amounts as may be due thereunder out of the funds so deposited with the Mortgagee or its designated representative. If the aforesaid sums are found insufficient fully to pay the said Impositions when said items become due, the Mortgagor agrees to pay such deficiency immediately upon demand, and in default thereof the Mortgagee may pay the same and add the sum so paid to the principal sum secured by this Mortgage, and said additional sum shall be payable to the Mortgagee on demand with interest thereon at the then current interest rate charged under the Note; also the Mortgagor agrees to pay when due, all prior Impositions for which provisions have not been made hereinbefore and promptly to deliver the official receipt therefor to the Mortgagee, and in default of payment thereof, the Mortgagee may pay the same and add the amounts so paid to the principal sum secured by this Mortgage, and said additional sums shall be payable to the Mortgagee on demand with interest thereon at the then current interest rate charged under the Note. The failure to pay any of the aforesaid payments referred to in this Section shall be deemed a default under the terms of this Mortgage, for which the Mortgage may, at its sole option, declare the entire unpaid balance of principal then due and owing, to be immediately due and payable. Said payments shall be paid to the Mortgagee until the Note is paid in full. The Mortgagee under the provisions of this Mortgage, may at any time, in its sole discretion, apply any balance accumulated in the above funds as a credit against any unpaid interest due under the Note and/or in reduction of the amount of principal then remaining unpaid under the Note. Notwithstanding all of the foregoing, nothing contained herein shall cause Mortgagee or its designated representative to be deemed a trustee of said funds or to be obligated to pay any amounts

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in excess of the amounts of funds deposited with Mortgagee or its designated representative pursuant to this Section. Mortgagee or its designated representative may commingle said reserve with its own funds and Mortgagor shall be entitled to no interest thereon.

It is the intention of the Mortgagor and the Mortgagee herein that the payments as set forth in the paragraph above shall be sufficient so that when such payments are due to any taxing authority, there will be sufficient money held by the Mortgagee to make such payments on their due dates.

1.09 **Maintenance, Repairs, Alterations.** Mortgagor will keep the Mortgaged Property and Improvements thereon, or cause the same to be kept, in good condition and repair and fully protected from the elements to the satisfaction of Mortgagee; Mortgagor will commit or permit no waste thereon and will do or permit no act by which the Mortgaged Property shall become less valuable; Mortgagor will complete promptly and in good and workmanlike manner any building or other Improvement which may be constructed on the Premises and promptly restore in like manner any Improvement which may be damaged or destroyed thereon and will pay when due all claims for labor performed and materials furnished therefor; and Mortgagor will use and operate, and will require its lessees or licensees to use or operate, the Mortgaged Property in compliance with all applicable laws, ordinances, regulations, covenants, conditions, and restrictions, and with all applicable requirements of any ground lease, lease, or sublease now or hereafter affecting the Premises or any part thereof. Mortgagee and its representatives shall have access to the Premises at all reasonable times to determine whether Mortgagor is complying with its obligations under this Mortgage, including, but not limited to, those set out in this Section.

1.10 **Eminent Domain.** Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public use or improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor or the Owner receive any notice or other information regarding such Condemnation, Mortgagor or the Owner shall give prompt written notice thereof to Mortgagee.

(a) Mortgagee shall be entitled to all compensation, awards, and other payments or relief granted in connection with such Condemnation and shall be entitled, at its option, to commence, appear in and prosecute in its own name any action or proceedings relating thereto. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action, and proceeds awarded to Mortgagor are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.

(b) In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option in its sole and absolute discretion to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may

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determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(c) Any amounts received by Mortgagee hereunder (after payment of any costs in connection with obtaining same) shall, if retained by Mortgagee, be applied in payment of any accrued interest and then in reduction of the then outstanding principal sum of the Note secured hereby, notwithstanding that the same may not then be due and payable. Any amount so applied to principal shall be applied to the payment of installments of principal on the Note in inverse order of their due dates.

1.11 ***Actions Affecting the Security of this Mortgage.*** The Mortgagor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of the Mortgagee. If any action or proceeding affecting the Mortgaged Property or any part thereof shall be commenced, to which action or proceeding the Mortgagee is made a party or in which the right to use the Mortgaged Property or any part thereof is threatened or in which, in the opinion of the Mortgagee, it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee in connection therewith, including reasonable attorneys' fees, shall be paid by the Mortgagor, together with interest thereon at the then current interest rate charged under the Note, and any such sum and the interest thereon shall be a lien on the Mortgaged Property, prior to any right or title to, interest in, or claim upon the Mortgaged Property attaching or accruing subsequent to or otherwise subordinate to the lien of this Mortgage and shall be deemed to be secured by this Mortgage.

1.12 ***Actions by Mortgagee to Preserve the Security of this Mortgage.*** If the Mortgagor fails to make any payment or to do any act as and in the manner provided for in this Mortgage or the Note secured hereby, the Mortgagee, in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as the Mortgagee may deem necessary to protect the security hereof. Mortgagor will pay upon demand all expenses incurred or paid by Mortgagee (including, but not limited to, counsel fees and court costs) on account of the exercise of any of the aforesaid rights or privileges or on account of any litigation which may arise in connection with this Mortgage or the Note or on account of any attempt, without litigation, to enforce the terms of this Mortgage or said Note. In case the Mortgaged Property or any part thereof shall be advertised for foreclosure sale and not sold, Mortgagor shall pay all costs in connection therewith.

In the event that the Mortgagee is called upon to pay any sums of money to protect this Mortgage and the Note secured hereby as aforesaid, all monies advanced or due hereunder shall become immediately due and payable, together with interest at the then current interest rate charged under the Note, computed from the date of such advance to the date of the actual receipt of payment thereof by the Mortgagee.

In the event this Mortgage is placed in the hands of an attorney for the collection of any sum payable hereunder, the Mortgagor agrees to pay all costs of collection, including reasonable attorneys' fees, incurred by the Mortgagee, either with or without the institution of any action or proceeding, and in addition to all costs, disbursements and allowances provided by law. All such costs so incurred shall be deemed to be secured by this Mortgage.

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1.13 **Additional Security.** In the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.14 **Inspections.** Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

1.15 **Liens.** Mortgagor shall pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances, and charges upon the Mortgaged Property or any part thereof or interest therein. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance, or charge, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts as Mortgagee shall reasonably require, but not more than one and one-half (1½) times the amount of the claim, and provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance, or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any amount so paid by the Mortgagee shall, at Mortgagee's option, become immediately due and payable with interest at the then current interest rate charged under the Note and shall be deemed part of the indebtedness secured by this Mortgage.

ARTICLE II

ASSIGNMENT OF LEASES, SUBLEASES, FRANCHISES, RENTS, ISSUES AND PROFITS

2.01 **Assignment of Rents.** Mortgagor hereby assigns and transfers to Mortgagee all the leases, subleases, franchises, rents, issues and profits of the Mortgaged Property, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall have the right to collect such rents, issues, and profits (but not more than one month in advance) prior to or at any time there is not an event of default under this Mortgage. The assignment of the leases, subleases, franchises, rents, issues and profits of the Mortgaged Property in this Article II is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. The leases, subleases, franchises, rents, issues, and profits are hereby assigned absolutely by Mortgagor to Mortgagee contingent only upon the occurrence of an event of default under this Mortgage.

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2.02 **Collection Upon Default.** Upon any event of default under this Mortgage, Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues, and profits, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

2.03 **Restriction on Further Assignments, etc.** Except as hereinafter specifically provided, Mortgagor will not, without prior written consent of the Mortgagee, assign the rents, issues or profits, or any part thereof, from the Mortgaged Property or any part thereof. Any action of Mortgagor in violation of the terms of this Section shall be void as against Mortgagee in addition to being a default under this Mortgage.

All leases or subleases hereafter entered into by Mortgagor with respect to the Mortgaged Property or any part thereof, shall be subordinate to the lien of this Mortgage.

ARTICLE III SECURITY AGREEMENT

3.01 **Creation of Security Interest.** Mortgagor hereby grants to Mortgagee a security interest in the Personal Property located on or at the Premises, including without limitation any and all property of similar type or kind hereafter located on or at the Premises for the purpose of securing all obligations of Mortgagor set forth in this Mortgage.

3.02 **Warranties, Representations and Covenants of Mortgagor.** Mortgagor hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Mortgagor will not lease, sell, convey, or in any manner transfer the Mortgaged Property or any interest therein or any part thereof without the prior written consent of Mortgagee.

(c) The Personal Property is not used or bought for personal, family or household purposes.

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(d) The Personal Property will be kept on or at the Premises and Mortgagee will not remove the Personal Property from the Premises without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.

(e) At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Illinois in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.

(f) All covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

(g) This Mortgage constitutes a Security Agreement as that term is used in the Illinois Compiled Statutes Uniform Commercial Code.

ARTICLE IV REMEDIES UPON DEFAULT

4.01 **Events of Default.** Any one or more of the following shall constitute a default under this Mortgage and the Note hereby secured:

(a) Failure of Mortgagor (or Sullivan Builders, Inc.) to make one or more payments of principal or interest required by said Note within ten (10) days after the due date thereof.

(b) Failure of Mortgagor (or Sullivan Builders, Inc.) to pay within twenty (20) days after written demand the amount of any costs, expenses, or fees (including counsel fees) of the Mortgagee, with interest thereon, as required by any provision of this Mortgage.

(c) Failure to exhibit to the Mortgagee, within ten (10) days after demand, receipts showing payment of all taxes, water rates, sewer rents, and assessments, provided same are payable by Mortgagor and the time for payment thereof without penalty shall have expired.

(d) Except as hereinbefore permitted, the actual or threatened alteration, demolition, or removal of any building on the Premises without the written consent of the Mortgagee.

(e) If the Improvements on said Premises are not maintained in reasonably good repair and Mortgagor (or Sullivan Builders, Inc.) shall have failed

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to cure such default within thirty (30) days after written demand wherein Mortgagee shall have specified the nature of such default.

(f) Failure to comply with any requirements or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Mortgaged Property within three (3) months from the issuance thereof.

(g) After thirty (30) days' notice to the Mortgagor in the event of the passage of any law deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes.

(h) Failure of Mortgagor (or Sullivan Builders, Inc.), within twenty (20) days after written demand, to comply with or perform any other warranty, covenant, or agreement contained herein or in said Note.

(i) The institution of any bankruptcy, reorganization, or insolvency proceedings against the then owner or Mortgagor (or Sullivan Builders, Inc.) in possession of the Mortgaged Property or the appointment of a receiver or a similar official with respect to all or a substantial part of the properties of the then owner or Mortgagor (or Sullivan Builders, Inc.) in possession of the Mortgaged Property and a failure to have such proceedings dismissed or such appointment vacated within a period of ninety (90) days.

(j) The institution of any voluntary bankruptcy, reorganization, or insolvency proceedings by the then owner or Mortgagor (or Sullivan Builders, Inc.) in possession of the Mortgaged Property or the appointment of a receiver or a similar official with respect to all or a substantial part of the properties of the then owner or Mortgagor (or Sullivan Builders, Inc.) in possession of the Mortgaged Property at the instance of the then owner or Mortgagor in possession of the Mortgaged Property.

(k) The transfer, conveyance, or other disposition of the Mortgaged Property by the Mortgagor.

4.02 Acceleration Upon Default, Additional Remedies. In the event that one or more defaults as above provided shall occur, the remedies available to Mortgagee shall include, but not necessarily be limited to, any one or more of the following:

(a) Mortgagee may declare the entire unpaid balance of the Note immediately due and payable without notice.

(b) Mortgagee may take immediate possession of the Mortgaged Property or any part thereof (which Mortgagor agrees to surrender to Mortgagee) and manage, control or lease the same to such person or persons and at such rental as it may deem proper and collect all the rents, issues, and profits therefrom, including those past due

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as well as those thereafter accruing, with the right in the Mortgagee to cancel any lease or sublease for any cause which would entitle Mortgagor to cancel the same; to make such expenditures for maintenance, repairs, and costs of operation as it may deem advisable; and after deducting the cost thereof and a commission of five percent (5%) upon the gross amounts of rents collected, to apply the residue to the payment of any sums which are unpaid hereunder or under the Note. The taking of possession under this paragraph shall not prevent concurrent or later proceedings for the foreclosure sale of the Mortgaged Property as provided elsewhere herein.

(c) Mortgagee may apply to any court of competent jurisdiction for the appointment of a receiver or similar official to manage and operate the Mortgaged Property, or any part thereof, and to apply the net rents and profits therefrom to the payment of the interest and/or principal of said Note and/or any other obligations of Mortgagor to Mortgagee hereunder. In the event of such application, Mortgagor agrees to consent to the appointment of such receiver or similar official and agrees that such receiver or similar official may be appointed without notice to Mortgagor, without regard to the adequacy of any security for the debt and without regard to the solvency of Mortgagor or any other person, firm, or corporation who or which may be liable for the payment of the Note or any other obligation of Mortgagor hereunder.

(d) Mortgagee shall have the right to foreclose this Mortgage and in case of sale in an action or proceeding to foreclose this Mortgage, the Mortgagee shall have the right to sell the Mortgaged Property covered hereby in parts or as an entirety. It is intended hereby to give to the Mortgagee the widest possible discretion permitted by law with respect to all aspects of any such sale or sales.

4.03 **Additional Provisions.** Mortgagor expressly agrees, on behalf of itself, its successors and assigns, and any future owner of the Mortgaged Property, or any part thereof or interest therein, as follows:

(a) All remedies available to Mortgagee with respect to this Mortgage shall be cumulative and may be pursued concurrently or successively. No delay by Mortgagee in exercising any such remedy shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default.

(b) The obtaining of a judgment or decree on the Note, whether in the State of Illinois or elsewhere, shall not in any manner affect the lien of this Mortgage upon the Mortgaged Property covered hereby, and any judgment or decree so obtained shall be secured hereby to the same extent as said Note is now secured.

(c) In event of any foreclosure sale hereunder, all net proceeds shall be available for application to the indebtedness hereby secured whether or not such proceeds may exceed the value of the Mortgaged Property for recordation tax, mortgage tax, insurance, or other purposes.

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(d) The only limitation upon the foregoing agreements as to the exercise of Mortgagee's remedies is that there shall be but one full and complete satisfaction of the indebtedness secured hereby.

4.04 **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or the Note secured hereby or under any other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, or otherwise. Neither the acceptance of this Mortgage, nor its enforcement shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given to Mortgagee, or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee and it may pursue inconsistent remedies.

ARTICLE V MISCELLANEOUS

5.01 **Corporate Existence.** The Mortgagor shall at all times maintain its corporate existence and shall be fully authorized to do business in the State of Illinois shall maintain in the State of Illinois a duly authorized registered agent for the service of process. Failure to comply with such obligations shall, in addition to being a default under this Mortgage, authorize Mortgagee, as attorney-in-fact of Mortgagor, to appoint any person as agent of Mortgagor for the service of process in any proceeding or proceedings concerning this Mortgage or said Note. Within ninety (90) days after the expiration of the time for filing its annual report and the payment of appropriate corporate taxes in the State of Illinois, Mortgagor will furnish to Mortgagee a certificate of good standing or other evidence satisfactory to Mortgagee to show compliance with the provisions of this Section.

5.02 **Statements by Mortgagor.** Mortgagor, within three (3) days after request in person or within ten (10) days after request by mail, will furnish to Mortgagee or any person, firm, or corporation designated by Mortgagee a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no offsets or defenses exist against such debt, or, if such offsets or defenses are alleged to exist, full information with respect to such alleged offsets and/or defenses.

5.03 **Successors and Assigns.** The provisions hereof shall be binding upon and shall inure to the benefit of the Mortgagor, its successors and assigns (including without limitation subsequent owners of the Premises or any part thereof; shall be binding upon and shall inure to the benefit of

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Mortgagee, its successors and assigns of any future holder of the Note hereby secured, and any successors or assigns of any future holder of the Note.

5.04 **Notices.** All notices, demands, and requests given by either party hereto to the other party shall be in writing. All notices, demands, and requests by the Mortgagee to the Mortgagor shall be deemed to have been properly given if sent by United States registered or certified mail, postage prepaid, addressed to the Mortgagor at the address indicated on page 1 hereof, or at such other address as the Mortgagor may from time to time designate by written notice to the Mortgagee, given as herein required. All notices, demands, and requests by the Mortgagor to the Mortgagee shall be deemed to have been properly given if sent by United States registered or certified mail, postage prepaid, addressed to the Mortgagee, at the address indicated on the first page of this Mortgage or to such other address as the Mortgagee may from time to time designate by written notice to the Mortgagor given as herein required. Notices, demands, and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder at the same time such notice, demand, or request shall be deposited in any post office or branch post office regularly maintained by the United States Government.

The Mortgagor shall deliver to the Mortgagee, promptly upon receipt of same, copies of all notices, certificates, documents, and instruments received by it which materially affect any part of the Mortgaged Property covered hereby.

5.05 **Modifications in Writing.** This agreement may not be changed, terminated, or modified orally or in any other manner than by an instrument in writing signed by the party against whom enforcement is sought.

5.06 **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

5.07 **Invalidity of Certain Provisions.** If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured portion of the debt shall be completely paid prior to the payment of the secured portion of the debt, and all payments made on the debt, whether voluntary or otherwise, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

5.08 **Governing Law and Construction of Clauses.** This Mortgage shall be governed and construed by the laws of the State of Illinois.

5.09 **Inapplicable Provisions.** If any term, covenant, or condition of this Mortgage shall be held to be invalid, illegal, or unenforceable in any respect, this Mortgage shall be construed without such provision.

5.10 **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

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5.11 **Certain Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form, the word "Note" shall mean, "the Note or any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity, the words "Mortgaged Property" shall include any portion of the Mortgaged Property or interest therein, and the word "Debt" shall mean all sums secured by this Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

5.12 **Hazardous or Toxic Materials.** The Mortgagor shall ensure that the Mortgaged Property is maintained in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions ("Hazardous Materials Laws") on, under, about, or affecting the Mortgaged Property. Neither the Mortgagor nor any of its tenants shall use, generate, manufacture, store, or dispose of on, under, or about the Mortgaged Property or transport to or from the Mortgaged Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations. The Mortgagor shall advise the Mortgagee in writing promptly upon notice of (a) any and all enforcement, cleanup, removal, or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable Hazardous Materials Laws; (b) all claims made or threatened by any third party against the Mortgagor, the Lessee, or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss, or injury resulting from any Hazardous Materials, and (c) the Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use of the Mortgaged Property under any Hazardous Materials Laws.

The Mortgagor shall, at its expense, and after obtaining the written consent of the Mortgagee, take all necessary remedial action(s) in response to the presence of any Hazardous Materials on, under, or about the Mortgaged Property.

IN WITNESS WHEREOF, the parties have duly executed this Mortgage on the day and year first written above.

Orchard Properties, Inc.

By: Thomas E. Sullivan, III
Its Vice President

Attest:

Byron R. Cochran
Its Secretary

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STATE OF ILLINOIS)
)
 COUNTY OF COOK)

SS

I, the undersigned, a Notary Public on and for said County, in the State aforesaid, do hereby certify that Thomas E. Sullivan, III, personally known to me to be the Vice President of Orchard Properties, Inc. and Bryan R. Sullivan, personally known to me to be the Secretary of said corporation and personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as said Vice President and Secretary, they signed, sealed and delivered the said instrument as Vice President and Secretary of said corporation and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Board of Directors of the corporation, as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 17th day of November, 2003.

Jay N. Badur

 Notary Public

This instrument prepared by:

Randall C. Romei
 Ashcraft & Ashcraft, Ltd.
 180 North Stetson Avenue
 Suite 5510
 Chicago, Illinois 60601



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EXHIBIT A

LEGAL DESCRIPTION

LOT 12 IN ORCHARD PROPERTIES SUBDIVISION UNIT 2, BEING A RESUBDIVISION OF
OUTLOT C IN ORCHARD PROPERTIES SUBDIVISION UNIT 1, BEING A SUBDIVISION OF
PART OF THE SOUTH HALF (1/2) OF THE SOUTHEAST QUARTER (1/4) OF SECTION 34,
TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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EXHIBIT B

1. Trust Deed dated January 22, 1997 and recorded January 28, 1997 as Document Number 97-061789 made by Orchard Properties, Inc. to Chicago Title and Trust Company, as Trustee, to secure an indebtedness of \$3,650,000.00.

Note: Affects the premises and other property.

2. Mortgage dated July 17, 1997 and recorded July 23, 1997 as Document Number 97-533521 made by Orchard Properties, Inc. to First Midwest Bank to Secure an indebtedness of \$1,307,000.00.

Note: Affects the premises and other property.

Property of Cook County Clerk's Office