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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE is made at Chicago, Illinois, as of February 2, 1989, by and among STANDARD BANK AND TRUST COMPANY, not personally but as Trustee under a Trust Agreement dated April 8, 1987 and known as Trust No. 11044 (the "Trust") (hereinafter sometimes called the "Grantor" or "Maker"), and ORCHARD HILL BUILDING COMPANY (sometimes hereinafter called the "Borrower"), an Illinois corporation (herein, the Borrower and the Grantor, individually and collectively, jointly and severally, together with the successors and assigns of each of them are sometimes called the "Mortgagor"); and CONTINENTAL BANK N.A., a national banking association having its principal office at 231 South LaSalle Street, in Chicago, Cook County, Illinois 60697 (together with its successors and assigns, sometimes hereinafter called the "Mortgagee")

WITNESSETH:

WHEREAS, Borrower is the sole beneficiary of the Trust; and

WHEREAS, to provide funds for the construction of the model homes on the Mortgaged Property (hereinafter defined), Mortgagee has agreed to make a certain loan to Mortgagor (the "Loan"), in the principal sum of Nine Hundred Forty-Eight Thousand Dollars (\$948,000.00) (the "Loan Amount") upon the terms and conditions contained herein; and

WHEREAS, Mortgagor has executed a promissory note (as it may be supplemented, modified or otherwise amended, the "Note") for said Loan Amount, bearing even date herewith, payable to the order of Mortgagee, and delivered, due and payable as provided in said Note, with the final payment on indebtedness being due and payable, if not sooner paid, on February 1, 1991, unless extended by Mortgagor as provided in the Note, in which event the Note shall be due and payable, if not sooner paid, on February 1, 1993; and

WHEREAS, said Note bears interest until maturity payable as provided in said Note on the principal amount thereof from time to time unpaid, with interest on all payments of principal and interest after maturity (whether said Note shall mature by lapse of time or by acceleration, as therein and hereinafter provided) until paid at the "Default Rate" (defined hereinafter), all of which principal and interest is payable in lawful money of the United States of America at the office of Continental Bank N.A., Chicago, Illinois, or at such place as the Mortgagee or legal holder thereof may from time to time appoint in writing; and

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Mortgagor: Dean Isaacs  
Mayor, Brown & Platt  
190 South LaSalle  
Chicago, Ill.  
Box 407 60603.

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M 482961L  
Mortgage / adj.

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WHEREAS, to secure the Note, Mortgagor has executed and delivered (or caused to be executed and delivered) to Mortgagee this Mortgage and certain other documents or instruments securing the Note (all of such documents or instruments, including the Note, together with this Mortgage, the Assignment of Beneficial Interest in Land Trust and the Guaranty, as the same may respectively be modified, amended or restated from time to time and together with all supplements thereto and replacements or substitutions therefor, are sometimes hereinafter referred to collectively as the "Loan Papers").

A. NOW, THEREFORE, for the purpose of securing the payment of the principal of and interest on the Note, all of Borrower's obligations to the Mortgagee under any and all other liabilities, direct or contingent, that may now or hereafter become owing to the Mortgagee under this Mortgage and under any of the Loan Papers (provided, however, that the maximum amount included in the liabilities secured hereby on account of principal shall not exceed \$5,000,000.00 plus interest thereon at the rate set forth in the Note plus the total amount of all advances made by the Mortgagee to protect the Mortgaged Property (defined hereinbelow)), including, without limitation, the liabilities and other amounts described in paragraphs 1, 3, 4, 7, 8 and 14, of this Mortgage, and the performance of the covenants and agreements herein contained to be performed by the Mortgagor, and in further consideration of the sum of One Dollar (\$1.00) in hand paid to the Mortgagor (receipt of which is hereby acknowledged by both the Grantor and the Borrower), the Mortgagor, hereby assigns, grants, mortgages, conveys and warrants unto the Mortgagee the real estate described in Appendix A attached hereto, situated in the County of Cook and State of Illinois, together with all and singular the tenements, hereditaments, easements, privileges, appendages and appurtenances thereunto belonging or in anywise appertaining, all buildings and improvements now located thereon or which may hereafter be placed thereon, the rents, issues and profits thereof (which are hereby assigned to the Mortgagee), and all apparatuses and fixtures of every kind and nature whatsoever, including, but without limiting the generality of the foregoing, all apparatuses and fixtures of every kind for the purpose of supplying or distributing heat, light, air, power, water, ventilation, air conditioning, or refrigeration (whether single units or centrally controlled), all screens, screen doors, storm windows, storm doors, shades, awnings, gas and electric fixtures, radiators, heaters, engines, machinery, boilers, ranges, motors, sinks, bathtubs, carpets, floor coverings, window shades, drapes, furnaces, stokers, pumps and all other apparatuses and equipment, including inventory equipment, in, or that may be placed in, any building or improvement now or hereafter standing on said land, it being expressly understood and agreed by the parties hereto that all of

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the foregoing items of property (and all substitutions therefor or additions thereto) are necessary, indispensable and especially adapted and appropriate to the use and operation of said Premises and constitute an integral part of said real estate, and that all of the same are hereby conveyed, assigned and pledged, or intended so to be, and shall be deemed and treated for all purposes of this instrument as real estate and not as personal property. All of said items of property, together with said real estate and the buildings and improvements thereon, are hereinafter sometimes referred to herein as the "Premises" or the "Mortgaged Property".

B. WITHOUT limitation of the foregoing, Grantor and Borrower hereby further grant unto Mortgagee, pursuant to the provisions of the Uniform Commercial Code of the State of Illinois, a security interest in and to all of the above-described property, and in all building materials, fittings, appliances, furniture, furnishings, carpeting, supplies, and all other personal property of any and every kind whatsoever which is specifically used in connection with the Premises or were obtained from funds advanced pursuant to the Loan and all replacements of any of the foregoing, now or at any time hereafter affixed to, attached to, incorporated or intended to be incorporated in, placed upon, or used in connection with, the aforescribed Premises, and any material or equipment regardless of where located in the possession of any third party for purposes of the manufacture, storage, fabrication, or transportation thereof or otherwise, and now owned or hereafter owned by Grantor or Borrower or in which Grantor or Borrower now or hereafter has any interest, which property includes without limitation goods which are or are to become fixtures, any and all intangibles relating to all of the foregoing set forth in paragraph A and this paragraph B (including without limitation all good will, trademarks, trade names (excluding only the names "Orchard Hill Building Company" and "Gallagher & Henry"), contracts for labor or materials, plans and specifications, real estate sale contracts with purchasers of any portion of the Mortgaged Property, building permits, approvals, consents and licenses from any and all governments and governmental and quasi governmental agencies, books and records, accounts, contract rights, chattel paper, and other rights of the Mortgagor for payment of money or property sold or lent, relating to all of the foregoing set forth in paragraph A and this paragraph B) and all proceeds (including, without limitation, insurance and condemnation proceeds) and products of all of the foregoing. All of the foregoing are included in the definition of the terms "Premises" and "Mortgaged Property".

TO HAVE AND TO HOLD the Premises and the Mortgaged Property unto the Mortgagee, its successors and its assigns, forever, for

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the purposes and uses herein set forth, hereby releasing and waiving all rights of the Mortgagor under and by virtue of the Homestead Exemption Laws of the State of Illinois in and to the Premises hereby conveyed.

In consideration of the Premises and for the better securing of the payment of said principal sum, interest, and all other obligations hereby secured, the said Grantor and the Borrower hereby covenant and agree to and with the Mortgagee, as follows:

1. To pay or perform said obligations (including, without limitation, any and all interest thereon as herein and in said Note provided, or according to any agreement extending the time of payment thereof); to pay prior to the delinquent date in each year, all taxes and assessments levied or assessed upon said Premises or any part thereof, and, upon demand by the Mortgagee, to exhibit receipts therefor; to pay, within thirty (30) days after the same shall become due under the ordinances, requirements or regulations of the municipality in which the real estate described herein is situated, all water charges against said Premises, and, upon demand by the Mortgagee, to exhibit receipts therefor; not to allow any building erected on said Premises to remain unfinished, nor do, nor permit to be done upon said Premises, anything that might impair the value thereof, or the security intended to be effected by virtue of this instrument; and in case of the failure of the Grantor or Borrower so to pay taxes, water charges, or special assessments, or to keep the Mortgaged Property in good repair and in a completed condition, free from any liens thereon, then the Mortgagee may pay such taxes, water charges, or special assessments, or redeem said Premises from any tax sale, or discharge or purchase any tax claims or other liens thereon, or make repairs on any part of the Mortgaged Property, or complete any unfinished building on said Premises, or pay out any other sum or sums necessary for the protection, enforcement, or collection of this security, and any and all moneys paid for any such purpose, with interest thereon from the respective dates of payment at the rate of Default Rate annually, shall become so much additional indebtedness secured hereby, and shall be included in any decree of foreclosure hereof, and shall be paid out of the rents and proceeds of sale of said Premises if not otherwise paid by said Grantor; and it shall not be obligatory, in advancing or disbursing moneys for any purpose above authorized, to inquire into the validity of any claim or lien for which such disbursement is made. Nothing herein contained shall be construed as requiring the Mortgagee to advance or expend moneys for any of the aforesaid purposes. The Grantor shall not be required to pay any tax or assessment deemed excessive or invalid so long as the Grantor shall, in good faith, object to or otherwise contest the validity of the same by appropriate legal proceedings which shall operate to prevent the



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collection of any such tax or assessment, or the sale of any part of said Premises to satisfy the same, provided always that prior to the institution of any such legal proceedings the Grantor shall give not less than 20 days' notice to Mortgagee and, upon demand by the Mortgagee, as protection and indemnity against loss or damage resulting from such failure to pay such tax or assessment, deposit indemnity acceptable to the Mortgagee in an amount sufficient in Mortgagee's judgment to cover the unpaid or protested portion of any such tax or special assessment, together with any and all costs and penalties thereon which may accrue thereon.

2. The lien of this Mortgage shall extend to any and all improvements, fixtures, and other property now or hereafter on said Premises, as prior to any other lien thereon that may be claimed by any person excepting only the Permitted Exceptions set forth in Appendix B attached hereto, it being the intention hereof that after the filing of this instrument for record in the office of the Recorder of the County in which the Mortgaged Property is situated, subsequently accruing claims for lien shall be subordinated to this encumbrance, rather than that this encumbrance shall be subordinated to such subsequently accruing claims, and all contractors, subcontractors, and other parties dealing with the Mortgaged Property, or with any parties interested herein, are hereby required to take notice of the above provisions.

3. As additional security for the payment of the aforesaid indebtedness, the Mortgagor covenants and agrees to keep all buildings and fixtures, and all furniture, furnishings and personal property of any kind, that may be upon the said Premises at any time during the continuance of said indebtedness, insured against loss or damage by fire (with extended coverage endorsement) for the full insurable value of said buildings and fixtures and personal property; in addition thereto, to carry liability, steam boiler, and such other insurance in such amounts as, in the judgment of the Mortgagee, shall be adequate to protect the Mortgaged Property, all in responsible insurance companies to be approved by the Mortgagee; to make all sums recoverable upon such policies payable to the Mortgagee by the usual mortgagee loss payable clause to be attached to such policies; and such policies or certificates therefor shall be deposited with the Mortgagee. Any renewal policies or certificates therefor shall be deposited with the Mortgagee not less than ten (10) days before the expiration date of the prior policy being renewed or replaced. In case of failure of the Mortgagor to insure or renew insurance as above provided, then the Mortgagee may procure such insurance for a term not to exceed five (5) years, and all moneys paid therefor, with interest at the Default Rate provided in the Note, shall be so much

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additional indebtedness secured hereby, and may be included in any decree of foreclosure hereof; but it shall not be obligatory upon the Mortgagee to advance moneys or to pay for any such insurance.

4. The Mortgagee is hereby empowered to adjust, collect, and compromise all claims under such policies, and to execute and deliver, on behalf of the insured, all necessary proofs of loss, receipts, releases, and other papers; and all insurance money recovered shall be forthwith applied by the Mortgagee, at the sole election of the Mortgagee, to payment of the principal balance and accrued interest on the Note and any and all other obligations and liabilities secured hereby, or to the rebuilding or restoration of the buildings and fixtures damaged or destroyed; and, if the Mortgagee so elects to have such proceeds applied to rebuild and restore the buildings and fixtures so damaged or destroyed, it is expressly covenanted and agreed that the Mortgagor shall, within thirty (30) days of Mortgagee's request therefor, give security satisfactory to the Mortgagee for the complete rebuilding or restoration of said buildings and fixtures within a reasonable time, in accordance with plans and specifications to be approved by and deposited with said Mortgagee and for payment of a reasonable compensation to said Mortgagee, whereupon, subject to all of the foregoing, such insurance money shall be so applied, under architect's certificates, contractors' orders or other evidence satisfactory to the Mortgagee, as the work shall progress. And if the Mortgagor shall fail to give security as above provided, then such insurance money shall be forthwith applied by the Mortgagee as it may elect to the immediate reduction of the indebtedness secured hereby, or to the restoration of said buildings and fixtures under the supervision of the Mortgagee, and all moneys, in excess of the insurance money, paid by the Mortgagee for the purpose of such restoration, with interest thereon from the respective dates of payment thereof at the rate of Default Rate annually shall become so much additional indebtedness secured by this Mortgage and shall be included in any decree of foreclosure hereof. In case the Mortgaged Property or any part or interest in any thereof, is taken by condemnation, the Mortgagee is hereby empowered to collect and receive all compensation and awards of any kind whatsoever (referred to herein collectively as "Condemnation Awards") which may be paid for any property taken or for any damages to property not taken (all of which the Mortgagor hereby assigns to the Mortgagee). All Condemnation Awards so received shall forthwith be applied by the Mortgagee, as it may elect, in its discretion, to the prepayment of the Note and any other obligations hereby secured, or to the repair or restoration of any property so taken or damaged. The Mortgagor hereby empowers the Mortgagee, in the Mortgagee's discretion, to settle, compromise and adjust any and all claims or rights

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arising under any condemnation or eminent domain proceeding relating to the Mortgaged Property or any portion thereof.

5. It is further covenanted and agreed that, in case of (1) default in making payment of said Note, or any installment due in accordance with the terms thereof, either of principal or interest, and such default shall continue for a period of ten (10) days after written notice thereof to Borrower from Mortgagee, or (2) any breach by the Mortgagor of any of the covenants or agreements or representations or warranties herein not referred to in clauses (1) or (3) of this Paragraph 5 or of any other default under this Mortgage not referred to in clauses (1) or (3) of this Paragraph 5, which default is not cured within 30 days after notice thereof from the Mortgagee to the Borrower; provided if such default is reasonably susceptible of being cured but cannot by its nature be cured within 30 days and if Borrower commences to cure such default promptly after notice thereof, and thereafter diligently pursues the curing thereof, then Mortgagor shall not during such period of diligent curing be in default hereunder), or (3) the occurrence of one or more of the following:

(i) If, for any reason whatsoever, Borrower shall be in default (after expiration of any applicable grace period) under any of the terms and provisions of any of the various Loan Papers; or

(ii) If the Mortgaged Property, or any material part thereof, is materially damaged or destroyed by fire or other casualty and the loss is not adequately covered by insurance actually collected or in the process of collection, and if Borrower shall fail to deposit the deficiency with the Mortgagee within thirty (30) days of the Mortgagee's written request therefor; or

(iii) If Borrower fails to comply with each requirement, relating to the Mortgaged Property, of any governmental authority having jurisdiction within thirty (30) days after notice of such requirement shall have been given to Borrower; provided, if such default is susceptible of being cured but cannot by its nature be cured within thirty (30) days, and if Borrower commences to cure such default promptly after notice thereof and thereafter diligently pursues the curing thereof, then Borrower shall not during such period of diligent curing be in default hereunder; or

(iv) If proceedings are commenced by any public or quasi-public body to acquire the Premises or an interest therein or any material part thereof by eminent domain and if such taking would cause a substantial change in the nature of the Mortgaged Property; or

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(v) If the Borrower or Robert E. Gallagher ("Gallagher") makes an assignment for the benefit of creditors, or petitions or applies to any tribunal for the appointment of a trustee or receiver for itself or for any substantial part of its assets, or commences any proceedings ("Insolvency Proceedings") under any bankruptcy, arrangement, insolvency, readjustment of debt or similar law or statute of any jurisdiction, whether now or hereafter in effect; or if any order is entered appointing any such trustee or receiver, or adjudicating any of the aforementioned parties bankrupt or insolvent, or approving the petition in any such proceedings; or if any petition for Insolvency Proceedings or for the appointment of trustee or receiver is filed by any third party against any of the aforesaid parties and such petition shall not be dismissed within ninety (90) days of its filing; or

(vi) If the Mortgagee reasonably concludes at any time that there has been a material adverse change in the financial condition of the Borrower or in the financial condition of Gallagher from that set out in their financial statements most recently heretofore furnished to the Mortgagee; or

(vii) If an event of default shall occur under the terms of any loan agreement between the Mortgagee and Borrower, Gallagher, or any entity owned or controlled by Gallagher; or

(viii) If an event of default occurs under any mortgage or other document constituting a lien on the Mortgaged Property; or

(ix) If Borrower shall cause or permit Gallagher to cease to hold the largest interest in profit and losses and capital and cease to be the sole person or entity managing the business and affairs of the Borrower, whether the same occurs as a result of the death, disability, legal incompetency, resignation or withdrawal of Gallagher or for any other reason (including, without limitation, the participation by any other shareholder or anyone else in the management of the business and affairs of the Borrower); provided, however, a default under this Subparagraph (ix) only shall be deemed to be cured if (and only if) within 45 days of such default, the Borrower appoints a Managing Partner satisfactory to the Mortgagee or the Borrower appoints a managing officer who in all respects performs all of the duties of the Managing Partner (including, without limitation, all management and supervisory functions of the Borrower), which managing officer is in all respects satisfactory to the Mortgagee and is engaged pursuant to a binding agreement in all respects satisfactory to the Mortgagee; or

(x) If any representation or warranty made herein by Borrower or otherwise made in writing in connection with this



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loan shall prove to have been false in any material respect on the date as of which made or becomes false at any subsequent time, and such representation or warranty is not corrected or made good within thirty (30) days after written notice thereof shall have been given to Borrower; provided, if such default is reasonably susceptible of being cured but cannot by its nature be cured within thirty (30) days, and if Borrower commences to cure such default promptly after notice thereof and thereafter diligently pursues the curing thereof, then Borrower shall not during such period of diligent curing be in default hereunder, but no further loan disbursements need be made by Mortgagee until such time as the default is cured;

then the whole of the indebtedness hereby secured, including, without limitation, the principal sum of the Note and all accrued interest thereon, shall at once, at the option of the Mortgagee, become immediately due and payable, without notice to the Mortgagor, with like effect as if the same had then matured by express terms.

6. Upon any such breach the Mortgagor hereby waives all right to the possession, income, and rents of the Premises, and thereupon it shall be lawful for the Mortgagee, and the Mortgagee is hereby expressly authorized and empowered, to enter into and upon and take possession of the Premises hereby conveyed, to lease the same, collect and receive all the rents, issues, and profits thereof, and apply the same, less the necessary expenses of collection thereof, for the care, operation, and preservation of said Premises, including the payment of fees, insurance premiums, costs of operation of said Premises, taxes, assessments, interest, penalties and water charges, or at the election of the Mortgagee, in its sole discretion, to apply all or any part thereof to a reduction of said indebtedness; and it is further expressly covenanted and agreed that, upon any such breach, the Mortgagee shall have the right to immediately foreclose this Mortgage, and upon the filing of any bill for that purpose, the court in which such bill is filed may at once, or any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor, or to any party claiming under said Mortgagor, and without regard to the solvency or insolvency at the time of such application for a receiver of the person or persons then liable for the payment of the indebtedness secured hereby, and without regard to the then value of said Premises or whether the same shall then be occupied, in whole or in part, as a homestead by the owner of the equity of redemption, and without requiring any bond from the complainant in such proceeding, appoint a receiver for the benefit of the Mortgagee, with power to take possession, charge, and control of said Premises, to lease the same, to keep the buildings thereon in good repair, and to collect all the rents, issues, and profits of said Premises

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during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during the full statutory period of redemption; and the court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his attorney to be allowed by the court, in payment (in whole or in part) of any or all of the following items: (1) amounts due upon the obligations secured hereby, (2) amounts due upon any decree entered in any suit foreclosing this Mortgage, (3) insurance premiums or repairs, as aforesaid, upon the improvements upon said Premises, or (4) taxes, special assessments, water charges, and interest, penalties and costs, in connection therewith, or any other lien or charge upon said Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same.

7. It is further expressly covenanted and agreed by the Mortgagor, that, in case of foreclosure of this Mortgage in any court of law or equity, or the commencement of foreclosure proceedings or preparation therefor, all expenses of every kind paid or incurred by the Mortgagee in or about the enforcement, protection, or collection of this security, including, without limitation, reasonable costs, attorney's fees, and stenographer's fees of the complainant in such proceeding or preparation therefor, and also all outlays for documentary evidence and the cost of title insurance or of a complete abstract of title to said Premises, and for an examination or opinion of title for the purpose of such foreclosure, shall be paid by the Mortgagor, and that all similar fees, costs, charges and expenses paid or incurred by the Mortgagee in any other suit or legal proceeding in which it shall be or be made a party by reason of this mortgage, shall also be paid by the Mortgagor, and that all such fees, costs, charges and expenses, shall constitute so much additional indebtedness secured by this Mortgage and shall be allowed in any decree of foreclosure hereof. No proceeding to foreclose this Mortgage, whether a decree of foreclosure shall have been entered therein or not, shall be dismissed, nor shall a release of this Mortgage be given until all such expenses, charges, and costs of suit, including Mortgagee's, attorney's, and stenographer's fees, shall have been paid.

8. There shall be included in any decree foreclosing this Mortgage and be paid out of the rents, or out of the proceeds of any sale made in pursuance of any such decree: (1) all the costs of such suit or suits, advertising, sale and conveyance, including attorney's, stenographer's and Mortgagee's costs, outlays for documentary evidence and cost of said title insurance or abstract and examination or opinion of title; (2) all of the moneys advanced by the Mortgagee for any purpose authorized in this Mortgage, with interest on such advances at the rate of

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Default Rate annually; (3) all the accrued interest remaining unpaid on the indebtedness hereby secured; and (4) all of said principal money remaining unpaid. The overplus of the proceeds of sale, if any, shall then be paid to the Grantor, on reasonable request.

9. Notwithstanding any subsequent extension of the time of payment of the principal note hereby secured, or any installment thereof, the liability of the Maker thereof shall in no event cease until the payment in full with interest of all indebtedness hereby secured.

10. It is expressly agreed by the parties hereto that in case the State of Illinois shall hereafter enact any law imposing a specific tax on notes, bonds, or other evidences of indebtedness secured by mortgages of real estate, or in case the laws of Illinois now in force relating to taxes on mortgages, or notes, bonds, or other evidences of indebtedness secured by mortgages shall be in any way changed, as a result of which the Mortgagee, or holder of such notes, bonds, or other evidences of indebtedness may become chargeable with the payment of such tax, then and in any such event the Grantor will pay to the Mortgagee, within twenty (20) days after written notice thereof, the amount of any such tax on the Notes hereby secured, and in default of such payment, the whole of the indebtedness hereby secured shall, at the option of the Mortgagee, become immediately due and payable without notice, provided, however, that the Mortgagor shall not be required to pay any such tax in excess of an amount which, when added to the interest and other charges to be paid by the Mortgagor, would exceed the maximum lawful interest rate allowed in the State of Illinois.

11. It is further covenanted and agreed that the various rights, powers, options, elections, appointments and remedies contained in this Mortgage shall be construed as cumulative, and no one of them as exclusive of the others, or of any rights or remedies allowed by law, and that all the conditions, covenants, provisions, and obligations herein contained, and all rights hereunder shall run with the land hereby conveyed and shall extend to and be binding upon, and inure for the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties hereto, provided always that neither said Mortgagee, nor any of its agents or attorneys, shall incur any personal liability for acts or omissions hereunder, except in case of its, his, or their own gross negligence or misconduct. No delay or omission to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

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12. The Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

13. Grantor and Borrower, and each of them, hereby waives any and all rights to retain possession of the Mortgaged Property after default hereunder, which default is not cured within the period of time (if any) allowed under any of the Loan Papers, and also waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any sale pursuant to any statute, order, decree or judgment of any court, on its own behalf, on behalf of the trust estate and all persons beneficially interested therein, and on behalf of each and every person (except decree and judgment creditors of such Grantor) acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. Grantor represents that it has been and is authorized and empowered by the trust instruments and by all necessary persons having the power of direction over it as such trustee to execute this Mortgage and the foregoing waivers and releases.

14. The Note secured by this Mortgage evidences a debt created by one or more disbursements made by Mortgagee to Maker and Borrower for the financing of the acquisition of the real estate described herein.

All rights and remedies of Mortgagee set forth in this Mortgage are in addition to all other rights and remedies possessed by it, including, without limitation, those under any of the Loan Papers, or under any other instrument or agreement evidencing or securing any indebtedness evidenced by the Note. All of such rights and remedies may be enforced successively or concurrently as Mortgagee may elect.

15. Grantor and Borrower represent and agree that the proceeds of the Note secured by this Mortgage will be used for business purposes as specified in Section 6404, Chapter 17 of the Illinois Revised Statutes.

16. Prior to the disbursement of the Loan proceeds, Borrower shall pay to Bank a loan fee of \$9,480.00 which shall be fully earned when paid and shall be non-refundable in any event.

17. The legal description of the Premises is attached to this Mortgage as Appendix A, which Appendix A is incorporated by reference herein for all purposes.

18. The term "Default Rate" as used herein shall be deemed to mean interest at a rate equal to one and one-half percent (1 1/2 %) in excess of Mortgagee's reference rate in effect from



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time to time and changing simultaneously with each change in such reference rate.

19. By execution of this Mortgage, Borrower expressly covenants and agrees that all covenants, undertakings, agreements and waivers of Grantor in this Mortgage shall also be deemed to be covenants, undertakings, agreements and waivers of Borrower.

20. Subject to and except for consequences due to acts of God, strikes, governmental controls and other factors beyond the reasonable control of Grantor and Borrower, Grantor and Borrower further covenant and agree: to keep and maintain the Mortgaged Property in good order, condition, and repair; not to commit or suffer any waste to the Mortgaged Property or any portion thereof; not to cause or permit any of the buildings, structures, or improvements now or hereafter erected or located on the Mortgaged Property to be removed, demolished or substantially or structurally altered in any respect without the prior written consent of Mortgagee; to promptly comply or cause compliance with all present and future laws, ordinances, rules, regulations and other requirements of all governmental authorities with respect to the Mortgaged Property or any part thereof or the use or occupancy of any thereof.

21. Except for the Loan Papers, neither Grantor nor Borrower will, without the prior written consent of Mortgagee, further mortgage, grant a deed of trust, pledge or otherwise further encumber, or suffer or permit to exist any further mortgage, lien or encumbrance upon, whether by operation of law, or otherwise, any or all of the Mortgaged Property or the interest of either of them therein; any such mortgage, deed of trust, pledge or other encumbrance made without Mortgagee's prior written consent shall be null and void and of no force and effect and the making thereof shall at the option of Mortgagee constitute a default under this Mortgage.

22. Notwithstanding anything to the contrary contained in this Mortgage, nothing in this Mortgage shall prevent Grantor or Borrower, after first indemnifying Mortgagee to Mortgagee's satisfaction, from contesting any tax, lien or other encumbrance upon the Premises; and it shall not be deemed a default under any other covenant hereunder if it has so indemnified Mortgagee and is diligently contesting such tax, assessment, lien or other encumbrances upon the Premises; and Mortgagee shall not pay any such tax, assessment, lien or encumbrance if it has been so indemnified, and such payment would prejudice any such legal proceedings and such proceedings stay the enforcement or collection of such tax, assessment, lien or encumbrance.

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23. A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof or of the note or any other documents given by Grantor or Borrower to secure the indebtedness secured hereby, or any part thereof, shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage and of such other documents shall survive and continue to remain in full force and effect.

24. No change, amendment, modification, cancellation or discharge hereof, or any part thereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

25. Grantor and Borrower will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, and assurances as Mortgagee shall reasonably require for accomplishing the purposes of this Mortgage. Without limitation of the foregoing, Grantor and Borrower will assign to Mortgagee, upon request, as further security for the indebtedness secured hereby, their respective interests in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments satisfactory to Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon Mortgagee any obligations with respect thereto.

26. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

27. This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Illinois.

28. Any provision of this Mortgage which is unenforceable or invalid or contrary to law, or the inclusion of which would adversely affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case, all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage the

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same as though any such invalid portion had never been included herein.

29. Grantor and Borrower acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with either of them or with any of the partners of the Borrower. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the indebtedness secured hereby, or otherwise.

30. This Mortgage, to the extent that it conveys, grants a security interest in, or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the State of Illinois.

31. Borrower represents and Mortgagor covenants as follows:

(A) The proposed or existing use of the Mortgaged Property does not presently violate any applicable condition, covenant, restriction, easement, reservation, right or right-of-way, or any law, ordinance, administrative rule, regulation or underlying requirement of any government or any governmental agency or other government entity affecting said property.

(B) Borrower is an Illinois general partnership duly existing and in good standing under the laws of the State of Illinois. Robert E. Gallagher ("Gallagher") is the managing general partner of Borrower. No person or entity has any mortgage, lien or other encumbrance on any of such ownership interests, and no person or other entity has any option or contract right or other right to acquire any ownership interest in the Borrower. No other partner shall acquire a partnership interest in the Borrower larger than the partnership interest of Gallagher until the Loan is paid in full. Gallagher, as such managing general partner, shall have complete responsibility for the management and administration of the Borrower at all times until the Loan is paid in full, and no other partner in the Borrower or anyone else will participate in the management or administration of the business and affairs of the Borrower without the consent of the Mortgagee. Borrower and Grantor have full power and authority to enter into this Mortgage and perform their obligations hereunder. This Mortgage and the Loan Papers have been duly authorized by Borrower and Grantor. This Mortgage constitutes, and the Loan Papers upon execution will constitute, the legal, valid and binding obligations of Borrower and Grantor.

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(C) To the best of Borrower's knowledge based on due inquiry: (i) the Premises (including underlying groundwater, and the use and operation thereof, have been and are currently in compliance with all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified below, all as amended and modified from time-to-time (collectively, "Environmental Laws"); (ii) all Hazardous Material generated or handled on the Premises has been disposed of in a lawful manner; (iii) no generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred or is occurring on or from the Premises, except as has been disclosed in writing to and approved by the Bank ("Permitted Material"); (iv) no environmental or public health or safety hazards currently exist with respect to the Premises or the business or operations conducted thereon; (v) no underground storage tanks (including petroleum storage tanks) are present on or under the Premises except as has been disclosed in writing to and approved by the Bank ("Permitted Tanks"); (vi) there have been no past, and there are no pending or threatened actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Premises, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws or liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Premises, or the priority of the Mortgage lien or of any of the other Loan Papers. For purposes of this Mortgage, "Hazardous Material" means: (i) "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Illinois Environmental Protection Act ("Illinois Environmental Act"), Ill. Rev. Stat. ch 111-1/2, § 1001 et seq.; (ii) "hazardous wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6902 et seq.; (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (iv) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. § 2011 et seq., as amended or hereafter amended; and (vi) asbestos in any form or condition.



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(D) The Premises and the use and operation thereof, shall comply with all Environmental Laws and all Hazardous Material shall be handled in compliance with all applicable Environmental Laws. Other than Permitted Material, no Hazardous Material shall be introduced to or handled on the Premises without thirty (30) days' prior written notice to the Mortgagee and the Mortgagee's prior written approval therefor. Borrower shall immediately notify the Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Premises or compliance with Environmental Laws. Borrower shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of the Mortgagee and shall keep the Premises free of any lien imposed pursuant to any Environmental Laws. Borrower agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to the Mortgagee and at Borrower's sole cost) and hold the Mortgagee and its Affiliates free and harmless from and against the Mortgagee's Environmental Liability. The foregoing indemnification, defense and hold harmless obligations shall survive repayment of the Note or any transfer of the Premises by foreclosure or by a deed in lieu of foreclosure for any Mortgagee's Environmental Liability. Borrower, its successors and assigns, hereby waive, release and agree not to make any claim or bring any cost recovery action against the Mortgagee under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that the Mortgagee is strictly liable under any Environmental Laws, Borrower's obligation to the Mortgagee under this indemnity shall likewise be without regard to fault on the part of Borrower with respect to the violation or condition which results in liability to the Mortgagee. The term "Mortgagee's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against the Mortgagee or any of the Mortgagee's parent and subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively "Affiliates") in connection with or arising from: any Hazardous Material on, in, under or affecting all or any portion of the Premises, the groundwater, or any surrounding areas; any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this subsection or in subsection 31(C); any violation or claim of violation by Borrower of any

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Environmental Laws; or the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material.

(E) Environmental Audit. Prior to the first disbursement of the Loan, Borrower shall provide such information and certifications which the Mortgagee may reasonably request from time to time to insure Borrower's compliance with subsections 31(C) and 31(D). To investigate Borrower's compliance with Environmental Laws and with subsections 31(C) and 31(D), the Mortgagee shall have the right, but no obligation, at any time to enter upon the Premises, take samples, review Borrower's books and records, interview Borrower's employees and officers, and conduct similar activities. Borrower shall cooperate in the conduct of such an audit. The Mortgagee is entitled to rely upon Borrower's representations and warranties contained in subsection 31(C) despite any independent investigations by the Mortgagee or its consultants. The Borrower shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Premises and shall have no right to rely upon any environmental investigations or findings made by the Mortgagee or its consultants.

32. The Premises subject to the lien of this Mortgage consist of Lots 129, 130 and 31 in that certain real estate, described in Appendix A attached hereto, in a certain Planned Unit Development known as Brittany Glen in Cook County, Illinois. The right is hereby given by Grantor and Borrower and reserved by Mortgagee to make partial release or releases of the Mortgaged Property and of other security hereunder, according to the terms and conditions herein set forth, without notice to, or the consent, approval or agreement of, any other party in interest (including but not limited to senior or junior lienors, and guarantors). Provided that the Mortgagee theretofore has not declared an event of default or default under the terms of this Mortgage or under the terms of the Note, or any of the Loan Papers, the Mortgagee shall release the Mortgage on any Lot provided the Mortgagee receives \$363,400.00 from Borrower for each such Lot. Upon receipt by the Mortgagee of the full release payment in currently available funds for such Lot, and provided no default or event of default has occurred hereunder or under any of the Loan Papers, the Mortgagee shall execute a letter in substantially the form attached hereto as Appendix C and deliver the same to the Trust. Any such partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of the Mortgaged Property or other security remaining, nor release the personal liability of any person, persons or entity obligated to pay any indebtedness secured hereby for the full amount of the indebtedness remaining unpaid.

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33. This Mortgage may be signed in two or more counterparts, and each of such fully executed counterparts shall be deemed an original of this Mortgage.

34. This Mortgage is executed by STANDARD BANK AND TRUST COMPANY, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed by the Mortgagee herein and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the Note shall be construed as creating any liability on STANDARD BANK AND TRUST COMPANY personally to pay said Note or any interest that may accrue thereon, on any indebtedness accruing hereunder or to perform any covenants either express or implied herein contained, all such liability, if any, being expressly waived, and that any recovery on this Mortgage against STANDARD BANK AND TRUST COMPANY and the Note shall be solely against and out of the Premises and the Mortgaged Property hereby conveyed by enforcement of the provisions hereof and of said Note, but this waiver shall in no way affect the personal liability and obligations on the Note, this Mortgage and all of the Loan Papers of the Borrower and of any co-signor, endorser or guarantor of the Note (including, without limitation, Robert E. Gallagher and Orchard Hill Building Company).

WITNESS the hand and seal of each of said Grantor and Borrower as of the date first above written.

STANDARD BANK AND TRUST COMPANY, as  
Trustee aforesaid

ATTEST:

*Louis M. Roberts*  
Its Assistant Secretary

By *James O. [unclear]*  
Its Assistant Vice President

ORCHARD HILL BUILDING COMPANY,  
an Illinois general partnership

Witness:

*Terry Woolums*  
Print Name: TERRY WOOLUMS

By *Robert E. Gallagher*  
Robert E. Gallagher,  
General Partner

*Marilyn Hager*  
Print Name: MARILYN HAGER

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James D. McKenzie Assistant Vice President of STANDARD BANK AND TRUST COMPANY, and Linda M. Sobiski, Assistant Secretary of said Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said Company, did affix the corporate seal of said company to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 2nd day of February, 1989.

Bud Cross  
Notary Public



NOTARIAL SEAL  
ILLINOIS  
FEB 2 1989

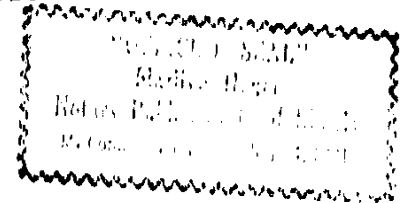


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STATE OF Illinois )  
COUNTY OF Cook ) SS

I, Maryloue Hagen, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert E. Gallagher, personally known to me to be the General Partner of ORCHARD HILL BUILDING COMPANY, an Illinois general partnership, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such General Partner he signed and delivered the said instrument as General Partner as his free and voluntary act, and as the free and voluntary act and deed of said general partnership, for the uses and purposes therein set forth. Given under my hand and Notarial Seal this 8th day of February, 1989.

Maryloue Hagen  
Notary Public



This instrument prepared by:

Dean A. Isaacs  
Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60693

*Mayer*

CLERK OF COOK COUNTY CLERK'S OFFICE

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## Appendix A

### Legal Description

LOTS 129, 130 AND 131 IN GALLAGHER AND HENRY'S BRITTANY GLEN UNIT 1 FINAL PLANNED UNIT DEVELOPMENT, A PART OF THE OF THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 23-32-400-001-0000

#### Common Address:

Lot 129:	13130	Georgetown Drive
Lot 130:	13120	Georgetown Drive
Lot 131:	13110	Georgetown Drive

All in unincorporated Palos Township, Cook County, Illinois

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## Appendix B

### Permitted Exceptions

1. Real Estate taxes for 1988 and subsequent years not yet due and payable.
2. No other exceptions.

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Brittany Glen Model Loans

## APPENDIX C

### LOT RELEASE LETTER

Standard Bank & Trust Company  
2400 West 95th Street  
Evergreen Park, Illinois 60642  
Attention: Mr. Dennis Radek

Re: Standard Bank and Trust Company as Trustee under Trust  
Agreement dated April 8, 1987 and known as Trust  
Number 11044

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Dear Mr. Radek:

Continental Illinois National Bank (hereinafter "CINB"), is collateral assignee of the subject Trust under terms of a loan to the Trust secured by, among other things, a mortgage on lots 129, 130 and 131 in Gallagher and Henry's Brittany Glen Development, Unit 1, Cook County, Illinois. Our loan documents with the Trust and with its sole beneficiary, Orchard Hill Building Company, provide that upon certain terms and conditions, including the payment of a stipulated amount for each lot, CINB will release its mortgage and all other security interests in that lot.

Please be advised that Orchard Hill Building Company has delivered today its release payment to CINB for Lot(s) \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ in Gallagher and Henry's Brittany Glen Development, Unit 1. As required by the collateral documents and as a result of CINB's receipt of such release payment, you are hereby authorized to deliver your Trustee's Deed for Lot(s) \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ in Unit 1, as and when directed by the beneficiary and without further consent or authorization from us. This authorization is irrevocable.

Very truly yours,

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Real Estate Department