

Mortgage (Commercial)

OLDKent BANK

DEPT-01 RECORDING \$27.00
T#0012 TRAN 5693 08/08/95 10:22:00
#8821 0 JM --95-521640
COOK COUNTY RECORDER
DEPT-10 PENALTY \$24.00

95521640

THIS MORTGAGE is made on the 28TH day of JUNE 19 95 between

ANTON F. ENGELMANN AND LAUREL A. ENGELMANN, HIS WIFE, AS JOINT TENANTS AS TO LOTS 2, 4 AND 5 AND LORENZ ENGELMANN AND ROSINA ENGELMANN, HIS WIFE AS JOINT TENANTS AS TO LOT 1

as Mortgagor, and OLDKent BANK, an Illinois banking corporation of 105 South York Street, Elmhurst, Illinois, as mortgagee ("Bank").

FOR VALUE RECEIVED, Mortgagor mortgages and warrants to Bank lands located in the CITY ELGIN County of COOK State of Illinois, described as follows:

PROPOSED LOTS 1, 2, 4 AND 5 IN ENGELMANN'S RESUBDIVISION, BEING A PROPOSED RESUBDIVISION OF ENGELMANN'S FLOWERWOOD ADDITION AND LOT 10 AND PART OF LOT 11 OF COUNTY CLERK'S SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF CHICAGO STREET WITH THE EAST LINE OF THE ETTNER TRACT; THENCE SOUTH 67 DEGREES 14 MINUTES EAST ALONG THE NORTH LINE 282.80 FEET TO THE POINT OF BEGINNING; THENCE NORTH 21 DEGREES 26 MINUTES EAST, 134.20 FEET; THENCE NORTH 10 DEGREES 48 MINUTES EAST, 429.4 FEET TO A POINT IN THE NORTH LINE OF SAID LOT 11; THENCE SOUTH 79 DEGREES 52 MINUTES WEST ALONG SAID NORTH AND ALONG THE NORTH LINE OF ENGELMANN'S FLOWERWOOD ADDITION, 461.95 FEET TO THE NORTHEAST CORNER OF SAID ENGELMANN'S FLOWERWOOD ADDITION; THENCE SOUTH 6 DEGREES 19 MINUTES 57 SECONDS ALONG THE EAST LINE OF SAID ENGELMANN'S FLOWERWOOD ADDITION, 684.19 FEET TO THE NORTHERLY LINE OF CHICAGO STREET; THENCE NORTH 67 DEGREES 14 MINUTES WEST ALONG SAID NORTHERLY LINES, 553.6 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

P.I.N. #06-18-300-019-0000, 06-18-300-021-0000, 06-18-300-065-0000, 06-18-300-066-0000, 06-18-300-011-0000

COMMON ADDRESS: 936-950 E. CHICAGO STREET ELGIN, IL 60120

Handwritten notes: T. 2700, P. 24.00, 57.00

95521640

together with all buildings, structures and other improvements now and hereafter located thereon and all easements, benefactions, and appurtenances now or hereafter belonging thereto and the rents, income, and profits therefrom and all fixtures now or hereafter attached to or used in connection therewith, and all machinery, engine, boilers, elevators, and plumbing, heating, air conditioning, and ventilating equipment now or hereafter located thereon, which shall be deemed to be fixtures and a part of the realty, all of the foregoing being collectively referred to herein as the "premises".

THIS MORTGAGE IS MADE AND GIVEN TO SECURE PAYMENT AND PERFORMANCE OF ALL INDEBTEDNESS AND OBLIGATIONS NOW AND HEREAFTER OWING BY MORTGAGOR TO BANK, including all obligations of Mortgagor under this Mortgage and all indebtedness and obligations now and hereafter owing to Bank that are evidenced by any instruments, documents and agreements that have been executed by another person or persons, including any and all extensions, amendments and modifications thereof. The indebtedness and obligations secured by this Mortgage are collectively referred to in this Mortgage as the "indebtedness." If Mortgagor is more than one person, the indebtedness includes all indebtedness and obligations now and hereafter owing to Bank by any one or more of such persons, regardless of whether the remaining person or persons are not liable for such indebtedness and obligations or whether one or more persons other than Mortgagor are also liable for such indebtedness and obligations. The indebtedness and obligations now owing by Mortgagor to Bank include, BUT ARE NOT NECESSARILY LIMITED TO, the indebtedness and obligations evidenced by any instruments, documents and agreements listed below:

Table with columns: Instrument/Document or Agreement, R.E. Date, Principal Amount, Interest Rate, Payment Schedule, R.E. Schedule, Maturity, Maker (if other etc.). Row 1: PROMISSORY NOTE, 06-28-95, \$750,000.00, INDEX RATE + 1.00% (FLOATING), DUE MONTHLY COMMENCING 08-01-95, 04-01-96, TOM AND COUNTRY GARDENS, INC.

This Mortgage secures all present and future indebtedness and obligations owing to Bank by Mortgagor, regardless of whether any such indebtedness or obligation is (a) not listed above, (b) not presently intended or contemplated by Bank or Mortgagor, (c) indirect, contingent or secondary, (d) unrelated to the premises or to any financing of the premises by Bank, (e) of a kind or class that is different from any indebtedness or obligation now owing to Bank by Mortgagor, or (f) evidenced by a note or other document that does not refer to this Mortgage.

Mortgagor further warrants, represents, and agrees as follows:

1. Payment of Indebtedness. Mortgagor agrees to pay or perform all of the indebtedness, including all interest thereon, in accordance with the terms of the instruments, documents, or agreements evidencing the same ("Instruments").

2. Warranties. Mortgagor warrants and represents to Bank that all financial statements and other information concerning Mortgagor, the premises, and any guarantor of the indebtedness, heretofore or hereafter furnished to Bank, are and shall be true and correct in all material respects; that the execution, delivery, and performance of this Mortgage by Mortgagor will not violate any law, rule, judgment, order, agreement or instrument binding upon Mortgagor not require the approval of any public authority or any third party; and that this Mortgage constitutes the valid and binding obligation of Mortgagor, enforceable in accordance with its terms. If Mortgagor is a corporation, partnership, association, trust or other entity, Mortgagor further represents and warrants to Bank that Mortgagor is duly organized and validly existing in good standing in the State of Illinois or other state of incorporation, Registration, Formation or Location; that Mortgagor has full power and authority to carry on its business as presently conducted and to enter into and perform its obligations under this Mortgage; that the execution, delivery, and performance hereof by Mortgagor have been duly authorized by all necessary action of its board of directors, trustees or other governing body and will not violate Mortgagor's articles or certificate of incorporation, bylaws, partnership agreement, articles of association, trust agreement or other governing instrument, nor require the approval of its shareholders or members.

3. Assignment of Interest as Lessee or Purchaser. Mortgagor hereby assigns and mortgages to Bank, as additional security for the indebtedness, all of Mortgagor's right, title, and interest in and to any and all leases, land contracts, or other agreements by which Mortgagor

(f) If Mortgagor, without the written consent of Bank, shall sell, convey, or transfer the premises or any interest therein or any rents or profits therefrom or if any mortgage, lien, or other encumbrance, or any writ of attachment, garnishment, execution, or other legal process shall be issued against or placed upon the premises or any interest therein or any rents or profits therefrom, except in favor of Bank, or if any part of the premises or any interest therein shall be transferred by operation of law, or if the mortgagor is a land trustee, the beneficial interest, or any portion thereof, in the land trust, is assigned for any purpose or if any lien or encumbrance, or any writ of attachment, garnishment, execution or other legal process shall be issued or placed against said beneficial interest or any portion thereof.

(g) If all or any material part of the premises shall be damaged or destroyed by fire or other casualty, regardless of insurance coverage therefor, or shall be taken by condemnation or power of eminent domain.

(h) If any law or government regulation shall hereafter impose any tax or assessment upon mortgages or debts secured by mortgages.

(i) If any guaranty that now or hereafter secures payment or performance of all or any part of the Indebtedness shall be terminated or limited, for any reason, without the written consent or agreement of Bank.

(j) If at any time Bank in good faith believes that the prospect of payment or performance of any part or all of the Indebtedness is impaired.

(k) If any lease, land contract, or other agreement by which Mortgagor is leasing or purchasing any interest in the premises shall be declared by the lessor or seller thereunder to be forfeited or terminated or if any suit or other action shall be commenced to foreclose any such land contract or to recover possession of all or any part of the premises by reason of any default or alleged default under any such lease, land contract, or agreement.

If a voluntary or involuntary case in bankruptcy or receivership shall be commenced by or against Mortgagor or any of Mortgagor's partners (if Mortgagor is a partnership) or any Guarantor, then the entire Indebtedness shall automatically become immediately due and payable, without notice or demand. All or any part of the Indebtedness also may become, or may be declared to be, immediately due and payable under the terms and conditions contained in any Security Document, Instrument or other agreement heretofore or hereafter entered into between Bank and Mortgagor.

13. Remedies. Bank shall have all rights and remedies provided for in this Mortgage or otherwise permitted by law. In addition, if the Indebtedness shall not be paid upon maturity, Bank shall have the right, and is hereby authorized:

(a) To the extent permitted by law, to collect and receive all rents, profits, and other amounts that are due or shall hereafter become due under the terms of any leases, land contracts, or other agreements, now or hereafter in effect, by which the premises or any interest therein are then being sold or leased, and to exercise any other right or remedy of Mortgagor under any such lease, land contract, or other agreement, provided, that Bank shall have no obligation to make any demand or inquiry as to the nature or sufficiency of any payment received by, to present or file any claim or take any other action to collect or enforce the payment of any amounts to which Bank may become entitled hereunder, nor shall Bank be liable for any of Mortgagor's obligations under any such lease, land contract, or other agreement.

(b) To obtain or update abstracts of title, title searches, title insurance, commitments for title insurance and surveys with respect to the premises, and Mortgagor shall reimburse Bank for all costs thereof, together with interest at the Default Rate.

(c) To conduct or obtain an environmental investigation or audit of the premises, and Mortgagor shall reimburse Bank for all costs thereof, together with interest at the Default Rate.

(d) To foreclose this Mortgage by action pursuant to applicable law.

(e) To sell, release, and convey the premises at public sale, and to execute and deliver to the purchasers at such sale good and sufficient deeds of conveyance, rendering any surplus funds, after payment of the Indebtedness in full and the expenses of such sale, including attorney fees as provided by law, to Mortgagor, all in accordance with Illinois Mortgage Foreclosure Law, Chapter 110, Illinois Revised Statutes, Section 15-1101, et. seq., as the same may be amended from time to time, and any similar statutory provisions which may hereafter be enacted in addition thereto or in substitution therefor. In the event of public sale, the premises, at the option of Bank, may be sold in one parcel.

(f) To exercise any and all rights and options of Mortgagor under any lease, land contract, or other agreement by which Mortgagor is then leasing or purchasing any part or all of the premises, including any option to purchase the premises or to renew or extend the term of any such lease, land contract, or other agreement. ~~But Bank shall have no obligation to exercise any such right or option.~~

All rights and remedies of Bank under this Mortgage, whether or not exercisable only on default, shall be cumulative and may be exercised from time to time, and no delay by Bank in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise of any right or remedy shall preclude either or further exercise thereof or the exercise of any other right or remedy, except to the extent otherwise provided by law. In this Mortgage, "maturity" means such time as the Indebtedness shall be or shall become due and payable, whether by the terms of the Instruments or pursuant to paragraph 12 hereof or otherwise.

14. Security Interest in Fixtures. Mortgagor grants to Bank a security interest in all fixtures now or hereafter located on the premises. If the Indebtedness is not paid at maturity, Bank, at its option, may enforce this security interest in fixtures under the Illinois Uniform Commercial Code or other applicable law or may include the fixtures in any foreclosure of this Mortgage under paragraph 13 hereof. Any requirement of reasonable notice with respect to any sale or other disposition of fixtures shall be met if Bank sends the notice at least five (5) days prior to the date of sale or other disposition.

15. Indemnification. Mortgagor shall indemnify and hold the Bank harmless with respect to any and all claims, demands, causes of action, liabilities, damages, losses, judgments and expenses (including attorney fees) that shall be asserted against or incurred by Bank by reason of (a) any representation or warranty by Mortgagor in this Mortgage being accurate in any respect, (b) any failure of Mortgagor to perform any of Mortgagor's obligations under this Mortgage, or (c) any past, present, or future condition or use of the premises (whether known or unknown), other than an excluded condition or use, including, but not limited to, liabilities arising under any "environmental law," as defined in paragraph 11 of this Mortgage. An "excluded condition or use" is one that (i) does not exist or occur, to any extent, at any time before Mortgagor has permanently given up possession and control of the premises, by reason of a foreclosure of this Mortgage or a conveyance of the premises in lieu of foreclosure and (ii) was not caused or permitted to exist, in whole or part, by any act or omission of Mortgagor. Indemnification by Mortgagor under this paragraph shall not limit any other right or remedy (including Bank's right to accelerate payment of the Indebtedness) that is available to Bank by reason of the circumstance in respect of which indemnity is made. Mortgagor's obligations under this paragraph shall survive foreclosure of this Mortgage and any conveyance of the premises in lieu of foreclosure.

16. Waivers.

(a) Mortgagor and any other person hereafter obtaining any mortgage or lien upon, or any other interest in, the premises waives, with respect to any foreclosure of this Mortgage, (i) any right to marshaling of the premises and any right to require a minimum bid or "upset" price, and (ii) the benefit of any stay, extension, exemption or moratorium law, now existing or hereafter enacted.

(b) Bank may at any time release all or any part of the premises from the lien of this Mortgage or release the personal liability of any person for the Indebtedness, with or without consideration and without giving notice to, or obtaining the consent of, the holder of any mortgage or lien upon, or other interest in, the premises. Any such release shall not impair or affect the validity or priority of this Mortgage, regardless of the effect of such release upon any such mortgage, lien or other interest or the holder thereof. Nothing in this subparagraph constitutes consent by Bank to the placing of a mortgage, lien or other encumbrance on the premises.

(c) Mortgagor (i) waives notice of any advances or other extensions of credit included in the Indebtedness, (ii) waives any right to require Bank to sue upon or otherwise enforce payment of the Indebtedness or to enforce any security therefor before exercising its rights and remedies under this Mortgage, and (iii) agrees that the validity and enforceability of this Mortgage shall not be impaired or affected by any failure of Bank to obtain or perfect, or secure priority of, any other security at any time given, or agreed to be given, by any person for the Indebtedness.

(d) Bank is authorized from time to time and without notice to or consent of Mortgagor and with or without consideration, to give and make such extensions, renewals, modifications, waivers, settlements, and compromises, on such terms and conditions as Bank may see fit, with regard to any of the Indebtedness as to which Mortgagor is not the obligor or with regard to any security for the Indebtedness that is not owned by Mortgagor. Any such action shall not impair or affect the validity or enforceability of this Mortgage.

(e) Mortgagor hereby irrevocably releases, waives any and all applicable homestead right or exemption.

17. Expenses. Mortgagor shall pay to Bank on demand any and all expenses, including attorneys' fees, paralegal fees, and legal expenses, filing fees, title insurance, real estate taxes, photocopies, recording fees, publication costs, witness fees and the like, paid or incurred by Bank in collecting or attempting to collect the Indebtedness or in protecting and enforcing the rights of and obligations to Bank under any provision of this Mortgage, including, without limitation, taking any action in any bankruptcy, insolvency, or reorganization proceedings concerning Mortgagor or foreclosing this Mortgage by advertisement or by action. All such expenses shall be part of the Indebtedness and shall bear interest, from the date paid or incurred by Bank, at the Default Rate.

18. Application of Proceeds. In the event of the payment to Bank, pursuant to the provisions hereof, of any rents or profits or any proceeds of insurance or proceeds of any condemnation or eminent domain award or proceeds from any sale of the premises at foreclosure, Bank shall have the right to apply such rents or profits or proceeds, in such amounts and proportions as Bank shall in its sole discretion determine, to the full or partial satisfaction of any or all of the Indebtedness and obligations of Mortgagor secured hereby, including any contingent or secondary obligations, whether or not the same shall then be due and payable by the primary obligor. Mortgagor shall be obligated to the Bank for any deficiency, if the rents, profits, proceeds of insurance, condemnation or sale, are insufficient to satisfy the Indebtedness in full.

19. Other. All notices to Mortgagor and to Bank shall be deemed to be duly given if and when mailed, with postage prepaid, to the respective addresses of Mortgagor and Bank appearing on the front page hereof, or if and when delivered personally. The provisions of this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Bank and their respective successors, assigns, heirs and personal representatives. Any provision of this Mortgage prohibited or unenforceable by any applicable law shall be ineffective only to the extent and for the duration of such prohibition or unenforceability without invalidating the remaining provisions hereof. If Mortgagor is more than one person, their obligations under this Mortgage are joint and several, and the term "Mortgagor" refers to each of them and all of them.

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95521640

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor and Bank have executed this Mortgage as of the date first written above.

Witnesses:

Timothy Serritella
TIMOTHY SERRITELLA

Individual Mortgagor(s):

Anton F. Engelmann ANTON F. ENGELMANN
Laurel A. Engelmann LAUREL A. ENGELMANN

INDIVIDUAL MORTGAGOR(S):

Coreng Engelmann CORENG ENGELMANN
Rosina Engelmann ROSINA ENGELMANN

Non-individual Mortgagor:

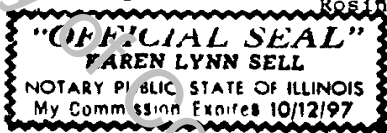
By _____
Its _____
And by _____
Its _____

STATE OF ILLINOIS

COUNTY OF _____

95521640

The foregoing Mortgage was acknowledged before me this 20th day of July, 1995
by ~~Anton F. Engelmann, Laurel A. Engelmann, Coreng Engelmann, Rosina Engelmann~~ *Anton F. Engelmann, Laurel A. Engelmann, Coreng Engelmann, Rosina Engelmann*



Notary Public, Faren Sell County, Illinois.

My commission expires: 10/12/97

STATE OF ILLINOIS

COUNTY OF _____

The foregoing Mortgage was acknowledged before me this _____ day of _____, 19____
by _____ the _____ of _____
a _____ (type of entity) on its behalf.

This instrument prepared by:

OLD KENT BANK
105 South York Street, Elmhurst, Illinois 60126

Notary Public, _____ County, Illinois.

My commission expires:

MORTGAGE

LOAN NO. _____

Return to:

OLD KENT BANK
105 S. YORK RD.
Elmhurst, Illinois 60126
LINDA ELWOOD

BOX 333-CT1

Proper Cook County Clerk's Office