

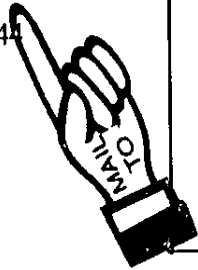
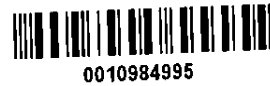
UNOFFICIAL COPY

0010984995

9/11/0104 38 001 Page 1 of 7  
2001-10-22 14:21:10  
Cook County Recorder 33.50

This instrument was prepared by,  
and after recording should be mailed to:

Laura E. Callan  
Solheim Billing & Grimmer, S.C.  
P.O. Box 1644  
Madison, WI 53701-1644



(THE ABOVE SPACE RESERVED FOR RECORDING DATA)

REAL ESTATE MORTGAGE

STEWART TITLE OF ILLINOIS  
2 NORTH LaSALLE STREET, SUITE 1920  
CHICAGO, IL 60606 2

STEWART TITLE COMPANY OF ILLINOIS  
1515 E. WOODFIELD ROAD  
SUITE 102  
SCHAUMBURG, IL 60173

Property of Stewart Title Office

166057

750 Cherry Custard, LLC ("Mortgagor", whether one or more) mortgages, conveys and warrants to Wisconsin Business Development Finance Corporation ("Lender" a/k/a "CDC") in consideration of the sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00), loaned or to be loaned to 750 Cherry Custard, LLC ("Borrower", whether one or more), evidenced by Borrower's note(s) or agreement dated October 15, 2001, the real estate described on Exhibit A attached hereto and incorporated herein by reference, together with all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all awards and payments made as result of the exercise of the right of eminent domain, and all existing and future improvements and fixtures (all called the "Property") to secure the Obligations described in paragraph 3 hereof, including but not limited to repayment of the sum stated above plus certain future advances made by Lender. The Property is not the homestead of Mortgagor. The mortgage also constitutes a fixture filing.

1. **Title, Condition of Property.** Mortgagor warrants title to the Property, excepting only restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not yet due and a mortgage to Bank One, Wisconsin to secure a promissory note in the amount of \$970,000.00 which mortgage is the subject of an intercreditor agreement with Lender. Mortgagor further warrants that the current use of the property complies with applicable zoning and municipal ordinances and that the property has direct access to an improved public highway.

2. **Escrow.** Interest will not be paid on escrowed funds if an escrow is required under paragraph 6.a hereof.

3. **Mortgage as Security.** This Mortgage secures prompt payment of Lender of (a) the sum stated in the first paragraph of this Mortgage, plus interest and charges, according to the terms of a promissory note(s) or agreement of Borrower to Lender identified herein, and any extensions, renewals or modifications of such promissory note(s) or agreement, (b) to the extent not prohibited by the Wisconsin Consumer Act (i) any additional sums which are in the future loaned by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor primarily for personal, family or household purpose and agreed in documents evidencing the transaction to be secured by this Mortgage and (ii) all other additional sums which are in the future loaned by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor, (c) all interest and charges, and (d) to the extent not prohibited by law, all costs and expenses of collection or enforcement (all called the "Obligations"). This Mortgage also secures the performance of all covenants, conditions and agreements contained in this Mortgage, and to the extent not prohibited by law costs and expenses of collection or enforcement. Unless otherwise required by law,

Lender will satisfy this Mortgage upon request by Mortgagor if (a) the Obligations has been paid according to its terms, (b) any commitment to make future advances under this Mortgage has terminated, (c) Lender has terminated any line of credit under which advances are to be secured by this Mortgage, and (d) all other payments required under this Mortgage and the Obligations and all other terms, conditions, covenants, and agreements contained in this Mortgage and the documents evidencing the Obligations have been paid and performed.

4. **Taxes.** To the extent not paid to Lender under paragraph 6.a hereof, Mortgagor shall pay before they become delinquent all taxes, assessments and other charges which may be levied or assessed against the Property, or against Lender upon this Mortgage or the Obligations or other debt secured by this Mortgage, or upon Lender's interest in the Property, and deliver to Lender receipts showing timely payment.

5. **Insurance.** Mortgagor shall keep the improvements on the Property insured against direct loss or damage occasioned by fire, extended coverage perils and such other hazards as Lender may require, through insurers approved by Lender, in amounts, without co-insurance, not less than the full replacement value, and to maintain public liability insurance covering the property of not less than amounts sufficient to cover all risks normally insured against by like Mortgagors, and shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of Lender and, unless Lender otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Lender. Subject to Lender's approval, Borrower is free to select the insurance agent or insurer through which insurance is obtained. Mortgagor shall promptly give notice of loss to insurance companies and Lender. All proceeds from the casualty insurance shall be applied, at Lender's option, to the installments of the Obligations in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the Property. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor in and to any insurance then in force shall pass to the purchaser or grantee. If Mortgagor fails to keep any required insurance on the Property, Lender may purchase such insurance for Mortgagor. Such insurance may be acquired by Lender solely to protect the interest of Lender (it will not cover Mortgagor's equity in the Property), and Mortgagor's obligation to repay Lender shall be in accordance with paragraph 8 hereof.

6. **Mortgagor's Covenants.** Mortgagor covenants:

a. **Escrow.** If escrow is required by Lender, to pay Lender sufficient funds at such times as Lender designates, to pay when due (1) the estimated annual real estate taxes and assessments on the Property, (2) all property and hazard insurance premiums when due, (3) flood insurance premiums, if any, (4) if payments owed under the Obligations are guaranteed by mortgage guaranty insurance, the premiums necessary to pay for such insurance, and (5) other items agreed to be included in the Escrow.

Lender may, at any time, collect and hold such escrow funds in an amount not to exceed the maximum amount a lender for a federally-related mortgage loan may require for Mortgagor's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time. Lender may estimate the amount of escrow funds due on the basis of current data and reasonable estimates of future expenditures of future escrow account funds or as otherwise required by applicable law. Lender shall apply the escrowed funds against the taxes, assessments and insurance premiums when due or as otherwise required by law. Escrowed funds may be commingled with Lender's general funds. If the escrowed funds held by Lender exceed the amount permitted to be held by applicable law, Lender shall account to Mortgagor for the excess escrowed funds in a manner determined by Lender or as otherwise required by applicable law. If the escrowed funds held by Lender at any time are not sufficient to pay the escrow account items when due, Lender may notify Mortgagor in writing, and Mortgagor shall pay to Lender the amount necessary to make up the deficiency in a manner determined by Lender or as otherwise required by applicable law;

b. **Condition and Repair.** To keep the Property in good and tenantable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures;

c. **Liens.** To keep the Property free from liens and encumbrances superior to the lien of this Mortgage and not described in paragraph 1 hereof;

d. **Other Mortgages.** To perform all of Mortgagor's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;

e. **Waste.** Not to commit waste or permit waste to be committed upon the Property;

f. **Conveyance.** Not to sell, assign, lease, mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Property, or permit the same to occur without the prior written consent of Lender and, without notice to Mortgagor, Lender may deal with any transferee as to his interest in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor under this Mortgage or the Obligations;

g. **Alteration, Removal, Additional Improvements.** Not to remove, demolish or materially alter any part of the Property or construct or attach any additional improvements, without Lender's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility;

h. **Condemnation.** To pay to lender all compensation received for the taking of the Property, or any part, by condemnation proceedings (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Property, or any part. The compensation shall be applied in such manner as Lender determines to rebuilding of the Property or to installments of the Obligations in the inverse order of their maturities (without penalty for prepayment);

i. **Inspection.** Lender and its authorized representatives may enter the Property at reasonable times to inspect it and, at Lender's option, repair or restore the Property and to conduct environmental assessments and audits of the Property;

j. **Ordinances.** To comply with all laws, ordinances and regulations affecting the Property; and

k. **Subrogation.** That the Lender is subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the note(s) or agreement identified herein.

7. **Environmental Laws.** Mortgagor represents and warrants to Lender (a) that during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"), (b) that Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property, (c) that, without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks, (d) that there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claim relating to any Hazardous Substance, (e) that Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance, and (f) that Mortgagor in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or

about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

8. **Authority of Lender to Perform for Mortgagor.** If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, Lender may, after giving Mortgagor any notice and opportunity to perform which is required by law, perform the duties or cause them to be performed, including without limitation signing Mortgagor's name or paying any amounts so required, and the cost shall be due on demand and secured by this Mortgage, bearing interest at the highest rate stated in any document evidencing an Obligation, but not in excess of the maximum rate permitted by law, from the date of expenditure by Lender to the date of payment by Mortgagor.

9. **Default; Acceleration; Remedies.** If, (a) there is a default under any Obligation secured by this Mortgage, or (b) Mortgagor fails timely to observe or perform any of Mortgagor's covenants or duties contained in this Mortgage, then, at the option of Lender each Obligation will become immediately payable unless notice to Mortgagor or Borrower and an opportunity to cure are required by §425.105, Wis. Stats., or the document evidencing the Obligation and, in that event, the Obligation will become payable if the default is not cured as provided in that statute or the document evidencing the Obligation or as otherwise provided by law. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Obligation, together with all sums paid by Lender as authorized or required under this Mortgage or any Obligation, shall be collectible in a suit at law or by foreclosure of this Mortgage by action, or both, or by the exercise of any other remedy available at law or equity.

10. **Waiver.** Lender may waive any default without waiving any other subsequent or prior default by Mortgagor.

11. **Power of Sale.** In the event of foreclosure, Lender may sell the Property at public sale and execute and deliver to the purchasers deeds of conveyance pursuant to statute.

12. **Assignment of Rents and Leases.** Mortgagor assigns and transfers to Lender, as additional security for the Obligations, all rents which become or remain due or are paid under any agreement or lease for the use or occupancy of any part or all of the Property. Until the occurrence of an event of default under this Mortgage or any Obligation, Mortgagor has the right to collect the rents, issue, and profits from the Property, but upon the occurrence of such an event of default, and the giving of notice by Lender to Mortgagor declaring that constructive possession of the Property is in Lender, Mortgagor's license to collect is terminated and Lender shall be entitled to such rents, issues, and profits and may, after giving Mortgagor any notice and opportunity to perform required by law, notify any or all tenants to pay all such rents directly to Lender. All such payments shall be applied in such manner as Lender determines to payments required under this Mortgage and the Obligations. This assignment shall be enforceable and Lender shall be enforceable and Lender shall be entitled to take any action to enforce the assignment (including notice to the tenants to pay directly to Lender or the commencement of a foreclosure action) without seeking or obtaining the appointment of a receiver or possession of the Property.

13. **Receiver.** Upon the commencement or during the pendency of an action to foreclosure this Mortgage, or enforce any other remedies of Lender under it, without regard to the adequacy or inadequacy of the Property as security for the Obligations, Mortgagor agrees that the court may appoint a receiver of the Property (including homestead interest) without bond, and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and exercise such other powers as the court may grant until the confirmation of sale, and may order the rents, issues and profits, when so collected, to be held and applied as the court may direct.

14. **Foreclosure Without Deficiency Judgment.** If the Property is a one to four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or owned by a tax exempt charitable

**UNOFFICIAL COPY**

organization, Mortgagor agrees to the provisions of §846.101, Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of real estate of 20 acres or less six months after a foreclosure judgment is entered. If the Property is other than a one to four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or a tax exempt charitable organization, Mortgagor agrees to the provisions of §846.103, Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of real estate three months after a foreclosure judgment is entered.

15. **Expenses.** To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorneys' fees, fees and expenses for environmental assessments, inspections, and audits, and fees and expenses for obtaining title evidence, incurred by Lender in protecting or enforcing its rights under this Mortgage.

16. **SBA as Holder of the Obligations.** The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

a. When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

b. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

c. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

17. **Severability.** Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision.

18. **Successors and Assigns.** The obligations of all Mortgagors are joint and several. This Mortgage benefits Lender, its successors and assigns, and binds Mortgagor(s) and their respective heirs, personal representatives, successors and assigns.

19. **Entire Agreement.** This Mortgage is intended by the Mortgagor and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.



# UNOFFICIAL COPY

**EXHIBIT A**  
**Legal Description**

Lots 4 and 5 in Block 11 in Elmores Harlem Avenue Estates, being a subdivision of part of the West 1/2 of Section 31, Township 36 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois

*PINs: 28-31-306-017 & 018*

Property Address: 18248 South Sayre Avenue  
Tinley Park, Illinois

Property of Cook County Clerk's Office