



(Headquarters)

This Instrument prepared by  
and after recording should be  
returned to:

Michael A. Nemeroff, Esq. (JNU)  
Vedder, Price, Kaufman & Kammholz  
222 N. LaSalle Street  
Suite 2400  
Chicago, IL 60601

Booked  
7994592-PT

MORTGAGE AND SECURITY AGREEMENT

35-9a

This Mortgage and Security Agreement (hereinafter referred to as "Mortgage") entered into as of this 17<sup>th</sup> day of May, 2002, by and between **CHICAGO TITLE LAND TRUST COMPANY**, not personally but solely as Trustee under Trust Agreement dated May 1, 2002 and known as Trust No. 1110870 (the "Land Trust"), whose address is 171 North Clark Street, Chicago, Illinois 60601, **SBDI PROPERTY, LLC**, an Illinois limited liability company, as beneficiary under the Land Trust (the "Beneficiary"), having its principal office at 4427 Midlothian Turnpike, Crestwood, Illinois (the Land Trust and Beneficiary collectively referred to herein as the "Mortgagor"), and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, having an office at 135 South LaSalle Street, Chicago, Illinois ("Mortgagee").

WITNESSETH:

**THIS MORTGAGE SECURES FUTURE OBLIGATIONS  
AND ADVANCES PURSUANT TO 205 ILCS 5/5D**

WHEREAS, Beneficiary is the sole beneficiary under the Land Trust, which is the owner of the fee simple estate in the Land (defined below);

WHEREAS, Beneficiary is indebted to Mortgagee pursuant to that certain Mortgage Note of even date herewith (as further amended, restated, modified or substituted from time to time, the "Note"), which Note evidences a loan from Mortgagee to Beneficiary in the aggregate principal amount of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00) (the "Loan"); and

WHEREAS, as a condition precedent to Mortgagee extending any financial accommodation to Beneficiary pursuant to the Note or otherwise, Mortgagee has requested that Beneficiary and Land Trust execute and deliver this Mortgage to Mortgagee, and that any loan or other financial accommodation made by Mortgagee to Beneficiary, as the case may be, under the Note shall be in reliance upon this Mortgage.

**BOX 333-CTI**

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## ARTICLE I DEFINITIONS

1.1 As used herein, the following terms shall have the following meanings:

- (a) Affiliate: As to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse and children) of such individual and any trust whose principal grantee is such individual or one or more members of such immediate family and any Person who is controlled by any such member of trust. As used in this definition, "control" (including, with correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interest, by contract or otherwise).
- (b) Assignment of Rents and Leases: means that certain Assignment of Rents and Leases of even date herewith executed by Mortgagor in favor of Mortgagee, as amended, modified or restated from time to time.
- (c) Beneficiary: SBDI Property, LLC, an Illinois limited liability company.
- (d) Debtor Relief Laws: The term Debtor Relief Laws shall mean any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.
- (e) Default Rate: A rate per annum equal to the sum of three percent (3%) plus the interest rate then in effect.
- (f) Environmental Indemnity Agreement: Means that certain Environmental Indemnity Agreement of even date herewith executed by Beneficiary in favor of Mortgagee, as amended, modified or restated from time to time.
- (g) Event of Default: Any happening or occurrence described in Article VI herein.
- (h) Escrowed Sums: The amounts paid by Mortgagor to Mortgagee pursuant to Section 4.14 hereof to be held by Mortgagee in a fund for the payment of Impositions and insurance premiums.
- (i) Financial Statements: The balance sheets, profit and loss statements, reconciliations of capital and surplus, changes in cash flow, schedules of sources and applications of funds, and other financial information of Beneficiary heretofore furnished to Mortgagee or required to be furnished to Mortgagee under the terms of this Mortgage or any other of the Security Documents from time to time, which statements shall be prepared in accordance with generally accepted accounting principles consistently applied or such other form as shall be reasonably acceptable to Mortgagee and shall be certified by Beneficiary as appropriate.

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(j) Fixtures: All materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed on or in the Land or the Improvements, or which in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the State of Illinois, other than those owned by tenants under any lease. The term "Fixture" shall include, without limitation, all items of Personalty to the extent that the same may be deemed fixtures under applicable law.

(k) Guarantees: Means, collectively, those certain Guaranty Agreements of even date herewith executed, respectively, by Southwest Beer Distributors, Inc., Chris Jensen and Kurt Karlson.

(l) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(m) Governmental Requirements: The term Governmental Requirements shall mean all statutes, laws, ordinances, orders, writs, injunctions, decrees, rules and regulations of any Governmental Authority applicable to Mortgagor, the Mortgaged Property or the Improvements.

(n) Impositions: All real estate and personal property taxes; water, gas, sewer, electricity and other utility rates and charges; charges imposed pursuant to any subdivision, planned unit development or condominium declaration or restrictions; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy or enjoyment thereof by entities with the legal right or authority to so assess, levy or impose.

(o) Improvements: Any and all buildings, structures, open parking areas and other improvements, and any and all accessions, additions, replacements, substitutions or alterations thereof or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(p) Indebtedness: The principal of, including future advances of, said principal amount, interest on and all other amounts and payments due under or secured by the Security Documents, together with all funds hereafter advanced by Mortgagee to or for the benefit of Mortgagor (including, without limiting the generality of the foregoing, advances to protect the security of and costs of enforcement under this Mortgage or the Security Documents), and all other indebtedness of whatever kind or character, direct or indirect, absolute or contingent, owing or which may hereafter become owing by Mortgagor to Mortgagee, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Mortgagor may hereafter become indebted to Mortgagee in further sum or sums. The total principal amount of Indebtedness secured by this Mortgage, excluding accrued interest (whether or not added to principal) and costs, fees and charges and advances by Mortgagee for other purposes authorized by this Mortgage shall not exceed the aggregate principal amount of Two Million Eight Hundred Thousand and 00/100

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Dollars (\$2,800,000.00). All future advances made from the date hereof will have the same priority as the original loans evidenced by the Note, secured by, among other things, the Mortgage. Notwithstanding the foregoing, or anything contained in the Mortgage to the contrary, Mortgagee shall not be obligated to advance any amounts in excess of the amount of the Loan.

(q) Land: The real estate or any interest therein described on Exhibit "A", attached hereto and made a part hereof, together with all Improvements and fixtures and all rights, titles and interests appurtenant thereto.

(r) Leases: All of the right, title and interest of Mortgagor in and to any and all Real Estate Leases and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant Mortgagor an interest in the Personalty.

(s) Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Mortgagor or the Mortgaged Property, including but not limited to those respecting the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) Mortgagor's presently or subsequently effective by-laws and articles of incorporation, or any instruments establishing any partnership, limited partnership, joint venture, trust or other form of business association (if either, both or all by any of the same), (iii) any and all Leases and other contracts (written or oral) of any nature to which Mortgagor may be bound and (iv) any and all restrictions, reservations, conditions, easements or other covenants or agreements of record affecting the Mortgaged Property.

(t) Mortgagee: LaSalle Bank National Association, a national banking association.

(u) Mortgaged Property: The Land, Improvements, Fixtures, Leases and Rents, together with:

(i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part therein or thereof;

(ii) all betterments, accessions, additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(iii) all other interest of every kind and character which Mortgagor now has or at any time hereafter acquires in and to the above-described real and all property which is used in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Mortgagor with respect to such property. In the event the estate of Mortgagor in and to any of the Land and Improvements is a leasehold estate, this conveyance shall include and the lien, security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time may be

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acquired by Mortgagor in or to the property demised under the lease creating such leasehold estate and including Mortgagor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Mortgagor, such fee simple interest shall be encumbered by this Mortgage in the same manner as if Mortgagor had fee simple title to such property as of the date of execution hereof; and

(iv) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Mortgage, the term "Mortgaged Property" is expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(v) Mortgagor: The above defined Mortgagor and any and all subsequent record or equitable owners of the Mortgaged Property.

(w) Note: That certain Mortgage Note of even date herewith made payable by Beneficiary to Mortgagee in the original principal amount of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00), as amended, modified or restated from time to time, together with all substitutions and renewals thereof.

(x) Obligations: Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor to Mortgagee, or otherwise as set forth in the Security Documents, and/or any other documents or instruments executed in connection with the Indebtedness.

(y) Permitted Encumbrances: The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any) as set forth on Exhibit "B" attached hereto and made a part hereof, and to the extent permitted pursuant to Section 5.4 of this Mortgage, (i) the rights of the lessors under any Leases other than Real Estate Leases wherein Mortgagor is the lessee, (ii) purchase money security interests in Personalty, and (iii) any financing statements evidencing the foregoing.

(z) Person: An individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

(aa) Personalty: All of the right, title and interest of Mortgagor in and to all tangible and intangible personal property which is now or becomes attached to, installed on or placed on or used on or in connection with or which is acquired for such attachment, installation, placement or use, or which arises out of the development, improvement, financing, leasing, sale, operation or use of the Land, Improvements, Fixtures or other goods located on the Land or Improvements, and with respect to all of the foregoing, whether now owned or at any time hereafter acquired, including, but not limited to:



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(i) all furnishings, building materials, supplies, machines, engines, boilers, stokers, pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, furniture, cabinets, shades, blinds, screens; plumbing, heating, air conditioning, lighting, lifting, ventilating, refrigerating, cooking, medical, laundry and incinerating equipment; partitions, drapes, carpets, rugs and other floor coverings, awnings; call and sprinkler systems, fire prevention and extinguishing apparatus and equipment, water tanks, swimming pools, compressors, vacuum cleaning systems; disposals, dishwashers, ranges, ovens, kitchen equipment, cafeteria equipment and recreational equipment;

(ii) all equipment, attachments, partitions, goods, instruments, appliances, furnishings, machinery, tools, raw materials, component parts, work in progress and materials, and all other tangible personal property of whatsoever kind, used or consumed in the improvement, use or enjoyment of the Land, the Improvements or the Fixtures, now or any time hereafter owned or acquired by Mortgagor, wherever located and all products thereof whether in possession of Mortgagor or whether located on the Land or elsewhere;

(iii) all general intangibles relating to the design, development, operation, management and use of the Land, the Improvements and the Fixtures, including, but not limited to: (w) all names under which or by which the Land, the Improvements and the Fixtures may at any time be owned and operated under, any such names or any variant thereof, and all goodwill in any way relating to the Land, the Improvements and the Fixtures; (x) all permits, licenses, authorizations, variances, trademarks, service marks, trade names, symbols, land use entitlements, approvals, consents, clearances, and rights obtained from governmental agencies issued or obtained in connection with the Land, the Improvements and the Fixtures; and (y) to the extent allowed or permitted, all permits, licenses, approvals, consents and authorizations issued or obtained in connection with the use, occupation or operation of the Land, the Improvements and the Fixtures;

(iv) all evidence of ownership of any part of the Land, the Improvements, and the Fixtures that is owned by Mortgagor in common with others, including all water stock relating to the Land, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Land;

(v) all accounts, deposit accounts, security deposits, accounts receivable, instruments, documents, chattel paper, bank deposits, books and records, documents of title, general intangibles, rights to payment of every kind, all of Mortgagor's rights, direct or indirect, under or pursuant to any and all construction, development, financing, guaranty, indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts, subcontracts, insurance policies and the proceeds therefrom, licenses and bonds now or anytime hereafter arising from construction on the Land or the use or enjoyment of the Land and the Improvements including, without limitation, maintenance agreements, service contracts and all contracts and agreements for the operation, management and leasing of the Land and/or the Improvements;

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(vi) all water, water stock, water capacity or other water rights, licenses, permits, warranties, irrigation rights, oil and gas rights, minerals, crops and timber, and wastewater and storm drainage discharge capacity attributable or allowable to all or any portion of the Land, the Improvements and any other property, both real and personal, hereinabove described;

(vii) all rights, titles and interests in and to all of the plans, specifications, drawings, surveys, maps and plats, including, but not limited to, plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering studies and analyses heretofore or hereafter prepared by any architect or engineer in respect to the Land, Improvements or Fixtures;

(viii) all of Mortgagor's right, title and interest in and to any award, remuneration, settlement or compensation heretofore made or hereafter to be made by any Governmental Authority to Mortgagor, including those for any vacation of change of grade in any streets affecting the Land or the Improvements;

(ix) all of Mortgagor's right, title and interest in and to all proceeds arising from or by virtue of the sale, lease or other disposal of all or any part of the Mortgaged Property (consent to same not granted or to be implied hereby); and, all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Mortgaged Property;

(x) all additions, accessions, accessories, amendments, modifications, extensions, renewals and enlargements, and additions to, substitutions for the products thereof, and all proceeds, whether cash proceeds or noncash proceeds, and including insurance and condemnation proceeds, received when any of the foregoing property described in (i) through (ix) above (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily or when earlier received; such proceeds shall include any of the foregoing specifically described property of Mortgagor acquired with cash proceeds, together with, and without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Chattel Paper and General Intangibles located on or related to the Land, as those terms are defined in the Illinois Uniform Commercial Code; and

(xi) any rights to the beneficial interest in the Land Trust.

(bb) Real Estate Leases: All of the lessor's right, title and interest in and to any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant a possessory interest in and to, or the right to extract, mine, reside in, sell or use the Land, Improvements or Fixtures.

(cc) Rents: All of the rents, revenues, income, proceeds, royalties, profits and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting or otherwise enjoying or using the Mortgaged Property.

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(dd) Security Documents: The Note, this Mortgage, the Assignment of Rents and Leases, the Environmental Indemnity Agreement, the Guarantees and any and all other documents now or hereafter executed by Mortgagor or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations, as the same may be amended, modified or restated from time to time.

## ARTICLE II GRANT

2.1 Mortgagor is justly indebted to Mortgagee and has agreed to pay the same, with interest thereon, according to the terms of the Note, which, by reference, are made a part hereof.

2.2 In consideration of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, in order to secure the payments and obligations under the Note, and any other Security Documents as each may be modified or amended, extended, removed, replaced, supplemented or restated, MORTGAGOR DOES HEREBY GIVE, GRANT, BARGAIN, SELL, WARRANT, ALIENATE, REMISE, RELEASE, CONVEY, ASSIGN, GRANT A SECURITY INTEREST IN, TRANSFER, HYPOTHECATE, DEPOSIT, PLEDGE, SET OVER AND CONFIRM UNTO MORTGAGEE, the Improvements, Land, Leases, Personalty, Real Estate Leases, Rents and all substitutions for all proceeds, replacements, reversions and remainders of such property, whether now owned or hereafter acquired.

## ARTICLE III WARRANTIES AND REPRESENTATIONS

Beneficiary hereby unconditionally warrants and represents to Mortgagee as of the date hereof as follows:

3.1 Organization and Power: That (a) Beneficiary is a duly organized and validly existing limited liability company under the laws of the State of Illinois, all in accordance with applicable Legal Requirements, and the articles of organization and operating agreement of Beneficiary are in full force and effect and have not been amended or changed except as previously disclosed to Mortgagee in writing; (b) the Land Trust is a duly organized and validly existing land trust in accordance with all applicable laws, the Land Trust has not been amended or changed except as previously disclosed to Mortgagee in writing, and all conditions prerequisite to the Land Trust holding title to the real estate in the State of Illinois have been satisfied; (c) no proceeding is pending, planned or threatened for the dissolution or annulment of Mortgagor; (d) all licenses, filing fees, income and other taxes due and payable by Mortgagor have been paid in full; (e) all conditions prerequisite to Mortgagor doing business in each jurisdiction in which it conducts business have been done; (f) Mortgagor is in good standing in Illinois; and (g) Mortgagor has all requisite power and authority to own, lease, operate and encumber the Mortgaged Property.

3.2 Validity of Documents: (a) The execution, delivery and performance by Mortgagor of the Security Documents and the borrowing evidenced by the Note is within Mortgagor's powers and has been duly authorized by Mortgagor; (b) Mortgagor has received all



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(if any) requisite prior governmental approvals to cause the Security Documents to be legally binding and enforceable in accordance with the terms thereof; and (c) the execution, delivery and performance by Mortgagor of the Security Documents and the borrowing evidenced by the Notes will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon Mortgagor's property or assets, except as contemplated by the provisions of the Security Documents. The Security Documents constitute legal, valid and binding obligations of Mortgagor obligated under the terms of the Security Documents in accordance with their respective terms, and Mortgagor has full and lawful authority to bargain, grant, sell, mortgage, assign, transfer and convey all of the Mortgaged Property as set forth herein.

3.3 Information: All information, reports, papers and data given to Mortgagee with respect to Mortgagor or the Mortgaged Property (excluding any projections or forecasts) are accurate, complete and correct in all material respects as of the date hereof and to the best knowledge of Mortgagor, do not omit any fact the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

3.4 Title to Mortgaged Property and Lien of This Instrument: Land Trust has good and indefeasible title in fee simple to the Land described on Exhibit "A" attached hereto, and good and indefeasible title to the Improvements, the Fixtures and Personalty, Leases and Rents, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances, and Beneficiary is the sole beneficiary and holder of 100% of the power of direction in the Land Trust. Subject to the Permitted Encumbrances, this Mortgage constitutes a valid, subsisting, first lien Mortgage on the Land, the Improvements, the Fixtures and a valid, subsisting first security interest in and to the Personalty, all in accordance with the terms hereof.

3.5 Taxes and Other Payments: Mortgagor has filed all federal, state, county, municipal and city income and other tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Mortgagor, and Mortgagor does not know of any basis for any additional assessment in respect of any such taxes. Mortgagor has paid, will pay or cause to be paid in full in a commercially reasonable time and manner all sums owing or claimed for labor, material, supplies, personal property (whether or not constituting a Fixture hereunder) and services of every kind and character used, furnished or installed in the Mortgaged Property which Mortgagor is obligated to pay.

3.6 Litigation: Except as otherwise disclosed in writing to Mortgagee by Mortgagor prior to the date hereof, there are no actions, suits or proceedings pending or, to the knowledge of Mortgagor, threatened against or affecting the Mortgaged Property or involving the validity or enforceability of this Mortgage or the priority of the lien and security interest hereof, and no event has occurred (including specifically Mortgagor's execution of the Security Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any

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nature whatsoever upon any of Mortgagor's property other than the lien and security interest created by the Security Documents.

3.7 The Financial Statements: To the best of Beneficiary's knowledge the Financial Statements are true, correct, and complete as of the dates specified therein and fully and accurately present in all material respects the financial condition of Beneficiary as of the date thereof. No material adverse change has occurred in the financial condition of Beneficiary since the date of the most recent Financial Statements delivered to Mortgagee.

3.8 Utilities: All utility services in such capacities as are necessary for the Mortgaged Property and the operation thereof for their intended purpose are available to the Mortgaged Property and the operation thereof for their intended purpose, including water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities.

3.9 Streets and Parking: All parking areas, streets, roads, and/or highways necessary for the full utilization of the Improvements for their intended purposes have been completed or the necessary rights-of-way therefor have either been acquired by the appropriate Governmental Authority or have been dedicated to the public use and accepted by such Governmental Authority.

3.10 Permits: All zoning, utility, building, health and operating permits (if any) required for the operation of the Improvements have been obtained and copies of same shall be delivered to Mortgagee upon the request of Mortgagee.

## ARTICLE IV AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

4.1 Payment and Performance: Beneficiary will pay the Indebtedness as and when called for in the Security Documents and will perform all of the Obligations in full on or before the dates they are to be performed.

4.2 Existence: Mortgagor will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.3 Compliance with Legal Requirements: Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements whether or not same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 Payment of Impositions: Mortgagor will pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier of the date the same becomes delinquent, or the day any fine, penalty, interest or cost may be added thereto or imposed or the day any lien may be filed for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Mortgagor may, if permitted by law and pursuant to an agreement with the taxing entity, pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions. Mortgagor may in good

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faith, in lieu of paying such Impositions as they become due and payable, by appropriate proceedings, contest the validity thereof. During such contest Mortgagor shall not be deemed in default hereunder because of such nonpayment if, in the case of a contest involving an amount in excess of Fifty Thousand and 00/100 Dollars (\$50,000), prior to delinquency of the asserted tax or assessment, Mortgagor furnishes Mortgagee an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated, secured by a deposit in cash or security acceptable to Mortgagee or with surety acceptable to Mortgagee, in the amount of the tax or assessment being contested by Mortgagor and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith. Upon conclusion of such contest Mortgagor shall promptly pay any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

4.5 Repair: Mortgagor will keep or cause the Mortgaged Property to be kept in good order and condition consistent with its existing condition, reasonable wear and tear excepted, and presenting a good appearance and will make or cause tenants of the Mortgaged Property to make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition, reasonable wear and tear excepted. Mortgagor will also use its reasonable efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for its intended usages as set forth in any plans and specifications for the Improvements submitted to Mortgagee or in the Security Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Mortgagor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Section 5.2 hereinbelow; provided, however, that in instances where such emergency measures are to be taken, Mortgagor will promptly notify Mortgagee in writing of the commencement of such emergency measures and, when same are completed, the completion date and the measures actually taken.

4.6 Insurance: Mortgagor shall obtain and maintain insurance upon and relating to the Mortgaged Property providing the following described insurance coverage.

(a) Casualty: Fire and casualty insurance insuring against personal injury and death, loss by fire and such other hazards, casualties and contingencies (including but not limited to fire, lightning, hail, windstorm, explosion, malicious mischief, vandalism and rent loss or business interruption insurance covering loss of Rents) as are covered by extended coverage policies in effect where the Land is located and such other risks as may be specified by Mortgagee from time to time, all in such amounts and with such insurers of recognized responsibility as are acceptable to Mortgagee; provided, however, that absent written direction from Mortgagee, such insurance shall be in an amount not less than the full insurable replacement value of the Mortgaged Property with no co-insurance liability.

(b) Flood: If, and to the extent that the Mortgaged Property is located within an area that has been or is hereafter designated or identified as an area having special flood

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hazards by the Director of the Federal Emergency Management Agency or by such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1968, as such act may from time to time be amended and in effect, or pursuant to any other national or state program of flood insurance, Mortgagor shall carry flood insurance with respect to the Mortgaged Property in amounts not less than the maximum limit of coverage then available with respect to the Mortgaged Property pursuant to any and all national and state flood insurance programs with respect to the Mortgaged Property or the amount of the Indebtedness, whichever is less.

(c) Boiler and Machinery: Boiler and machinery insurance covering loss or damage to all portions of the Mortgaged Property comprised of air conditioning and heating systems, other pressure vessels, machinery, boilers or high pressure piping in an amount and containing terms acceptable to Mortgagee.

(d) Liability Insurance: Commercial general liability, automobile liability, worker's compensation, employer liability and broad form umbrella or excess liability insurance policies against claims for bodily injury, death or property damage in an amount and containing terms acceptable to Mortgagee.

Each insurance policy issued in connection with the Mortgaged Property shall provide, by way of endorsements, riders or otherwise, that proceeds will be payable to Mortgagee as its interest may appear. All renewal and substitute policies of insurance or certified copies thereof shall be delivered at the office of Mortgagee, premiums paid, at least thirty (30) days before termination of policies theretofore delivered to Mortgagee. In the event Mortgagor at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above or to pay any premium in whole or in part relating thereto, then Mortgagee, after giving five (5) days' prior notice to Mortgagor, without waiving or releasing any obligation or Event of Default by Mortgagor hereunder, may at any time or times hereafter (but shall be under no obligation to) obtain and maintain such policies of insurance and pay such premium and take any other action with respect thereto which Mortgagee deems advisable. Such insurance may, but need not, protect Mortgagor's interests, and Mortgagee shall be under no obligation to so protect Mortgagor's interests. The insurance coverage that Mortgagee purchases on behalf of Mortgagor may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance coverage purchased by Mortgagee, but only after providing Mortgagee with evidence that insurance coverage has been obtained as provided in this Mortgage. In the event Mortgagee purchases all or any portion of the insurance coverage for the Mortgaged Property or as otherwise required hereunder, Mortgagor will be responsible for all costs and expenses of such insurance coverage, including, but not limited to, interest and any other charges imposed by Mortgagee in connection with the purchase of the insurance coverage, until the effective date of the cancellation or expiration of the insurance coverage. The costs and expenses of any insurance coverage purchased by Mortgagee shall be added to the indebtedness secured hereby and payable on demand. Mortgagor acknowledges that the cost of the insurance coverage purchased by Mortgagee pursuant hereto may be more than the cost of insurance Mortgagor may be able to obtain on its own.



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4.7 Restoration Following Casualty: If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor will give prompt notice thereof to Mortgagee. In case of any loss including, without limitation, any loss that requires restoration, repair or replacement (hereinafter referred to as the "Work") of the Mortgaged Property, such proceeds shall be paid directly to Mortgagee; however, Mortgagee, at its sole and absolute discretion, may apply any insurance proceeds received at any time to the cost of any Work and/or to the payment of the Indebtedness. In the event Mortgagee elects to make such insurance proceeds available to Mortgagor for purposes of completing the Work, Mortgagor will promptly and at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds (if any) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction. In the event insurance proceeds are not made available to Mortgagor to restore, repair, replace or rebuild the Mortgaged Property as aforesaid, Mortgagor shall not be obligated to perform such work but shall clean up any damaged areas in a commercially reasonable manner at Mortgagor's sole cost and expense.

If the proceeds of the insurance described in Section 4.6 hereinabove are to be used for the prosecution of the Work, such proceeds shall be paid out by Mortgagee from time to time to Mortgagor (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or material incident to such restoration, repair or replacement or directly to such persons or through a construction escrow to be maintained by a title insurer acceptable to Mortgagee) as the Work progresses, subject to the following conditions if the cost of the Work exceeds \$100,000: (a) an architect or engineer, approved by Mortgagee, shall be retained by Mortgagor (at Mortgagor's expense) and charged with the supervision of the Work and Mortgagor shall have prepared, submitted to Mortgagee and secured Mortgagee's written approval of the plans and specifications for such Work which shall not be unreasonably withheld or delayed; (b) each request for payment by Mortgagor shall be made on ten (10) days' prior written notice to Mortgagee and shall be accompanied by a certificate executed by the architect or engineer supervising the Work stating, among such other matters as may be reasonably required by Mortgagee that: (i) all of the Work completed has been done in compliance with the approved plans and specifications; (ii) the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials); (iii) when added to all sums previously paid out by Mortgagor, the sum requested does not exceed the value of the Work done to the date of such certificate; and (iv) the amount of insurance proceeds remaining in the hands of Mortgagee plus any funds deposited with Mortgagee or demonstrated to be available for such purpose in accordance with subparagraph (f) below will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as the Mortgagee may require an estimate of the cost of such completion); (c) each request shall be accompanied by waivers of lien satisfactory in form and substance to Mortgagee covering that part of the Work completed prior to that part of the Work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Mortgagee that there has not been filed with respect to the Mortgaged Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the

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Mortgaged Property; (d) there has not occurred any Event of Default (as herein defined) since the hazard, casualty or contingency giving rise to payment of the insurance proceeds occurred; (e) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Mortgaged Property lawful; and (f) if, in Mortgagee's reasonable judgment, the amount of such insurance proceeds will not be sufficient to complete the Work (which determination may be made prior to or during the performance of the Work), Mortgagor shall deposit with Mortgagee, immediately upon a request therefor, or, demonstrate to Mortgagee's reasonable satisfaction that Mortgagor has funds available for such purpose in Mortgagor's possession (in which event such funds will be the first funds expended to pay for the Work) an amount of money which when added to such insurance proceeds will be sufficient, in Mortgagee's reasonable judgment, to complete the Work. Mortgagee may impose such further conditions upon the release of insurance proceeds as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens and claims for liens, including the receipt of title insurance. All title insurance charges and other costs and expenses paid to or for the account of Mortgagor in connection with the release of such insurance proceeds shall constitute so much additional indebtedness hereby secured to be payable upon demand with interest at the rate applicable to the Notes at the time such costs or expenses were incurred. If, upon completion of the Work, any portion of the insurance proceeds has not been disbursed to Mortgagor (or one or more of the other aforesaid persons) incident thereto, Mortgagee shall, at its option, either disburse such balance to Mortgagor or apply such amount to the Indebtedness. Nothing herein shall be interpreted to prohibit Mortgagee from (y) withholding from each such disbursement ten percent (10%) (or such greater amount, if permitted or required by any Legal Requirement) of the amount otherwise herein provided to be disbursed, and then continuing to withhold such sum until the time permitted for perfecting liens against the Mortgaged Property has expired, at which time the amount withheld shall be disbursed to Mortgagor (or to Mortgagor and/or any person or persons furnishing labor and/or material for the Work or directly to such persons), or (z) applying at any time the whole or any part of such insurance proceeds to the Indebtedness or the curing of any Event of Default.

4.8 Leases and Rents: Except in the ordinary course of Mortgagor's business (which shall generally include current market conditions at such location when such events occur), Mortgagor shall (a) with respect to any proposed Real Estate Lease, not execute any Real Estate Lease without the prior written consent of Mortgagee (and which Real Estate Lease shall be only for the occupancy by the tenant thereunder); (b) not discount any rent payable under any Real Estate Lease or modify or vary, surrender or terminate, either orally or in writing, any Real Estate Lease resulting in terms less favorable to Mortgagor than those existing as of the date hereof; (c) not cancel any Real Estate Lease affecting the Mortgaged Property or any part thereof without the prior written consent of Mortgagee; (d) not voluntarily terminate, cancel, waive, modify or amend its rights or the obligations of any party under any of the Real Estate Leases; and (e) use all reasonable efforts to maintain each of the Real Estate Leases in full force and effect during the full term hereof. With respect to the Real Estate Leases, Mortgagor shall: (i) not collect any rent payable for a period of more than one (1) month in advance (except that Mortgagor may collect the first month's rent at one time prior to the lease commencement date); (ii) not further assign its interest in, to or under any Real Estate Lease or the rents payable under any Real Estate Lease and from the Mortgaged Property to any person or entity; (iii) duly and punctually perform and comply with any and all representations, warranties, covenants and

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agreements expressed as binding upon it under each of the Real Estate Leases; and (iv) appear and/or defend any action or proceeding involving Mortgagor arising under or in any manner connected with any of the Real Estate Leases. Mortgagor has executed and delivered to Mortgagee an Assignment of Leases and Rents of even date herewith granting Mortgagee certain rights with respect to the Mortgaged Property including, without limiting the generality of the foregoing, the right to collect Rents directly from the tenants under the Real Estate Leases.

4.9 Inspection: Mortgagor will permit Mortgagee and its agents, representatives and employees to inspect the Mortgaged Property during reasonable business hours, provided such inspection does not unreasonably interfere with the conduct of business by Mortgagee on the Mortgaged Property. Mortgagee will notify Mortgagor prior to any inspection.

4.10 Defense of Interest: If the interest of Mortgagee in the Mortgaged Property hereby conveyed or any part thereof, shall be endangered or shall be attached, directly or indirectly, and in the event the title insurance company issuing Mortgagee a loan policy is either not defending against such claim or, in Mortgagee's reasonable opinion, not adequately defending against such claim, Mortgagor shall, at Mortgagor's expense, take all necessary and proper steps for the defense of such interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such interest in the Mortgaged Property. Mortgagor will indemnify and hold Mortgagee harmless from and against any and all loss, cost, damage, liability or expense (including all court costs and attorneys' fees) incurred by Mortgagee in protecting its interests hereunder in such an event. In the event Mortgagee, in Mortgagee's sole discretion, is not satisfied with Mortgagor's actions in such regard, Mortgagor hereby authorizes Mortgagee, at Mortgagor's expense, to take all necessary and proper steps for the defense of such interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such interest in the Mortgaged Property. All such payments by Mortgagee shall be part of the Indebtedness secured hereby and be payable on demand.

4.11 Future Impositions: At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage or upon any rights, titles, liens or security interests created hereby, upon Mortgagee's written request, Mortgagor shall immediately pay all such taxes; provided that, in the alternative, upon Mortgagee's written request, Mortgagor may, in the event of the enactment of such a law, and must if it is unlawful for Mortgagor to pay such taxes, prepay the Indebtedness in full within sixty (60) days after demand therefor by Mortgagee. No prepayment fee will be due with respect to any prepayment required by Mortgagee pursuant to this section.

4.12 Estoppel Certificates: Mortgagor shall, upon request of Mortgagee, promptly furnish, at any time and from time to time, a written statement or affidavit, in such form as shall be reasonably determined by Mortgagee, stating the amount of the unpaid balance of the Indebtedness.

4.13 Financial Statements and Reports: Mortgagor will maintain full and accurate books of account and other records reflecting the results of its operations and will furnish or cause to be furnished to Mortgagee those Financial Statements required pursuant to the Security Documents.



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4.14 Impositions and Insurance Escrows: To implement the provisions of Sections 4.4 and 4.6 hereof, upon the occurrence of an Event of Default, Mortgagor, at Mortgagee's request, shall pay to Mortgagee in advance, as and when directed by Mortgagee and as escrowed sums, an amount equal to the sums of: (a) monthly, an amount reasonably determined by Mortgagee to be equal to the amount which, when added to the other monthly payments to be made prior to the due date of the annual Impositions, shall be sufficient to pay the annual Impositions (estimated wherever necessary) to become due for the tax year during which such payment is so directed; and (b) monthly, an amount reasonably determined by Mortgagee to be equal to the amount which, when added to the other monthly payments to be made prior to the due date of the insurance premiums, shall be sufficient to pay the insurance premiums for the same year for those insurance policies as are required hereunder. If Mortgagee determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such Impositions and insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to provide a sufficient fund, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount so stated in Mortgagee's notice. The escrowed sums may be held by Mortgagee in non-interest bearing accounts and may be commingled with Mortgagee's other funds. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of the escrowed sums then in its possession to its assignee, whereupon Mortgagee shall then become completely released from all liability with respect thereto. Upon payment of the Indebtedness and Obligations, or at such earlier time that Mortgagee may elect, the balance of the escrowed sums in its possession may be paid over to Mortgagor, and no other party shall have any right or claim thereto. If the Event of Default shall be cured by Mortgagor, the escrowed sums shall be repaid to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Security Documents to pay the Impositions and the required insurance premiums or may be paid by Mortgagee directly to the Governmental Authority and the insurance company entitled thereto. If an Event of Default shall have occurred or be continuing hereunder, and Mortgagee has accelerated the maturity date of the Indebtedness as provided for herein, Mortgagee shall have the additional option of crediting the full amount of the escrowed sums against the Indebtedness. Notwithstanding anything to the contrary contained in this Section 4.14 or elsewhere in this Mortgage, Mortgagee hereby reserves the right to waive the payment by Mortgagor to Mortgagee of the escrowed sums and, in the event Mortgagee does so waive such payment, it shall be without prejudice to Mortgagee's right to insist, at any subsequent time or times, that such payments be made in accordance herewith.

## ARTICLE V NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees with Mortgagee that, until the entire Indebtedness shall have been paid in full and all of the Obligations which are then subject to performance and discharge shall have been fully performed and discharged:

5.1 Use Violations: Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property in any manner which (a) violates any Legal Requirement, including, without limitation, Legal Requirements with respect to the disposal of medical waste products, (b) may be dangerous unless safeguarded as required by law, or (c) constitutes a public or private nuisance.



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5.2 Alterations: Mortgagor (i) will not commit or permit any waste (as such term is defined at common law) of the Mortgaged Property and (ii) will not (subject to the provisions of Sections 4.5 and 4.7 herein), without the prior written consent of Mortgagee, make or permit to be made any alterations or additions to the Mortgaged Property which materially and adversely affect the structural portions of any Improvements or the value of the Mortgaged Property, or which alterations affect the exterior side or common areas of any Improvements, or any areas visible from the exterior or common areas of the Improvements.

5.3 Replacement of Fixtures and Personalty: Mortgagor will not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements (i) except in the ordinary course of Mortgagor's business in a manner that does not materially adversely affect Mortgagor's business operations or (ii) unless the removed item is obsolete, removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except such as may be first approved in writing by Mortgagee.

5.4 No Further Encumbrances: Mortgagor will not, without the prior written consent of Mortgagee, create, place, suffer or permit to be created or placed or, through any act or failure to act, acquiesce in the placing of or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge on, or conditional sale or other title retention agreement, regardless of whether the same are expressly subordinate to the liens of the Security Documents, with respect to the Mortgaged Property, other than the Permitted Encumbrances, or such encumbrances as Mortgagee may agree to in writing. The foregoing shall not limit the right of tenants under Real Estate Leases to install removable fixtures subject to security interests on the Mortgaged Property which can be removed without damage to the Mortgaged Property and which pursuant to the Real Estate Leases and the written consent of Mortgagor obtained prior to installation shall remain the property of such tenants and shall not be considered part of the Mortgaged Property.

5.5 Zoning; Title Matters: Mortgagor will not, without Mortgagee's express prior written consent, (A) initiate or support any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable thereto; (B) modify, amend or supplement any Permitted Encumbrances; (C) impose any restrictive covenants or any other encumbrance upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality; or (D) permit or offer the Mortgaged Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement by prescription.

## ARTICLE VI EVENTS OF DEFAULT

6.1 Default: Any one or more of the following events shall constitute an "Event of Default" hereunder and under the Security Documents:

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(a) A failure to pay when and as the same shall become due and payable, whether by maturity or otherwise, any interest, principal or other amounts required to be paid pursuant to the Note, this Mortgage, or any of the Security Documents;

(b) Default in the due observance or performance of any of the terms, covenants or conditions contained in this Mortgage, the Note, or any of the Security Documents;

(c) Any representation or warranty made by Land Trust or Beneficiary to Mortgagee in any of the Security Documents or any certificate or document furnished to Mortgagee in connection with the loan evidenced by the Note or in furtherance of the requirements of this Mortgage or of any other Security Document shall be incorrect in any material respect at the time when made or at the time when reaffirmed or deemed reaffirmed by the terms of any Security Document;

(d) Subject to Mortgagor's rights to contest, as set forth in Section 4.4 hereof, a failure by Mortgagor to pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto, all franchise taxes and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Mortgaged Property or any part thereof or become payable during the term of the Indebtedness, which default continues for a period of thirty (30) days after Mortgagee delivers written notice thereof to Mortgagor;

(e) Land Trust or Beneficiary sells, leases (other than leases approved in writing by Mortgagee), exchanges, assigns, conveys or otherwise disposes of the Land, Improvements, or Real Estate Leases or any interest therein or in the Land Trust, or enters into a written agreement to do so, or grants or permits to exist any other mortgage, mortgage of trust or other lien, charge or encumbrance against the Land, Improvements, or Real Estate Leases, whether superior or inferior to this Mortgage;

(f) Except as permitted in accordance with Section 5.3 or Section 5.4 above, Land Trust or Beneficiary sells, leases, exchanges, assigns, conveys or otherwise disposes of any portion of the Mortgaged Property or any interest in the Land Trust, other than the Land, Improvements or Real Estate Leases or any interest thereon covered by Section 6.1(e) hereof, or enters into a written agreement to do so, or grants or permits to exist any other lien, charge or encumbrance against such property, whether superior or inferior to the liens and security interests in this Mortgage, and such default continues for a period of thirty (30) days after written notice thereof to Mortgagor;

(g) A receiver, liquidator or trustee of Land Trust or Beneficiary or of the Mortgaged Property or of any substantial portion of the properties of any of them, shall be appointed and shall not be removed within thirty (30) days;

(h) A petition in bankruptcy or for reorganization or for protection under any Debtor Relief Laws shall have been filed against Land Trust or Beneficiary and the same is not withdrawn, dismissed, canceled or terminated within sixty (60) days;

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(i) Land Trust or Beneficiary makes an assignment for the benefit of creditors or files or consents to the filing of a petition in bankruptcy or for protection under any Debtor Relief Laws or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Code or any other federal or state law, now or hereafter in effect, relating to the reorganization of Land Trust or Beneficiary or the arrangement or rearrangement or readjustment of the debts of Land Trust or Beneficiary or having the effect of enjoining or staying the exercise of rights or remedies by creditors, it being understood that the filing against any such entity of such a petition by a partner of such entity, shall be deemed to be a filing with the consent of such entity;

(j) There is an attachment or sequestration of or relating to a portion of the Mortgaged Property and the same is not promptly discharged or bonded over to the reasonable satisfaction of Mortgagee within thirty (30) days;

(k) Mortgagor ceases to do business on the Land for any reason whatsoever without prior written consent of Mortgagee, which consent Mortgagee shall not unreasonably withhold or delay;

(l) A material default occurs under any other agreement that Mortgagor has with Mortgagee, and such default continues for a period of thirty (30) days after Mortgagee delivers written notice of such default to Mortgagor;

(m) Any suit is filed against Land Trust or Beneficiary which, if adversely determined, could substantially impair the ability of Land Trust or Beneficiary to perform each and every one of its obligations under and by virtue of the Security Documents, and Land Trust or Beneficiary fails to answer such suit and diligently prosecute the defense of such suit;

(n) Land Trust or Beneficiary shall default or breach any Governmental Requirements pertaining to the Mortgaged Property (unless Mortgagor diligently contests such default or breach in the proper forum with the assistance of legal counsel and provides a bond or other security to Mortgagee satisfactory to Mortgagee in its sole discretion or is otherwise diligently pursuing a remedy for the breach of such Governmental Requirement in accordance with and in the time period specified by the applicable governmental agency);

(o) Land Trust or Beneficiary shall be in default under the terms of any document evidencing or securing payment of a debt secured by any lien or security interest on the Mortgaged Property or Improvements (without implying Mortgagee's consent to the existence, placing, creating or permitting of any lien or security interest);

(p) The dissolution or reorganization of Land Trust or Beneficiary without the prior written consent of Mortgagee; and

(q) Any substantial damage to or destruction of the Improvements shall occur and insurance proceeds (together with other funds available for such purpose, including funds of Mortgagor) shall not, in the reasonable opinion of Mortgagee, be sufficient to restore or repair the Improvements and pay all extra cost to be incurred such as additional interest, or if insurance proceeds shall not be paid within one hundred twenty (120) days after the date of such casualty, or if Mortgagor shall fail to promptly commence repair or restoration of the Improvements

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and/or thereafter not diligently complete such repair and restoration within a reasonable time any of which continue for a period of thirty (30) days after written notice of such default from Mortgagee to Mortgagor.

As used in this Section 6.1, the term "control" as used with respect to any person or entity shall mean the possession of the power to direct the management and policies of such entity.

## ARTICLE VII REMEDIES

7.1 Remedies: If an Event of Default shall occur and shall continue, Mortgagee, at Mortgagee's election, may exercise any or all of the following rights, remedies and recourses:

(a) enter upon and take possession of the Mortgaged Property without the appointment of a receiver, or an application therefor, employ a managing agent of the Land and let the same, either in its own name, or in the name of Mortgagor, and receive the rents, income, issues and profits of the Land and apply the same after payment of all necessary charges and expenses, on account of the Indebtedness, and Mortgagor will transfer and assign to Mortgagee, in form satisfactory to Mortgagee, Mortgagor's lessor interest in any lease now or hereafter affecting the whole or any part of the premises;

(b) pay any sums in any form or manner deemed expedient by Mortgagee to protect the security of this instrument or to cure any event of default other than payment of interest or principal on Indebtedness (specifically including the payment of taxes, assessments and insurance premiums on the Land, the costs of maintaining, repairing, and preserving the Land, and the costs of completing any improvements on the Land); make any payments hereby authorized to be made according to any bill, statement, or estimate furnished or procured from the appropriate public officer or the party claiming payment without inquiry into the accuracy or validity thereof, and the receipt of any such public officer or party in the hands of Mortgagee shall be conclusive evidence of the validity and amount of items so paid, in which event the amounts so paid, with interest thereon from the date of such payment at the Default Rate, shall be added to and become a part of the Indebtedness and be immediately due and payable to Mortgagee; and Mortgagee shall be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security to this Mortgage;

(c) declare the entire Indebtedness immediately due, payable and collectible, without notice to Mortgagor, regardless of maturity, and in that event, the entire Indebtedness shall become immediately due, payable and collectible, Mortgagee may foreclose the lien hereto and sell and dispose of the Land at public auction, at the usual place for conducting sales at the courthouse in the county where the Land or any part thereof may be, to the highest bidder for cash, first advertising the time, terms and place of such by publishing a notice thereof as required by the Illinois Mortgage Foreclosure Act 735 ILCS 5/15 (et seq.) (the "Act") in said county, all other notice being hereby waived by Mortgagor; and Mortgagee may thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Land in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of

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the foreclosure took place and said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and Mortgage were in all things duly complied with; and Mortgagee, its agents, representatives, successors or assigns, may bid and purchase at such sale; and Mortgagor hereby constitutes and appoints Mortgagee, or its assigns, or agents as attorney in fact to make such recitals, sale and conveyance, and all of the acts of such attorney in fact are hereby ratified, and Mortgagor agrees that such recitals shall be binding and conclusive upon Mortgagor and that the conveyance to be made by Mortgagee, or its assigns (and in the event of a Mortgage in lieu of foreclosure, then as to such conveyance) shall be effectual to bar all right, title and interest, equity of redemption, homestead, dower, courtesy and all other exceptions of Mortgagor, or its successors in interest, in and to said Land, except as permitted by the Act. Mortgagee, or its assigns, shall collect the proceeds of such sale, reserving therefrom all unpaid Indebtedness with interest then due thereon, and all amounts together with all costs and charges for advertising and commissions for selling the Land, including reasonable attorneys' fees, and pay over any surplus to Mortgagor (in the event of deficiency Mortgagor shall immediately on demand from Mortgagee pay over to Mortgagee, or its nominee, such deficiency); and Mortgagor agrees that possession of the Land during the existence of the Indebtedness by Mortgagor, or any person claiming under Mortgagor, shall be that of tenant under Mortgagee, or its assigns, and, in case of a sale, as herein provided, Mortgagor or any person in possession under Mortgagor shall then become and be tenants holding over, shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over; the power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are in addition to any and all other remedies which Mortgagor may have at law or in equity. Mortgagee, in any action to foreclose this Mortgage, or upon any event of default, shall be at liberty to apply for the appointment of a receiver of the rents and profits or of the Land or both without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Land as security for the amounts due the Mortgagee, or the solvency of any person or corporation liable for the payment of such amounts.

In case of any sale under this Mortgage pursuant to any order in any judicial proceedings or otherwise, the Land or any part thereof may be sold in one parcel and as entirety, or in such parcels, manner or order as Mortgagee in its sole discretion may elect;

(d) institute proceedings for the complete foreclosure of this Mortgage;

(e) institute proceedings to collect any delinquent installment or installments of the indebtedness secured by this Mortgage without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only, and any sale of the Mortgaged Property under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness and this Mortgage shall be and continue as a lien on the Mortgaged Property securing the unmatured indebtedness;

(f) institute proceedings in equity or at law for the specific performance of any covenant, agreement or condition in this Mortgage or in aid of the execution of any power granted in this Mortgage; and

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(g) take such other action as may be permitted under the laws of the state in which the Mortgaged Property is located, including all rights and remedies with respect to the Personalty, Fixtures, and Leases and Rents in accordance with the Illinois Uniform Commercial Code, now or hereafter in effect.

7.2 Waiver of Rights and Defenses: To the full extent Mortgagor may do so, Mortgagor agrees with Mortgagee as follows:

(a) Mortgagor hereby waives and will not at any time insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisal, valuation, stay, extension, moratorium or redemption, or of any statute of limitations, and Mortgagor, for itself and its successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property, hereby waives and releases all rights of redemption, valuation, appraisal, notice of intention to mature or declare due the whole of the Indebtedness, and all rights to a marshaling of the assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder.

(b) Mortgagor hereby waives and shall not have or assert the matters set forth in subsection (A) of this Section, or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder, including sale of the Mortgaged Property for the collection of the Indebtedness and the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to any other person.

(c) If any statute or rule of law referred to in this Section and now in force, of which Mortgagor or any of its successors or assigns and such other persons claiming any interest in the Mortgaged Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such statute or rule of law shall not thereafter be deemed to preclude the application of this Section.

(d) Mortgagor shall not be relieved of its obligation to pay the Indebtedness or perform the Obligations at the time and in the manner provided in this Mortgage or any other of the Security Documents, nor shall the lien, security interest or priority of this Mortgage or any other of the Security Documents be impaired by any of the following actions, nonactions or indulgences by Mortgagee:

(i) any failure or refusal by Mortgagee to comply with any request by Mortgagor, or to consent to any action by Mortgagor, or to take any action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or any other of the Security Documents;

(ii) any release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Indebtedness or any person liable for payment of the Indebtedness;

(iii) any waiver by Mortgagee of compliance by Mortgagor with any provision of this Mortgage or any other of the Security Documents, or consent by Mortgagee to the performance by Mortgagor of any action which would otherwise be

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prohibited hereunder or thereunder, or to the failure by Mortgagor to take any action which would otherwise be required hereunder or thereunder; and

(iv) any agreement or stipulation, with or without Mortgagor's consent, between Mortgagee and any subsequent owner or owners of the Mortgaged Property or any other security for the Indebtedness, renewing, extending or modifying the time of payment or the terms of this Mortgage or any other of the Security Documents (including a modification of any interest rate), and in any such event Mortgagor shall continue to be obligated to pay the Indebtedness at the time and in the manner provided in this Mortgage and the other of the Security Documents as so renewed, extended or modified, unless expressly released and discharged by Mortgagee.

## ARTICLE VIII CONDEMNATION

8.1 Application of Proceeds: If the Mortgaged Property or any part thereof shall be condemned or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking, or injury to, the Mortgaged Property (the "Award") shall be paid to Mortgagee. To enforce its rights hereunder, Mortgagee shall be entitled to participate in any condemnation proceedings and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation.

In case of a taking in which the cost of the restoration, repair or replacement (hereinafter referred to as the "Restoration") of the Mortgaged Property estimated by Mortgagee shall not exceed One Hundred Thousand Dollars (\$100,000.00), then such Award may be used for the prosecution of the Restoration in the manner hereinafter provided. If the cost of the Restoration estimated by Mortgagee shall exceed One Hundred Thousand Dollars (\$100,000.00), Mortgagee, at its option, shall be entitled to receive and retain the Award, applying the same upon the Indebtedness. In the event Mortgagee elects to make such Award available to Mortgagor for such purpose, Mortgagor will (if such work is necessary to the continued operation of the Mortgaged Property as determined by Mortgagee in its reasonable discretion) promptly and at Mortgagor's sole cost and expense and regardless of whether the Award (if any) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such taking subject to the conditions and restrictions applicable to Mortgagor's use of insurance proceeds contained in the second paragraph of Section 4.7 above.

In the event the Award exceeds the cost of any work to restore, repair, replace and rebuild the Mortgaged Property, following completion of such work Mortgagee shall apply such excess to the Indebtedness or pay such excess to Mortgagor if Mortgagor furnishes Mortgagee with an appraisal acceptable to Mortgagee concluding that the appraised value of the Mortgaged Property following such taking and work is at least two times the sum of (i) the outstanding balance of the Indebtedness and (ii) the remaining amount which Mortgagee may be obligated to advance under the Notes.

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## ARTICLE IX SECURITY AGREEMENT

9.1 Security Interest: This Mortgage shall be construed as a Mortgage on real property, and it shall also constitute and serve as a security agreement on personal property within the meaning of, and shall constitute, until the grant of this Mortgage shall terminate as provided in Article II hereof, a first and prior pledge and assignment and a first and prior security interest under the Illinois Uniform Commercial Code, now or hereafter in effect, as to the property within the scope thereof and situated in the State of Illinois with respect to the Personalty, Fixtures, Leases and Rents subject to the Permitted Encumbrances. Mortgagor has granted, warranted, bargained, conveyed, assigned, transferred and set over, and by these presents does grant, warrant, bargain, convey, assign, transfer and set over unto Mortgagee a first and prior security interest in and to all of Mortgagor's right, title and interest in, to and under the Personalty, Leases and Rents, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Upon an Event of Default, Mortgagor shall gather all of the Mortgaged Property which is Personalty at a location designated by Mortgagee for sale pursuant to the terms hereof.

9.2 Financing Statements: Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Pursuant to the Illinois Uniform Commercial Code, as now or hereafter in effect, this Mortgage shall be effective as a Financing Statement filed as a fixture filing from the date of its filing for record covering the Fixtures and Personalty. The addresses of Mortgagor, as Debtor, and Mortgagee, as Secured Party, are as set forth herein. The above described goods are or are to become fixtures related to the Land and Improvements of which Mortgagor is record title owner.

9.3 Uniform Commercial Code Remedies: Mortgagee shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures, Leases and Rents afforded a secured party by the aforesaid Illinois Uniform Commercial Code, now or hereafter in effect, in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Security Documents and at law.

9.4 No Obligation of Mortgagee: The assignment and security interest herein granted shall not be deemed or construed to constitute Mortgagee as a trustee in possession of the Mortgaged Property, to obligate Mortgagee to operate the Mortgaged Property or attempt to do the same, or take any action, incur expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

## ARTICLE X MISCELLANEOUS

10.1 Survival of Obligations: Each and all of the Obligations shall survive the execution and delivery of the Security Documents and the consummation of the loan called for



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therein and shall continue in full force and effect until the Indebtedness shall have been paid in full.

10.2 Further Assurances: Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may reasonably be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents, to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including, specifically, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property, and to complete, execute, record and file any document or instrument necessary to place third parties on notice of the liens and security interests granted under the Security Documents. Mortgagor hereby irrevocably appoints Mortgagee as its agent to execute and deliver all such instruments and additionally to record and file any of the same as may be necessary.

10.3 Recording and Filing: Mortgagor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, rerecorded and refiled in such manner and in such places as Mortgagee shall reasonably request and will pay all such recording, filing, rerecording and refileing taxes, fees and other charges.

10.4 Notices: Any notice, request or other communication required or permitted to be given hereunder must be in writing and shall conclusively be deemed and considered to have been given and received three (3) days after being deposited in the U.S. Mail, certified mail, return receipt requested, postage prepaid, and addressed to the party to receive such notice at the address set forth below or such other address elected in writing by the party to receive such notice; but actual notice however given or received, shall always be effective. The last preceding sentence shall not be construed in any way to effect or impair the waiver of notice or demand to or upon Mortgagor in any situation or for any reason (except as otherwise specifically provided).

If to Mortgagor:	Southwest Beer Distributors, Inc. 4427 Midlothian Turnpike Crestwood, Illinois 60445 Attn: Chris Jensen
with a copy to:	Nisen & Elliott 200 West Adams Street Suite 250 Chicago, Illinois 60606 Attn: Thomas V. McCauley, Esq.
If to Mortgagee:	LaSalle Bank National Association 135 South LaSalle Street Chicago, Illinois 60603 Attn: Timothy J. Moran

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with copy to:

Vedder, Price, Kaufman & Kammholz  
222 North LaSalle Street  
Suite 2300  
Chicago, Illinois 60601  
Attn: Michael A. Nemeroff, Esq.

10.5 No Waiver: Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of the same or of any other term, provision or condition thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor of any and all of such terms, provisions and conditions.

10.6 Mortgagee's Right to Pay Indebtedness and Pay Obligations: If an Event of Default shall occur and be continuing under any of the Security Documents, then at any time thereafter and without further notice to or demand upon Mortgagor or any other party, without waiving or releasing any other right, remedy or recourse Mortgagee may have because of the same, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon with respect to the Mortgaged Property as it may deem necessary or appropriate. Mortgagor shall be obligated to repay Mortgagee for all sums advanced by it pursuant to this Section 10.6 and shall indemnify and hold Mortgagee harmless from and against any and all loss, cost, expense, liability, damage and claims and causes of action, including reasonable attorney's fees, incurred or accruing by any acts performed by Mortgagee pursuant to the provisions of this Section 10.6 or by reason of any other provision of the Security Documents. All sums paid by Mortgagee pursuant to this Section 10.6 and all other sums expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the rate of the Mortgage Note (as defined in the Loan Agreement) plus three percent (3%) from the date of such payment or expenditure, shall constitute additions to the Indebtedness and Obligations, shall be secured by the Security Documents and shall be paid by Mortgagor to Mortgagee upon demand.

10.7 Covenants Running with the Land: All obligations contained in the Security Documents are intended by the parties to be and shall be construed as covenants running with the Mortgaged Property.

10.8 Successors and Assigns: All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives and all other persons claiming by, through or under them.

10.9 Severability: The Security Documents are intended to be performed in accordance with all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances or other instruments referred to hereinabove shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

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10.10 Usury: All agreements in the Note and the other Security Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Indebtedness or otherwise, shall the amount agreed to be paid hereunder for the use, forbearance or detention of money exceed the highest lawful rate permitted under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision of this Mortgage or any other of the Security Documents at the time performance of such provision shall be due, shall involve exceeding any usury limit prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligations to be fulfilled shall be reduced to allow compliance with such limit, and if, from any circumstance whatsoever, Mortgagee shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall be deemed a mistake and shall be canceled automatically or, if theretofore paid, such excess shall be credited against the principal amount of the Indebtedness to which the same may lawfully be credited, and any portion of such excess not capable of being so credited shall be refunded immediately to Mortgagor. Mortgagor hereby affirms that the Indebtedness was obtained, and the proceeds thereof have been and shall be used, solely for business purposes.

10.11 Entire Agreement and Modification: The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

10.12 Counterparts: This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

10.13 Headings and General Application: The article, paragraph and subparagraph entitlements hereof are inserted for convenience or reference only and shall in no way affect, modify or define, or be used in construing, the text of such article, paragraph or subparagraph. If the context requires, words used in the singular shall be read as including the plural, and pronouns of any gender shall include all genders.

10.14 Compliance with Illinois Mortgage Foreclosure Law: In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. Furthermore, if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

10.15 Waiver of Statutory Rights: Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in

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Section 15-1219 of the Act) and, to the fullest extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act and, to the fullest extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

10.16 Business Loan Recital/Statutory Exemptions: Mortgagor acknowledges and agrees that (a) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of the Illinois Interest Act (815 ILCS 205/0.01 *et seq.*), (b) the obligations secured hereby constitute a business loan which comes within the purview of said Section 4, and (c) the Loan evidenced by the Notes is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*

10.17 Sole Benefit: This instrument and the other Security Documents have been executed for the sole benefit of Mortgagor and Mortgagee and the successors, assigns and legal representatives of Mortgagee. No other party shall have rights thereunder nor be entitled to assume that the parties thereto will insist upon strict performance of their mutual obligations hereunder, any of which may be waived from time to time. Mortgagor shall have no right to assign any of their rights under the Security Documents to any party whatsoever, including the right to receive advances under the Notes or otherwise.

10.18 Subrogation: If any or all of the proceeds of the Indebtedness or the Obligations have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind (including liens securing the payment of any Impositions), such proceeds have been advanced by Mortgagee at Mortgagor's request, and, to the extent of such funds so used, the Indebtedness and Obligations in this Mortgage shall be subrogated to and extend to all of the liens and titles heretofore existing against the Mortgaged Property to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former liens and titles, if any, shall not be waived, but rather shall be continued in full force and effect and in favor of Mortgagee and shall be merged with the lien and security for the repayment of the Indebtedness and satisfaction of the Obligations.

10.19 JURISDICTION AND VENUE: MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE OR THE OTHER SECURITY DOCUMENTS SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION OR, IF MORTGAGEE INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY ACTUAL



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DELIVERY OR REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT HEREIN. MORTGAGOR WAIVES ANY CLAIM THAT THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS OR THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS, PROVIDED, HOWEVER, MORTGAGEE MAY NOT SEEK A DEFAULT JUDGMENT FOR AT LEAST THIRTY (30) DAYS AFTER THE DATE OF PROOF OF SERVICE. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH HEREIN SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

10.20 WAIVER OF RIGHT TO JURY TRIAL: MORTGAGEE AND MORTGAGOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS MORTGAGE TRUST OR ANY OF THE OTHER SECURITY DOCUMENTS OR WITH RESPECT TO THE TRANSACTION CONTEMPLATED THEREBY WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND, THEREFORE, THE PARTIES AGREE THAT ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

10.21 APPLICABLE LAW: THIS MORTGAGE AND THE OTHER SECURITY DOCUMENTS SHALL BE DEEMED TO HAVE BEEN DELIVERED AND ACCEPTED IN, AND THIS MORTGAGE AND THE OTHER SECURITY DOCUMENTS SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS AND DECISIONS OF, THE STATE OF ILLINOIS (WITHOUT REGARD FOR ITS CONFLICTS OF LAW PRINCIPLES), AND BY EXECUTION HEREOF, MORTGAGOR, AND BY ACCEPTANCE HEREOF, MORTGAGEE, EACH AGREE THAT SUCH LAWS AND DECISIONS OF THE STATE OF ILLINOIS SHALL GOVERN THIS MORTGAGE OF TRUST AND THE OTHER SECURITY DOCUMENTS, NOTWITHSTANDING THE FACT THAT THERE MAY BE OTHER JURISDICTIONS WHICH MAY BEAR A REASONABLE RELATIONSHIP TO THE TRANSACTIONS CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT WITH RESPECT TO THE PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO THE CREATION, VALIDITY, PERFECTION AND ENFORCEMENT BY MORTGAGEE OF ITS RIGHTS AND REMEDIES AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL LOCATED IN ANY STATE OTHER THAN ILLINOIS, SUCH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH SUCH PROPERTY IS LOCATED.

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10.22 TRUSTEE EXCULPATION. THIS MORTGAGE IS EXECUTED BY THE UNDERSIGNED TRUSTEE, 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 IS PAYABLE ONLY OUT OF THE ASSETS OF THE TRUST ESTATE HELD UNDER THE TRUST AGREEMENT. NO PERSONAL LIABILITY SHALL BE ASSERTED OR BE ENFORCEABLE AGAINST THE TRUSTEE, BECAUSE OR IN RESPECT OF THIS MORTGAGE OR THE MAKING, ISSUE, TRANSFER OR ENFORCEMENT HEREOF, ALL SUCH LIABILITY OF THE TRUSTEE, IF ANY, BEING EXPRESSLY WAIVED BY MORTGAGEE, AND THE SOLE REMEDIES OF MORTGAGEE AGAINST THE TRUSTEE SHALL BE AS PROVIDED IN THIS MORTGAGE, THE SECURITY DOCUMENTS AND ANY OTHER DOCUMENTS GIVEN TO SECURE THE LOAN, IN ACCORDANCE WITH THE TERMS AND PROVISIONS CONTAINED THEREIN OR BY ACTION TO ENFORCE THE PERSONAL LIABILITY OF THE BENEFICIARY OR THE GUARANTORS FOR PAYMENT OF ALL AMOUNTS DUE AND PERFORMANCE OF ALL OBLIGATIONS REQUIRED UNDER THIS MORTGAGE.

*[SIGNATURE PAGE FOLLOWS]*

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(Mortgage and Security Agreement Signature Page)

Executed as of the date first above written.

## LAND TRUST:

**CHICAGO TITLE LAND TRUST COMPANY**, not personally, but solely as Trustee of that certain Trust Agreement dated May 1, 2002 and known as Trust No. 1110870

By: *CAROLYN FRAMPINELLA*  
Print Name: CAROLYN FRAMPINELLA  
Its: ASST VICE PRESIDENT



## BENEFICIARY:

**SBDI PROPERTY, LLC**, an Illinois limited liability company

By: *Chris Jensen*  
Print Name: CHRIS JENSEN  
Its: Manager/Member

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2058225







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Exhibit "A"

## LEGAL DESCRIPTION

LOT 15 (EXCEPT THE NORTH 17 FEET MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) IN ARTHUR T. MC INTOSH'S BLUE ISLAND FARMS BEING A SUBDIVISION OF THE EAST QUARTER OF THE SOUTH WEST QUARTER AND THE NUMBER 64 RODS OF THE SOUTH EAST 1/4 AND THAT PART OF THE EAST HALF OF THE WEST HALF OF THE NORTH EAST QUARTER LYING SOUTH OF THE CENTER LOT OF THE MIDLOTHIAN TURNPIKE ALL IN SECTION 3, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE SOUTH 33 FEET OF THE EAST HALF OF THE EAST HALF OF THE SOUTH WEST QUARTER CONVEYED TO THE MIDLOTHIAN AND BLUE ISLAND RAILROAD), IN COOK COUNTY, ILLINOIS.

Tr #

2A-03-30A-045

2A-03-30A-046

Address of party

4427 Midlothian Turnpike

Crystalwood

2058225

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## Exhibit "B"

### PERMITTED ENCUMBRANCES

1. State, County and City Taxes for the year 2001 and subsequent years which, as of the date hereof, are liens but not now due and payable.
2. Encroachment of the pavement located mainly on the property East and adjoining onto the land by approximately 0.7 feet, as shown on Plat of Survey Number 02-04-236 prepared by Landmark Engineering Corporation dated April 19, 2002.

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