

# UNOFFICIAL COPY

95130492

DEPT-03 RECORDING \$95.00  
T#0012 TRAN 2747 02/24/95 11:07:00  
#1189 + AH \* -95-130492  
COOK COUNTY RECORDER

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT ("Mortgage"), is made as of January 30, 1995, by SOUTH EAST ALCOHOL AND DRUG ABUSE CENTER, an Illinois not-for-profit corporation, whose address is 9101 South Exchange Avenue, Chicago, Illinois 60617 ("Borrower") for the benefit of SOUTH CHICAGO BANK, a state banking corporation, whose address is 9200 South Commercial Avenue, Chicago, Illinois 60617 ("Lender").

R E C I T A L S

Borrower has executed and delivered to Lender that certain Secured Promissory Note in the principal amount of EIGHT HUNDRED THOUSAND AND NO/100 (\$800,000.00) DOLLARS dated of even date herewith (the "Note") which Note contains provisions for acceleration in the event of default, matures as stated therein, provides for payment of interest as set forth therein, payment of costs of collection, including attorneys' fees in the event of default, waives demand, presentment for payment, protest, notice of nonpayment and protest, and the terms of which are hereby incorporated by reference and

THIS INSTRUMENT WAS PREPARED BY  
AND UPON RECORDING SHOULD BE  
RETURNED TO:

Donna M. Shaw  
Schwartz & Freeman  
Suite 1900  
401 North Michigan Avenue  
Chicago, Illinois 60611

Recorder's Box No. 57

STREET ADDRESS:

8640 South Chicago Avenue  
Chicago, Illinois

PERMANENT TAX INDEX NUMBERS:

20-36-423-026  
20-36-423-027  
20-36-423-062  
20-36-423-033  
20-36-423-034  
20-36-423-035  
20-36-423-036  
20-36-423-037  
20-36-423-038

95130492

7 918-86-41

①  
②  
③  
④  
⑤  
⑥  
⑦  
⑧  
⑨  
⑩  
⑪  
⑫  
⑬  
⑭  
⑮  
⑯  
⑰  
⑱  
⑲  
⑳

# UNOFFICIAL COPY

32130435

Frank

RECORDING

1934-1935  
1935-1936  
1936-1937

## MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT was made this 1st day of January 1937, by SOUTH EAST ALCOHOL AND FOOD TRUST, an Illinois corporation, for profit, whose address is 2101 South La Salle Avenue, Chicago, Illinois 60617, hereinafter for the benefit of SOUTH CHICAGO BANK, a state banking corporation, whose address is 2700 South Commercial Avenue, Chicago, Illinois 60617 (hereinafter "Lender").

### WITNESSES

Borrower has executed and delivered to Lender and certain secured promissory note in the principal amount of EIGHT HUNDRED THOUSAND AND NO/100 (\$800,000.00) (hereinafter called "said note" hereinafter in the "note") which note contains provisions for acceleration in the event of default, and as stated therein, provides for payment of interest as well as the principal, payment of costs of collection, including attorney's fees in the event of default, waiver demand, presentment for payment, protest, notice of nonpayment and protest, and the terms of which are hereby incorporated by reference and

STREET ADDRESS:

840 South Chicago Avenue  
Chicago, Illinois

THIS INSTRUMENT WAS PREPARED BY  
AND UPON RECORDING SHOULD BE  
RETURNED TO:

Wanda M. Shaw  
Robert S. Freeman  
Suite 1900

141 North Michigan Avenue  
Chicago, Illinois 60611

PERMANENT TAX INDEX NUMBERS:

- 20-18-423-026
- 20-18-423-027
- 20-18-423-028
- 20-18-423-029
- 20-18-423-030
- 20-18-423-031
- 20-18-423-032
- 20-18-423-033
- 20-18-423-034
- 20-18-423-035
- 20-18-423-036
- 20-18-423-037
- 20-18-423-038

Recorder's Box No. 27

32130435

116-11-117

# UNOFFICIAL COPY

made a part hereof and a copy of which is attached hereto as Exhibit "A". NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE MAXIMUM AMOUNT OF THE INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL NOT EXCEED THE SUM OF FIVE MILLION AND NO/100 (\$5,000,000.00) DOLLARS.

NOW, THEREFORE, Borrower, in order to secure to Lender the (i) repayment of the indebtedness evidenced by the Note, together with interest, prepayment premiums, late charges and all other charges, as provided therein and herein, and (ii) the performance of the covenants, conditions and agreement contained herein and in the Loan Documents (as hereinafter defined), does hereby MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, ALIENATE, CONVEY, CONFIRM AND ASSIGN all of Borrower's fee simple interest and estate in the property legally described in Exhibit B attached hereto and by this reference made a part hereof and located in Cook County, Illinois (the "Land") and all improvements thereon located at 8640 South Chicago Avenue in Chicago, Illinois; together with all buildings, structures and other improvements and chattels now on the Land or that may hereafter be erected or placed thereon which are owned by Borrower; also together with all shrubbery and trees now growing or that hereafter may be planted or grown thereon; and also together with all crops and/or produce of any kind now growing or that may be hereafter growing, grown or produced upon said land or any part thereof; and also to the extent owned by Borrower, development rights or credits, oil, gas and mineral rights, air rights and water and water rights; also together with all and singular the ways, easements, riparian and other rights, and all tenements, hereditaments and appurtenances thereto belonging to Borrower, including but not limited to all rights in any abutting public or private streets and alleys adjacent thereto including (all of which items are hereinafter referred to as the "Premises");

And all present and future rents, issues, avails, profits and proceeds (hereinafter referred to as the "Rents") of or from the Premises (which are also hereby granted, sold, bargained and conveyed to Lender), the "Leases" and/or and the "Equipment" (both of which terms are hereinafter defined), howsoever occurring, existing, created or arising;

And all present and future leases, use agreements, agreements, tenancies, licenses and franchises (hereinafter referred to as the "Leases") of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent under any or all of the Leases and all guaranties of lessees' performances thereunder;

And all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof,

# UNOFFICIAL COPY

and a full amount and a copy of which is attached hereto as  
EXHIBIT A. MATHEMATICAL TABLES HEREIN TO THE  
BONDHOLDERS, THE MAXIMUM AMOUNT OF THE INTERESTS SECURED BY THIS  
MORTGAGE SHALL NOT EXCEED THE SUM OF FIVE MILLION AND NO/100  
(\$5,000,000.00) DOLLARS.

NOW, THEREFORE, in order to secure to lender the  
(i) repayment of the indebtedness evidenced by the Note, together  
with interest, maturity premiums, late charges and all other  
charges, as provided herein and herein, and (ii) the performance  
of the covenants, conditions and agreements contained herein and in  
the loan documents, the borrower has granted, sold, conveyed and assigned  
GARNANT, GRANT, HANAWALT, HILL, ALLEN, HANCOCK, HANCOCK AND ASSIGNS  
all of borrower's fee simple interest and estate in the property  
fully described in Exhibit A attached hereto and by this  
reference made a part hereof and located in Cook County, Illinois  
"the land" and all improvements thereon located at 8540 South  
Chicago Avenue, in Chicago, Illinois, together with all buildings,  
structures and other improvements and fixtures now on the land or  
that may hereafter be erected or placed thereon which are owned by  
borrower, also together with all shrubbery and trees now growing or  
that hereafter may be planted or grown thereon, and also together  
with all crops and/or produce of any kind now growing or that may  
be hereafter growing or produced upon said land or any part  
thereof; and also to the extent owned by borrower, development  
rights or rights, all easements, rights, appurtenant and other rights  
and water rights; also together with all and singular the  
ways, easements, appurtenant and other rights, and all tenements,  
hereditaments and appurtenances thereto belonging to borrower,  
included but not limited to all rights in any building public or  
private streets and alleys adjacent thereto including (all of which  
items are hereinafter referred to as the "Premises");

32130135

And all present and future rents, issues, profits and  
proceeds (including but not limited to the "rents") of or from the  
Premises (which are also hereby granted, sold, assigned and  
conveyed to lender), the "lease" and/or the "equipment" (both  
of which terms are hereinafter defined), howsoever occurring,  
existing, created or arising;

And all present and future leases, use agreements, easements,  
condemnation, licenses and franchises hereinafter referred to as the  
"leases" of or from the Premises and/or the equipment or in any  
way, manner or respect required, existing, used or capable in  
connection with the Premises and/or the equipment or the  
management, maintenance, operation or business thereof; and all  
deposits of money or advances and notes any or all of the leases  
and all guarantees of leases, performance thereunder;

And all present and future judgments, awards of damages and  
settlements made as a result or in lieu of any taking of the  
Premises, the equipment and/or the leases, or any part thereof,

# UNOFFICIAL COPY

under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto;

And all present and future apparatus, machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures and expressly excluding all interior office equipment, interior office furniture and interior furnishings and files), and articles of personal property and accessions thereof and renewals and replacements thereof and substitutions therefor and other tangible property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises, or appurtenances thereto, or usable in connection with the present or future operation and occupancy of the Premises and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises, or appurtenances thereto, or usable in connection with the present or future operation and occupancy of the Premises (hereinafter collectively called the "Equipment");

And all contract rights, with respect to, or which may in any way pertain to, the Premises or the business of the Borrower, including, without limitation, all refunds, rebates, security deposits, or other expectancy under or from any such account or contract right;

And all general intangibles with respect to, or which may in any way pertain to, the Premises or the business of the Borrower, including without limitation, any trade names, or other names under or by which the Premises may at any time be operated or known, the good will of the Borrower in connection therewith and the right of the Borrower to carry on business under any or all such name or names and any variant or variants thereof, insofar as the same may be transferable by the Borrower without breach of any agreement pursuant to which the Borrower may have obtained its right to use such name or names, and any and all trademarks, prints, labels, advertising concepts and literature;

And all present and future insurance policies in force or effect owned by Borrower, insuring the Premises, the Rents, the Leases or the Equipment;

And all proceeds of each and every of the foregoing.

TO HAVE AND TO HOLD the above described property, including, without limitation, the Premises, the Leases, the Equipment and the Rents (collectively, the "Mortgaged Property") unto Lender and its successors and assigns, forever, however, upon the terms, provisions and conditions herein set forth and hereby covenanting and agreeing to warrant and forever defend the Mortgaged Property



# UNOFFICIAL COPY

under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereon;

and all present and future apparatus, machinery, equipment, fixtures (including but not limited to all heating, air conditioning, electrical, plumbing, communication and elevator fixtures and necessary equipment and related office equipment), interior office furniture and fixtures (including and without limitation all personal property and accessories thereof and other and replacement thereof and alterations thereto and other tangible property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises, or apparatus, fixtures, or readily in connection with the present or future operation and occupancy of the Premises (hereinafter collectively called the "Equipment");

and all contract rights, with respect to, or which may in any way pertain to, the Premises or the business of the Borrower, including, without limitation, all rights, claims, security deposits, or other expectancy under or from any such account or contract right;

And all general intangibles with respect to, or which may in any way pertain to, the business of the Borrower, or the business of the Borrower, including without limitation, any trade names, or other names under or by which the business of the Borrower is operated or known, the good will of the Borrower in connection therewith and the right of the Borrower to carry on business under any or all such name or names and any variety of various thereof, together as the same may be distinguished by the Borrower without regard to any agreement pursuant to which the Borrower may have obtained its right to use such name or names, and any and all trademarks, prints, labels, advertising concepts and literature;

And all present and future insurance policies in force or effect owned by Borrower, insuring the Premises, the Goods, the Lease or the Equipment;

And all proceeds of each and every of the foregoing;

TO HAVE AND TO HOLD the above described property, including, without limitation, the Premises, the Lease, the Equipment and the Goods and fixtures, the "Contract Rights", the "Intangibles" and the "Insurance" and assigning, conveying, power, upon the terms, provisions and conditions herein set forth and hereby covenants and agrees to warrant and forever defend the Mortgagee properly

32130105

# UNOFFICIAL COPY

unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof.

PROVIDED ALWAYS, that upon full payment of the Note secured hereby plus all accrued, but unpaid, Interest, or extensions or renewals thereof, in whole or in part, and payment in full of Borrower's Liabilities (as hereinafter defined) and secured hereby, and Borrower faithfully and promptly having complied with and performed "Borrower's Obligations" to Lender, then Lender shall cancel this Mortgage of record and shall surrender this Mortgage.

This Mortgage shall operate as and constitute a Security Agreement from Borrower to Lender with respect to that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code of Illinois or any similar and applicable law, statute, code or other governing body of law. In addition Borrower hereby grants to Lender a continuing security interest in (i) that portion of the Mortgaged Property (as herein defined) constituting property or interests in property, whether real or personal, tangible or intangible, now owned or existing and hereafter acquired and arising, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code of Illinois or any similar and applicable law, statute, code or other governing body of law; and (ii) the Equipment and all proceeds thereof to secure payment of the indebtedness and obligations secured by this Mortgage. In the event of a foreclosure sale, all property or interests in property, subject to the priority and perfection of security interest provisions of the Uniform Commercial Code of Illinois or any similar and applicable law, statute, code or other governing body of law, may, at the option of Lender, be sold as a whole and it shall not be necessary to have present at the place of sale the property or any part thereof.

AND THIS INDENTURE FURTHER WITNESSETH:

## 1. DEFINITIONS

1.1 Wherever used in this Mortgage, "Borrower's Liabilities" means any and all of the following: (i) the payment of any and all monies, including, but not limited to, the payment, when due or declared due, of the principal sum of the Note, together with the interest described therein, now and/or hereafter owed or to become owing by Borrower to Lender under and/or pursuant to the terms and provisions of the Note; (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Borrower to Lender under and/or pursuant to the terms and provisions of this Mortgage or the Loan Documents; and (iii) the payment of any and all other debts,





# UNOFFICIAL COPY

claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Borrower to Lender under any document or instrument securing or executed in connection with the Note, including that certain Construction Loan Agreement dated of even date herewith (the "Loan Agreement") executed by Lender and Borrower, that certain Environmental Indemnity Agreement dated of even date herewith executed by Borrower, and that certain Assignment of Rents and Leases dated of even date herewith executed by Borrower (hereinafter collectively referred to as the "Other Agreements"). (The Note, the Mortgage and the Other Agreements may be collectively referred to as the "Loan Documents.")

1.2 The term "Interest" as used herein means interest as provided for in the Note, including, without limitation, monthly interest on the principal balance thereof.

1.3 Wherever used in this Mortgage, "Borrower's Obligations" means the prompt, full and faithful performance, discharge, compliance and observance by Borrower of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provisions to be performed, discharged, observed or complied with by Borrower contained in the Loan Documents.

1.4 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any one or all, of the things, events or persons or parties in connection with which the term is used.

## 2. CONVEYANCE

2.1 To secure the payment of Borrower's Liabilities and the performance of Borrower's Obligations, Borrower hereby does mortgage, warrant, grant, bargain, sell, alienate, convey, confirm, assign, pledge, set over, transfer, remise and release to Lender, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage.

2.2 Borrower, within ten (10) days after request by Lender therefor, will certify, in writing, to Lender, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing and unpaid under the Note and whether Borrower has or asserts any offsets or defenses thereto.

2.3 Borrower, immediately upon request by Lender, at Borrower's sole expense, will or will cause to be made, executed and delivered to Lender, in form and substance acceptable to Lender, all documents and instruments that Lender is reasonably advised are and/or reasonably deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Note or the Other Agreements or required to perfect or continue perfected, as valid liens, the

... (mirrored text) ...

1.2 The term "interest" as used herein means interest as provided for in the Note, including, without limitation, monthly interest on the principal balance thereof.

1.3 Wherever used in this Mortgage, "Borrower's obligations" means the principal and accrued interest, taxes, discounts, commissions and expenses of interest, and every term, condition, warranty, representation, agreement, undertaking, covenant and provision to be performed, discharged, observed or complied with by Borrower contained in the Loan Documents.

1.4 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any combination of the things, events or persons or parties in connection with which the term is used.

2. ASSIGNMENT

2.1 To secure the payment of Borrower's obligations and the performance of Borrower's obligations, Borrower hereby does hereby assign, transfer, convey, sell, alienate, convey, warrant, assign, pledge, mortgage, lease, license and release to Lender, its successors and assigns, forever, the mortgaged property for the purposes and uses set forth in this Mortgage.

2.2 Borrower, within ten (10) days after request by Lender that it will verify, in writing, to Lender, on or day proposed assignment of this Mortgage, the amount of principal and interest then due and unpaid under the Note and whether Borrower has or assigns any offsets or defenses thereto.

2.3 Borrower, immediately upon request by Lender, at Borrower's sole expense, will cause to be made, executed and delivered to Lender in form and substance acceptable to Lender, all documents and instruments that Lender is reasonably required and/or reasonably may deem necessary or appropriate to evidence, document or complete the transaction described in and/or contemplated by this Mortgage, the Note or the Other Agreements or related to period or continuing period, as valid liens, the

32130435

# UNOFFICIAL COPY

liens granted herein or in the Other Agreements by Borrower to Lender upon the Mortgaged Property.

## 3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower promptly will pay, or cause to be paid, when due or declared due, Borrower's Liabilities and Borrower will promptly, fully and faithfully perform, discharge, observe and comply with each and every of Borrower's Obligations.

(ii) Borrower now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver the Loan Documents to Lender, to encumber the Mortgaged Property to Lender as provided herein or in the Loan Documents and to perform all of Borrower's Obligations and to consummate all of the transactions described in or contemplated by the Loan Documents.

(iii) The execution, delivery and performance by Borrower of and under this Mortgage, the Note and the Loan Documents does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, trust agreement, note, judgment, order, award, decree or other restriction to which Borrower or any of the Mortgaged Property is or hereafter shall become a party or by which Borrower or any of the Mortgaged Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Borrower or any of the Mortgaged Property.

(iv) Borrower has duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Borrower is required by law to file with respect to the Mortgaged Property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid and Borrower shall maintain adequate reserves in amount to fully pay all such liabilities which hereafter may accrue. Borrower shall have the right to contest any taxes, charges, or other sums levied, imposed, assessed or claimed due by any federal, state and other governmental agency; provided, however, Borrower shall proceed diligently in good faith to contest such tax, charge or other sum and Borrower shall establish such reserves as Lender shall reasonably require to protect the Mortgaged Property.

95130192

# UNOFFICIAL COPY

Terms stated herein or in the other Agreements by Borrower to Lender upon the Mortgaged Property.

## 3. GOVERNANCE, WARRANTIES AND REPRESENTATIONS

3.1 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower hereby will pay, or cause to be paid, when due or demanded, the Borrower's obligations and Borrower will promptly, fully and faithfully perform, discharge, observe and comply with each and every of Borrower's obligations.

(ii) Borrower now has and hereafter shall maintain the standing, right, power and legal authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver the Loan Documents to Lender, to complete the Mortgaged Property to Lender as provided herein or in the Loan Documents and to perform all of Borrower's obligations and representations of the transactions described in or contemplated by the Loan Documents.

(iii) The execution, delivery and performance by Borrower of and under this Mortgage, the Note and the Loan Documents does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage deed, trust deed, lease agreement, rate, judgment, order, writ, decree or other restriction to which Borrower or any of the Mortgaged Property is or hereafter shall become a party or by which Borrower or any of the Mortgaged Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Borrower or any of the Mortgaged Property.

(iv) Borrower has duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Borrower is required by law to file with respect to the Mortgaged Property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid and Borrower shall maintain adequate reserves in amount to fully pay all such liabilities which hereafter may accrue. Borrower shall have the right to contest any taxes, charges or other sums levied, assessed or claimed due by any federal, state and other governmental agency provided, however, Borrower shall proceed diligently in good faith to contest such tax, charge or other sum and Borrower shall maintain such reserves as Lender shall reasonably require to protect the Mortgaged Property.

22130105

# UNOFFICIAL COPY

(v) All of the Licenses necessary for the operation of the Mortgaged Property are and shall at all times be in full force and effect. All of the Leases are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes, and valid and enforceable in accordance with their terms. Borrower has made no previous assignment of the Licenses, agreements or franchises, and Borrower agrees not to further assign or to otherwise encumber its interest in such Licenses, agreements or franchises during the term of this Mortgage. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, and revealed by Borrower to Lender in writing, no advance payments have been or shall be made thereunder.

(vi) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Lender's encumbrances thereon, the collectibility of the Note, the ability of Borrower to repay the Note or the financial condition of the Mortgaged Property or the operation or business thereof.

(vii) Borrower and the Mortgaged Property possess and hold and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property.

(viii) There does not exist and hereafter there shall not arise any default or breach of or under any agreement, instrument or document for borrowed money by which the Mortgaged Property is bound or obligated, nor does Borrower have any claims for set-off or defenses to the payment of such borrowed money.

(ix) The location, existence, use and condition of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, environmental laws and regulations and all covenants and restrictions of record.

(x) Borrower is and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

(xi) Borrower has no knowledge that the appraisal provided to Lender as a condition to the making of the loan evidenced by the Note was not prepared by the appraiser in accordance with, or does not fully comply with, all applicable





# UNOFFICIAL COPY

regulations of any regulatory agency having jurisdiction over Lender.

(xii) Borrower will save and hold Lender harmless of and from any and all damage, loss, cost and expense, including, but not limited to, reasonable attorneys' and paralegals' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding, threatened, filed and/or pending, in or to which Lender is or may become or may have become a party by reason of or arising from or on account of or in connection with Borrower's Liabilities, this Mortgage, the Note or the Loan Documents.

3.2 Borrower covenants with and warrants and represents to Lender that at closing of the loan secured hereby Borrower will be lawfully seized, possessed and the owner of and will have good and indefeasible, marketable fee simple title to the Land and the Mortgaged Property, free and clear of all liabilities, claims, debts, exceptions, security interests, assessments, charges, impositions, levies, taxes, liens and all other types of encumbrances (hereinafter referred to as the "Encumbrances") except (I) the Encumbrances of Lender, and (II) those Encumbrances described on Exhibit C attached hereto and made a part of hereof (Subparagraphs 3.2(I) and (I) are collectively referred to as the "Permitted Encumbrances").

3.3 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Borrower shall not remove any fixture except in the ordinary course of business; provided that any fixture, building or improvement so removed is either replaced or is not a material portion of the Mortgaged Property, or demolish any building or improvement located in or on the Premises. Borrower shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the reasonable opinion of Lender diminishes its value, and, promptly shall repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Borrower shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof. Borrower shall permit Lender, and its agents, upon reasonable advance

95130492

...of any regulatory agency having jurisdiction over ...

...with any and all ... including, but not limited to ... and ...

3.2. Borrower covenants with and warrants and represents to Lender that at closing of the Loan ...

3.3. Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not ...

22130435

# UNOFFICIAL COPY

notice, access to inspect the Mortgaged Property at all reasonable times; provided, however, Lender shall not unreasonably interfere with the tenants of the Mortgaged Property.

(ii) Borrower shall promptly pay and discharge, as and when due and payable, before any penalty attaches, all charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges and all other municipal or governmental charges, impositions, levies, assessments and taxes of any kind or nature that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Lender duplicate receipts evidencing payment thereof prior to delinquency. To prevent an Event of Default, Borrower may pay in full, under protest, and in the manner provided by statute, or contest, without payment, any charge, imposition, levy, tax or assessment which Borrower may desire to contest; provided that Borrower shall proceed diligently in good faith to contest such payment and if Borrower does not elect to pay under protest, Borrower will post such bond or other security as Lender may reasonably require to protect the lien of the Mortgage.

If Lender is required by legislative enactment or judicial decision to pay any charge, imposition, assessment, levy or tax in or to any state, municipality or government on the Mortgaged Property (or on any interest therein), this Mortgage, the Other Agreements or Borrower's Liabilities, all of Borrower's Liabilities shall be due and payable, at the election of Lender, thirty (30) days after Borrower's receipt of notice of such election; provided, however, said election and right to elect will be unavailing and this Mortgage, the Note and the Other Agreements will be and remain in full force and effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Borrower lawfully may pay such charge, imposition, assessment, levy or tax to or for Lender, and does, in fact, pay, when payable, so much thereof as, taken with interest as aforesaid, does not exceed the maximum amount of interest permitted by applicable law. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, the Note or the Other Agreements, Borrower will pay for the same, together with any interest or penalties imposed in connection therewith.

(iii) Borrower shall keep the Mortgaged Property free and clear of all Encumbrances (including, but not limited to, mechanics' liens and other similar liens or claims for liens and mortgages and trust deeds irrespective of whether same are junior to the lien of this Mortgage) of any and every kind and nature, except Permitted Encumbrances, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Lender, shall deliver



# UNOFFICIAL COPY

... shall be deemed to have been made in accordance with the provisions of this section.

... shall be deemed to have been made in accordance with the provisions of this section.

... shall be deemed to have been made in accordance with the provisions of this section.

... shall be deemed to have been made in accordance with the provisions of this section.

32330435



# UNOFFICIAL COPY

to Lender evidence satisfactory to Lender of the payment and discharge thereof.

(iv) The Note secured by the Mortgaged Property is not assumable. Without the prior written consent of Lender, Borrower shall not, at any time or times hereafter, (1) sell (including any sale or other transfer pursuant to installment contract for sale or sale under articles of agreement), grant an option to purchase, lease under any master lease, enter into a lease for substantially all of the Mortgaged Property, exchange, assign, convey, further encumber, hypothecate or otherwise transfer the Mortgaged Property and/or any part of interest in, the Mortgaged Property, assign, transfer or encumber the beneficial interest in any land trust which holds title to the Mortgaged Property; (2) if Borrower is a partnership, issue, sell, convey, assign or create a security interest in or otherwise transfer, pledge or hypothecate any general partnership interest or permit any of its existing general partners to sell, assign, transfer or convey any share of their interest in Borrower now owned by any of them; (3) if any general partner ("GP") of Borrower is a corporation, any GP shall sell or issue any shares of its capital stock, or any shareholder of any GP shall sell or transfer any shares of capital stock of any GP; (4) if Borrower is a corporation, Borrower shall not sell or issue any shares of its capital stock and each shareholder of Borrower shall not sell, assign or pledge any outstanding and issued shares of Borrower; (5) if Borrower is a limited liability company, Borrower shall not sell or issue any membership interests and each member of Borrower shall not sell, assign or pledge any outstanding membership interest in Borrower; or (6) obtain any loan or incur any obligation of any character whether direct or indirect, the repayment or performance of which is secured by a lien on the Mortgaged Property or any interest therein. Any of the foregoing acts, occurrences or events described in clauses (1) through (6) shall be deemed to be a "Sale" hereunder and under the Note, and the Loan Documents. Lender may, in its sole and absolute discretion, withhold consent to any Sale, or condition any such consent upon the payment of a fee, the partial payment of the Note, an increase in the interest rate, an increase in collateral, or all or any of the foregoing requirements, together with any other requirements it may wish to impose. The foregoing list is not intended in any way to limit the requirements Lender may impose nor is it intended to imply that Lender is obligated to consent to any Sale.

(v) All present and future items of fixtures, equipment, furnishings or other tangible personal property of Borrower related or necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances, except Permitted Encumbrances and Borrower will not acquire any such property subject to any such Encumbrance. Within five (5) days after request by Lender,



# UNOFFICIAL COPY

Borrower will execute and deliver to Lender a security agreement and financing statements, in form and substance acceptable to Lender, covering all such property.

(vi) With respect to the Mortgaged Property and the operation and business thereof, Borrower will keep or cause to be kept proper books and records, prepared in accordance with requirements of federal income tax laws and regulations, consistently applied. Borrower shall permit Lender and its auditors and agents from time to time during regular business hours and on reasonable notice to review Borrower's books, records and financial information.

3.4 If Borrower, within ten (10) days after written demand from Lender, shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair, replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed or Borrower otherwise defaults in the performance of Borrower's Obligations, (or, if such actions can not be completed within ten (10) days, shall fail within ten (10) days to begin, or at any time thereafter shall fail to diligently pursue, such actions), Lender, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such of Borrower's Obligations. Any amounts paid by Lender in taking such action, together with interest thereon at the Default Rate (as defined in the Note) from the date of Lender's payment thereof until repaid by Borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and, until paid, shall constitute a part of Borrower's Liabilities secured by this Mortgage and bear interest at the Default Rate. Notwithstanding the foregoing, such advances by Lender shall not be deemed to relieve Borrower from an Event of Default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Lender and not obligatory upon Lender and Lender shall not in any case be liable to Borrower for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Lender may rely upon any bills delivered to it by Borrower or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

3.5 Borrower covenants that it shall not grant or modify any existing easements which benefit or burden the Mortgaged Property or grant or modify any licenses relating to the Mortgaged Property or the operation thereof, without in each instance obtaining the prior written consent of Lender, which shall not be unreasonably withheld. Borrower shall grant such easements, cross-easements and rights of way in, to, on, over, through or under all or a part of the Mortgaged Property necessary for ingress and egress, passage and parking of vehicles, passage of pedestrians, installation, maintenance, repair, replacement, removal and use of roadways and

35130492

# UNOFFICIAL COPY

...will remain and deliver to the security agreement and financial statements in form and substance acceptable to lender, covering all such property.

With respect to the mortgaged property and the operation and maintenance thereof, borrower will keep or cause to be kept in good repair and condition in accordance with requirements of Federal Reserve Bank laws and regulations, and borrower shall permit lender and its auditors and agents from time to time during regular business hours and on reasonable notice to review borrower's books, records and financial information.

1.4. If borrower, within the time specified in the loan agreement, shall neglect or refuse to keep the mortgaged property in good repair and condition and to pay the premiums for fire and theft insurance, to pay the taxes and other charges all as required by law and to discharge all obligations as herein provided or borrower's default in the performance of borrower's obligations, or if such action can not be completed within the 100 days shall fail to diligently perform or at any time thereafter shall fail to diligently perform, such default, default at the discretion of lender may cause such reports or representations to be made, which such statements, pay such obligations, or from such of borrower's obligations. Any amounts paid by lender in taking such action, together with interest thereon at the rate specified in the Note, from the date of lender's payment thereof until repaid by borrower to lender, shall be due and payable by borrower to lender upon demand, and until paid, shall constitute a part of borrower's liabilities accrued by this Note, and shall be added to the Default Rate. Notwithstanding the foregoing, such amounts by lender shall not be deemed to release borrower from default of default borrower or impair any right or remedy or remedy of lender. The exercise of the right to take such action shall be optional with lender and not obligatory upon lender and lender shall not in any case be liable to borrower for failure or refusal to exercise any such right. In making any payment pursuant to the exercise of any such right, lender may rely upon any bills delivered to it by borrower or any such bills and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

1.5. Borrower covenants that it shall not grant or modify any existing or future security interest or lien in the mortgaged property or grant or modify any interest related to the mortgaged property or the operation thereof, without in each instance obtaining the prior written consent of lender, which shall not be unreasonably withheld. Borrower shall grant such easements, cross easements and rights of way as, for any over, through or under all or a part of the mortgaged property necessary for ingress and egress, passage and parking of vehicles, passage of pedestrians, installation, maintenance, repair, replacement, removal and use of conduits and

021301035



# UNOFFICIAL COPY

sidewalks and installation, operation, maintenance, repair, replacement, relocation, removal and use of public facilities and utilities.

3.6 The Borrower represents and warrants to Lender that (A) the Borrower has not used any "Hazardous Materials" (as defined below) on, from or affecting the Mortgaged Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Material and, to the best of Borrower's knowledge no prior owner of the Mortgaged Property or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Mortgaged Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, registration, reporting or disposal of Hazardous Materials except for the two incidents regarding leaking underground storage tanks (LUST Incident Nos. 890553 and 932730) which were reported to the Illinois Emergency Management Agency as required by law and Borrower represents to Lender that the aforesaid tanks have been properly removed from the Mortgaged Property and that all contamination caused by said tanks has been remediated and cleaned in accordance with the Illinois Environmental Protection Agency's ("IEPA") clean-up standards based on the documentation provided to Borrower by Ford Motor Company, Ford Motor Land Services Corporation and Ford Leasing Development Company; (b) Borrower has never received any notice of any violations (and is not aware of any existing violations) of federal, state, or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment transportation, manufacture, refinement, handling, production, registration, reporting or disposal of Hazardous Materials at the Mortgaged Property and, to the best of Borrower's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Mortgaged Property; (c) Borrower shall keep or cause the Mortgaged Property to be kept free of all underground and/or above ground storage tanks except to the extent that such underground and/or above ground storage tanks do not leak on and/or into the Mortgaged Property and are used in compliance with all applicable federal, state and local laws and regulations; (d) Borrower shall keep or cause the Mortgaged Property to be kept free of all Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Borrower shall not cause or permit the Mortgaged Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Borrower cause or permit, as a result of any intentional or unintentional





# UNOFFICIAL COPY

act or omission on the part of Borrower or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Mortgaged Property or onto any other contiguous property; (e) the Borrower shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Mortgaged Property as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of Lender, and in accordance with the orders and directives of all federal, state and local governmental authorities. If the Borrower fails to conduct an environmental audit required by the orders and directives of any of the aforesaid governmental authorities or required by Lender, then Lender may at its option and at the expense of Borrower, conduct such environmental audit.

Subject to the limitations set forth below, Borrower shall defend, indemnify and hold harmless Lender, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Mortgaged Property or the soil, water, vegetation, (buildings, personal property, persons or animals); (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Mortgaged Property; (c) any lawsuit or administrative proceeding brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Mortgaged Property; and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Lender, which are based upon or in any way related to such Hazardous Materials used in the Mortgaged Property; and (e) the presence on or under the Premises of underground or above ground storage tanks. The indemnity obligations under this paragraph are specifically limited only to the effect that Borrower shall have no indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by Lender, its successor or assigns.

Borrower agrees that in the event this Mortgage is foreclosed or the Borrower tenders a deed in lieu of foreclosure, Borrower shall deliver the Mortgaged Property to Lender free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.



# UNOFFICIAL COPY

For purposes of this Mortgage, "Hazardous Materials" includes, without limitation, petroleum, petroleum by-products, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, gasoline, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.); the Federal Insecticide Fungicide and Rodenticide Act, as amended (7 U.S.C. Sections 136, et seq.); the Resource Conservation and Recovery Act, as amended (16 U.S.C. Sections 3401, et seq.); and all applicable state and local environmental laws, and the rules, regulations and ordinances adopted and publications promulgated pursuant to said laws and ordinances, as any of the foregoing laws, ordinances, rules and regulations may be amended from time to time, and any other federal, state or local laws or ordinances, now or hereafter existing, relating to regulation or control of toxic or hazardous substances, wastes or materials (all the foregoing being referred to herein as the "Environmental Laws").

The provisions of this Paragraph 3.6 shall be in addition to any and all other obligations and liabilities Borrower may have to Lender under the Loan, any of the Loan Documents, and in common law, and shall survive (a) the repayment of all sums due under the Note and the Loan Documents, (b) the satisfaction of all of the other obligations of Borrower in this Mortgage and under the Loan Documents, (c) the discharge of this Mortgage, and (d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of Borrower and Lender that the indemnity provisions of this Paragraph 3.6 shall only apply to an action commenced against any owner or operator of the Premises in which any interest of Lender is threatened or any claim is made against Lender for the payment of money.

#### 4. TAXES, INSURANCE AND CONDEMNATION

4.1 (A) Borrower at all times, shall keep and maintain the Mortgaged Property fully insured as required under the Loan Agreement. Borrower will give immediate written notice to Lender of any material loss or damage to the Mortgaged Property caused by any casualty. In the event of foreclosure of this Mortgage or assignment hereof by Lender or transfer of title to the Mortgaged Property in extinguishment of Borrower's Liabilities, all right, title and interest of Borrower in and to any policies then in force shall pass to the purchaser, grantee or assignee.

(B) (1) Full power is hereby conferred on Lender:



# UNOFFICIAL COPY

For purposes of this mortgage, "hazardous materials" includes, without limitation, petroleum, petroleum by products, asbestos, polychlorinated biphenyls, chemical explosives, radioactive materials, and any hazardous materials, hazardous wastes, or toxic substances or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Sections 9601, et seq., the Hazardous Materials Transportation Act, as amended 49 U.S.C. Sections 1801, et seq., the Toxic Substances Control Act, as amended 15 U.S.C. Sections 2601, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. Sections 136, et seq.), the Resource Conservation and Recovery Act, as amended 16 U.S.C. Sections 1401, et seq., and all applicable state and local environmental laws, and the rules, regulations and ordinances adopted and promulgated pursuant to said laws and ordinances, as any of the foregoing laws, ordinances, rules and regulations may be amended from time to time, and any other federal, state or local laws or ordinances, now or hereafter enacted, relating to regulation or control of toxic or hazardous substances, wastes or materials (all the foregoing being referred to herein as the "environmental laws").

The provisions of this Paragraph 3.3 shall be in addition to any and all other obligations and liabilities Borrower may have to lender under the loan, any of the loan documents, and in common law, and shall survive to the extent of all sums due under the Note and the loan documents, (b) the satisfaction of all of the other obligations of Borrower under this mortgage and under the loan documents, (c) the discharge of this mortgage, and (d) the termination of this mortgage or assignment of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this mortgage, it is the intention of lender and borrower that the liability provisions of this Paragraph 3.3 shall only apply to an action commenced against any owner or operator of the premises in which any interest of lender is threatened or any claim is made against lender for the payment of money.

## 4. ASSIGNMENT, INTEREST AND LIEN

4.1 (a) Borrower at all times shall keep and maintain the mortgaged property fully insured as required under the loan documents. Borrower will also immediately written notice to lender of any certain loss or damage to the mortgaged property caused by any casualty in the event of foreclosure of this mortgage or assignment hereof by lender or transfer of title to the mortgaged property in extinguishment of Borrower's liability, all rights, title and interest of borrower in and to any policies then in force shall pass to the purchaser, grantee or assignee.

(b) This power is hereby conferred on lender:

02130135



# UNOFFICIAL COPY

- (a) to settle and compromise all claims under all policies;
- (b) to demand, receive and issue a receipt for all monies becoming due and/or payable under all policies;
- (c) to execute, in the name of Borrower or in the name of Lender, any proofs of loss, notices or other instruments in connection with all claims under all policies; provided, however, that so long as no uncured Event of Default shall exist hereunder, Lender shall not exercise such power without the consent of Borrower; and
- (d) to assign all policies to any holder of Borrower's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(2) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Lender, and Lender, in its sole and absolute discretion, may

- (1) apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' and paralegals' fees either
  - (I) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof, in which event Lender must give its prior written approval to all plans and specifications for the alteration, reconstruction, repair or restoration of the Mortgaged Property; or
  - (II) as a payment on account of Borrower's Liabilities (without affecting the amount or time of each subsequent payment required to be made by Borrower to Lender under the Note), whether or not then due or payable;

95130192

# UNOFFICIAL COPY

(a) In the event of a default under this mortgage, the lender shall have the right to:

(b) In the event of a default under this mortgage, the lender shall have the right to:

(c) In the event of a default under this mortgage, the lender shall have the right to:

(d) In the event of a default under this mortgage, the lender shall have the right to:

(e) In the event of a default under this mortgage, the lender shall have the right to:

(f) In the event of a default under this mortgage, the lender shall have the right to:

(g) In the event of a default under this mortgage, the lender shall have the right to:

(h) In the event of a default under this mortgage, the lender shall have the right to:

20250105

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

or

(ii) deliver the same to Borrower.

(C) All insurance proceeds now or hereafter disbursed for the benefit of Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, are hereby assigned to Lender as additional security for the payment of Borrower's Liabilities (and for such purpose, Borrower hereby grants to Lender a security interest therein).

4.2 (A) Upon the request of Lender, Borrower shall deposit with Lender monthly as and when payments are due under the Note until the Borrower's Liabilities are paid in full, a sum equal to one-twelfth (1/12th) of: (i) Lender's reasonable estimate of the total annual impositions, levies, taxes and assessments arising with respect to the Mortgaged Property which will next become due and payable; and (ii) the total amount of annual premiums for all policies required to be obtained and maintained by Borrower pursuant to this Mortgage with respect to the Mortgaged Property. Subject to the provisions of this Paragraph, Lender shall pay, when and to whom due and payable under applicable contracts or law, to and including the maturity date, all of the aforesaid impositions, levies, taxes, assessments and premiums. Notwithstanding the foregoing, Lender does not hereby assume any of Borrower's obligations under said laws to make such payments and nothing contained herein, in the Note or the Other Agreements shall require Lender to perform any such obligations of Borrower except for the making of the aforesaid payments in accordance with and subject to the above specified terms. Lender shall not be obligated to make such payments, except to the extent of deposits held in escrow hereunder. Any such payments made by Lender in excess of the deposits held in escrow, together with interest thereon at the Default Rate from the date of Lender's payment(s) thereof until repaid by Borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and, until paid, shall constitute part of Borrower's Liabilities secured by this Mortgage.

Notwithstanding anything contained herein to the contrary, so long as Borrower retains a valid and effective exemption from the imposition of general real estate taxes on the Mortgaged Property based on the Borrower's status as an Illinois not-for-profit corporation, Lender hereby agrees that it will not require the deposits provided for in Subparagraph 4.2(A)(i) above. Borrower hereby agrees to provide Lender, upon Lender's request, with evidence of Borrower's exemption from the imposition of general real estate taxes on the Mortgaged Property.

(B) If the deposits required by this Paragraph 4.2 are insufficient to pay the impositions, levies, taxes or assessments for which they are provided, Lender shall give notice to Borrower



# UNOFFICIAL COPY

and, on or before thirty (30) days before the same shall become due and payable, Borrower shall deposit with Lender such additional monies as are necessary to pay, in full, such obligations.

(C) Lender shall not be liable for failure to pay, when due, any such impositions, levies, taxes or assessments. Upon payment, in full, of Borrower's Liabilities, Lender shall deliver any remaining amount of the aforesaid deposits to or at direction of Borrower or the then owner of the Mortgaged Property.

(D) All of the aforesaid deposits hereby are pledged, as additional security for the payment of Borrower's Liabilities (and for such purpose, Borrower hereby grants to Lender a security interest therein), to be applied by Lender for the purposes hereinabove set forth and shall not be subject to the control of Borrower. No interest shall be paid Borrower on any of the foregoing deposits. Upon the occurrence of an Event of Default hereunder, Lender, at its option and in its sole discretion, may apply any monies held pursuant to Sub-Paragraphs (A) and (C) above on account of any of Borrower's Liabilities, in such order or priority as Lender may elect.

4.3 (A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, but not limited to, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to the Lender as additional security for the payment of Borrower's Liabilities (and for such purpose, Borrower hereby grants to Lender a security interest therein).

(B) Lender shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Borrower's name, in Lender's name or in both names).

(C) Borrower, immediately upon request by Lender, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to Lender of, all such awards, free and clear of all Encumbrances, except Permitted Encumbrances. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Borrower shall continue to pay all of Borrower's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Lender, and any reduction in Borrower's Liabilities resulting from the application by Lender of such award





# UNOFFICIAL COPY

or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Lender of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Lender shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and of the reasonable attorneys' fees, costs, expenses and disbursements incurred by Lender in connection with the collection of such award or payment.

## 5. ASSIGNMENT OF RENTS AND LEASES

5.1 All of the Rents arising from the Leases are hereby absolutely and unconditionally assigned, transferred and conveyed to Lender as security for the payment of Borrower's Liabilities. Prior to the occurrence of an Event of Default under this Mortgage, Borrower shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same to be applied first to the payment of all impositions, levies, interest, assessments and other charges upon the Mortgaged Property, secondly to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, thirdly to the maintenance and repairs required hereby and lastly to the payment of any scheduled payment of Borrower's Liabilities then due and owing, before using any part of the Rents for any other purposes.

5.2 At all times and at reasonable intervals (prior to the occurrence of an Event of Default hereunder), any of Lender's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Lender, a nominee of Lender or in any or all of said names.

5.3 If an Event of Default shall occur or exist:

(i) Borrower's right to use the Rents is terminated and any Rents then or thereafter coming into Borrower's possession are to be held in trust by Borrower for the benefit of Lender in a segregated manner and immediately delivered to Lender, and Borrower shall have no rights to use the Rents for any purpose whatsoever without the prior written consent of Lender.

(ii) To the extent permitted by applicable law, Lender may, without notice and without bringing any action or proceeding or by a receiver appointed by a court, take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Lender may deem proper. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease portions of the Premises or from any other act or omission of

# UNOFFICIAL COPY

of payment as herein set forth shall be deemed to have been made only on the date of such payment. In the event of the death of the lender, the lender's estate shall have the right to demand payment of this mortgage and shall have the right to receive and hold payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this mortgage shall have been sought or recovered or not, and of the reasonable attorney's fees, costs, expenses and disbursements incurred by lender in connection with the collection of such sums or payment.

## ARTICLE IV. ASSIGNMENT OF THIS MORTGAGE

4.1 All of the benefits arising from this mortgage are hereby absolutely and unconditionally assigned, transferred and conveyed to lender as security for the payment of borrower's obligations. Prior to the execution of an Assignment of this mortgage, lender shall have the right to collect all of the rents arising from the leased premises, and shall have the same to be applied first to the payment of all obligations, interest, assessments and other charges upon the mortgaged property, secondly to the payment of the maintenance of the premises and other expenses and charges upon the property, thirdly to the maintenance and repair of the mortgaged property and lastly to the payment of any scheduled payment of borrower's obligations thereon and unpaid, before using any part of the rents for any other purpose.

4.2 At all times and at reasonable intervals prior to the execution of an Assignment of this mortgage, any of lender's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the leases, by mail, telephone, teletype or otherwise, in the name of lender, a nominee of lender or in any or all of said names.

## 4.3 If an event of default shall occur or exist:

(i) Borrower's right to use the rents is terminated and any rents then or thereafter coming into borrower's possession are to be held in trust by borrower for the benefit of lender in a separate manner and immediately delivered to lender, and borrower shall have no right to use the rents for any purpose whatsoever without the prior written consent of lender.

(ii) To the extent permitted by applicable law, lender may, without notice and without bringing any action or proceeding or by a receiver appointed by a court, take possession of the mortgaged property and have, hold, manage, lease and operate the mortgaged property on such terms and for such period of time as lender may deem proper. Lender shall not be liable for any loss sustained by borrower resulting from lender's failure to lease portions of the premises or from any other act or omission of

22130-135

# UNOFFICIAL COPY

Lender in managing the Mortgaged Property (unless such loss is caused by the willful misconduct and bad faith of Lender).

(iii) Immediately upon demand by Lender, Borrower shall deliver to Lender the originals of the Leases, with appropriate endorsement and/or other specific evidence of assignment thereto to Lender which endorsement and/or assignment shall be in form and substance acceptable to Lender.

(iv) Lender, then or at any time or times thereafter, at its sole election, without notice thereof to Borrower, may notify any or all of the obligors of the Leases that the Leases have been assigned to Lender and Lender (in its name, in the name of Borrower or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Lender.

(v) Borrower, immediately upon demand by Lender, unconditionally shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Lender.

(vi) Lender shall have the right at any time or times thereafter, at its sole election, without notice thereof to Borrower, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Borrower, Lender or in both names.

(vii) Borrower, irrevocably hereby designates, makes, constitutes and appoints Lender (and all persons designated by Lender) as Borrower's true and lawful attorney and agent in fact with power, without notice to Borrower and at such time or times thereafter as Lender, at its sole election, may determine, in the name of Borrower, Lender or in both names: (a) to demand payment of the Rents and performance of the Leases; (b) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (c) to exercise all of Borrower's rights, interests and remedies in and under the Leases and to collect the Rents; (d) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (e) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (f) to take control, in any manner, of the Rents; (g) to prepare, file and sign Borrower's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (h) to endorse the name of Borrower upon any payments or proceeds of the Rents and to deposit the same to the account of Lender; and (i) to do all acts and things necessary, in Lender's sole discretion, to carry out any or all of the foregoing.

(viii) All of the foregoing payments and proceeds received by Lender shall be utilized by Lender, at its sole election in its sole discretion, for any one or more of the

# UNOFFICIAL COPY

Leader in handling the Mortgage Property unless such loss is caused by the willful misconduct and bad faith of Leader.

(v) Immediately upon demand by Leader, Borrower shall deliver to Leader the originals of the Lease, with appropriate endorsement and other specific evidence of assignment thereof to Leader with endorsement and/or assignment shall be in form and substance acceptable to Leader.

(vi) Leader, upon or at any time or times thereafter, at its election, without notice thereof to Borrower, may notify any or all of the obligors of the Lease that the Lease has been assigned to Leader and Leader (in its name, in the name of Borrower or in both names) may direct said obligors thereafter to make all payments due from them under the Lease directly to Leader.

(vii) Borrower, immediately upon demand by Leader, unconditionally shall direct all obligors of the Lease then and thereafter to make all payments then and thereafter due from them under the Lease directly to Leader.

(viii) Leader shall have the right at any time or times thereafter, at its election, without notice thereof to Borrower, to enforce the terms of the Lease and obtain payment of and collect the Rent, by legal proceedings or otherwise, in the name of Borrower, Leader or in both names.

(ix) Borrower, immediately hereby designated, makes, constitutes and appoints Leader and all persons designated by Leader as Borrower's true and lawful attorney and agent in fact with power, without notice to Borrower and at such time or times thereafter as Leader, at its election, may determine, in the name of Borrower, Leader or in both names, (a) to enforce payment of the Rent and performance of the Lease; (b) to enforce payment of and collect the Rent, by legal proceedings or otherwise, in the name of Borrower, Leader or in both names; (c) to enforce the Lease and to collect the Rent; (d) to settle, adjust, compromise, extend or renew the Lease and/or the Rent; (e) to settle, adjust or compromise any legal proceedings pending or to be brought or shall be brought of the Lease; (f) to take control, in any manner, of the Rent; (g) to prepare, file and sign Borrower's name on any deed of trust in bankruptcy, or similar document in a similar proceeding, against obligors of the Lease; (h) to enforce the terms of the Lease upon any payments or proceeds of the Rent and to deposit the same to the account of Leader; and (i) to do all acts and things necessary, in Leader's sole discretion, to carry out any or all of the foregoing.

(x) All of the foregoing payments and proceeds received by Leader shall be utilized by Leader, at its sole election in its sole discretion, for any one or more of the

38130178



# UNOFFICIAL COPY

following purposes: (a) to be held by Lender as additional collateral for the payment of Borrower's Liabilities; (b) to be applied to Borrower's Liabilities, in such manner and fashion and to such portions thereof as Lender, at its sole election, shall determine; (c) to be applied to such obligations of Borrower or the Mortgaged Property or the operations or business thereof as Lender, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (d) to be remitted to Borrower.

## 6. DEFAULT

6.1 The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(i) Failure of Borrower to pay within three (3) days of when due any of Borrower's Liabilities.

(ii) Borrower's obtaining any additional or future advances, or incurring any additional indebtedness or obligations of any character, the repayment or performance of which is secured by a lien on or an interest in the Mortgaged Property, without the prior written consent of Lender.

(iii) The occurrence or existence of a "Default" or "Event of Default" under the Loan Documents or under any other agreement, instrument, or document evidencing and/or securing and/or guarantying all or any portion of the indebtedness secured hereby, which is not cured within any applicable grace or cure periods.

(iv) Any Sale, as described in or contemplated by Paragraph 3.3(iv) above, without Lender's consent.

(v) The occurrence or existence of any default, event of default, or breach of or under any other agreement, instrument or document for borrowed money, or the acceleration of any obligation for borrowed money, by which the Mortgaged Property or the Borrower is bound or obligated, which is not cured within any applicable grace or cure periods.

(vi) Failure of Borrower to promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Borrower's Obligations.

6.2 Upon the occurrence or existence of an Event of Default, Lender, after notice and demand insofar as required hereby, or by applicable law, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

# UNOFFICIAL COPY

following purposes: (a) to be held by lender as additional collateral for the payment of Borrower's liabilities; (b) to be applied to Borrower's liabilities, in such manner and fashion and to such portions thereof as lender, at its sole discretion, shall determine; (c) to be applied to the satisfaction of lender or the Mortgagee in the event of the liquidation or business failure of Borrower; (d) to be used to satisfy, in whole or in part, any obligations or liabilities of Borrower, or to be used for any other purpose or purposes; or (e) to be used for any other purpose or purposes as may be determined by lender.

## ARTICLE 5

5.1 The occurrence of any one or more of the following events shall constitute an event of default under this Mortgage:

(i) Failure of Borrower to pay within three (3) days of when due any of Borrower's liabilities.

(ii) Borrower's obtaining any additional or future advances or increasing any existing indebtedness or obligations of any kind, the repayment or performance of which is secured by a lien on or an interest in the Mortgaged Property, without the prior written consent of Lender.

(iii) The occurrence or existence of a "default" or "Event of Default" under the Loan Documents or under any other agreement, instrument, or document existing and/or accruing and/or payable all or any portion of the indebtedness secured hereby, which is not cured within any applicable grace or cure periods.

(iv) Any title, as described in or contemplated by Paragraph 3.3(iv) above, without Lender's consent.

(v) The occurrence or existence of any default, event of default, or breach of or under any other agreement, instrument or document for borrowed money, or the acceleration of any obligation for borrowed money, by which the Mortgaged Property or the interest is bound or obligated, which is not cured within any applicable grace or cure periods.

(vi) Failure of Borrower to promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Borrower's obligations.

5.2 Upon the occurrence or existence of an Event of Default, Lender, after notice and demand insofar as required hereby, or by applicable law, in its sole discretion and at its sole election, without notice of an election, and without further demand, may do any one or more of the following:

20130425

# UNOFFICIAL COPY

(i) Declare all of Borrower's Liabilities immediately due and payable and collect the same at once by foreclosure or otherwise, without notice of broken covenant or condition.

(ii) Subject to the rights of the tenants of the Mortgaged Property, either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or located on the Mortgaged Property, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as Borrower might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed necessary by Lender and the leasing of the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' and paralegals' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Borrower's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served in the manner of Paragraph 7.1 by registered mail to the Borrower at the address of Borrower last appearing on the records of Lender. Borrower agrees to surrender possession of the Mortgaged Property to Lender immediately upon the occurrence of an Event of Default. If Borrower shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such Event of Default, such possession shall be as a tenant of Lender, and Borrower agrees to pay to Lender, or to any receiver appointed as provided below, after such Event of Default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Borrower, to be applied as provided above in the first sentence of this Sub-Paragraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Borrower may be dispossessed by the usual summary proceedings. In the event Borrower or Borrower's lessee shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Lender in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(iii) File one or more suits at law or in equity for the foreclosure of the lien of this Mortgage. At its option, Lender may foreclose the lien of this Mortgage upon less than all of the Mortgaged Property and specifically reserves the right to bring future foreclosure actions with respect to the balance of the Mortgaged Property or portions thereof. In the event of the commencement of any such suit by Lender, Lender shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without



# UNOFFICIAL COPY

regard to the solvency or insolvency of Borrower at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Borrower's Liabilities.

(iv) Exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State of Illinois (including all remedies and rights of a secured party under the Uniform Commercial Code of the State of Illinois), accruing to a mortgagee and/or secured party in connection with a nonrecourse loan upon a default by a mortgagor and/or debtor or otherwise available in equity or under the Other Agreements.

6.3 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of Borrower's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Note) the following: the costs, charges, expenses and reasonable attorneys' and other fees specified in Paragraph 6.4 below; any and all expenditures which may be paid or incurred by or on behalf of Lender for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, and similar data and assurances with respect to the title to the Mortgaged Property; interest at the Default Rate, as provided in the Note upon a Default thereunder; all prepayment or like premiums, if any, provided for in the Note; and all other fees, costs and expenses which Lender deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of Borrower's Liabilities, secured by this Mortgage, payable on demand and, except for the aforesaid Interest at the Default Rate and the prepayment or like premiums, shall bear interest at the Default Rate from the date of Lender's payment thereof until repaid to Lender.

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if Lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or



...of the delivery of the property of borrower at the time of application and without regard to the value of the mortgaged property... to make application for and obtain the appointment of a receiver for the mortgaged property... the power to collect the rents and profits of such estate and to lease and a sale and a redemption or not, as well as to carry out the terms of the mortgage, except for the interest of such receiver, would be entitled to collect the rents and profits... all other assets which may be necessary or useful to such receiver for the payment of the mortgage, including the proceeds of the mortgaged property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of borrower's liabilities.

...and provided under or by the laws or decisions of the State of Illinois... and rights of a secured party under the Uniform Commercial Code of the State of Illinois... in connection with a mortgage loan upon a default by a mortgagor and/or debtor or otherwise available in equity or under the Other Agreements.

...in the event of default under this Mortgage, there will be added to and included as part of borrower's liabilities and allowed in the claims for sale of the mortgaged property or in any judgment rendered upon this Mortgage or the sale of the property... all expenditures which may be paid or incurred by or on behalf of lender for appraisal, title, documentary and expert evidence, stamping, charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, and similar data and assurances with respect to the title to the mortgaged property; interest at the default rate, as provided in the Note and a default thereunder; all payments or like premiums or fees provided for in the Note; and all other fees, costs and expenses which lender deems necessary to prosecute any remedy it has under this Mortgage, or to claim priority of the time which may be paid pursuant to the claim hereunder of the time of sale of the property or of the value of the mortgaged property. All such costs, charges, expenses, payments or like premiums, fees and other expenditures shall be a part of borrower's liabilities, secured by this mortgage, payable on demand and, except for the amount thereof at the default rate and the prepayment or like premium, shall bear interest at the default rate from the date of lender's payment thereof until repaid to lender.

...if lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or

# UNOFFICIAL COPY

proceeding (bankruptcy or otherwise) relating to the Loan Documents, or Borrower's Liabilities, in which Lender has been involved as a result of being the holder or mortgagee, or if Lender shall incur or pay any expenses, costs, charges or reasonable attorneys' and paralegals' fees by reason of the employment of counsel to represent Lender in connection with amendments, modifications or subsequent agreements requested by Borrower, or to represent Lender in connection with any occurrence which results in an Event of Default, whether in court proceedings or otherwise, such expenses and all of Lender's reasonable attorneys' and paralegals' fees shall be part of Borrower's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the Default Rate from the date of Lender's payment thereof until repaid to Lender.

6.5 The proceeds of any sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 6.3 above, secondly, to the balance of Borrower's Liabilities, and thirdly, the surplus, if any, to Borrower. Payment of the purchaser to the Lender at any sale shall satisfy the obligation of the purchaser at such sale and such purchaser shall not be bound to look after the application thereof.

6.6 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Borrower, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (i) does hereby expressly waive any and all rights of appraisement, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to purchaser at such sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor. The Borrower 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 Illinois Mortgage Foreclosure Law (Chapter 735, Act 5, Sections 15-1101 et seq., Illinois Compiled Statutes) (herein called the "Act"), or residential real estate, as defined in Section 15-1219 of the Act, and to the full 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 full extent permitted by law, the benefits of all present and future valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.



# UNOFFICIAL COPY

6.7 Lender shall have the right to become the purchaser at any sale, and as purchaser purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the Borrower's Liabilities owing to such Lender, or, if such Lender holds less than all of Borrower's Liabilities, the pro rata part thereof owing to such Lender, accounting to all other purchasers not joining in such bid in cash for the portion of such bid or bids apportionable to such nonbidding purchaser or purchasers.

6.8 To the full extent Borrower may do so, Borrower agrees that it will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Borrower and its successors and assigns, and for any and all persons ever claiming any interest in Borrower's Liabilities, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the Borrower's Liabilities, notice of election to mature or declare due the whole of the Borrower's Liabilities and all rights to a marshaling of the assets of Borrower, including Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Borrower shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of the Lender under the terms of this Mortgage to a sale of Mortgaged Property for the collection of the Borrower's Liabilities without any prior or different resort for collection, or the right of the Lender under the terms of this Mortgage to the payment of such indebtedness out of the proceeds of sale of Lender in preference to every other claimant whatever. If any law referred to in this paragraph and now in force, of which Borrower or its representatives, successors and assigns and such other persons claiming any interest in Mortgaged Property might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph.

6.9 Lender shall have the right from time to time to bring any action to enforce any rights under the terms of this Mortgage or the Loan Documents, without prejudice to the right of the Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default by the Borrower existing at the time such earlier action was commenced.

6.10 No right or remedy of Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the holder of the Note may recover judgment thereon, issue execution



# UNOFFICIAL COPY

8.7 Lender shall have the right to demand the purchase of any Note and as purchaser purchasing or any such sale shall have the right to credit upon the amount of the bid made thereon, to the extent necessary to satisfy such bid, the Borrower's obligation to pay to Lender the principal and interest thereon. All of Lender's obligations, the principal and interest thereon to such Lender, shall be satisfied to all the extent necessary and permitted to such Lender for the portion of such bid or bids appropriated to such bidding purchaser or purchasers.

8.8 To the full extent Borrower may do so, Borrower agrees that it will not of any time limit upon, plead, claim or take any benefit or advantage of any law or doctrine in force providing for any suspension, extension, stay or extension of redemption, and Borrower and its successors and assigns, and for any and all purposes ever intended or intended in Borrower's obligations, to the extent permitted by law, hereby waives and releases all rights of redemption, extension, suspension, stay or extension, notice of intention to redeem or declare and all rights of the Borrower's (including) notice of election, maturity or declaration of the Borrower's obligations and all rights to a marshaling of the assets of Borrower, including Mortgages, Property, or to a sale in course of redemption in the event of foreclosure of the loans and security interests hereby created. Borrower shall not have in respect any right under any statute or rule of law pertaining to the marshaling of assets, sale in favor of order of redemption, the suspension of redemption, the extension of redemption or otherwise, or other matters whether to defect, reduce or affect the right of the Lender under the terms of this Mortgage to a sale of Mortgaged Property for the collection of the Borrower's obligations without any prior or different resort for collection, or the right of the Lender under the terms of this Mortgage to the payment of such indebtedness out of the proceeds of sale of such Property in preference to every other claimant whatsoever. If any law referred to in this paragraph and now in force, of which Borrower or its successors, assigns and assigns and any other persons claiming any interest in Mortgaged Property might have taken the benefit of this paragraph, shall hereafter be repealed or amended, or in force, such law shall not thereafter be deemed to provide the application of this paragraph.

8.9 Lender shall have the right from time to time to bring any action to enforce any rights under the terms of this Mortgage or the Loan Documents, without prejudice to the right of the Lender thereafter to bring an action of foreclosure, or any other action, for an event of default by the Borrower existing at the time such earlier action was commenced.

8.10 No right or remedy of Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but no limitation or condition shall be placed on the right of the Note may recover judgment thereon, issue execution

02150485



# UNOFFICIAL COPY

therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of an Event of Default by Borrower hereunder, or acquiescence therein, nor will it affect any subsequent Event of Default hereunder by Borrower of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Lender. No terms or conditions contained in this Mortgage or the Note may be waived, altered or changed except as evidenced in writing signed by Borrower and Lender.

6.11 Lender shall release this Mortgage by proper instrument upon payment and discharge of all of Borrower's Liabilities, including all prepayment or like premiums, if any provided for in the Note and payment of all costs, expenses and fees, including attorneys' fees, incurred by Lender for the preparation, execution and/or recording of such release.

6.12 Upon occurrence of an Event of Default and following acceleration by Lender of the maturity of Borrower's Liabilities as provided herein, a tender of payment thereof by Borrower, or any other party, or a payment thereof received upon or on account of a sale or foreclosure of this Mortgage or Lender's exercise of any of its other rights or remedies under other Loan Documents or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Borrower of the Note and, therefore, such payment must, to the extent permitted by law, include the interest at the Default Rate payable upon a default, contained in the Note.

6.13 (A) Any agreements between Borrower and Lender are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loan evidenced by the Note or otherwise, shall the amount paid or agreed to be paid to Lender for the use, detention or forbearance of the loan proceeds to be disbursed exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

(B) If fulfillment of any provision herein or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful rate. If by any circumstance Lender shall ever receive as interest an amount which would exceed such highest lawful rate, the amount which may be deemed excessive interest shall be applied to the principal of Borrower's Liabilities and not to interest.

95130192



# UNOFFICIAL COPY

(C) The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, in the Note or in the Other Agreements.

6.14 Any failure of Lender to insist upon the strict performance by Borrower of any of the terms and provisions of the Loan Documents, this Mortgage, or the Note shall not be deemed to be a waiver of any of the terms and provisions thereof, and Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof to be performed by Borrower. Borrower or any other person now or hereafter obligated for the payment of the whole or any part of Borrower's Liabilities, shall not be relieved of such obligation by reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of Lender to comply with any request of Borrower, or of any other person, to take action to foreclose this Mortgage or to sell the Mortgaged Property or otherwise enforce any of the provisions of this Mortgage, the Other Agreements or the Note, or by reason of the release, regardless of consideration, of the whole or any part of the security held for Borrower's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Lender extending the time of payment or modifying without first having obtained the consent of Borrower or such other person, and, in the latter event, Borrower, and all such other persons, shall continue to be liable on account of Borrower's Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Lender. Lender, without notice, may release, regardless of consideration, any part of the security held for Borrower's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Lender may resort for the payment of Borrower's Liabilities to any other security therefor held by the Lender in such order and manner as Lender may elect.

6.15 Upon and after the occurrence of an Event of Default under this Mortgage, Lender shall not be obligated to accept any cure or attempted cure by Borrower, except to the extent otherwise specifically provided hereunder or required by applicable law; however, if Lender accepts such cure, Lender shall not exercise rights or remedies under Paragraphs 5 or 6 of this Mortgage unless and until a separate or additional Event of Default then exists hereunder.

6.16 It is understood and agreed that neither the exercise by Lender of any of its rights or remedies under this Mortgage shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or

# UNOFFICIAL COPY

(C) The terms and provisions of this Mortgage shall control all other terms and provisions contained herein, in the Note or in the Other Agreements.

5.14 Any failure of Lender to insist upon the strict performance by Borrower of any of the terms and provisions of the loan documents, this Mortgage, or the Note shall not be deemed to be a waiver of any of the terms and provisions thereof, and Lender, notwithstanding any such failure, shall have the right at any time or from time to time thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof to be performed by Borrower. However, no other person now or hereafter obligated for the payment of the whole or any part of Borrower's liabilities, shall not be relieved of such obligation by reason of the sale, conveyance or other transfer of the mortgaged property or the failure of Lender to comply with any request of Borrower or of any other person, to take action to enforce any Mortgage or to enforce the Mortgage (property or otherwise) or the provisions of this Mortgage, the Other Agreements or the Note, or by reason of the release, transfer, or consideration, of the whole or any part of the security held for Borrower's liabilities, or by reason of any agreement or stipulation between any third party and Lender, or the sale, conveyance or other transfer of the mortgaged property or the failure of Lender to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof, and, in the event of a default by Borrower, and all other persons, shall continue to be liable on account of Borrower's liabilities and to make such payments according to the terms of any such agreement, exercise or modification unless expressly released and discharged in writing by Lender, and, without any notice, recording, or other consideration, any party to the security held for Borrower's liabilities, without any notice, recording, or other consideration, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Lender may resort for the payment of Borrower's liabilities to any other security therefor held by Lender in such order and manner as Lender may elect.

5.15 From and after the occurrence of an event of default under this Mortgage, Lender shall not be obligated to accept any cure or attempted cure by Borrower, except to the extent otherwise specifically provided hereunder or required by applicable law; however, if Lender accepts such cure, Lender shall not exercise rights or remedies under Paragraphs 5 or 6 of this Mortgage unless and until a separate or additional event of default then exists hereunder.

5.16 It is understood and agreed that neither the exercise by Lender of any of its rights or remedies under this Mortgage shall be deemed to make Lender a "possessor-in-possession" or otherwise responsible or liable in any manner with respect to the mortgaged property or the use, occupancy, enjoyment or operation of all or

20250325

# UNOFFICIAL COPY

any portion thereof, unless and until Lender, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Mortgaged Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Mortgaged Property or any part thereof by such receiver, be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

6.17 (A) 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.

(B) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

(C) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

## 7. MISCELLANEOUS

7.1 Every provision for notice, demand or request required in this Mortgage, or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on, mailed or delivered by nationwide courier to the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made by certified or registered mail, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the third (3rd) day of posting as aforesaid. If notice is served by nationwide courier, notice shall be deemed made on the first business day following delivery to the courier. For the purposes herein, notices shall be sent to Borrower and Lender as follows:





# UNOFFICIAL COPY

If to Lender:

South Chicago Bank  
9200 South Commercial Avenue  
Chicago, Illinois 60617  
Attention: Mr. James T. Sheehan

with a courtesy copy to:

Schwartz & Freeman  
401 North Michigan Avenue  
Suite 1900  
Chicago, IL 60611  
Attention: John T. Duax, Esq.

If to Borrower:

South East Alcohol and Drug Abuse Center  
9101 South Exchange Avenue  
Chicago, Illinois 60617  
Attention: Mr. Gregory R. Zyvert, Executive Director

with a courtesy copy to:

Truitt, Brown & Truitt  
1642 East 56th Street  
Suite 100  
Chicago, Illinois 60637-1952  
Attention: David M. Truitt, Esq.

The failure to deliver or send any courtesy copy provided for above shall not affect the validity and effectiveness of any notice given hereunder. Any person may change the address for the giving of notice by giving notice as provided herein.

7.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns, or heirs and personal representatives, as the case may be, of the Borrower and Lender.

7.4 This Mortgage shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

7.5 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this

# UNOFFICIAL COPY

11 to Borrower:

South Chicago Bank  
9300 South Commercial Avenue  
Chicago, Illinois 60617  
Attention: Mr. James T. Sheehan

With a courtesy copy to:

STUBBS & FREEMAN  
401 North Michigan Avenue  
Suite 1500  
Chicago, IL 60611  
Attention: John T. Black, Esq.

11 to Borrower:

South East Chicago and Trust Union Center  
3101 South Exchange Avenue  
Chicago, Illinois 60617  
Attention: Mr. Gregory R. Ayers, Executive Director

With a courtesy copy to:

TRUITT, ROWN & TRUITT  
1543 East 53rd Street  
Suite 100  
Chicago, Illinois 60617 1972  
Attention: David M. Truitt, Esq.

The failure to deliver or send any courtesy copy provided for above shall not affect the validity and effectiveness of any notice given hereunder. Any error in the address for the giving of notice by giving notice as provided herein.

7.3 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.4 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns, or heirs and personal representatives, as the case may be, of the Borrower and lender.

7.5 This Mortgage shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

7.6 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or in any other state, or the inclusion of which would affect the validity, legality or enforcement of this

Property of Cook County Clerk's Office

2018/04/27

# UNOFFICIAL COPY

Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.6 As used herein, the term "Default Rate" shall have the same meaning as in the Note.

7.7 Wherever a power of attorney is conferred upon Lender hereunder, it is understood and agreed that such power of attorney is conferred with full power of substitution, and Lender may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof to one or more sub-agents.

7.8 Nothing herein shall be deemed or construed, nor shall the exercise by Lender of any rights, privileges or remedies conferred under this Mortgage, the Note or the Other Agreements, to render Lender and Borrower as joint venturers or partners in any way with respect to the Mortgaged Property.

7.9 Borrower's Obligations and Borrower's Liabilities secured by this Mortgage have been incurred by Borrower for the construction of improvements to the Mortgaged Property and this Mortgage constitutes a "Construction Mortgage" within the meaning of Section 9-313(1)(c) of the Illinois Uniform Commercial Code.

IN WITNESS WHEREOF, the Borrower has executed this Mortgage as of the day and year first above set forth.

SOUTH EAST ALCOHOL AND DRUG  
ABUSE CENTER, an Illinois not-  
for-profit corporation

By: *Gregory F. Zyvert*  
Name: Gregory F. Zyvert  
Its: Executive Director

By: *Charles E. McDowell*  
Name: CHARLES E. MCDOWELL  
Its: President

Attest: *Ramona F. Edwards*  
Name: RAMONA F. EDWARDS  
Its: Secretary

# UNOFFICIAL COPY

7.4. As used herein, the term "Default Rate" shall have the same meaning as in the Note.

7.5. Wherever a power of attorney is conferred upon Lender hereunder, it is understood and agreed that such power of attorney is conferred with full power of substitution, and Lender may exercise in its sole discretion or exercise such power itself or to designate such power, or any part thereof to one or more sub-agents.

7.6. Nothing herein shall be deemed to constitute, nor shall the exercise by Lender of any rights, privileges or remedies conferred under this Mortgage, the Note or the Other Agreements, to confer Lender and Borrower as joint venturers or partners in any way with respect to the Mortgaged Property.

7.7. Borrower's obligations hereunder shall survive the completion of the term of this Mortgage and shall be deemed to be obligations of Borrower for the continuation of the term of this Mortgage and shall be deemed to be obligations of Borrower within the meaning of section 9-113(f) of the Illinois Uniform Commercial Code.

IN WITNESS WHEREOF, the Borrower has executed this Mortgage as of the day and year first above set forth.

LEITH EAST ALMOND AND ORLE  
AMUSE CENTER, an Illinois not-  
for-profit corporation

By: [Signature]  
Name: Gregory A. Ryger  
Title: Executive Director

By: [Signature]  
Name: [Name]  
Title: President

Attest: [Signature]  
Name: [Name]  
Title: Secretary

FILED IN PUBLIC RECORDS  
COUNTY CLERK'S OFFICE

32130435







# UNOFFICIAL COPY

## EXHIBIT "A" TO MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

### SECURED PROMISSORY NOTE

\$800,000.00

Chicago, Illinois  
January 30, 1995

FOR VALUE RECEIVED, the undersigned, SOUTH EAST ALCOHOL AND DRUG APOSE CENTER, an Illinois not-for-profit corporation (hereinafter referred to as "Borrower"), hereby promises to pay to the order of SOUTH CHICAGO BANK, (hereinafter referred to as "Lender"), with its principal office located at 9200 South Commercial Avenue, Chicago, Illinois 60617, or such other place or places as Lender from time to time may designate in writing, the principal sum of EIGHT HUNDRED THOUSAND AND NO/100 (\$800,000.00) DOLLARS, or such lesser amount as may have been disbursed pursuant to the terms of the Loan Agreement, in lawful money of the United States of America, together with interest on the unpaid principal balance thereof from time to time outstanding at the rates or in the amounts described below.

1. Certain Definitions. For the purposes hereof, the terms set forth below shall have the following meanings:

A. "End Interest Rate" shall mean the prevailing yield on 5-year U.S. Government Treasury Notes in effect on the Permanent Funding Date plus two and one-quarter (2-1/4) percent.

B. "Floating Rate" shall mean the rate of interest announced by Lender, as its prime lending rate. The Floating Rate shall be automatically increased or decreased, as the case may be, from time to time as of the opening of business on the effective date of each change in the prime rate of the Lender, without prior notice to Borrower. The use of the term "prime rate" is not intended to be nor does it imply that said rate is a preferred rate of interest or one offered by Lender to its most creditworthy customers.

C. "Loan Agreement" shall mean that certain Construction Loan Agreement entered into by and between Borrower and Lender dated of even date herewith, providing for a construction and permanent loan with respect to the Property.

D. "Maturity Date" shall mean the earlier of:

(1) June 1, 1995 in the event all of the requirements and conditions set forth in Article VII of the Loan Agreement have not been fully satisfied by Borrower by June 1, 1995; or

95130492

# UNOFFICIAL COPY

## EXHIBIT A TO THE MORTGAGE, ASSIGNMENT OF INTEREST AND LEASE AND PRIORITY AGREEMENT

### ASSIGNED TREASURY NOTE

Chicago, Illinois  
January 30, 1992

\$500,000.00

FOR VALUE RECEIVED, the undersigned, the assignor, SOUTH EAST ALCOHOL AND  
GRUB HOUSE BREWERY, an Illinois non-profit corporation  
(hereinafter referred to as "Borrower"), hereby agrees to pay to  
the order of SOUTH CHINA BANK, hereinafter referred to as  
"Lender", the principal sum of \$500,000.00 (Five Hundred  
Thousand and no/100ths Dollars) in cash or cash equivalents  
as follows: (a) the sum of \$100,000.00 (One Hundred Thousand  
and no/100ths Dollars) on the date hereof; and (b) the balance  
of \$400,000.00 (Four Hundred Thousand and no/100ths Dollars)  
in equal monthly installments of \$33,333.33 (Thirty Three  
Thousand, Three Hundred and thirty three and 33/100ths Dollars)  
commencing on the first day of the month of January, 1993, and  
continuing thereafter on the first day of each month thereafter  
until the principal sum of \$500,000.00 (Five Hundred Thousand  
and no/100ths Dollars) has been fully paid. The term of this  
assignment shall be the term of the loan agreement, a lawful money of the United  
States of America, together with interest on the unpaid principal  
balance thereof from time to time as standing at the time of its  
the amounts described below.

1. Certain definitions. For the purposes hereof, the terms  
set forth below shall have the following meanings:

A. "Real Time Rate" shall mean the prevailing yield  
on 5-year U.S. Government Treasury Notes in effect on the Payment  
Funding Date plus two and one-quarter (2-1/4%) percent.

B. "Floating Rate" shall mean the rate of interest  
announced by Lender as its prime lending rate. The Floating Rate  
shall be automatically increased or decreased, as the case may be,  
from time to time as of the opening of business on the effective  
date of and change in the prime rate of the Lender, without prior  
notice to Borrower. The use of the term "prime rate" is not  
intended to be nor does it imply that said rate is a preferred rate  
of interest or one offered by Lender to its most creditworthy  
customers.

C. "Loan Agreement" shall mean that certain  
Consent and Loan Agreement entered into by and between Borrower  
and Lender dated of even date herewith, providing for a  
construction and permanent loan with respect to the Property.

D. "Maturity Date" shall mean the earlier of:

(i) June 1, 1992 in the event all of the  
requirements and conditions set forth in Article VII of the  
Loan Agreement have not been fully satisfied by Borrower by  
June 1, 1992; or

# UNOFFICIAL COPY

(ii) June 1, 2000; or

(iii) The date on which the principal balance hereof shall be declared due and payable by the Lender as the result of a Default hereunder.

E. "Loan Documents" shall mean this Note, and all other documents defined as Loan Documents in the Loan Agreement.

F. "Mortgage" shall mean that certain Mortgage, Assignment of Rents and Leases and Security Agreement dated of even date herewith executed by Borrower pledging the Property as security for Borrower's obligations under the Loan Documents.

G. "Permanent Funding Date" shall mean the first day of the calendar month immediately following completion of the renovation of the Project provided all of the requirements and conditions set forth in Article VII of the Loan Agreement have been fully satisfied by Borrower, but in no event later than June 1, 1995.

H. "Project" shall mean the renovation of the approximate 13,000 square foot commercial building located on the Property to be used by Borrower as a drug and alcohol abuse treatment center.

I. "Property" shall mean that certain 13,000 square foot commercial building located on the property commonly known as 8640 South Chicago Avenue in Chicago, Illinois, as more particularly described in the Mortgage, together with all Improvements as defined in the Loan Agreement.

## 2. Calculation and Payment of Principal and Interest.

A. Accrued and unpaid interest only computed at one (1.00%) percentage point over the Floating Rate as changing from time to time shall be paid to Lender commencing on the first day of the calendar month immediately following the first disbursement of the Loan hereunder and under the Loan Agreement and continuing on the first day of each calendar month thereafter to and including the Permanent Funding Date.

B. Provided all of the requirements and conditions set forth in Article VII of the Loan Agreement have been fully satisfied by Borrower on the Permanent Funding Date, commencing on the Permanent Funding Date and continuing on the first day of each calendar month thereafter, there shall be paid to Lender equal monthly payments of principal and interest equal to the amount arrived at by amortizing the principal balance of this Note on the Permanent Funding Date over a period of twenty (20) years at the End Interest Rate in effect on the Permanent Funding Date, with a



# UNOFFICIAL COPY

(11) June 1, 2008

shall be declared due and payable by the lender as the result of a default occurrence.

document defined as loan documents in the loan agreement.

assignment of rents and leases and security agreement dated of even date herewith executed by Borrower pledging the Property as security for Borrower's obligations under the loan documents.

the lender shall immediately following completion of the renovation of the Property provided all of the requirements and conditions set forth in Article VII of the loan agreement have been fully satisfied by Borrower, but in no event later than June 1, 2008.

approximately 13,000 square foot commercial building located on the Property to be used by Borrower as a drug and alcohol abuse treatment center.

foot commercial building located on the property commonly known as 8040 South Chicago Avenue in Chicago, Illinois, as more particularly described in the Mortgage, together with all improvements as defined in the loan agreement.

## 2. Calculation and Payment of Principal and Interest.

At the time of the first disbursement of the loan, the lender shall pay to Borrower the net amount of the loan, less the amount of the first disbursement of the loan, and under the loan agreement and continuing on the first day of each calendar month thereafter to and including the Maturity Date.

Provided all of the requirements and conditions set forth in Article VII of the loan agreement have been fully satisfied by Borrower on the Maturity Date, commencing on the first day of each calendar month thereafter, there shall be paid to the lender equal monthly payments of principal and interest equal to the amount arrived at by amortizing the principal balance of this loan on the Maturity Date over a period of twenty (20) years at the end interest rate in effect on the Maturity Date, with a

# UNOFFICIAL COPY

final payment of the total principal balance hereof together with all accrued interest due on June 1, 2000.

C. If all of the requirements and conditions set forth in Article VII of the Loan Agreement have not been fully satisfied by Borrower on June 1, 1995, then the total principal balance hereof together with all accrued interest shall be due and paid to Lender on June 1, 1995.

D. Interest on this Note (i) shall be calculated on the basis of 360 day year and (ii) be charged for the actual number of days within the period for which interest is being charged.

E. All payments on account of the indebtedness evidenced by this Note shall be first applied to interest accrued on the unpaid principal balance and the remainder to principal.

F. This Note may at any time and from time to time be prepaid in whole or in part without penalty. Any partial payments shall first be applied to interest accrued on the unpaid principal balance, the remainder shall be applied against the principal payments due on the Note in the inverse order of their maturity.

3. Security. This Note is secured by the Mortgage as well as all other collateral described in the Loan Documents and the terms and provisions of the Mortgage and other Loan Documents including the right to accelerate the balance due hereunder upon a sale of the Property without the consent of Lender are hereby incorporated herein by reference thereto.

4. Acceleration for Default; Waivers. If any installment of this Note, or any portion thereof, or any other monies owing hereunder or under the Loan Documents by Borrower to Lender, is not paid within three (3) days of when due at the place specified herein, or if Borrower otherwise defaults under the terms of this Note, the Loan Agreement or the Loan Documents (a "Default"), and such Default is not cured within the time as provided in the Loan Documents, if any, all installments of this Note, together with all other monies owing hereunder by Borrower to Lender immediately will be due and payable, without notice, at the election of Lender. The acceptance by Lender of any payment, partial or otherwise, made hereunder after the time when it becomes due as herein set forth will not establish a custom or constitute a waiver by Lender of any right to enforce prompt payment hereof. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES THE APPLICATION OF ANY AND ALL OF ITS RIGHTS AND POWERS UNDER ALL STATUTES OF LIMITATION AND SIMILAR STATUTES AND LAWS AS TO THIS NOTE AND ALL PORTIONS HEREOF. DEMAND, PRESENTMENT FOR PAYMENT, PROTEST AND NOTICE OF NONPAYMENT AND PROTEST HEREBY ARE WAIVED BY BORROWER AND EVERY ENDORSER AND/OR GUARANTOR HEREOF.



# UNOFFICIAL COPY

5. Default Rate of Interest. If any installment of this Note, or any portion thereof, is not paid when due, then the outstanding principal balance hereof shall bear interest at the "Default Rate" (as hereinafter defined) from and after the occurrence of the Default until (i) such installment is paid in full, or (ii) in the event the payment of this Note is accelerated, all indebtedness evidenced hereby and other sums payable under the Loan Documents to Lender shall bear interest at the Default Rate until paid or otherwise satisfied in full. The "Default Rate" shall be a rate equal to three (3%) percentage points over the Floating Rate in effect as of the date of the Default.

6. Fees and Expenses. If any installment of this Note, or any portion thereof, or any other monies owing hereunder or under the Loan Documents by Borrower to Lender, is not paid at the time and place specified therefor and Lender employs counsel for advice with respect thereto or to this Note, the Loan Documents or the Property, or to intervene, file a petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) relating to this Note, the Loan Documents or the Property, or to attempt to collect this Note or said other monies from, or to enforce this Note or the Mortgage against Borrower or any other party, then, in any such event and to the extent permitted by law, all reasonable attorneys' fees arising from such services, and all expenses, costs and charges relating thereto, shall be an additional liability owing hereunder by Borrower to Lender, payable on demand and bearing interest, until payment thereof to Lender, at the Default Rate until paid in full and shall be secured by the lien of the Mortgage.

7. Maximum Interest. All agreements between Borrower and Lender expressly are limited so that in no contingency or event whatsoever, whether by reason of disbursement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid by Borrower to Lender for the use, detention or forbearance of the amounts to be disbursed hereunder exceed the highest lawful rate of interest permissible under the law which a court of competent jurisdiction, by a final non-appealable order, determines is applicable hereto ("Highest Lawful Rate"). If fulfillment of any provision herein contained at the time performance of such provision becomes due involves exceeding the Highest Lawful Rate, then ipso facto, the obligation to fulfill the same shall be reduced to such Highest Lawful Rate. If by any circumstance Lender shall ever receive as interest an amount which may be deemed excessive interest, same shall be applied to the principal of the indebtedness evidenced hereby and not to interest. The terms and provisions of this paragraph shall control all other terms and provisions contained herein, or in the Loan Documents. If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and the application of such provision to other parties or

95130492

# UNOFFICIAL COPY

3. **Default Rate of Interest.** If any installment of this Note, or any portion thereof, is not paid when due, then the outstanding principal balance hereof shall bear interest at the "Default Rate" (as hereinafter defined) from and after the occurrence of the default until such installment is paid in full, or until the payment of this Note is accelerated. All obligations of the Borrower and other sums payable under the Note shall bear interest at the "Default Rate" until paid or otherwise satisfied in full. The "Default Rate" shall be a rate equal to three (3) percentage points over the Floating Rate in effect as of the date of the default.

4. **Enforcement of Note.** If any installment of this Note, or any portion thereof, or any other amount owing hereunder or under the Note is not paid by the Borrower to the Lender at the time and place specified hereunder, the Lender shall have the right with respect to the Note, the Loan Documents or the property, or to interests therein, including any and all proceeds (including in any suit or proceeding (bankruptcy or otherwise) relating to this Note, the Loan Documents or the property, or to attempts to collect this Note or said other monies from, or to enforce this Note or the Mortgage against the Borrower or any other party, then, in any such event and to the extent permitted by law, all reasonable and proper costs and charges, including reasonable attorney's fees and expenses, shall be an additional liability of the Borrower to the Lender, and shall be secured by the Lien of the Mortgage.

5. **Maximum Interest.** All agreements between Borrower and Lender, expressly or implied, shall be subject to the provisions of the laws of the State of New York, and shall be governed by the laws of the State of New York. If the amount paid or agreed to be paid by Borrower to Lender for the use, detention or forbearance of the money to be loaned hereunder exceeds the highest lawful rate of interest permitted under the law which a court of competent jurisdiction, by a final non-appealable order, determines is applicable hereof ("Highest Lawful Rate"). If the performance of such provision becomes due involves exceeding the highest lawful rate, the obligation to fulfill the same shall be reduced to such highest lawful rate. If by any circumstance Lender shall ever receive an interest on account which may be deemed excessive interest, same shall be applied to the principal of the indebtedness evidenced hereby and not to interest. The terms and provisions of this paragraph shall control all other terms and provisions contained herein, or in the Loan Documents. If any provision of this Note or the Loan Documents is held invalid or unenforceable, the remainder of this Note and the application of such provision to other parties or

02130135



# UNOFFICIAL COPY

circumstances shall not be affected thereby, the provisions of this Note being severable in any such instance.

8. Waivers; Continued Liability. It is agreed that the granting to Borrower or any other party of an extension or extensions of time for the payment of any sum or sums due under this Note, or the Loan Documents or for the performance of any term, provision, covenant or agreement of this Note, or the Loan Documents, or the taking or releasing of security or collateral for the payment of this Note or the exercising or failure to exercise of any right or power under this Note, or the Loan Documents, shall not in any way release or affect the liability of Borrower, or any guarantor hereof, or any other party obligated to pay the indebtedness evidenced by this Note.

9. Amendments. This Note may not be amended or modified, nor shall any revision hereof be effective, except by an instrument in writing expressing such intention executed by Lender and directed to Borrower.

10. Choice of Law; Waiver of Jury Trial; Service of Process. This Note shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects, including, but not limited to, the legality of the interest charged hereunder, by the statutes, laws and decisions of the State of Illinois. Borrower, in order to induce Lender to accept this Note and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF ILLINOIS, IN THE COUNTY OF COOK AND THE CITY OF CHICAGO, AND CONSENTS THAT ALL SERVICE OF PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO THE BORROWER AT 9101 SOUTH EXCHANGE AVENUE, CHICAGO, ILLINOIS 60617, ATTENTION: GREGORY R. ZYVERT, EXECUTIVE DIRECTOR, AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN POSTED AS AFORESAID, AND FURTHER BORROWER WAIVES, AT THE OPTION OF LENDER, TRIAL BY JURY AND WAIVES ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER AND CONSENTS TO THE GRANTING OF SUCH EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

11. Binding Effect. Wherever the term "Borrower" is used in this Note, the term shall include (unless otherwise expressly indicated) all of Borrower's successors, and assigns, as the case may be. This Note shall be binding upon Borrower and shall inure to the benefit of Lender and its successors and assigns.

12. Severability. Any provision of this Note which is unenforceable or contrary to applicable law, the inclusion of which would affect the validity, legality or enforcement of this Note, shall be of no effect, and in such case all remaining terms and provisions of this Note shall be fully effective, the same as

95130492



# UNOFFICIAL COPY

though no such invalid provision had ever been included in this Note.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the day and year first above written.

SOUTH EAST ALCOHOL AND DRUG  
ABUSE CENTER, an Illinois not-  
for-profit corporation

By: \_\_\_\_\_  
Name: Gregory R. Zyvert  
Its: Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: President

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Secretary

Property of Cook County Clerk's Office

95130492

# UNOFFICIAL COPY

Note. Although no such invalid provision had ever been included in this

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the day and year first above written.

SOUTH EAST ALCOHOL AND DRUG  
ABUSE CENTER, an Illinois not-  
for-profit corporation

BY: \_\_\_\_\_  
Name: Gregory R. Myvert  
Its: Executive Director

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: President

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Secretary

Property of Cook County Clerk's Office

32130435

COOK COUNTY CLERK'S OFFICE  
111 N. WASHINGTON ST. CHICAGO, ILL. 60602

# UNOFFICIAL COPY

EXHIBIT "B" TO  
MORTGAGE, ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT

LEGAL DESCRIPTION

LOTS 51 TO 66, BOTH INCLUSIVE, IN BLOCK 4 IN LINCOLN SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 36, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, LYING NORTH AND EAST OF THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY'S RIGHT OF WAY, IN COOK COUNTY, ILLINOIS.

PERMANENT TAX INDEX NUMBERS: 20-36-423-026  
20-36-423-027  
20-36-423-062  
20-36-423-033  
20-36-423-034  
20-36-423-035  
20-36-423-036  
20-36-423-037  
20-36-423-038

STREET ADDRESS: 8540 South Chicago Avenue  
Chicago, Illinois

35130492



# UNOFFICIAL COPY

EXHIBIT A TO  
MORTGAGE, ASSIGNMENT OF MORTGAGE AND LEASE  
AND SECURITY AGREEMENT

## LEGAL DESCRIPTION

TO HAVE AND TO HOLD TO THE SAID COUNTY OF COOK, ILLINOIS, ALL THAT PART OF THE SEVERAL LOTS OF THE SEVERAL LOTS OF SECTION 38, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BEING NORTH AND PART OF THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY'S RIGHT OF WAY, IN COOK COUNTY, ILLINOIS.

PERMANENT TAX INDEX NUMBERS:  
20-38-453-027  
20-38-453-028  
20-38-453-029  
20-38-453-030  
20-38-453-031  
20-38-453-032  
20-38-453-033  
20-38-453-034  
20-38-453-035  
20-38-453-036  
20-38-453-037  
20-38-453-038

STREET ADDRESS:  
Chicago, Illinois  
8540 South Chicago Avenue

22130435

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT "C" TO  
MORTGAGE, ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT

ENCUMBRANCES

1. Accrued but not yet due and payable general real estate taxes for 1994 and subsequent years.
2. Unrecorded easement for maintenance of overhead wires traversing the southeasterly portion of the Land, as disclosed by Chicago Guarantee Survey Order Number 8801009 dated March 23, 1988.

Property of Cook County Clerk's Office

95130492

# UNOFFICIAL COPY

OFFICE OF THE CLERK  
NORTHWEST TERRITORIES DEPARTMENT OF LANDS AND FORESTRY  
AND SPECIALTY AGREEMENT

## STIPULATIONS

1. The land described in this agreement is situated in the Northwest Territories and is subject to the provisions of the Land Act, R.S.N.W.T. 1988, Chapter 100.

2. The land is being transferred to the recipient for the purpose of being used as a site for a building or other structure. The recipient shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities.

Property of Cook County Clerk's Office