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2002-02-15 10:00:25

Cook County Recorder 77.50

THIS INSTRUMENT PREPARED
BY AND RETURN TO:
DAVID J. O'KEEFE
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street
Suite 1910
Chicago, Illinois 60601



0020187899

GIT 4288428 1/3 MJ

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

THIS MORTGAGE is made as of the 8th day of February, 2002 by SPY GLASS PROPERTIES LLC, an Illinois limited liability company ("Mortgagor") with a mailing address of 710 East Ogden Avenue, Suite 300, Naperville, Illinois 60563, and BANK OF AMERICA, N.A., having its principal office at 231 South LaSalle Street, Chicago, Illinois 60697, Attn: Randolph Kohler ("Lender").

WHEREAS, Mortgagor is indebted to Lender in the principal sum of THREE MILLION EIGHT HUNDRED THOUSAND NINE HUNDRED AND 00/100 DOLLARS (\$3,800,000.00), which indebtedness (the "Loan") is evidenced by Mortgagor's Construction Mortgage Note dated of even date herewith and all modifications, substitutions, extensions and renewals thereof ("Note") providing for repayment of principal and interest and providing for a final payment of all sums due thereunder on August 1, 2002.

TO SECURE to Lender the repayment of the Loan evidenced by the Note, with interest thereon; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor to Lender whether now or hereafter existing (collectively, the "Secured Indebtedness") and also in consideration of Ten Dollars (\$10.00), the receipt and sufficiency whereof is acknowledged, Mortgagor does hereby convey, grant mortgage and warrant to Lender the real estate ("Real Estate") located in the County of Cook, State of Illinois and described on Exhibit "A" attached hereto, subject only to covenants, conditions, easements and restrictions set forth on Exhibit "B", if any ("Permitted Encumbrances");

TOGETHER WITH all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, water rights, appurtenances thereunto belonging, title or reversion in any parcels, strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or hereafter acquired, all leasehold estates and all rents, issues, and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) proceeds of insurance in effect with respect to the Property (as hereinafter defined) and (ii) any and all awards, claims for damages, settlements and other compensation made for or

consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards") (which are pledged primarily and on a parity with the Real Estate and not secondarily), and all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the property including all additions, substitutions and replacements thereof. All of the foregoing are declared to be a part of the Real Estate whether physically attached or not, and it is agreed that all similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property".)

To have and to hold the Property unto the Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Property is located, which rights and benefits Mortgagor does hereby expressly release and waive.

Mortgagor and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness.

2. **Funds for Taxes and Insurance.** Subject to applicable law, if requested by Lender, Mortgagor shall thereafter pay or cause to be paid to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, the following amounts (collectively "Funds"): (i) a sum equal to all general and special real estate and property taxes and assessments (including condominium and planned unit development assessments, if any) and ground rents on the Property, if any (collectively "Impositions") next due on the Property, all as estimated by Lender, divided by the whole number of months to elapse before the month prior to the date when such Impositions will become due and payable; provided, however, that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Impositions next becoming due one (1) month prior to the date when such Impositions are, in fact, due and payable, plus (ii) if requested by Lender, a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required in Paragraph 6, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed, if any, all as are reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and estimates thereof.

The Funds shall be held by Lender or, at Lender's election, in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency ("depository account"). Lender shall apply the Funds to pay the Impositions, except that upon the occurrence of an Event of Default (as defined below), Lender may apply the Funds to the Secured Indebtedness as Lender

sees fit. Lender shall not be required to pay any interest or earnings on the Funds unless otherwise required by law, in which case, all interest shall accrue in the depository account and Lender may charge for so holding and applying the Funds, analyzing the account or verifying and compiling assessments and bills. Upon Mortgagor's request, Lender shall provide to Mortgagor an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit was made. The Funds are pledged as additional security for the sums secured by this Mortgage. The Funds are for the benefit of Mortgagor and Lender only and no third party shall have any right to or interest in the Funds or the application thereof.

If the amount of Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of Impositions, shall exceed the amount required to pay said Impositions and insurance premiums as they fall due, such excess shall be retained by Lender or in the depository account and credited to subsequent monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay the Impositions and insurance premiums as they fall due, Mortgagor shall immediately pay or cause to be paid to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all Secured Indebtedness, Lender shall promptly refund to Mortgagor, or to any person to whom Mortgagor directs, any Funds held by Lender. If, under Paragraph 18, the Property is sold or acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the Secured Indebtedness.

3. **Application of Payments.** Unless prohibited by applicable law, all payments received by Lender under this Mortgage, the Note and all other documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, the "Loan Documents") shall be applied by Lender first to payments required from Mortgagor to Lender under Paragraph 2, then to any sums advanced by Lender pursuant to Paragraph 8 to protect the security of this Mortgage, then to interest payable on the Note and to any prepayment premium which may be due, and then to principal payable on the Note (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity). Any applications to principal of proceeds from insurance policies, as provided in Paragraph 6, or of condemnation awards, as provided in Paragraph 10, shall not extend or postpone the due date of any monthly installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note or other Loan Documents.

4. **Prior Encumbrances; Liens.** Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Mortgage, including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice or the passage of time would constitute a default or event of default under any Prior Encumbrance or under any ground lease shall be an Event of Default under this Mortgage. Mortgagor shall promptly deliver to Lender all notices given or received of any defaults or events of default under any Prior Encumbrance or any ground lease. Nothing in this Paragraph shall be deemed to permit a Prohibited Transfer as defined in Paragraph 17 hereof. Mortgagor shall keep the Property free from mechanics' and all other liens and encumbrances, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable.

5. Taxes and Assessments; Rents. Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges, fines and Impositions attributable to the Property and leasehold payments, if any, and all other sums due under any ground lease attributable to the Property. Mortgagor shall provide evidence satisfactory to Lender of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by statute, any tax or assessment Mortgagor desires to contest.

6. Insurance. Definitions. For purposes of this Paragraph 6:

"Premises" means all land, improvements and fixtures.

"Real Estate" means only the land.

"Impositions" means all general and special real estate and property taxes and assessments (including condominium and planned unit developments assessments, if any) and ground rents on the Premises, if any.

A. Mortgagor, at its sole cost and expense, shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and, in any event, including:

(i) All Risk. Insurance against loss to the Premises which shall be on an "All Risk" policy form, in each case, covering insurance risks no less broad than those covered under a Standard Multi Peril (SMP) policy form, which contains a 1987 Commercial ISO "Causes of Loss - Special Form", including theft, and insurance against such other risks as Lender may reasonably require, including, but not limited to, insurance covering the cost of demolition of undamaged portions of any portion of the Premises when required by code or ordinance, the increased cost of reconstruction to conform with current code or ordinance requirements and the cost of debris removal. In addition, during construction such policies shall cover real estate property taxes; architect, engineering, and consulting fees; legal and accounting fees, including, but not limited to, the cost of in-house attorneys and paralegals; advertising and promotions expenses; interest on money borrowed; additional commissions incurred upon renegotiating leases and any and all other expenses which may be incurred as a result of any property loss or destruction by an insured. Such policies shall be in amounts equal to the full replacement cost of the Premises (other than the Real Estate), including all fixtures, equipment, construction materials and personal property on and off site, and Mortgagor's interest in any leasehold improvements. Such policies shall also contain a one hundred percent (100%) co-insurance clause with an agreed amount endorsement (with such amount to include the replacement cost of the foundation and any underground pipes), a permission to occupy endorsement and deductibles in amounts acceptable to Lender.

(ii) Workers' Compensation. During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (iv) below and (ii) workers' compensation insurance covering all persons engaged in such alterations or improvements.

(iii) **Flood.** Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Premises is now, or at any time while the Liabilities remain outstanding shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts equal to the full replacement value of all above grade structures on the Premises.

(iv) **Public Liability.** Commercial general public liability insurance against death, bodily injury and property damage arising in connection with the Premises. Such policy shall be written on a 1986 Standard ISO occurrence basis form or equivalent form, shall list Lender as the named insured, shall designate thereon the location of the Premises and have such limits as Lender may reasonably require, but in no event less than One Million Dollars (\$1,000,000.00). Mortgagor shall also obtain excess umbrella liability insurance with such limits as the Lender may reasonably require, but in no event less than Two Million Dollars (\$2,000,000.00).

(v) **Rent Continuation.** Rent and rental value/extra expense insurance in amounts sufficient to pay during any period in which the Premises may be damaged or destroyed, on a gross rents basis for a period of twelve (12) months or such greater time as Lender may deem appropriate: (a) all rents derived from the Premises; (b) all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor or by tenants of the Premises; and (c) all contingent rents.

(vi) **Boiler and Machinery.** If necessary, broad form boiler and machinery insurance including business interruption/extra expense and rent and rental value insurance, on all equipment and objects customarily covered by such insurance and/or involved in the heating, cooling, electrical and mechanical systems of the Premises (if any are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as Lender may reasonably require, but in no event less than that customarily carried by persons owning or operating like properties;

(vii) **Other Insurance.** Such other insurance relating to the Premises and the use and operation thereof, as Lender may, from time to time, reasonably require.

B. **Policy Requirements.** All insurance shall: (i) be carried in companies with a Best's rating of A/X or better, or otherwise acceptable to Lender; (ii) in form and content acceptable to Lender; (iii) provide thirty (30) days' advance written notice to Lender before any cancellation, adverse material modification or notice of non-renewal; (iv) to the extent limits are not otherwise specified herein, contain deductibles which are in amounts acceptable to Lender; and (v) provide that no claims shall be paid thereunder without ten (10) days advance written notice to Lender. All physical damage policies and renewals shall contain a standard mortgage clause naming the Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Lender under such insurance; and a loss payable clause in favor of the Lender for personal property, contents, inventory, equipment, loss of rents and business interruption. All liability policies and renewals shall name the Lender as an additional insured. No additional parties shall appear in the mortgage or loss payable clause without Lender's prior written consent. All deductibles shall be in amounts acceptable to Lender. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial satisfaction of the Secured Indebtedness, all right,

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title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

C. **Delivery of Policies.** Any notice pertaining to insurance and required pursuant to this Paragraph 6 shall be given in the manner provided in Paragraph 15 below at Lender's address stated below. The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or in the case of liability insurance, by certificates of insurance. Mortgagor shall use its best efforts to deliver originals of all policies and renewals (or certificates evidencing the same), marked "paid", (or evidence satisfactory to Lender of the continuing coverage) to Lender at least thirty (30) days before the expiration of existing policies and, in any event, Mortgagor shall deliver originals of such policies or certificates to Lender at least fifteen (15) days before the expiration of existing policies. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance for Lender's interest only. Any amounts so disbursed by Lender pursuant to this Paragraph shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note. Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 6.

D. **Separate Insurance.** Mortgagor shall not carry any separate insurance on the Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall have attached standard non-contributing mortgagee clause, with loss payable to Lender, and shall otherwise meet all other requirements set forth herein.

E. **Compliance Certificate.** At Lender's option, but not more often than annually, Mortgagor shall provide Lender with a report from an independent insurance consultant of regional or national prominence, acceptable to Lender, certifying that Mortgagor's insurance is in compliance with this Paragraph 6.

F. **Notice of Casualty.** Mortgagor shall give immediate notice of any loss to Lender. In case of loss covered by any of such policies, Lender is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, Mortgagor covenants to sign upon demand, or Lender may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender may deduct from such insurance proceeds any expenses incurred by Lender in the collection and settlement thereof, including, but not limited to, attorneys' and adjusters' fees and charges.

G. **Application of Proceeds.** If all or any part of the Premises shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 10 and the Proceeds (as defined below) are made available to Mortgagor by Lender, Mortgagor shall promptly and with all due diligence restore and repair the Premises to the extent the net insurance proceeds of the policies required to be maintained by Mortgagor hereunder, award or other compensation (collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in

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writing prior to commencement of the work. At Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of the Proceeds, and only in the event that Lender reasonably believes that the effect on the Premises of the casualty or condemnation is such that the Premises cannot be restored to substantially the same condition which existed prior to such casualty or condemnation, or is such that any tenant of the Premises has the right to terminate its lease due to the Premises being untenable or uninhabitable as a result of such casualty or condemnation, the entire amount of the Proceeds shall either: (i) be applied to the Secured Indebtedness in such order and manner as Lender may elect (subject to the requirements of the Loan Documents) or (ii) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 6 to finance the cost of restoration or repair. If the amount of the Proceeds to be made available to Mortgagor pursuant to this Paragraph 6 is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to the Proceeds. If Mortgagor is required to deposit funds under this Paragraph 6, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse the Proceeds held by Lender hereunder and in the event Mortgagor fails to deposit such deficiency within said thirty (30) days, Lender may thereupon apply the Proceeds to the Secured Indebtedness. The amount of the Proceeds which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Lender may require (i) evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender and (ii) such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance acceptable to Lender. If Lender requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with an escrow trustee acceptable to Lender pursuant to a construction loan escrow agreement satisfactory to Lender. No payment made prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of the Secured Indebtedness except and to the extent the funds are applied thereto pursuant to this Paragraph 6. Without limitation of the foregoing, Lender shall have the right at all times to apply such funds to the cure of any Event of Default or the performance of any obligations of Mortgagor under the Loan Documents.

7. Use, Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Mortgagor shall not commit waste or permit impairment or deterioration of the Property. Mortgagor shall not allow store, treat or dispose of Hazardous Material as defined in Paragraph 28, nor permit the same to exist or be stored, treated or disposed of, from or upon the Property, except in full compliance with all Environmental Laws. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or destroyed. Mortgagor shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance

of the Property, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Property, except as required by law, without the prior written consent of Lender. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Property. If this Mortgage is on a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If this Mortgage is on a ground leasehold, Mortgagor shall perform or cause to be performed all obligations of the lessee under the underlying ground lease.

8. **Protection of Lender's Security.** If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, the Note or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including: (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, paying ground rents (if any); (iv) procuring insurance; and (v) renting, operating and managing the Property and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property shall be operational and usable for its intended purposes. Lender, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 8 shall be part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 8.

9. **Inspection of Property and Books and Records.** Upon reasonable prior notice, Mortgagor shall permit Lender and its representatives and agents to inspect the Property from time to time during normal business hours and as frequently as Lender requests. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Property. From time to time upon not less than five (5) days' demand, Mortgagor shall permit Lender or its agents to examine and copy such books and records and all supporting vouchers and data at its offices or at the address identified above.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Lender. Mortgagor hereby grants a security interest to Lender in and to such proceeds. Lender is authorized to collect such proceeds and, at Lender's sole option and discretion, to apply said proceeds either to restoration or repair of the Property or in payment of the Secured Indebtedness. In the event the Property is restored, Lender may pay the condemnation proceeds in accordance with its customary loan payment procedures, and may charge its customary fee for such services. In the event the condemnation proceeds are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment, and any prepayment premium required by the

Loan Documents shall then be due and payable as provided therein. Lender may apply the condemnation proceeds to such prepayment premium.

11. **Mortgagor Not Released; Forbearance by Lender Not a Waiver; Remedies Cumulative.** Extension or other modification granted by Lender to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured Indebtedness shall not operate to release, in any manner, the liability of the Mortgagor. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 8 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Secured Indebtedness. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and assigns of Lender and Mortgagor. If this Mortgage is executed by more than one Mortgagor, each Mortgagor shall be jointly and severally liable hereunder.

13. **Loan Charges.** If the Secured Indebtedness secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Mortgagor which exceeded permitted limits ("Excess Loan Charges") will, at Lender's option, either be refunded to Mortgagor or applied as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note. Neither Mortgagor nor any other guarantor or obligor of the Note shall have any action against Lender for any damages whatsoever arising from the payment of Excess Loan Charges.

14. **Legislation Affecting Lenders' Rights.** If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of the Note, this Mortgage or any of the other Loan Documents unenforceable according to its terms, Lender, at its option upon giving written notice to Mortgagor allowing Mortgagor sixty (60) days to pay off the balance of the Secured Indebtedness, may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by Paragraph 19.

15. **Notice.** Except for any notice required under applicable law to be given in another manner, any notices required or given under this Mortgage shall be given by hand delivery, by nationally recognized overnight courier service or by certified mail, return receipt requested. Notices shall be given to Mortgagor at the address provided below and to Lender to the attention of Victor Stasica at Lender's address stated above. Copies of Notice to Lender shall be sent to David J. O'Keefe, Schain, Burney, Ross & Citron, Ltd., 222 North LaSalle Street, Suite 1910, Chicago, Illinois 60601. Notices shall be deemed to have been given and effective on the date of

delivery if hand-delivered, the next business day after delivery to the nationally recognized overnight courier service if by such courier service, or two (2) business days after the date of mailing shown on the certified receipt, if mailed. Any party hereto may change the address to which notices are given by notice as provided herein. Notices to Mortgagor shall be sent to 710 East Ogden Avenue, Suite 300, Naperville, Illinois 60563, with a copy to Michael S. Friman, Esq., Horwood Marcus & Berk Chartered, 180 North LaSalle Street, Suite 3700, Chicago, Illinois 60601.

16. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage, the Note or any of the other Loan Documents conflicts with applicable law, or is adjudicated to be invalid or unenforceable same shall not affect other provisions of this Mortgage, the Note or any of the other Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage, the Note or any of the other Loan Documents are declared to be severable and the validity or enforceability of the remainder of the Loan Document in question shall be construed without reference to the conflicting, invalid or unenforceable clause or provision.

17. **Prohibitions on Transfer of the Property or of an Interest in Mortgagor.** It shall be an immediate default if, without the prior written consent of Lender, which consent may be granted or withheld at Lender's sole discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecate, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of the Property or any part thereof or interest therein, (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Lender may declare the entire unpaid balance, including interest, immediately due and payable. The foregoing provisions of this Paragraph 17 shall not, however, apply to the lien of current Impositions and assessments not yet due and payable. This option shall not be exercised by Lender if prohibited by federal law as of the date of this Mortgage.

18. **Event of Default.** Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) Mortgagor's failure to pay any installment of principal or interest when due and payable, whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any other Loan Document, or Mortgagor's failure to pay any other amount required under the Note, this Mortgage or any other Loan Document which failure continues for more than five (5) days following written notice thereof given by Lender to Mortgagor; provided, however, that such five (5) day cure period shall not apply to the other subparagraphs of this Paragraph 18;

(b) Mortgagor's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Mortgage (other than an Event of Default described elsewhere in this Paragraph 18) or any other document or instrument evidencing, guarantying or securing the Secured Indebtedness, and such failure continues for more than twenty-one (21) days following written notice thereof given by Lender to Mortgagor, unless such Event of Default is not capable of being cured within said twenty-one (21) days, Mortgagor commences to cure such Event of Default

within said twenty-one (21) days and thereafter Mortgagor diligently prosecutes the cure of such Event of Default, in which event Mortgagor shall have such additional time as is reasonably necessary, not to exceed sixty (60) days, to cure such Event of Default; provided, however, that such twenty-one (21) day cure period shall not apply to the other subparagraphs of this Paragraph 18;

(c) the occurrence of any breach of any representation or warranty contained in this Mortgage or any other Loan Document;

(d) the occurrence of a Prohibited Transfer;

(e) the entry by a court having jurisdiction of a decree or order for relief in respect of Mortgagor in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law; or if Mortgagor, or any person in control of Mortgagor, shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Mortgagor or for any part of the Property or any substantial part of the Mortgagor's other property; (iii) make any assignment for the benefit of Mortgagor's creditors; (iv) fail generally to pay Mortgagor's debts as they become due;

(f) the attachment, seizure, levy, or execution of any writ or distress warrant upon all or a substantial part of Mortgagor's assets;

(g) the dissolution or termination of existence of Mortgagor, voluntarily or involuntarily, or the amendment or modification in any respect of the Articles of Organization of Mortgagor that would or may adversely affect Mortgagor's performance of its obligations under the Note, this Mortgage or the other Loan Documents;

(h) if this Mortgage shall be deemed or adjudicated not to constitute a valid lien on and security interest in the Property (subject only to the Permitted Encumbrances), or if such lien and security interest shall be deemed not to have been properly or completely perfected;

(i) the Property is abandoned;

(j) an indictment or other charge is filed against Mortgagor, any guarantor of or obligor under the Note, or any Related Entity in any jurisdiction, under any federal or state law, for which forfeiture of the Premises or of other collateral securing the Secured Indebtedness is determined by Lender in its sole and absolute discretion, to be a potential penalty unless such charge is dismissed within ten (10) days after filing;

(k) Mortgagor's failure to pay, when due, any amount payable under any other obligation of Mortgagor, arising out of the Loan to Lender, however created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, subject to applicable cure periods, if any, and for purposes of this Mortgage, the Loan and the Loan Documents, a "Related Entity" being defined as any entity owned or controlled by Borrower or by any person or persons controlling Borrower;

(l) the death or legal incapacity of A. Joseph Gardella or Joseph P. Gardella;

(m) with respect to that certain Lease dated December 8, 2000, by and between Mortgagor as Lessor and Sweetener Supply Corp., an Illinois corporation ("Tenant") as Lessee ("Lease"), (i) any termination of the Lease prior to the Maturity Date, by any party thereto for any reason, or (ii) any sale or transfer of Tenant, (except transfers or sales among the persons owning and controlling Tenant as of the date hereof) including but not limited to a sale of assets or stock, such that the identity of the persons owning and controlling Tenant as of the date of such transfer is different than the identity of such persons owning and controlling Tenant as of the date hereof;

(n) any default by Sweetener Supply Corporation ("SSC") or Trans Distribution, Inc. ("TDI") under that certain Loan and Security Agreement dated August 30, 1996 by and between SSC and TDI and Lender; or

(o) Fisher Commercial Construction Co., Inc. ("Fisher") ceases to act as the General Contractor or that certain General Contractor's Agreement Part I between Fisher and Borrower dated April 9, 2001 is terminated or that certain General Contractor's Agreement Part II between Fisher and Borrower dated October 22, 2001 is terminated.

19. **ACCELERATION; REMEDIES.** AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PROPERTY SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR.

20. **Assignment of Leases and Rents.** All right, title, and interest of Mortgagor in and to those leases, if any, listed on Exhibit "C", and all present and future leases affecting the Property, written or oral (collectively, "Leases"), and all rents, income, receipts, revenues, issues, avails and profits from or arising out of the Property (collectively "Rents") are hereby collaterally transferred and assigned to Lender as further security for the payment of the Secured Indebtedness, and Mortgagor hereby grants a security interest to Lender in and to the same. If requested by Lender, Mortgagor shall submit all future Leases affecting the Property to the Lender for its approval prior to execution, and all approved and executed Leases shall be specifically assigned to Lender by an instrument satisfactory to Lender. Each Lease shall, at the option of Lender, be paramount or subordinate to this Mortgage. Mortgagor shall furnish Lender with executed copies of each Lease and, if requested by Lender, with estoppel letters from each tenant, which estoppel letters shall be in a form reasonably satisfactory to Lender and shall be delivered not later than thirty (30) days after Lender's written demand.

If, without Lender's prior written consent, Mortgagor; (i) as lessor, fails to perform and fulfill any term, covenant, or provision in any Lease; (ii) suffers or permits to occur any breach or default under the provisions of any separate assignment of any Lease given as additional security for the Secured Indebtedness; (iii) fails to fully protect, insure, preserve, and cause continued performance or fulfillment of the terms, covenants, or provisions, which are required to be performed by the lessee or the lessor of any other Lease or Leases hereafter assigned to Lender; (iv) cancels, terminates, or materially amends or modifies any Lease other than as permitted under the Loan Documents; or (v) permits or approves an assignment by lessee of a Lease or a subletting of all or any part of the Premises demised in the Lease; such occurrence shall constitute an Event of Default hereunder.

Lender shall have the right to assign Mortgagor's right, title and interest in any Leases to any subsequent holder of this Mortgage or the Note and other Loan Documents or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise.

Upon an Event of Default, this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof, if any, to pay all Rents directly to Lender, to the extent allowed by law, without proof of the Event of Default. While this assignment is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this paragraph other than in compliance with Illinois statutes and decisions regarding the rights of mortgagees in possession to receive rents and not until an Event of Default shall occur under this Mortgage. In the event Lender is prohibited or precluded from collecting the Rents upon an Event of Default, Mortgagor hereby agrees to remit to Lender all Rents collected by Mortgagor following such Event of Default, which amounts shall be applied to the Secured Indebtedness or to the operation and maintenance of the Premises, in Lender's sole discretion.

If Mortgagor, as lessor, shall neglect or refuse to perform and keep all of the covenants and agreements contained in the Lease or Leases, then Lender may perform and comply with any such Lease covenants and agreements. All related costs and expenses incurred by the Lender shall become a part of the Secured Indebtedness and shall be due and payable upon demand by Lender with interest thereon accruing thereafter at the Default Rate.

Lender, however, shall not be obligated to perform or discharge any obligation, duty or liability under any Lease. Mortgagor shall, defend, protect, indemnify and hold Lender harmless from and against any and all liability, loss or damage to Lender under the Leases or under or by reason of their assignments and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of all alleged obligations or undertakings on its part to perform or discharge any Lease terms, covenants or agreements. The amount of any such liability, loss or damage arising under the Leases or under or by reason of their assignment, or in the defense of any claims or demands, including costs, expenses and attorneys' fees, incurred by Lender shall be a part of the Secured Indebtedness due and payable upon demand with interest thereon accruing thereafter at the Default Rate.

21. **Appointment of Receiver.** Upon acceleration under Paragraphs 17 or 19 or abandonment of the Property, and without further notice to Mortgagor, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the Rents including those past due. The receiver shall have the power to collect the Rents from the time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any. All Rents collected by the receiver shall be

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applied as the appointing court may direct and, in the absence of such direction, first to payment of the costs and expenses of the management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and attorneys' fees, and then as provided in Paragraph 3. The receiver shall be liable to account only for those Rents actually received.

22. **Release.** Upon payment of all Secured Indebtedness and the implementation of an asbestos remediation plan which plan must be approved by Lender, Lender shall release this Mortgage upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

23. **Security Agreement.** Without limiting any other provisions of this Mortgage, this Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (herein called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Property as set forth in the description of the Property above, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Property, and with respect to all Funds and other sums which may be deposited with Lender pursuant hereto (all for the purposes of this paragraph called "Collateral"), and Mortgagor hereby grants to Lender a security interest in such Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property. When the Secured Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have all remedies of a secured party under the Code. This Mortgage is intended to be a financing statement with respect to any other Collateral which constitutes "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Lender any financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least ten (10) days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

24. **Zoning.** The Premises are zoned to permit the operation and use of the Premises in the manner intended by Mortgagor. Mortgagor will not initiate or acquiesce in a zoning reclassification without Lender's prior written consent.

25. **Principal Amount of Mortgage.** At no time shall the principal amount of the Note secured by this Mortgage, not including sums advanced for Impositions and insurance premiums or to protect the security of this Mortgage, exceed the stated principal amount of the Note plus THREE MILLION EIGHT HUNDRED THOUSAND AND 00/100 Dollars (\$3,800,000.00).

26. **Business Loan.** Mortgagor hereby represents and warrants that: (a) the proceeds of the Loan will be used for the purposes specified in 815 ILCS 205/4(1)(a) or (c) of the Illinois Compiled Statutes, as amended; (b) the Loan constitutes a "business loan" within the purview of that Section; (c) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. • 1601, et seq.; and (d) the proceeds of the Secured Indebtedness will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

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27. **Riders.** All Riders attached hereto, if any, are incorporated herein and made a part hereof.

28. **Environmental Compliance.** Mortgagor hereby represents and warrants to Lender and covenants with Lender that:

A. **Definitions.** For purposes of this Paragraph 28:

(i) "Premises" means: The Real Estate including improvements presently and hereafter situated thereon or thereunder, construction material used in such improvements, surface and subsurface soil and water, areas leased to tenants, and all business, uses and operations thereon.

(ii) "Environmental Laws" means any present or future federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license, guidance document or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including, but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.* ("TOSCA"); the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; and the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*;

(b) any present or future state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment.

(iii) "Hazardous Material" means:

(a) "hazardous substances" as defined by CERCLA;

(b) "hazardous wastes", as defined by RCRA;

(c) "hazardous substances", as defined by the Clean Water Act;

(d) any item which is banned or otherwise regulated pursuant to TOSCA;

(e) any item which is regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*;

(f) any item which triggers any thresholds regulated by or invoking any provision of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11001 *et seq.*;

(g) any hazardous, dangerous or toxic chemical, material, waste, pollutant, contaminant or substance ("pollutant") within the meaning of any Environmental Law prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;

(h) any petroleum, crude oil or fraction thereof;

(i) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Section 2011 *et seq.*, and amendments thereto and reauthorizations thereof;

(j) asbestos-containing materials in any form or condition; and

(k) polychlorinated biphenyls ("PCBs") in any form or condition.

(iv) "Environmental Actions" means:

(a) any notice of violation, complaint, claim, citation, demand, inquiry, report, action, assertion of potential responsibility, lien, encumbrance, or proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency, or body, or any person or entity respecting:

(i) Environmental Laws;

(ii) the environmental condition of the Premises, or any portion thereof, or any property near the Premises, including actual or alleged damage or injury to humans, public health, wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or

(iii) the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of Hazardous Material either on the Premises or off-site in alleged violation of Environmental Laws.

(b) any violation or claim of violation by Mortgagor of any Environmental Laws whether or not involving the Premises;

(c) any lien for damages caused by, or the recovery of any costs incurred by any person or governmental entity for the investigation, remediation or cleanup of any release or threatened release of Hazardous Material in alleged violation of Environmental Laws; or

(d) the destruction or loss of use of property, or the injury, illness or death of any officer, director, employee, agent, representative, tenant or invitee of Mortgagor or any other person alleged to be or possibly to be, arising from or caused by the environmental condition of the Premises or the release, emission or discharge of Hazardous Materials from the Premises in alleged violation of Environmental Laws.

B. Representations and Warranties. Mortgagor hereby represents and warrants to Lender that:

(i) Compliance. To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry and except as described in Exhibit "D" hereto, the Premises and Mortgagor have been and are currently in compliance with all Environmental Laws. There have been, to the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no past, and there are no pending or threatened, Environmental Actions to which Mortgagor is a party or which relate to the Premises. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. Mortgagor has not received any notice of any Environmental Action respecting Mortgagor, the Premises or any off-site facility to which has been sent any Hazardous Material for off-site treatment, recycling, reclamation, reuse, handling, storage, sale or disposal.

(ii) Absence of Hazardous Material. No use, exposure, release, emission, discharge, generation, manufacture, sale, handling, reuse, presence, storage, treatment, transport, recycling or disposal of Hazardous Material has, to the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, occurred or is occurring on or from the Premises except in compliance with Environmental Laws and as described in Exhibit "E" hereto, ("Disclosed Material"). The term "released" shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Material). To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, all Hazardous Material used, treated, stored, transported to or from, generated or handled on the Premises has been disposed of on or off the Premises in a lawful manner. To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no environmental, public health or safety hazards currently exist with respect to the Premises. To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no underground storage tanks (including but not limited to petroleum or heating oil storage tanks) are present on or under the Premises, or have been on or under the Property except as has been disclosed in writing to Lender ("Disclosed Tanks").

C. Mortgagor's Covenants. Mortgagor hereby covenants and agrees with Lender as follows:

(i) Compliance. The Premises and Mortgagor shall comply with all Environmental Laws. All required governmental permits and licenses shall be obtained and maintained, and Mortgagor shall comply therewith. All Hazardous Material on the Premises will be disposed of in a lawful manner without giving rise to liability under any Environmental Laws. Mortgagor will satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance, closure and removal of all underground storage tanks on the Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(ii) Absence of Hazardous Material. Other than Disclosed Material, no Hazardous Material shall be introduced to or used, exposed, released, emitted, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled on the Premises without thirty (30) days' prior written notice to Lender.

(iii) **Environmental Actions and Right to Consent.** Mortgagor shall immediately notify Lender of all Environmental Actions and provide copies of all written notices, complaints, correspondence and other documents relating thereto within two (2) business days of receipt, and Mortgagor shall keep Lender informed of all responses thereto. Mortgagor shall promptly cure and have dismissed with prejudice all Environmental Actions in a manner satisfactory to Lender and Mortgagor shall keep the Premises free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any Environmental Actions. Notwithstanding the foregoing sentence, Mortgagor may, diligently, in good faith and by appropriate legal proceedings, contest such proceedings provided: (i) Mortgagor first furnishes to Lender such deposits or other collateral as Lender, in its sole discretion, deems sufficient to fully protect Lender's interests; (ii) such contest shall have the effect of preventing any threatened or pending sale or forfeiture of all or any portion of the Premises or the loss or impairment of Lender's lien and security interests in and to the Premises; and (iii) such contest will not cause Lender to incur any liability, in Lender's sole judgment. Mortgagor shall permit Lender, at Lender's option, to appear in and to be represented in any such contest and shall pay upon demand all expenses incurred by Lender in so doing, including attorneys' fees.

(iv) **Future Environmental Audits.** Mortgagor shall provide such information and certifications which Lender may reasonably request from time to time to monitor Mortgagor's compliance with this Article for the sole purpose of protecting Lender's security interest. To protect its security interest, Lender shall have the right, but not the obligation, at any time (upon reasonable prior notice and without unreasonable interference with any of tenant's business operation) to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers and conduct such other activities as Lender, at its sole discretion, deems appropriate. Mortgagor shall cooperate fully in the conduct of such an audit. If Lender decides to conduct such an audit because of: (a) an Environmental Action; (b) Lender's considering taking possession of or title to the Premises after an Event of Default; (c) a material change in the use of the Premises, which in Lender's opinion, increases the risk to its security interest due to a potential Environmental Action; or (d) the introduction of Hazardous Material other than Disclosed Material to the Premises other than as permitted by this Agreement; then Mortgagor shall pay upon demand all costs and expenses connected with such audit, which, until paid, shall become additional indebtedness secured by the Loan Documents and shall bear interest at the Default Rate. Nothing in this Article shall give or be construed as giving Lender the right to direct or control Mortgagor's actions in complying with Environmental Laws.

(v) **Event of Default and Opportunity to Cure.** If Mortgagor fails to comply with any of its covenants contained in this Section C within thirty (30) days after notice by Lender to Mortgagor, Lender may, at its option, declare an Event of Default. If, however, the noncompliance cannot, in Lender's determination, be corrected within such thirty (30) day period, and if Mortgagor has promptly commenced and diligently pursues action to cure such noncompliance to Lender's satisfaction, then Mortgagor shall have such additional time as is reasonably necessary to correct such noncompliance, provided Mortgagor continues to diligently pursue corrective action, but in no event more than a total of sixty (60) days after the initial notice of noncompliance by Lender.

(vi) **Governmental Actions.** There are no pending or threatened: (i) actions or proceedings from any governmental agency or any other entity regarding the condition or use of the Property, or regarding any environmental, health or safety law; or (ii) "superliens" or similar governmental actions or proceedings that could impair the value of the Property, or the priority of

the lien of this Mortgage or any of the other Loan Documents (collectively "Environmental Proceedings"). Mortgagor will promptly notify Lender of any notices, or other knowledge obtained by Mortgagor hereafter of any pending or threatened Environmental Proceedings, and Mortgagor will promptly cure and have dismissed with prejudice any such Environmental Proceedings to the satisfaction of Lender.

(vii) **Fees; Costs.** Any fees, costs and expenses imposed upon or incurred by Lender on account of any breach of this Paragraph 28 shall be immediately due and payable by Mortgagor to Lender upon demand, and shall (together with interest thereon at the Default Rate accruing from the date such fees, costs and expenses are so imposed upon or incurred by Lender) become part of the Secured Indebtedness. Mortgagor shall keep, save and protect, defend, indemnify and hold Lender harmless from and against any and all claims, loss, cost, damage, liability or expense, including reasonable attorneys' fees, sustained or incurred by Lender by reason of any Environmental Proceedings or the breach or default by Mortgagor of any representation, warranty or covenant contained in this Paragraph 28.

D. **Lender's Right to Rely.** Lender is entitled to rely upon Mortgagor's representations, warranties and covenants contained in this Article despite any independent investigations by Lender or its consultants. The Mortgagor shall take all necessary actions to determine for itself, and to remain aware of, the environmental condition of the Premises. Mortgagor shall have no right to rely upon any independent environmental investigations or findings made by Lender or its consultants unless otherwise stated in writing therein and agreed to in writing by Lender.

E. **Indemnification.** The term "Lender's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, fines, lost profits, demands, litigation, defenses, costs, judgments, suits, proceedings, damages (including consequential, punitive and exemplary damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against, settling or prosecuting any suit, litigation, claim or proceeding) which may at any time be either directly or indirectly imposed upon, incurred by or asserted or awarded against Lender or any of Lender's parent and subsidiary corporations and their affiliates, shareholders, directors, officers, employees, and agents (collectively Lender's "Affiliates") in connection with or arising from:

(i) any Hazardous Material used, exposed, emitted, released, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled on, in or under all or any portion of the Premises, or any surrounding areas, in violation of Environmental Laws;

(ii) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Article;

(iii) any violation, liability or claim of violation or liability, under any Environmental Laws;

(iv) the imposition of any lien for damages caused by, or the recovery of any costs incurred for the cleanup of, any release or threatened release of Hazardous Material in actual or alleged violation of Environmental Laws; or

- (v) any Environmental Actions.

Mortgagor shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Lender and at Mortgagor's sole cost) and hold Lender and its Affiliates free and harmless from and against Lender's Environmental Liability (collectively, "Mortgagor's Indemnification Obligations"). Mortgagor's Indemnification Obligations shall survive in perpetuity with respect to any Lender's Environmental Liability.

Mortgagor and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against Lender under or with respect to any Environmental Laws. Mortgagor's obligation to Lender under this indemnity shall likewise be without regard to fault on the part of Mortgagor or Lender with respect to the violation or condition which results in liability to Lender.

29. **Compliance with Illinois Mortgage Foreclosure Law.** If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. seq. of the Illinois Compiled Statutes) (the "Act") the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act. If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. 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 or not enumerated in Paragraph 19 of this Mortgage, shall be added to the Secured Indebtedness secured by this Mortgage or by the judgment of foreclosure.

30. **Interpretation.** This Mortgage shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Note are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

31. **Waiver of Right of Redemption.** To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent

permitted by law, Mortgagor hereby expressly waives any and all rights of redemption, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such right of redemption of Mortgagor, and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by involving or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

32. Reservations of Rights. Nothing in this Mortgage shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Mortgage; or (ii) be a waiver by Lender of the protection afforded to it by 12 U.S.C. Sec. 91 or any substantially equivalent state law; or (iii) limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to obtain a judgment upon the Indebtedness or any part thereof, or (C) to foreclose against any real or personal property collateral, or (D) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver or of Lender as mortgagee in possession. Lender may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Mortgage. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party.

33. WAIVER OF JURY TRIAL. MORTGAGOR AND LENDER WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THIS MORTGAGE, THE OTHER LOAN DOCUMENTS OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH; OR (ii) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS. MORTGAGOR AND LENDER AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

34. Construction Mortgage. The Note evidences debt created by one or more disbursements made by Lender to Mortgagor pursuant to the Construction Loan Agreement to finance the cost of construction of certain improvements upon the Real Estate and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Code. To the extent that the terms and provisions of the Construction Loan Agreement conflict with the terms and provisions of this Mortgage, the terms and provisions of the Construction Loan Agreement shall prevail.

35. Future Advances. This Mortgage secures future advances from Lender to Mortgagor made pursuant to the Construction Loan Agreement not to exceed in the aggregate at any one time the principal sum of THREE MILLION EIGHT HUNDRED THOUSAND AND

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00/100 DOLLARS (\$3,800,00.00), together with all interest, costs and expenses incurred by Lender in enforcing all obligations under any or all of this Mortgage, the Loan Agreement, the Note, and the other Loan Documents, to the same extent as if such future advances were made on the date of the execution of this Mortgage. All advances required hereunder or under the Loan Agreement are obligatory advances up to the credit limit at any one time of **THREE MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$3,800,000.00)** established in the Loan Agreement and shall, to the extent permitted by law, have priority over mechanics' and materialmen's liens, if any, arising after this Mortgage is recorded.

[Signatures appear on next page]

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.

SPY GLASS PROPERTIES LLC, an Illinois limited liability company

By: Joseph P. Gardella
Joseph P. Gardella, Manager

DJO/LOANS/BA/SWEET/CONSTRUCTION/MTG-020502

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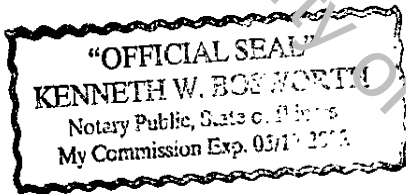
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Joseph P. Gardella**, Manager of **SPY GLASS PROPERTIES LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, as his free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 8 day of February, 2002.


Notary Public



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EXHIBIT "A"

LEGAL DESCRIPTION

THAT PORTION OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 3; THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 275.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED; THENCE SOUTHERLY AT RIGHT ANGLES TO SAID NORTH LINE OF SECTION 3, A DISTANCE OF 246.34 FEET; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID SECTION 3, DISTANT 320.0 FEET SOUTHERLY OF SAID NORTHWEST CORNER; THENCE SOUTHERLY ALONG SAID WEST LINE OF SECTION 3 TO THE POINT OF INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 105.0 FEET NORTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, BURLINGTON NORTHERN RAILROAD CO'S (FORMERLY CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY'S) MAIN TRACK CENTERLINE, AS NOW LOCATED AND CONSTRUCTED; THENCE NORTHEASTERLY ALONG SAID PARALLEL LINE, A DISTANCE OF 600.0 FEET; THENCE NORTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE TO THE POINT OF INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND DISTANT 160.0 FEET NORTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, SAID MAIN TRACK CENTERLINE; THENCE NORTHEASTERLY ALONG SAID PARALLEL LINE TO THE POINT OF INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND DISTANT 5.0 FEET WESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTHERLY EXTENSION OF THE CENTERLINE OF MORTON AVENUE, ACCORDING TO THE RECORDED PLAT OF THE TOWN OF BROOKFIELD, ILLINOIS; THENCE NORTHERLY ALONG SAID PARALLEL LINE TO THE POINT OF INTERSECTION WITH SAID NORTH LINE OF SECTION 3; THENCE WESTERLY ALONG SAID NORTH LINE TO THE TRUE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

P.I.N.: 18-03-100-011-0000

STREET ADDRESS: 9501 WEST SOUTHVIEW AVENUE, BROOKFIELD, IL

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EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. RIGHTS OF THE PUBLIC, THE STATE OF ILLINOIS AND THE MUNICIPALITY IN AND TO THAT PART OF THE LAND, IF ANY, TAKEN AND USED FOR SOUTHVIEW AVENUE.
2. TERMS, CONDITIONS, AND PROVISIONS CONTAINED IN SPECIAL WARRANTY DEED DATED OCTOBER 3, 1990 AND RECORDED NOVEMBER 13, 1990 AS DOCUMENT 90553286 EXCEPTING AND RESERVING ALL RIGHT, TITLE AND INTEREST, IN AND TO ALL GEOTHERMAL HEAT AND ALL ORES AND MINERALS.
3. ENCROACHMENT OF CONCRETE BLOCK (MOVEABLE) ON PROPERTY NORTH AND ADJOINING OVER NORTH LINE ONTO THE LAND BY 4 FEET 9 INCHES AS DISCLOSED BY SURVEY DATED MARCH 14, 1994 MADE BY RESPONSE LAND SURVEYING COMPANY ORDER NO. 4186.
4. RIGHTS OF WAY FOR RAILROAD SWITCH AND SPUR TRACKS.
5. ENCROACHMENT OF FENCES ONTO ADJOINING PROPERTY AS DISCLOSED BY PLAT OF SURVEY MADE BY SCHOMIG LAND SURVEYORS, LTD. DATED NOVEMBER 10, 2000 PLAT NO. 009845-A.
6. ENCROACHMENT OF PARKING STRIPS AND PAVEMENT OVER THE SOUTHERLY LINE OF THE WESTERLY 600 FEET BY 14.91 FEET AND OVER THE EAST LINE OF THE MOST SOUTHEASTERLY CORNER BY 17.75 FEET ONTO PROPERTY SOUTH AND ADJOINING AS DISCLOSED BY SURVEY MADE BY SCHOMIG LAND SURVEYORS, LTD. DATED NOVEMBER 10, 2000 PLAT NO. 009845-A.
7. UNRECORDED ELECTRIC SERVICE STATION AGREEMENT BETWEEN COM ED AND THE GREAT WESTERN SUGAR COMPANY TO MAINTAIN OVERHEAD FACILITIES AS DISCLOSED BY LETTER FROM COM ED DATED MARCH 10, 1995.
8. NOTICE RECORDED OCTOBER 4, 2000 AS DOCUMENT 00779014 BETWEEN METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND HOLLANDER DISTRIBUTION SYSTEMS, INC.
9. ENCROACHMENT OF GUARD RAIL OVER WEST LINE BY 0.81 OF A FOOT AS DISCLOSED BY SURVEY MADE BY SCHOMIG LAND SURVEYORS, LTD. DATED NOVEMBER 10, 2000 PLAT NO. 009845-A.
10. MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT BY 9501 W. SOUTHVIEW LLC AND BANK OF AMERICA, N.A. DATED DECEMBER 7, 2001 WITH COOK COUNTY RECORDER OF DEEDS NUMBER 00975656.

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EXHIBIT "C"

IDENTIFIED LEASES

LEASE DATED DECEMBER 8, 2000 BY AND BETWEEN 9501 W. SOUTHVIEW LLC AS LESSOR AND SWEETENER SUPPLY CORP., AN ILLINOIS CORPORATION, AS LESSEE, AS AMENDED BY FIRST AMENDMENT TO LEASE DATED FEBRUARY 6, 2002.

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EXHIBIT "D"

COMPLIANCE EXCEPTIONS

ALL MATTERS SET FORTH IN THAT CERTAIN PHASE I ENVIRONMENTAL
ASSESSMENT OF THE PROPERTY PREPARED BY SDI CONSULTANTS, INC.
DATED DECEMBER 5, 2000

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EXHIBIT "E"

DISCLOSED MATERIALS

ALL MATTERS SET FORTH IN THAT CERTAIN PHASE I ENVIRONMENTAL ASSESSMENT OF THE PROPERTY PREPARED BY SDI CONSULTANTS, INC. DATED DECEMBER 5, 2000

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