



Doc#: 0717803095 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/27/2007 01:22 PM Pg: 1 of 21

This instrument prepared by and  
after recording return to:

Kerry E. Braxton, Esq.  
PATTON BOGGS LLP  
2001 Ross Avenue  
Suite 3000  
Dallas, Texas 75201  
(214) 758-1534

**Ticor Title Insurance**

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING  
(Cook County, Illinois)**

THIS MORTGAGE ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING ("**Mortgage**"), made as of June 25,  
2007, is made and executed by The Spring Air Company, an Illinois corporation, having its  
principal offices at 2980 River Road, Des Plaines, Illinois 68018 (the "**Mortgagor**"), in favor  
of American Capital Financial Services, Inc., a Delaware corporation, having an office at 2  
Bethesda Metro Center, 14<sup>th</sup> Floor, Bethesda, Maryland 20814, as administrative and  
collateral agent ("**Agent**") for Purchasers (as "**Purchasers**" is defined in the Revolving Loan,  
Note and Equity Purchase Agreement referred to below).

**RECITALS**

I. Pursuant to the terms of that certain Revolving Loan Note and Equity  
Purchase Agreement of even date herewith (said Revolving Loan, Note and Equity Purchase  
Agreement, together with all amendments, supplements, modifications and replacements  
thereof, being hereinafter referred to as the "**Agreement**") by and among Agent, the Loan  
Parties (as defined in the Agreement which includes Mortgagor), and the Purchasers, the  
Purchasers have agreed to make loans to Mortgagor and extend other financial  
accommodations to Mortgagor (collectively, the "**Loans**") in an aggregate principal amount  
not to exceed \$159,700,000 (the "**Loan Amount**"), which Loans are evidenced by one or  
more notes having a maturity date of December 30, 2013 (said notes, together with all  
amendments, supplements, modifications and replacements thereof, being hereinafter referred  
to as the "**Notes**"). The terms and provisions of the Notes and the Agreement are hereby  
incorporated by reference in this Mortgage. The rate or rates of interest payable under the  
Agreement may vary from time to time.

**BOX 15**

9900 36436 NL

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II. Among other things, this Mortgage is given to secure a revolving credit facility and secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Agent or Purchasers, or otherwise as are to be made within twenty (20) years of the date hereof. The amount of indebtedness secured hereby may increase or decrease from time to time, however the principal amount of such indebtedness shall not at any time exceed twice the Loan Amount (the "**Maximum Secured Amount**") plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Instruments (hereinafter defined). Mortgagor has entered into (and this Mortgage secures, among other things) a certain "revolving credit" arrangement within the meaning of 815 ILCS 205/4.1, as set forth in the Agreement.

## GRANTING CLAUSES

To secure the payment of the indebtedness evidenced by the Notes and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Notes, the Agreement and any other documents and instruments now or hereafter executed by Mortgagor or any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Notes, the Agreement and any and all renewals, extensions, amendments and replacements of this Mortgage, the Notes, the Agreement and any such other documents and instruments (the Notes, the Agreement, this Mortgage, such other documents and instruments now or hereafter executed and delivered in connection with the Loans, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "**Loan Instruments**") (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as "**Borrower's Liabilities**" the principal amount of which indebtedness and liabilities being secured hereby shall, in no event, exceed the Maximum Secured Amount), Mortgagor does hereby convey, mortgage, warrant, assign, transfer, pledge and deliver to Agent and grant to Agent a security interest in the following described property subject to the terms and conditions herein:

(A) The land located in Cook County, Illinois, legally described in attached **Exhibit A ("Land")**;

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land and all machinery, appliances, equipment, furniture and all other personal property of every kind or nature which constitute fixtures with respect to the Land ("**Fixtures**"), together with all extensions, additions, improvements, substitutions and replacements of the foregoing ("**Improvements**");

(C) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and

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appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("Appurtenances");

(D)(i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements or Appurtenances or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances or any part thereof; and, except as otherwise provided herein, Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby; and

(iii) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements or Appurtenances;

(E) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

(F) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements or Appurtenances, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(G) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(H) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses is hereinafter referred to as the "Mortgaged Property."

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## SECURITY AGREEMENT AND FINANCING STATEMENT

In addition to the foregoing grant of mortgage, the Mortgagor hereby grants a continuing security interest to the Agent for the benefit of the Purchasers in that portion of the Mortgaged Property in which a security interest can be created and perfected under the Uniform Commercial Code in effect in the State of Illinois (the "UCC"), and this instrument shall constitute a continuously perfected security agreement, fixture filing and financing statement, from the date of the filing of this Mortgage for record with the Recorder of the County in which the Mortgaged Property is situated, pursuant to Sections 9-502 and 9-516 of the UCC. The information provided in this section is provided in order that this Mortgage shall comply with the requirements of the UCC, for a mortgage instrument to be filed as a financing statement, and for that purpose, the following information is set forth:

(A) The "Debtor" is the Mortgagor and the "Secured Party" is the Agent for the benefit of the Purchasers.

(B) The name and address of Debtor are set forth in the Preamble to this document.

(C) The name and address of Secured Party are set forth in the Preamble to this document.

(D) Description of the types or items of property covered by this financing statement: All personal property of the Debtor, including all personal property described above.

(E) Description of real estate to which collateral is attached or upon which it is located: The real estate described in Exhibit A.

(F) The organizational identification number of the Debtor issued by its State of formation is 33260032.

The Agent may file this Mortgage, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified herein as part of the Mortgaged Property. Any reproduction of this Mortgage or of any other security agreement or financing statement is sufficient as a financing statement.

The Mortgagor agrees to execute, deliver and file any financing statement, continuation statement or other instrument that the Agent may reasonably require from time to time to perfect or renew the security interest granted above under the UCC.

### FIXTURE FILING

To the extent permitted by law, (i) all of the Fixtures are or are to become fixtures on the Land and (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-334 and 9-502 of the UCC. The remedies for any violation of the covenants, terms and conditions of

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the agreements herein contained shall be as prescribed herein or by general law or, as to that part of the security in which a security interest may be perfected under the UCC, by the Loan Instruments or by the specific statutory consequences now or hereafter enacted and specified in the UCC, all at the Agent's sole election.

## ARTICLE ONE COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Agent as follows:

- 1.1. Performance under Agreement, Notes, Mortgage and Other Loan Instruments.** Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof, of the Agreement and of the Notes, every other Loan Instrument and every instrument evidencing or securing Borrower's Liabilities.
- 1.2. General Covenants and Representations.** Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever, except those set forth on Schedule B of the loan policy of title insurance accepted by Agent insuring the lien of this Mortgage (such liens, security interests, charges and encumbrances being hereinafter referred to as the "Permitted Encumbrances" as set forth on Exhibit B); and (b) Mortgagor will maintain and preserve the lien of this Mortgage as a second lien on the Mortgaged Property, subject only to the Permitted Encumbrances until Borrower's Liabilities have been paid in full and all obligations of Agent and Purchasers under the Agreement have been terminated.
- 1.3. Compliance with Laws and Other Restrictions.** Mortgagor covenants and represents that the Land and the Improvements and the use thereof presently comply with, and, to the extent required by the Agreement, will continue to comply, in all material respects, with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations.
- 1.4. Taxes and Other Charges.**
- 1.4.1. Taxes and Assessments.** Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities; provided, however, that Mortgagor

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may in good faith contest the validity, applicability or amount of any such tax, assessment or other charge under the terms set forth in the Agreement.

**1.4.2. Taxes Affecting Interest of Agent and Purchasers.** If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Agent or Purchasers a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of Borrower's Liabilities, requires or has the practical effect of requiring Agent or Purchasers to pay any portion of the real estate taxes levied in respect of the Mortgaged Property or to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Agent or Purchasers in respect of Borrower's Liabilities, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Agent, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Agent and Purchasers and does pay such taxes or other sums when due, Agent may not elect to declare due Borrower's Liabilities by reason of the provisions of this Section 1.4.2.

**1.5. Mechanic's and Other Liens.** Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property; provided, however, that Mortgagor may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien under the terms set forth in the Agreement.

**1.6. Insurance and Condemnation.**

**1.6.1. Insurance Policies.** Mortgagor shall, at its sole expense, obtain such policies of insurance as are required by the Agreement.

**1.6.2. Adjustment of Loss; Application of Proceeds.** Except as otherwise may be provided by the Agreement, and subject to the rights of the Mortgage Lender (as defined in the Agreement), following the occurrence and during the continuance of an Event of Default, Agent is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering the Mortgaged Property and to collect and receive the proceeds from any such policy or policies. Mortgagor hereby irrevocably appoints Agent as its attorney-in-fact for the purposes set forth in the preceding sentence. The Net Proceeds (as defined in the Agreement), awards or compensation shall be applied as provided in the Agreement.

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**1.6.3. Condemnation Awards.** Subject to the rights of the Mortgage Lender, promptly upon receipt, Mortgagor shall pay to Agent the Net Proceeds of any compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property, for application as provided in the Agreement. Agent is hereby authorized, at its option, following the occurrence and during the continuation of an Event of Default, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Agent as its attorney-in-fact for the purposes set forth in the preceding sentence. In the event that Mortgagor acquires any real estate to replace all or any portion of the Mortgaged Property which became subject to any such action or proceeding, Mortgagor shall execute and deliver to Agent a mortgage of such replacement property, which mortgage shall be in substantially the same form as this Mortgage, and Mortgagor shall deliver to Agent a survey and a title insurance policy and such other items in connection with such replacement property as Agent may require, all in form and substance satisfactory to Agent.

**1.6.4. Obligation to Repair.** If all or any part of the Mortgaged Property 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 Section 1.6.3, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are made available to Mortgagor or are sufficient to pay the cost of such restoration or repair.

**1.7. Agent May Pay; Default Rate.** Upon Mortgagor's failure to pay any amount required to be paid by Mortgagor under any provision of this Mortgage, Agent may pay the same. Mortgagor shall pay to Agent on demand the amount so paid by Agent together with interest at a rate equal to the highest rate payable under the Agreement after the occurrence of an "Event of Default" as such term is defined in the Agreement (the "**Default Rate**") and the amount so paid by Agent, together with interest, shall be added to Borrower's Liabilities.

**1.8. Care of the Mortgaged Property.** Mortgagor shall preserve and maintain the Mortgaged Property in good operating condition. Mortgagor shall not, without the prior written consent of Agent, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof. Except to the extent that capital expenditures are permitted by the Agreement, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be altered in any material manner without the prior written consent of Agent.

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1.9. **Transfer or Encumbrance of the Mortgaged Property.** Except as permitted by the Agreement, Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease or encumbrance of the Mortgaged Property, any part thereof, or any interest therein, without the prior written consent of Agent having been obtained.

1.10. **Further Assurances.** At any time and from time to time, upon Agent's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Agent, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Agent, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Agent may consider reasonably necessary in order to effectuate or perfect, or to continue and preserve the obligations under, this Mortgage.

1.11. **Assignment of Rents.** The assignment of rents, income and other benefits contained in Section (E) of the Granting Clauses of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Agent shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property, whether or not Agent takes possession of such property. Such assignment and grant shall continue in effect until Borrower's Liabilities are paid in full and all obligations of Agent and Purchasers under the Agreement have been terminated, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Agent pursuant to such grant, whether or not foreclosure proceedings have been instituted. Notwithstanding the foregoing, so long as no Event of Default has occurred, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from the Mortgaged Property as they become due and payable but not more than thirty (30) days prior to the due date thereof.

1.12. **After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

1.13. **Leases Affecting Mortgaged Property.** Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. The assignment contained in Sections (E) and (F) of the Granting Clauses shall not be deemed to impose upon Agent any of the obligations or duties of the landlord or Mortgagor provided in any lease.

1.14. **Management of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practice.



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1.15. **Execution of Leases.** Mortgagor shall not permit any leases to be made of the Mortgaged Property, or to be modified, terminated, extended or renewed, without the prior written consent of Agent.

1.16. **Expenses.** In the event of foreclosure hereof, Agent shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of expenses to be incurred after entry of the decree of foreclosure.

1.17. **Environmental Conditions.**

(a) Mortgagor covenants, warrants and represents that there are no, nor will there, for so long as any of Borrower's Liabilities remain outstanding, be, any Hazardous Materials (as hereinafter defined) generated, released, stored, buried or deposited over, beneath, in or upon the Mortgaged Property except as such Hazardous Materials may be required to be used, stored or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. For purposes of this Mortgage, "**Hazardous Materials**" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal, state or local laws, ordinances, regulations or guidance which regulate, govern, prohibit or pertain to the generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "**Hazardous Materials Laws.**"

(b) Mortgagor shall, and Mortgagor shall cause all employees, agents, contractors and subcontractors of Mortgagor and any other persons from time to time present on or occupying the Mortgaged Property to, keep and maintain the Mortgaged Property in compliance with, and not cause or knowingly permit the Mortgaged Property to be in violation of, any applicable Hazardous Materials Laws. Neither Mortgagor nor any employees, agents, contractors or subcontractors of Mortgagor or any other persons occupying or present on the Mortgaged Property shall use, generate, manufacture, store or dispose of on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Materials, except as such Hazardous Materials may be required to be used, stored or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(c) Mortgagor shall immediately advise Agent in writing of: (i) any notices received by Mortgagor (whether such notices are from the

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Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation occurring on or about the Mortgaged Property of any applicable Hazardous Materials Laws; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws; (iii) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "**Hazardous Materials Claims**"); and (iv) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any Hazardous Materials Claims. Agent shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and Mortgagor shall pay to Agent, upon demand, all attorneys' and consultants' fees incurred by Agent in connection therewith.

(d) Mortgagor shall be solely responsible for, and shall indemnify and hold harmless Agent and Purchasers, and the directors, officers, employees, agents, successors and assigns of each of them, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loans or otherwise and regardless of by whom caused, whether by Mortgagor or any predecessor in title or any owner of land adjacent to the Mortgaged Property or any other third party, or any employee, agent, contractor or subcontractor of Mortgagor or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials on, under or about the Mortgaged Property; including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, damages, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including attorneys' fees, incurred at, before or after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses, except for any such loss, cost or damage arising from the gross negligence or willful misconduct of the Agent or any of its employees, representatives, contractors or subcontractors. The obligations of Mortgagor under this subsection shall survive any of the foreclosure of this Mortgage, the repayment of Borrower's Liabilities, or other satisfaction of the

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indebtedness secured by this Mortgage, whether by deed in lieu of foreclosure or otherwise.

(e) Any loss, damage, cost, expense or liability incurred by Agent or Purchasers as a result of a breach or misrepresentation by Mortgagor or for which Mortgagor is responsible or for which Mortgagor has indemnified Agent and Purchasers shall be paid to Agent or Purchasers, as the case may be, on demand, and, failing prompt reimbursement, such amounts shall, together with interest thereon at the Default Rate from the date incurred by Agent or Purchasers, as the case may be, until paid by Mortgagor, be added to Borrower's Liabilities, be immediately due and payable and be secured by the lien of this Mortgage and the other Loan Instruments.

## ARTICLE TWO DEFAULTS

2.1. **Event of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean the occurrence of an "Event of Default" under and as defined in the Agreement or any of the other Loan Instruments.

## ARTICLE THREE REMEDIES

3.1. **Acceleration of Maturity.** If an Event of Default shall have occurred, Agent may declare Borrower's Liabilities to be immediately due and payable, and upon such declaration Borrower's Liabilities shall immediately become and be due and payable without further demand or notice.

3.2. **Agent's Power of Enforcement.** If an Event of Default shall have occurred, Agent may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not Borrower's Liabilities shall have been accelerated, and without prejudice to the right of Agent thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (a) to enforce payment of Borrower's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Agent may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Agent may determine.

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## 3.3. **Agent's Right to Enter and Take Possession, Operate and Apply Income.**

(a) If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Agent, shall forthwith surrender to Agent the actual possession of the Mortgaged Property, and to the extent permitted by law, Agent itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom and shall have joint access with Mortgagor to the books, papers and accounts of Mortgagor; and (ii) notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Agent, on Agent's entry into possession, or to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor, or any entity affiliated with or controlled by Mortgagor, and upon default in any such payment Mortgagor shall vacate and surrender possession of such part of the Mortgaged Property to Agent or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Agent's demand, Agent may obtain a judgment or decree conferring on Agent the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Agent, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Agent, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Agent, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Agent, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof.

3.4. **Leases.** If Agent so elects, Agent is authorized to foreclose this Mortgage subject to or prior to the rights, if any, of any or all tenants of the Mortgaged Property. Agent may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants.

3.5. **Purchase by Agent.** Upon any foreclosure sale, Agent may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

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3.6. **Application of Foreclosure Sale Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Agent shall be applied by Agent to the indebtedness secured hereby in such order and manner as Agent may elect.

3.7. **Application of Indebtedness Toward Purchase Price.** Upon any foreclosure sale, Agent may apply any or all of the indebtedness and other sums due to Agent under the Notes, the Agreement, this Mortgage or any other Loan Instrument to the price paid by Agent at the foreclosure sale.

3.8. **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Agent or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) (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 of the Act.

3.9. **Receiver - Agent in Possession.** If an Event of Default shall have occurred, Agent, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Agent's election, to either the appointment by the court of a receiver (without the necessity of Agent posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Agent shall be liable to account only for such rents,

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income and other benefits actually received by Agent, whether received pursuant to this Section 3.9 or Section 3.3. Notwithstanding the appointment of any receiver or other custodian, Agent shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Agent.

### **3.10. Mortgagor to Pay Borrower's Liabilities in Event of Default; Application of Monies by Agent.**

(a) Upon occurrence of an Event of Default, Agent shall be entitled to sue for and to recover judgment against Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Agent's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Agent to recover such judgment shall not be affected by any taking of possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Agent shall be entitled to enforce all other rights and remedies under the Loan Instruments.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Agent under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Agent hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

(d) Any monies collected or received by Agent under this Section 3.10 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Agent, and the balance remaining shall be applied to the payment of Borrower's Liabilities, in such order and manner as Agent may elect, and any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

**3.11. Compliance with Illinois Mortgage Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed

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in a manner consistent with the Act. If any provision of this Mortgage shall grant to Agent any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Agent under the Act in the absence of said provision, Agent 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 Agent 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.

3.12. **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Agent or Purchasers by the Notes, the Agreement, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Notes, the Agreement or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

## ARTICLE FOUR MISCELLANEOUS PROVISIONS

4.1. **Heirs, Successors and Assigns Included in Parties.** Whenever Mortgagor, Agent or Purchasers are named or referred to herein, heirs and successors and assigns of such person or entity shall be included and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Agent and Purchasers.

4.2. **Notices.** All notices, requests, reports, demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Agent shall be directed to Mortgagor or Agent, as the case may be, in the manner and at the addresses for notice set forth in the Agreement.

4.3. **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.4. **Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

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4.5. **Changes.** Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought.

4.6. **Governing Law.** Except with respect to the creation, perfection, priority and enforcement of the lien and security interest created hereunder, all of which shall be construed, interpreted, enforced and governed by the laws of the State of Illinois, the validity and interpretation of this Mortgage shall be governed by and in accordance with the internal laws of the State of Maryland, without regard to conflicts of law principles.

4.7. **Limitation of Interest.** The provisions of the Agreement regarding the payment of lawful interest are hereby incorporated herein by reference.

4.8. **Future Advances.** This Mortgage is given to secure not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the option of Agent or Purchasers, or otherwise) made by Agent or Purchasers under the Notes or the Agreement, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the principal amount of all indebtedness secured hereby shall, in no event, exceed the Maximum Secured Amount.

4.9. **Last Dollar.** The lien of this Mortgage shall remain in effect until the last dollar of Borrower's Liabilities is paid in full and all obligations of Agent and Purchasers under the Agreement have been terminated.

4.10. **Release.** Upon full payment and satisfaction of Borrower's Liabilities and the termination of all obligations of Agent and Purchasers under the Agreement, Agent shall issue to Mortgagor an appropriate release or satisfaction in recordable form.

4.11. **Time of the Essence.** Time is of the essence with respect to this Mortgage and all the provisions hereof.

4.12. **Agreement.** The Loans are governed by terms and provisions set forth in the Agreement and in the event of any conflict between the terms of this Mortgage and the terms of the Agreement, the terms of the Agreement shall control.

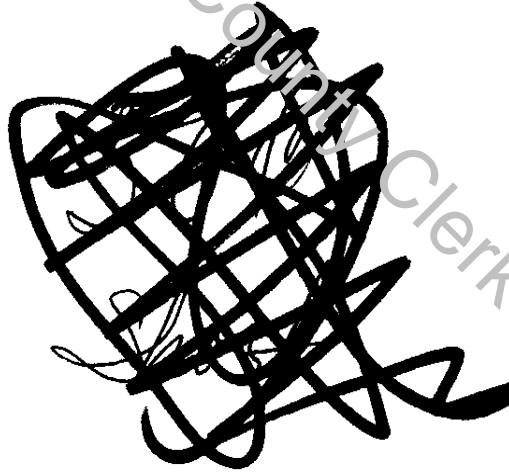
4.13. **Replacement of Notes.** Any one or more of the financial institutions which are or become a party to the Agreement as Purchasers may from time to time be replaced and, accordingly, one or more of the Notes may from time to time be replaced, provided that the terms of the Notes following such replacement, including the principal amount evidenced thereby, shall remain the same. As the indebtedness secured by this Mortgage shall remain the same, such replacement of the Notes shall not be construed as a novation and shall not affect, diminish or abrogate Mortgagor's liability under this Mortgage or the priority of this Mortgage.



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[Signature Page Follows]

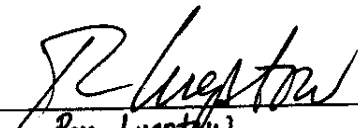
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IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers as of the day and year first above written.

**THE SPRING AIR COMPANY,**  
an Illinois corporation

By:   
Name: Ron Luepfer  
Title: CFO

Property of Cook County Clerk's Office



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## EXHIBIT A

### Legal Description

PARCEL 1:

LOT 1 (EXCEPT THE NORTH 90.14 FEET THEREOF) IN CENTEX INDUSTRIAL PARK NORTH UNIT NO. 1, BEING A SUBDIVISION IN SECTION 26, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 25 IN CENTEX INDUSTRIAL PARK NORTH UNIT 11 BEING A SUBDIVISION OF SECTION 26, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

commonly known as:

1111 Nicholas Boulevard  
Elk Grove Village, Illinois 60007

Tax ID No. 08-26-301-043-0000  
08-26-309-010-0000

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## EXHIBIT B

### Permitted Encumbrances

All those exceptions as shown on Schedule B – Part 1 of that certain Loan Policy, Policy No. 2000-990036436-N issued by Ticor Title Insurance Company contemporaneously herewith with respect to the Mortgaged Property for the benefit of Agent for the Purchasers.

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