

# UNOFFICIAL COPY

Doc#: 2022621098 Fee: \$98.00  
Edward M. Moody  
Cook County Recorder of Deeds  
Date: 08/13/2020 11:38 AM Pg: 1 of 10

This instrument was prepared  
by and, after recording, return  
to:

Kevin R. Purtill  
Meltzer, Purtill & Stelle LLC  
300 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606

*Permanent Tax Index No.:*  
See *Exhibit A* attached hereto

*Property Address:*  
See *Exhibit A* attached hereto

*This space reserved for Recorder's use only*

## ASSIGNMENT OF LEASES AND RENTS

**THIS ASSIGNMENT OF LEASES AND RENTS** ("Assignment"), is made as of this 29<sup>th</sup> day of June, 2020, by **SPY GLASS ILLINOIS, LLC**, an Illinois limited liability company ("Assignor"), to and for the benefit of **OLD SECOND NATIONAL BANK**, its successors and assigns ("Assignee").

### RECITALS:

A. Pursuant to the terms and conditions of that certain Loan Agreement of even date herewith (as amended, restated or replaced from time to time, "Loan Agreement") among **SPY GLASS INDIANA, LLC**, an Indiana limited liability company ("Borrower"), Guarantor (as defined therein) and Assignee, Assignee has extended to Borrower a loan in the maximum principal amount of Thirteen Million Five Hundred Thousand and No/100 Dollars (\$13,500,000.00) ("Loan"). All terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

B. The Loan is evidenced by that certain Promissory Note in the principal amount of the Loan, made as of even date herewith (as amended, restated or replaced from time to time, "Note") by Borrower, made payable to the order of and delivered to Assignee. The Note is governed and secured by the Mortgage and the other Loan Documents.

C. As one of the conditions to make the Loan, Assignee is requiring the execution and delivery of this Assignment by Assignor.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

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## AGREEMENTS:

### 1. Grant of Security Interest.

(a) Assignor hereby absolutely and unconditionally grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to all of the following:

(i) All leases, assignments, sub-leases and other agreements or arrangements affecting the use or occupancy of all or any portion of that certain real estate ("Property") legally described in **Exhibit A** attached hereto, now in effect or hereafter entered into (including all lettings, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Property), together with any guarantees, supplements, amendments, modifications, extensions and renewals of the same (each, a "Lease", and collectively, "Leases");

(ii) All of the rents, revenues, issues, profits, proceeds, receipts, income, accounts, condemnation awards, insurance proceeds, and other receivables arising out of or from the Property, including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any Lease (collectively, "Rents");

(iii) The right to accept or reject any offer made by any Tenant pursuant to its Lease to purchase all or any portion of the Property;

(iv) All security deposits delivered by Tenants pursuant to a Lease, whether in cash or letter of credit, subject to the rights of Tenants with respect thereto;

(v) All rights and claims for damage against Tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Bankruptcy Code or any replacement Section thereof; and

(vi) All tenant improvements and fixtures located on the Property.

(b) This Assignment is a present and absolute transfer and assignment of the foregoing interests (and not an assignment for additional security only) to Assignee given to secure:

(i) The payment by Borrower when due of (1) the Indebtedness; and (2) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(ii) The observance and performance by Borrower of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefiting Assignee which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents.

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2. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is or will be the lessor under all Leases, in each case either directly or as successor in interest to the named lessor thereunder;

(c) Except for Permitted Encumbrances under the Loan Agreement, there is no other existing assignment of Assignor's entire or any part of its interest in or to any of the Leases, or any of the Rents, nor has Assignor entered into any agreement to subordinate any of the Leases or Assignor's right to receive any of the Rents;

(d) Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation;

(e) Assignor has entered into the Existing Lease with respect to the Property, and true and correct copies of each Existing Lease have been delivered to Assignee;

(f) Assignor acknowledges that Assignee has not received for its own account any security deposited by any Tenant pursuant to the terms of the Leases and that Assignee assumes no responsibility or liability for any security so deposited; and

(g) There are no defaults by Assignor and, to Assignor's actual knowledge, there are no material defaults by Tenants under any of the Existing Leases.

3. **Rights Prior to Default.** Unless or until an Event of Default (as defined in Section 4) shall occur, Assignor shall have the right and license to collect, at the time (but in no event more than thirty (30) days in advance) provided for the payment thereof, all Rents, to retain, use and enjoy the same, to take all actions of landlord under the Leases, and to enforce the Leases, subject to the terms of the Loan Agreement. Upon the occurrence of an Event of Default, Assignor's right to collect such Rents or to prosecute and collect under any Lease shall immediately terminate without further notice thereof to Assignor. Assignee shall have the right to notify the Tenants under the Leases of the existence of this Assignment at any time.

4. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions contained herein that is not cured within the applicable grace or cure period, if any, set forth in the Loan Agreement, or (b) any Event of Default described in the Loan Agreement or any of the other Loan Documents. An Event of Default under this Assignment shall constitute an Event of Default under the other Loan Documents.

5. **Rights and Remedies Upon an Event of Default.** At any time upon or following the occurrence of any Event of Default, Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way

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waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Borrower or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other Lien or security interest granted by the Loan Documents, to the extent permitted under Applicable Law:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Subject to the rights of Tenants, enter upon and take possession of the Property, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict Tenants, to fix or modify Rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Property, demand, sue for, settle, compromise, collect, and give acquittances for all Rents of and from the Property and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the Tenants under the Leases and any guarantor thereof to pay all Rents and other amounts payable under the Leases to Assignee, without proof of an Event of Default hereunder, upon receipt from Assignee of written notice to thereafter pay all such Rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the obligors thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such Rents, and upon request will execute written notices to the Tenants under the Leases or any guarantor thereof to thereafter pay all such Rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

6. **Application of Proceeds.** All sums collected and received by Assignee out of the Rents following the occurrence of any one or more Events of Default shall be applied in accordance with the Foreclosure Act (as defined in the Mortgage) and, unless otherwise specified in such act, in such order as set forth in the Note.

7. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or from any other act or omission of Assignee in managing, operating or maintaining the Property following the occurrence of an Event of Default, except to the extent arising from the gross negligence or willful misconduct of Assignee. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor

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thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, in each case, before the Mortgagee Transfer Date (as hereinafter defined). Assignor shall and does hereby agree to indemnify, defend (using counsel reasonably satisfactory to Assignee) and hold Assignee harmless from and against any and all liability, loss or damage which Assignee may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignee incurs as a result of Assignee's gross negligence or willful misconduct, or that arise on or after the date (the "Mortgagee Transfer Date") (a) Assignee has taken possession of the Property, (b) of a deed in lieu of foreclosure, (c) Assignee has been appointed mortgagee-in-possession of the Property, (d) of the appointment, at the request of Assignee of a receiver for the Property, or (e) Assignee, or an affiliate of Assignee, takes title to the Property. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Property or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease before the Mortgagee Transfer Date, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Property by any Tenant, occupant or other party, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Property, in the absence of the taking of actual possession of the Property by Assignee pursuant to the provisions hereof or of the Mortgage.

8. **No Waiver.** No waiver of any provision of this Assignment shall be effective unless set forth in writing signed by Assignee, and any such waiver shall be effective only to the extent therein set forth. Failure by Assignee to insist upon full and prompt performance of any provisions of this Assignment, or to take action in the event of any breach of any such provision or Event of Default, shall not constitute a waiver of any rights of Assignee, and Assignee may at any time thereafter while such breach or Event of Default remains uncured exercise all rights specified herein or provided by Applicable Law with respect to such breach or Event of Default. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

9. **Further Instruments.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.



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10. **Enforceability.** In the event any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Assignment, and this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11. **Successors and Assigns.** This Assignment is binding upon and shall inure to the benefit of Assignor and Assignee and their respective legal representatives, successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

12. **Amendments.** This Assignment may only be amended, modified or supplemented by the written agreement of Assignor and Assignee.

13. **Duration.** This Assignment shall become null and void at such time as Borrower shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents (other than any indemnity or other contingent liabilities or obligations that survive repayment of the Loan in full).

14. **Notices.** All notices required under this Assignment will be in writing and will be transmitted in the manner and to the addresses required by the Loan Agreement.

15. **Governing Law.** This Assignment shall be governed by and construed in accordance with the substantive laws of the State of Illinois; provided that to the extent any of such laws may now or hereafter be preempted by Federal law, Federal law shall so govern and be controlling.

16. **CONSENT TO JURISDICTION.** TO INDUCE ASSIGNEE TO ACCEPT THE NOTE, ASSIGNOR IRREVOCABLY AGREES THAT, SUBJECT TO ASSIGNEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS ASSIGNMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN THE COUNTY WHERE THE PROPERTY OR THE INDIANA PROPERTY IS LOCATED. ASSIGNOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE COUNTY WHERE THE PROPERTY OR THE INDIANA PROPERTY IS LOCATED, WAIVES PERSONAL SERVICE OF PROCESS UPON ASSIGNOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY NOTICE TO BORROWER IN ACCORDANCE WITH THE LOAN AGREEMENT AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

17. **WAIVER OF TRIAL BY JURY.** ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE

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FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

18. **Release of Assignment.** Notwithstanding anything to the contrary contained in this Assignment or the other Loan Documents, upon the request of Assignor to Assignee, Assignee shall release this Assignment by proper instrument upon Assignee's receipt of a current appraisal of the Indiana Property demonstrating a LTV Ratio of eighty percent (80%) or lower, which appraisal shall be satisfactory to Assignee, as determined in its sole discretion; further provided, that at the time of such request (a) no Unmatured Event of Default or Event of Default shall then exist under any of the Loan Documents, and (b) Borrower and each Guarantor shall be in compliance in all material respects with all of their respective covenants set forth in the Loan Documents. As used herein, the term "LTV Ratio" shall mean the ratio of the Loan amount to the "as stabilized" appraised value of the Indiana Property based on a then current appraisal of the Indiana Property.

[Signatures on the following page]

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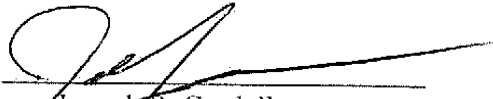
IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment of Leases and Rents as of the day and year first above written.

**ASSIGNOR:**

**SPY GLASS ILLINOIS, LLC**, an Illinois limited liability company

By: Spy Glass Properties LLC, an Illinois limited liability company

Its: Manager

By:   
Name: Joseph P. Gardella  
Its: Manager

Property of Cook County Clerk's Office

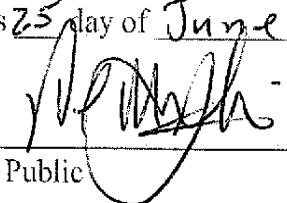


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STATE OF IL )  
 ) SS.  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joseph P. Gardella, the Manager of Spy Glass Properties LLC, an Illinois limited liability company, the Manager of SPY GLASS ILLINOIS, LLC, an Illinois limited liability company ("Assignor"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of such Assignor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 25 day of June, 2020.

  
\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: 11/30/2022



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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, A DISTANCE OF 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 600.00 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 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.

PIN NOS. 18-03-100-013-0000, 18-03-100-014-0000, 18-03-100-015-0000, 18-03-100-016-0000 AND 18-03-100-017-0000

ADDRESS: 9501 W. SOUTHVIEW AVENUE, BROOKFIELD, IL 60513