

# UNOFFICIAL COPY

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## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

**THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 8th day of January, 1992, from D.S. IL LIMITED PARTNERSHIP, an Illinois limited partnership ("Borrower") to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO (the "Lender");**

### R E C I T A L S:

47<sup>00</sup> \$

A. Lender has agreed to make a loan (the "Loan") to Borrower as evidenced by that certain Note Secured by Mortgage of even date herewith payable to the order of Lender in the principal amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) ("Note") and as secured by, among other things, that certain Mortgage and Security Agreement of even date herewith ("Mortgage") conveying the premises ("Premises") legally described in Exhibit A hereto; and

B. Borrower has also executed and delivered to Lender that certain Guaranty of Payment of even date herewith guarantying all debts of Borrower's affiliate, Empire Plastics, Inc., a Nevada corporation (the "Guaranty").

C. Lender has required, as a condition precedent to disbursing the Loan, that Borrower execute and deliver this Assignment to Lender; and

C. Borrower has agreed to execute and deliver this Assignment.

**NOW, THEREFORE, the Borrower, for and in consideration of these presents and the mutual agreements herein contained and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and as further and additional security for payment of the Note; the principal sum, interest, premiums and other indebtedness evidenced thereby; any amendments, extensions or renewals of the Note; any other indebtedness or obligation secured or guaranteed by the Mortgage; payment of all other sums with interest thereon becoming due and payable to Lender under the provisions of this Assignment; sums due under the Guaranty; and the performance and discharge of each and every obligation, covenant and agreement of Borrower contained in this Assignment, the Note, the Guaranty, the Mortgage or any other documents evidencing or securing the Loan (collectively, the "Loan Documents"), does hereby sell, assign and transfer unto the Lender its interest in (i) the identified leases shown on Schedule I attached hereto (collectively, the "Identified Leases"); (ii) all leases, licenses or tenancies (including concessions) of the Premises or any part thereof, or any letting of or agreement for the use or occupancy of the Premises or any part thereof, whether written or oral, heretofore or hereafter made or agreed to by any party, including without limitation the Lender in the exercise of the powers herein conferred or otherwise; and (iii) any and all extensions, renewals and replacements of any of the foregoing (all of the leases, tenancies and rights described above are herein referred to as the "Leases"), together with all the rents, income, issues and profits now due and which may hereafter become due under or by virtue of the Leases, together with all**

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COOK COUNTY, ILL.

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guaranties of any of the foregoing, it being the intention hereby to establish an absolute transfer and assignment of all the foregoing to Lender.

To protect and further the security of this Assignment, the Borrower agrees as follows:

1. Agreements Regarding Leases. Borrower agrees, represents and warrants unto Lender as follows:

(a) the Borrower is the sole owner of the entire interest of the landlord in the Leases; without Lender's prior written consent, Borrower will not transfer, sell, assign, pledge, encumber or grant a security interest in any of the Leases; without Lender's prior written consent, Borrower will not consent to, suffer or permit the assignment or subletting of any leasehold estate created thereunder; any attempted assignment or subletting without Lender's written consent, whether by Borrower or by a tenant, shall be null and void;

(b) any Leases are and will be valid and enforceable in accordance with their terms, and shall remain in full force and effect irrespective of any merger of the interest of landlord and tenant thereunder;

(c) the Borrower will promptly notify Lender of any default or claimed default by landlord or tenant under the Leases of which it becomes aware;

(d) if any Lease provides for the abatement of rent during repair of the premises demised thereunder by reason of fire or other casualty, the Borrower shall furnish rental insurance to Lender in amount and form and written by insurance companies as shall be satisfactory to Lender;

(e) the Borrower shall not hereafter permit any Lease to become subordinate to any lien other than the lien of the Mortgage and any liens to which the Mortgage is now, or may pursuant to its terms become, subordinate, nor terminate, modify or amend any of the Leases or any of the terms thereof without the prior written consent of Lender, and any attempted termination, modification or amendment of any of the Leases without such written consent shall be null and void;

(f) no payment of rent has been or will be made by any tenant or by any person in possession of any portion of the Premises for more than one month's installment in advance or has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Borrower, and the Borrower waives any right of set-off against any tenant or any person in possession of any portion of the Premises; Borrower has not made and will not make any other or further assignment of the rents, issues, income or profits of the Premises or of the Leases except subsequent to or in connection with the release of this Assignment with respect to such portion of the Premises so released;

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(g) the Borrower shall perform all of its covenants and agreements under the Leases and shall not suffer or permit any release of liability of, or right to withhold payment of rent by, the tenants therein;

(h) the Borrower shall not commence or continue proceedings to evict, remove or dispossess any tenant under any Lease or to terminate any Lease without prior written consent of Lender;

(i) the Identified Leases and all other existing Leases are valid and unmodified and in full force and effect, except as indicated herein, and neither the landlord nor any of the tenants thereunder are in default under any of the terms, covenants or conditions thereof, no event or condition has occurred or presently exists which would, but for the passage of time, the giving of notice or both, would constitute a default by either the landlord or any of the tenants thereunder, and none of the tenants thereunder has any rights of set-off or counterclaim or any defense to full performance of such tenant's obligations thereunder;

(j) the Borrower shall not waive, cancel, release, modify, excuse, condone, discount, set-off, compromise or in any manner release or discharge any tenant under any of the Leases from any material obligation, covenant, condition or requirement of said Leases, without prior written consent of Lender.

Any amounts received by Borrower or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Borrower as rents, income, issues or profits from the Premises from and after the date of any Default under the Note or under any of the Loan Documents, which default shall not have been cured within the time periods, if any, expressly established therefor, shall be held by Borrower as trustee for Lender and all such amounts shall be accounted for to Lender and shall not be commingled with other funds of the Borrower. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of the county in which the Premises are located stating that Borrower has received or will receive such amounts in trust for Lender.

2. Waiver of Liability. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers granted by the Mortgage, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by the Borrower.

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3. **Further Assurances and Assignments.** The Borrower further agrees to execute and deliver immediately upon the request of Lender, all such further assurances and assignments concerning the Leases or the Premises as Lender shall from time to time require.

4. **Exercise of Remedies.** In any case in which under the provisions of the Mortgage, Lender has a right to institute foreclosure proceedings, whether before or after institution of legal proceedings to foreclose the lien thereof or before or after sale thereunder, upon demand of Lender, the Borrower agrees to surrender to Lender and Lender shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, and Lender in its discretion may, with or without force or notice and with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all the documents, books, records, papers and accounts of the Borrower or the then owner of the Premises relating thereto, and may exclude Borrower, its agents, or servants, wholly therefrom and may as attorney in fact of Borrower, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment of security of the rents, income, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, and with full power to cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Borrower to cancel the same, to elect to disaffirm any Lease or sublease made subsequent to the Mortgage or subordinated to the lien thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that may seem judicious, in its discretion, to insure and reinsure the same for all risks incidental to Lender's possession, operation and management thereof and to receive all such rents, income, issues and profits.

5. **Indemnity.** Lender shall not at any time (regardless of any exercise by Lender, or right of Lender to exercise, any powers herein conferred) be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases or rental agreements relating to the Premises, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which Lender may or might incur under or by reason of (a) any Leases, (b) the assignment thereof, (c) any action taken by Lender or its agents hereunder, unless constituting willful misconduct or gross negligence, or (d) claims and demands which may be asserted against it by reason of any alleged obligations or undertakings on its part to (or to cause the Borrower to) perform or discharge any of the terms, covenants or agreements contained in the Leases.

6. Application of Proceeds. Lender in the exercise of the rights and powers conferred upon it by this Assignment shall have full power to use and apply the rents, income, issues and profits of the Premises to the payment of or on account of the following, in such order as Lender may determine:

(a) operating expenses of the Premises, including costs of management and leasing thereof (including reasonable compensation to Lender and its agents, and lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), establishing any claims for damages, and premiums on insurance hereinabove authorized; it being expressly understood and agreed that Lender in the exercise of such powers may so pay any claims purporting to be for any operating expenses of the Premises, without inquiry into, and without respect to, the validity thereof and whether such claims are in fact for operating expenses of the Premises;

(b) taxes and special assessments now due or which may hereafter become due on the Premises;

(c) the costs of all repairs, decorating, renewals, replacements, alterations, additions or betterment, and improvements of the Premises, including, without limitation, the cost from time to time of installing or replacing such fixtures, furnishings and equipment therein, and of placing the Premises in such condition as will, in the reasonable judgment of Lender, make it readily rentable;

(d) any indebtedness secured or guaranteed by the Mortgage or any deficiency which may result from any foreclosure sale.

7. Power of Attorney. Borrower does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead and hereby authorizes Lender, with or without taking possession of the Premises, to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms, in its discretion as it may determine, and to collect all of said rents, income, issues and profits now or hereafter arising from or accruing or due under the Leases with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth. Powers of attorney conferred upon Lender pursuant to this Assignment are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Lender.

8. Occurrence of Default. Although it is the intention of the parties that this assignment is a present assignment, Lender shall not exercise any of the rights and powers conferred upon it herein until and unless there shall occur a Default (as defined therein) in the performance and observance by Borrower of its obligations and agreements under the Note, the Mortgage or the other Loan Documents, in each instance after any applicable grace periods shall have expired. Nothing herein contained shall be deemed to affect or impair any rights which the Lender may have under the Note, the Mortgage or the other Loan Documents or to affect the



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Impression of a trust upon funds received by a trustee in the manner provided for in Paragraph 1 above.

9. Instruction to Tenants. Borrower further specifically and irrevocably authorizes and instructs each and every present and future tenant or tenant under any Lease of the whole or any part of the Premises to pay all unpaid rental agreed upon in any Lease or other agreement for occupancy of any part of the Premises to Lender upon receipt of demand from Lender so to pay the same, without any inquiry as to whether or not said demand is made in compliance with the immediately preceding paragraph hereof. Lender has not received or been transferred any security deposit with respect to any Lease, and assumes no responsibility for any such security deposit until such time such security deposit (specified as such with specific reference to the Lease pursuant to which deposited) may be transferred to Lender and accepted by Lender by notice to the tenant under said Lease.

10. Election of Remedies. The provisions set forth in this Assignment shall be deemed a special remedy given to Lender, and shall not be deemed exclusive of any of the remedies granted in the Note or the Mortgage but shall be deemed an additional remedy and shall be cumulative with the remedies therein and elsewhere granted Lender, all of which remedies shall be enforceable concurrently or successively. No exercise by Lender of any of its rights hereunder shall cure, waive or affect any default hereunder or default under the Note or the Mortgage. No inaction or partial exercise of rights by Lender shall be construed as a waiver of any of its such rights and remedies, and no waiver by Lender of any such rights and remedies shall be construed as a waiver by Lender of any of its other rights and remedies.

11. Continual Effectiveness. No judgment or decree which may be entered on any debt secured or intended to be secured by Lender shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment, discharge and performance of any and all indebtedness and obligations evidenced by the Note or secured or guaranteed by the Mortgage, in whatever form, and until all bills incurred by virtue of the authority herein contained have been fully paid out of rents, income, issues and profits of the Premises, or by the Borrower, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless all indebtedness secured or guaranteed by the Mortgage is fully satisfied before the expiration of any period of redemption.

12. Bankruptcy. In the event any tenant under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Borrower covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to the Borrower and Lender. The Borrower hereby assigns any such

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payment to Lender and further covenants and agrees that upon the request of Lender, it will duly endorse to the order of Lender any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Assignment Lender may elect.

13. Release of Mortgage. To the extent, if any, that any provisions of the Mortgage may provide for the partial release thereof upon conditions therein stated, the Leases of any portion of the Premises which may be released from the lien of the Mortgage pursuant to such provisions, and any rents, issues and profits thereafter accruing with respect thereto, shall ipso facto be immediately released from this Assignment without the necessity of further action or instrument.

14. Notices. Any notice which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given if and when personally delivered, or on the second (2d) business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth below, or at such other place as such party may have designated to all other parties by notice in writing in accordance herewith:

(a) If to Borrower: D.S. IL Limited Partnership  
300 Plaza Drive  
Binghamton, New York  
Attention: Richard Wilcox

with a copy to: Beveridge & Diamond  
Suite 700  
1350 I Street, NW  
Washington, D.C. 20005  
Attention: Brian Siegel, Esq.

(b) If to the Lender: American National Bank and  
Trust Company of Chicago  
33 North LaSalle Street  
Chicago, Illinois 60690  
Attention: Mr. Arthur Murray

with a copy to: Rudnick & Wolfe  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attention: George T. Plumb

Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Assignment is not required to be given.

15. Binding Agreements. This Assignment and all provisions hereof shall be binding upon Borrower, its successors, assigns, executors, administrators and legal representatives and all other persons or entities claiming under or through Borrower, and the word "Borrower," when used herein, shall include all such persons and

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entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Assignment. The word "Lender," when used herein, shall include Lender's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

16. Governing Law; Interpretation. This Assignment shall be governed by the laws of the State of Illinois in which State the Note and this Assignment were executed and delivered, the Premises are located, the proceeds of the Loan were disbursed by Lender, and the principal and interest due under the Note are to be paid. Wherever possible each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Assignment. Time is of the essence of this Assignment.

17. Miscellaneous. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally. The Section headings used herein are for convenience of reference only and shall not define or limit the provisions of this Agreement. As used in this Assignment, the singular shall include the plural and the plural shall include the singular, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

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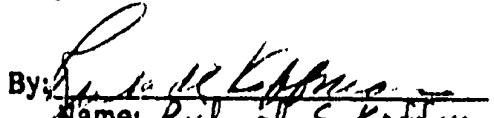
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IN WITNESS WHEREOF, the undersigned have caused this Assignment to be executed as of the day and year first above written.

**ASSIGNOR:**


**D.S. IL LIMITED PARTNERSHIP,**  
an Illinois limited partnership

By: **DAVIS STREET ILLINOIS**  
**CORPORATION,** an Illinois  
corporation

By:   
Name: Richard E. Kottman  
Title: President

**ASSIGNEE:**

**AMERICAN NATIONAL BANK AND**  
**TRUST COMPANY OF CHICAGO,**  
a national lending institution

By:   
Name: Arthur W. Swann  
Title: OFFICER

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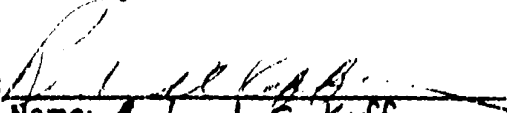
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## CONSENT OF LESSEE

Empire Plastics, Inc., as lessee of the entire premises commonly known as 1403 E. Davis Street, Arlington Heights, Illinois, hereby consents to the foregoing Assignment of Leases and Rents and to each of the terms and conditions thereof. Furthermore, the undersigned agrees that if American National Bank and Trust Company of Chicago, as lender, shall exercise its rights under the foregoing Assignment of Rents and Leases that the undersigned shall recognize such lender as landlord pursuant to its lease.

EMPIRE PLASTICS, INC., a  
Nevada corporation

By:

  
Name: Richard E. Koffman  
Title: Vice President

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STATE OF NEW YORK )  
                                  ) SS.  
COUNTY OF NEW YORK )

I, DAVITA V. CADE, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Richard E. Koffman President of Davis Street Illinois Corporation, the sole general partner of D.S. IL Limited Partnership, an Illinois limited partnership, is 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 and delivered said instrument as his own free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 8TH day of January, A.D., 1992.

DAVITA V. CADE  
Notary Public, State of New York  
No. 45593 101  
Qualified in Queens County  
Commission Expires May 31, 1992

DAVITA V. CADE  
Notary Public

My commission expires:  
May 31, 1992

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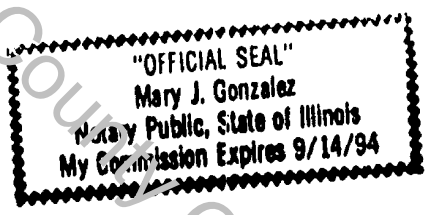
STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS.

I, Mary J. Gonzalez, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Arthur Murray an Officer of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, personally known to me to be to be the same person whose name is subscribed to the foregoing instrument as such Officer, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 15th day of January A.D., 1992.

Mary J. Gonzalez  
Notary Public

My commission expires:  
9/14/94



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## SCHEDULE I

### THE IDENTIFIED LEASES

<u>NAME OF LESSEE</u>	<u>DATE OF LEASE</u>	<u>TERM OF LEASE</u>
1. Empire Plastics, Inc.	May 28, 1985	15 years

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**EXHIBIT A  
TO  
COLLATERAL ASSIGNMENT OF LEASES AND RENTS**

**THE PREMISES**

Lots 1 and 4 in Berger Subdivision being a subdivision of part of Lot 'A' in Kirchoff's Subdivision of part of Sections 10 and 11, Township 41 North, Range 11 East of the Third Principal Meridian and Section 33, Township 42 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

**PIN: 03-33-300-067  
03-33-300-070  
03-33-300-071**

**Address: 1430 E. Davis Street  
Arlington Heights, Illinois**

**THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:**

**Janet O. Bally, Esq.  
RUDNICK & WOLFE  
203 N. LaSalle Street  
Suite 1800  
Chicago, IL 60601**

**Box 333**

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