



200202260118
Skagit County Auditor
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After Recording Mail To:

KEYBANK NATIONAL ASSOCIATION
WA-31-01-0475
P.O. Box 11500
Tacoma, WA 98411-5500
Attn: Ronald McKenzie

FIRST AMERICAN TITLE CO.

47139

**CONSENT TO TRANSFER,
MODIFICATION AND ASSUMPTION OF DEED OF TRUST,
AND
LIEN SUBORDINATION AGREEMENT**

GRANTOR: CC BEVERAGE (U.S.) CORPORATION, a Washington corporation formerly known as Cascade Clear Water Co. ("Company")

ADVANCED H2O, INC., a Washington corporation ("Transferee")

GRANTEE: KEYBANK NATIONAL ASSOCIATION, a national banking association ("Bank")

GRANTEE FIRST AMERICAN TITLE COMPANY OF SKAGIT (trustee) COUNTY

LEGAL Lot 22, Hopper Road Business Park BSP
DESCRIPTION The complete legal description is attached as Exhibit A.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT No: 5002383

RECORDING NO. OF DEED OF TRUST ASSUMED BY THIS DOCUMENT: 9512200102

THIS CONSENT TO TRANSFER, MODIFICATION AND ASSUMPTION OF DEED OF TRUST, AND LIEN SUBORDINATION AGREEMENT ("Consent") is dated as of February 19, 2002, and concerns the Deed of Trust, Assignment of Rents and Leases and

Security Agreement ("*Deed of Trust*") dated as of December 1, 1995, recorded under Skagit County recording no. 9512200102, from CC BEVERAGE (U.S.) CORPORATION, a Washington corporation formerly known as CASCADE CLEAR WATER CO., as Grantor, ("*Company*") to FIRST AMERICAN TITLE COMPANY OF SKAGIT COUNTY as Trustee in favor of KEY BANK OF WASHINGTON, a Washington banking corporation, predecessor in interest to KEYBANK NATIONAL ASSOCIATION, a national banking association, as Beneficiary ("*Bank*") which encumbered Company's leasehold interests in the real property ("*Parcels A & B*") legally described on Exhibit A to the Deed of Trust.

1. **New Legal Description.** Parcels A & B were reconfigured and became Lot 22 of the Hopper Road Business Park Binding Site Plan (the "*Binding Site Plan*") recorded February 23, 2000, under Auditor's File No. 200002230067 and is referred to as the "*Property*" in this Consent and is legally described on the attached Exhibit A. The Ground Lease (defined in the Deed of Trust) was amended by the Second Amendment to Lease recorded under Skagit County no. 200005100050 to reflect the new lot lines for the Property. The Ground Lease was assigned to Company by Assignment of Lease dated January 16, 1998, and recorded under Skagit County no. 9801230057. The parties hereby amend the Deed of Trust so that it encumbers the "*Property*" as defined on the attached Exhibit A.
2. **Consent to Assignment; Assumption.** Company is assigning the Ground Lease of the Property to ADVANCED H2O, INC., a Washington corporation, ("*Transferee*") which is assuming the Deed of Trust and Company's obligations under the Reimbursement Documents pursuant to an Assumption Agreement ("*Assumption Agreement*") dated the same as this Consent. Bank consents to the Company's assignment to Transferee. Company agrees that notwithstanding the foregoing assignment and assumption, Company remains obligated under the Reimbursement Documents and that its obligations under the Reimbursement Documents are unaffected by the foregoing assignment and assumption.
3. **Indemnity Lien.** As part of the consideration for the assignment, Transferee is granting a Leasehold Deed of Trust, Security Agreement, and Fixture Filing and a separate Security Agreement (together, the "*Indemnity Lien*") in favor of the Company and Clearly Canadian Beverage Corporation, a corporation organized under the laws of British Columbia, Canada ("*Guarantor*") on the property it is acquiring from Company. The Indemnity Lien secures Transferee's obligation ("*Indemnity Obligation*") to reimburse Company and Guarantor for any obligation either may incur as a result of Transferor's failure to pay or perform any of the obligations under the Reimbursement Documents. All documents evidencing or securing the Indemnity Obligation are referred to as the "*Indemnity Documents.*" The term "*Indemnity Lien*" includes the lien of the foregoing Leasehold Deed of Trust, the Security Agreement and the liens of any and all assignments of rents and leases, UCC financing statements, and other Indemnity Documents securing the Indemnity Obligation.



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4. **Unconditional Subordination.** In consideration of the benefits to Company from the assignment, the receipt and sufficiency of which are acknowledged, and to induce Bank to consent to the assignment and the Indemnity Lien, Company unconditionally subordinates the Indemnity Lien to:

- (a) the lien of Bank's Deed of Trust, including all rights granted Bank under the Deed of Trust;
- (b) all sums now or hereafter due Bank under Bank's Reimbursement Documents, including interest and all advances regardless whether optional or obligatory or whether there is any event of default under the Deed of Trust or whether there are any conditions in the Reimbursement Documents to such advances which have not been satisfied;
- (c) any and all Company's rights to insurance proceeds and condemnation awards, Company hereby assigning to Bank any and all of Company's rights to insurance proceeds and condemnation awards to the extent of the outstanding obligations secured by Bank's Deed of Trust;
- (d) any modification, extension, renewal, or replacement of the Reimbursement Documents; and
- (e) any mortgage or deed of trust securing another lender's loan whose proceeds are used in whole or in part to pay off or substitute the obligations secured by the Deed of Trust.

5. **Company's Waivers.** Bank, without the consent of or notice to Company, may release any or all parties liable for any obligation secured by Bank's Deed of Trust, release any or all security for the obligations secured by the Deed of Trust, all without affecting the subordination under this Consent. Company waives any right to require marshalling of assets or to require Bank to proceed against or exhaust any specific security for the obligations secured by Bank's Deed of Trust, and waives any defense arising out of the loss or impairment of any right of subrogation to the lien of the Deed of Trust.

6. **Obligations Secured by Indemnity Lien.**

- (a) Company shall not enter into any material modification (which includes any change in a payment provision) of any obligation or document evidencing or securing the obligation secured by the Indemnity Lien without Bank's prior written consent, which may be withheld or conditioned in Bank's sole discretion.



(b) Company shall not assign or encumber the Indemnity Lien or the Company Reimbursement Documents without Bank's prior written consent, which may be withheld or conditioned in Bank's sole discretion.

(c) If there is a default under the Indemnity Lien, Company shall not exercise any right or remedy before it has given Bank at least thirty (30) days prior notice describing the default and the action Company intends to take. Company acknowledges that if there is any default under Indemnity Lien, Bank may declare an Event of Default under Bank's Deed of Trust and exercise any rights or remedies without the consent of or notice to Company (except any notice required by law in connection with a foreclosure proceeding). Company further agrees that any foreclosure sale or deed in lieu of foreclosure of Indemnity Lien is a prohibited transfer and an independent and material event of default under Bank's Deed of Trust.

7. **Rents and Profits.** Company understands that under the Deed of Trust, all leases, income, rents, and profits of the Property have been assigned to Bank and that if rent or profits are collected through a receiver or by Company, they shall be applied first to the Secured Obligations under Bank's Deed of Trust and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation and maintenance of the Property. Company agrees that upon an Event of Default under the Reimbursement Documents, Bank shall have the absolute right to collect all rents and profits from the Property as provided in Bank's Deed of Trust. Company shall not exercise any right to require a change in the Property management without giving Bank thirty (30) days prior notice, and shall not have the right to terminate any lease at the Property in a foreclosure or other proceeding or action brought as a result of default under the Indemnity Lien, without obtaining Bank's prior written consent.
8. **Default; Bank's Rights.** Any default under the Indemnity Lien constitutes an Event of Default under Bank's Deed of Trust without the requirement of Bank giving notice. If the Deed of Trust is foreclosed, all of Company's rights under the Indemnity Lien shall be foreclosed. Upon an Event of Default under the Deed of Trust and thirty (30) days notice to Company, Bank may accept a deed to the Property in lieu of foreclosure and the recording of such deed shall extinguish the lien of Company's Deed of Trust.
9. **Bankruptcy.** In consideration for Bank's consent to the Indemnity Lien, Company agrees and hereby waives and releases Bank from any claim, objection or defense to a motion by Bank for relief from stay or any proposal by Bank for reorganization or the application of cash collateral in the event Company files any petition in bankruptcy.



10. **No Third Party Beneficiary.** Company executes this Consent solely for the benefit of the present and future holders of the indebtedness secured by Bank's Deed of Trust, not for the benefit of any other person or party. This Consent shall not impair the validity or priority of the lien of the Indemnity Lien other than in favor of the lien of Bank's Deed of Trust.
11. **Successors Bound.** This Consent shall be binding upon and inure to the benefit of the parties and their heirs, administrators, representatives, successors-in-interest, and assigns.
12. **No Waiver.** Company and Transferee agree that neither Bank's consent to the amendment and assignment of the Ground Lease of the Property to Transferee nor Bank's consent to the Indemnity Lien constitutes a waiver of the provisions of Article IV of the Deed of Trust and that, upon closing of the assignment of the Property to Transferee, all further assignments, sales, conveyances, encumbrances and transfers of all or any portion of the Ground Lease of the Property will be subject to Article IV of the Deed of Trust.
13. **Notices.** Transferee requests that all notices under the Deed of Trust be given to the address indicated by its signature to this Consent.
14. **Miscellaneous.**
- (a) If there is litigation arising out of this Consent, the prevailing party shall recover its reasonable attorneys' fees, court costs, and other expenses, incurred in any proceeding to enforce this Consent (including the adjudication of issues peculiar to bankruptcy law) and any appeal therefrom.
 - (b) Time is the essence of all of Company's obligations under this Consent. Bank's failure to require performance of any term of this Consent shall not limit its ability to enforce that term. The waiver of any breach of this Consent shall not imply or constitute a waiver of any subsequent breach.
 - (c) This Consent binds and applies to the parties' respective heirs, successors, executors, administrators and assigns. Company agrees to execute and deliver any further documents and instruments, including without limitation consents to construction draws, reasonably requested by Bank to confirm the continued subordination of the Indemnity Lien as provided in this Consent.
 - (d) This Consent constitutes the entire and only agreement between Company and Bank with regard to the subordination of the Indemnity Lien to Bank's Deed of Trust, and shall supersede any prior agreement as to such or any subordination. This Consent shall not be amended, waived or terminated



except by a writing signed by the party against whom the amendment, waiver or termination is sought. The captions to paragraphs in this Consent are for convenience and shall not be construed to limit or modify the language of this Consent.

- (e) This Consent is not intended to and shall not be construed to impair the validity, priority or enforceability of the Deed of Trust or the other Reimbursement Documents. In all other respects the provisions of the Deed of Trust are hereby affirmed and ratified.
- (f) This Consent may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

NOTICE TO COMPANY: The subordination in this Consent contains a provision which allows the person obligated on your real property security ("Transferee") to obtain a loan a portion of which may be expended for purposes other than improvement of the Property. It is recommended that prior to the execution of this Consent, the parties consult with their attorneys with respect thereto.

DATED as of the year and date first above written.

"Bank"

KEYBANK NATIONAL ASSOCIATION, a national banking association

By: Ronald McKenzie
Ronald McKenzie,
its Vice President

"Company"

CC BEVERAGE (U.S.) CORPORATION, a Washington corporation

By: [Signature]
its [Signature]



STATE OF WASHINGTON)
)
County of King) ss.

I certify that I know or have satisfactory evidence that DOUG MASON is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the PRESIDENT of CC BEVERAGE (U.S.) CORPORATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 19th day of February, 2002.



[Signature]
Notary Public in and for the State of
Washington,
residing at 11725 82ND AVE. S., SEATTLE
STEPHANIE SIMMONS RAY
Name (printed or typed)
My appointment expires: 5-17-04

STATE OF WASHINGTON)
)
County of King) ss.

I certify that I know or have satisfactory evidence that ROBERT ABRAMOWITZ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the PRESIDENT & CEO of ADVANCED H2O, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 19th day of February, 2002.



[Signature]
Notary Public in and for the State of
Washington,
residing at 11725 82ND AVE. S., SEATTLE
STEPHANIE SIMMONS RAY
Name (printed or typed)
My appointment expires: 5-17-04



**EXHIBIT A
TO
CONSENT TO TRANSFER
AND
ASSUMPTION OF DEED OF TRUST**

As amended, the Deed of Trust encumbers the Property, a leasehold interest in real property located in Skagit County, Washington, legally described as follows:

Lot 22 of the HOPPER ROAD BUSINESS PARK BINDING SITE PLAN
recorded February 23, 2000, under Auditor's File No. 200002230067;

TOGETHER WITH an easement for vehicular ingress and egress over the
North forty-five (45) feet of Lot 21 of Hopper Road Business Park Binding
Site Plan.



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