



0311933185

Eugene "Gene" Moore Fee: \$100.00  
Cook County Recorder of Deeds  
Date: 04/29/2003 11:54 AM Pg: 1 of 39

This instrument was prepared by and when recorded, please return to:

George N. Gilkerson, Jr.  
Rooks Pitts  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606

**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FINANCING STATEMENT**

THIS MORTGAGE, MORTGAGE AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FINANCING statement ("**Mortgage**") is dated and effective as of April 21, 2003 by and between **DELRAY BK, L.L.C.**, an Illinois limited liability company, as to an undivided 57.74% interest ("**DBK**") and **DELRAY RL, L.L.C.**, an Illinois limited liability company, as to an undivided 42.26% interest ("**DRL**"). (DBK and DRL are collectively referred to herein as the "**Borrower**"), both having an office at h c/o Centrum Properties, Inc., 225 W. Hubbard St., 4th Floor, Chicago, Illinois, 60610, and **National City Bank of Michigan/Illinois**, a national banking association ("**Lender**"), having its principal offices at 2021 Spring Road, Suite 600, Oak Brook, Illinois 60523.

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**RECITALS:**

A. Borrower has executed and delivered to Lender a Mortgage Note dated of even date in the principal sum of One Million Seven Hundred Eighty Five Thousand Dollars (\$1,785,000) ("**Loan**") (said note, together with all extensions, renewals, amendments, modifications and replacements and substitutes therefor, the "**Note**"), pursuant to which Borrower promises to pay the principal sum, together with interest on the balance of the principal from time to time outstanding and unpaid at the rates and at the times specified in the Note, with a maturity date of April 21, 2010 with respect to all principal and interest not required to be sooner paid. The Note provides, among other things, that interest on the principal amount outstanding will be paid at a fixed rate, which rate shall be determined in accordance with its terms.

B. Lender requires that Borrower execute and deliver this Mortgage to secure the payment and performance of the obligations and duties of Borrower under the Note and all other documents, agreements and instruments executed by Borrower. (This Mortgage, the Note, the Limited Guaranty of Payment (the "**Guaranty**") executed by Arthur Slavin, John McLinden, Laurence Ashkin, Sol Barket and Sherwood Blitstein (each, a "**Guarantor**") of even date herewith, and other documents, agreements and instruments, in each case as the same may be renewed, extended, amended, supplemented, modified and/or restated from time to time, are collectively referred to as the "**Loan Documents**.")

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NOW, THEREFORE, to secure:

- (ii) the payment when and as due and payable of the principal sum of and interest on the Note and any extensions, renewals, modifications and substitutes therefor,
- (iii) the payment of all other indebtedness which this Mortgage secures pursuant to its terms or which is payable under the terms of any of the Loan Documents, and
- (iv) the performance and observance of the covenants and agreements contained in and the payment of all obligations and liabilities of Borrower under this Mortgage and/or the Loan Documents (all of the indebtedness, obligations, agreements and liabilities identified in clauses (i), (ii) and (iii) being referred to as the "**Obligations**"):

## ARTICLE 1. GRANT OF MORTGAGE:

**1.1 Mortgage.** Borrower does by these presents MORTGAGE, GRANT, CONVEY, TRANSFER, BARGAIN, WARRANT, ALIEN, PLEDGE, SELL AND ASSIGN to Lender, its successors and assigns forever, the real estate situated in the County of Cook and State of Illinois, described in Exhibit A attached hereto and made a part hereof (the "**Real Estate**") and all of Borrower's estate, right, title and interest in the same.

TOGETHER WITH:

(a) **Reversions.** All estate, right, title, and interest of Borrower, if any, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, roadways, strips and gores, and alleys adjoining or within the boundaries of the Real Estate;

(b) **Other Property Rights.** All and singular the tenements, hereditaments, easements, licenses, minerals, appurtenances, passages, waters, water courses, riparian, irrigation and drainage rights, and other rights, liberties and privileges in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders; property and rights, if any, which by the express provisions of this Mortgage are required to be subjected to the lien and any additional property and rights that from time to time, by installation or writing of any kind, may be subjected to the lien by Borrower or by anyone on Borrower's behalf;

(c) **Access Rights.** All rights in and to common areas and access roads on adjacent land heretofore or hereafter granted to Borrower and any after-acquired title or reversion;

(d) **Improvements.** All of Borrower's interests in buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of any improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Real Estate

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immediately upon the delivery to the Real Estate (The property described in this Section 1.1(d) is referred to as the "Improvements");

(e) Fixtures. All fixtures and personal property now or hereafter owned by Borrower and attached to or contained in and used in connection with the Real Estate; furniture and furnishings owned by Borrower used in the operations of the Premises (as hereinafter defined); and all additions and renewals or replacements or articles in substitution therefor, whether or not the same are or shall be attached to the building or buildings in any manner (The property described in this Section 1.1(e) is referred to as the "Fixtures");

(f) Proceeds. All proceeds or sums payable in lieu of or as compensation for the loss of or damage to the Real Estate and Improvements, all rights in and to all present and future fire and other insurance policies pertaining to the Real Estate and Improvements, any sums at any time on deposit for the benefit of Lender or Borrower or held by Lender (whether deposited by or on behalf of Borrower or anyone else) pursuant to any of the provisions of this Mortgage and all awards, compensation, damages and/or proceeds paid or to be paid in connection with, or in lieu of, any condemnation, eminent domain, change of grade or similar proceeding for the taking or for the degradation in the value of all or any part of the Real Estate and Improvements; and

(g) Documents and Intangibles. All contracts, documents, agreements, contract rights and general intangibles of Borrower relating to design, development, operation, construction upon, management, leasing, sale and use of the Real Estate and Improvements, including:

- (i) all names under which or by which the Real Estate and/or Improvements may at any time be owned and operated, or any variation thereof, and all goodwill in any way relating to the Real Estate and Improvements and all service marks and logo types used in connection therewith,
- (ii) all permits, licenses, authorizations, variances, land use entitlements, approvals, consents, clearances and rights obtained from governmental agencies or other governmental authorities issued or obtained in connection with the Real Estate and/or Improvements,
- (iii) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the development, construction upon, use, occupation, leasing, sale or operation of the Real Estate and/or Improvements,
- (iv) all materials prepared for filing or filed with any governmental agency or other governmental authority in connection with the development, construction upon, use, occupation, leasing, sale or operation of the Real Estate and/or Improvements,
- (v) all plans, specifications, drawings, maps, surveys, studies, architectural, engineering and construction contracts, management and leasing contracts and other agreements and documents, of whatever kind or character, relating to the use, construction upon, occupation, leasing, sale or operation of the Real Estate, the Improvements, and/or the Fixtures,

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whether now existing or later entered into, and in, to and under any amendments, supplements, modifications and additions, extensions and renewals and substitutions, and

- (vi) the books and records of Borrower relating to design, development, construction, operation or management of the Real Estate and/or Improvements,

it being mutually agreed, intended and declared that all the property shall, so far as permitted by applicable laws be deemed to form a part and parcel of the pledged Real Estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage. The Real Estate, Fixtures and improvements and all of the other property of Borrower described in granting clauses (a) through (g) above are collectively referred to as the "**Premises.**"

## ARTICLE 2. MORTGAGE COVENANTS

**2.1 Incorporation of Recitals.** The recitals are incorporated as if fully restated.

**2.2 Payment of Principal and Interest.** Borrower pledges the Premises to secure the prompt payment, when and as due and payable, of the Obligations.

**2.3 Taxes and Other Charges.**

(a) **Payment of Taxes.** Prior to delinquency, and subject to the provisions of Section 2.12, Borrower shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, association charges, and all other charges of whatever kind, ordinary or extraordinary, whether public or private, which may be levied or imposed against the Premises, and if requested by Lender shall furnish to Lender official receipts therefor within thirty (30) days after payment. Borrower shall also pay when due all charges incurred for the benefit of the Premises for utilities, including energy, fuel, gas, electricity, water, sewer, and garbage removal, whether or not the charges are liens against the Premises.

(b) **Optional Tax Escrow.** Upon the occurrence of an Event of Default and upon notice from Lender, Borrower shall deposit at the place Lender may from time to time in writing appoint, and in the absence of appointment, then at the office of Lender, commencing on the first day of the first month after request therefor by Lender, and on the first day of each month thereafter until the Obligations are fully paid, a sum equal to one-twelfth on the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless taxes are based upon assessments which exclude the Improvements or any part now constructed, or to be constructed, in which event the amount of deposits shall be based upon Lender's estimate as to the amount of taxes and assessments to be levied and assessed).

(c) **Additional Escrow.** In addition, Borrower shall, concurrently with any required initial deposit made pursuant to Section 3.3(b), also deposit with Lender an additional amount as Lender may reasonably determine is necessary to enable Lender to pay the annual taxes and assessments on the Premises prior to delinquency. The deposits set forth under Section 2.3(b) above and this Section 2.3(c) need not be kept separate and apart, and are to be used for the

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payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds deposited are insufficient to pay any taxes or assessments (general and special) for any year when the same shall become due and payable, Borrower shall, within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay taxes and assessments (general and special) in full. If the funds deposited exceed the amount required to pay taxes and assessments (general and special) for any year, the excess shall be applied on subsequent deposits. Any funds deposited with Lender pursuant to Section 2.3(b) above and this Section 3.3(c) shall bear interest at a rate not less than the lowest rate offered by Lender to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(d) Evidence of Payment. Unless Borrower is making deposits with Lender as provided in Sections 3.3(b) and 3.3(c), receipts showing and evidencing payment of all taxes and assessments (general and special) levied in respect of the Premises shall be provided to Lender upon request.

## 2.4 Insurance, Casualty Loss.

(a) Required Insurance Coverages. The Borrower shall provide or cause to be provided to the Lender insurance policies which insurance must be in effect at all times during the term of this Loan, in amounts, in form, with deductibles and issued by companies satisfactory to the Lender and qualified to do business in the State of Illinois, for

- (i) Comprehensive general public liability insurance in an amount not less than Five Million Dollars (\$5,000,000);
- (ii) Workers' compensation insurance and employer's liability insurance for the Borrower and all contractors and subcontractors in amounts as may be required by statute;
- (iii) Flood Insurance if the Land is located in an area designated by the Federal Emergency Management Agency or any other applicable governmental or quasi-governmental authority having jurisdiction over the Premises as a special flood hazard area;
- (iv) Contractual liability insurance coverage to fully cover Borrower's indemnification obligations provided in the Loan Documents to the extent that same is available;
- (v) Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all Improvements, Fixtures and equipment from time to time of the Premises and bearing a replacement cost agreed amount endorsement;
- (vi) Steam boiler, machinery and pressurized vessel insurance (if applicable to the Premises); and

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(vii) Other insurance coverages as the Lender may reasonably require.

(b) Blanket Policies; Renewals. All of the requirements for insurance coverage may be satisfied by a blanket or umbrella insurance policy, provided it is acceptable to the Lender. The Borrower shall deliver renewal policies of required insurance, together with written evidence that premiums for all policies have been paid in full at least thirty (30) days prior to the expiration of the then current policy.

(c) Policy Requirements. All required policies shall provide that the insurance shall not be canceled (including for non-payment) or modified without at least thirty (30) days' prior written notice from the insurance carrier to the Lender and shall provide that no claims shall be paid without at least ten (10) days prior written notice to the Lender. Upon the Lender's request, the Borrower shall furnish evidence satisfactory to the Lender that workers' compensation insurance and public liability insurance have been obtained and are being maintained by the Borrower and by those parties maintaining insurance policies under which the Borrower is named as an additional insured, in amounts and with companies satisfactory to the Lender.

(d) Insurance Proceeds. In the event of any loss covered by the insurance, Borrower shall immediately notify Lender in writing. Borrower authorizes and directs each and every insurance company concerned to make payments for any loss directly and solely to Lender (which may, but need not, make proof of loss). So long as no Event of Default has occurred or is continuing, Borrower is authorized to adjust, collect, and compromise all claims up to One Hundred Thousand Dollars in its discretion, and, in collaboration with Lender and subject to Lender approval (with shall not be unreasonably withheld) those claims in excess of One Hundred Thousand Dollars under all policies. Upon the occurrence of an Event of Default, Lender is authorized to adjust, collect, and compromise in its discretion all claims in excess of One Hundred Thousand Dollars under all policies. Borrower shall sign, upon demand by Lender, all receipts, vouchers, and releases required by the insurance companies. After deducting any costs of collection, Lender may use or apply the proceeds, at its sole option,

- (i) as a credit upon any portion of the Note, or
- (ii) to repair and restore the Improvements, in which event Lender shall not be obliged to see to the proper application thereof nor shall the released amount used for restoration be deemed a payment on the Note, or
- (iii) to deliver same to Borrower.

(e) Application of Balance of Proceeds. Notwithstanding anything contained in the preceding paragraph to the contrary, and only so long as no Event of Default has occurred or is continuing, (i) provided that the proceeds of the insurance are sufficient, Borrower may in Borrower's discretion either repair or replace the Premises if the cost to do so is Five Hundred Thousand (\$500,000) or less, or (ii) if in Lender's reasonable judgment, after first deducting and paying the reasonable expenses, if any, incurred by Lender in the collection of proceeds, there are sufficient insurance proceeds available to fully restore, repair and replace the damaged portions of the Premises and to otherwise pay all costs and related expenses (or if the proceeds are insufficient, Borrower shall deposit the entire amount of any deficiency with Lender or make

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other arrangements satisfactory to Lender to pay the deficiency) and that the insurance company shall not claim that, notwithstanding payment to Lender, the insurance company has no liability to pay any or some portion of the proceeds to Borrower, the balance of the proceeds will be held and disbursed by Lender for the purposes of the repair, restoration, building or rebuilding of the Premises. In the event proceeds are applied to restoring the Improvements, the proceeds shall be made available, from time to time in accordance with the terms of the Loan Documents. If the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the Obligations, Borrower shall furnish Lender with all plans and specifications for rebuilding or restoration as Lender may reasonably require and approve. Lender's approval shall not be unreasonably withheld or delayed. Any funds deposited with Lender pursuant to this Section 2.4(e) shall bear interest at a rate not less than the lowest rate offered by Lender to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(f) Assignment of Policies. In the event of foreclosure of this Mortgage, or other transfer of title to the Premises in extinguishment of the Obligations, all right, title, and interest of Borrower, in and to any insurance policies then in force, and any claims or proceeds shall pass to Lender or any purchaser or grantee.

(g) Optional Insurance Escrow. Upon the occurrence of an Event of Default and on notice from Lender, Borrower shall deposit at the place as Lender may from time to time in writing appoint, and in the absence of an appointment, then at the office of Lender, commencing on the first day of the first month after request therefor by Lender, and on the first day of each month thereafter until the Obligations are fully paid, a sum equal to one-twelfth of the insurance premiums on the Premises.

(h) Additional Escrow. In addition, Borrower shall, concurrently with any required initial deposit made pursuant to Section 3.4(g), also deposit with Lender an additional amount as Lender may reasonably determine is necessary to enable Lender to pay the annual insurance premiums on the Premises prior to delinquency. The deposits set forth under Section 2.3(g) above and this Section 2.3(h) need not be kept separate and apart, and are to be used for the payment of insurance on the Premises next due and payable when they become due. If the deposited funds are insufficient to pay any insurance for any year when the same shall become due and payable, Borrower shall, within ten (10) days after receipt of demand therefore, deposit additional funds as may be necessary to pay the premiums in full. If the funds deposited exceed the amount required to pay premiums, the excess shall be applied on subsequent deposits. Any funds deposited with Lender pursuant to Section 2.4(g) above and this 2.4(h) shall bear interest at a rate not less than the lowest rate offered by Lender to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(i) Evidence of Payment. Unless Borrower is making deposits with Lender as provided in Sections 3.4(g) and 3.4(h), receipts showing and evidencing payment of all premiums shall be provided to Lender if requested.

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## 2.5 Preservation, Restoration and Use of Premises.

(a) Preservation. All Improvements shall be completed in accordance with the terms of the Loan Documents. Except in the ordinary course of business, no Improvement shall be altered, removed, or demolished nor shall any fixtures, appliances or other personal property subject to the lien, on, in or about the Improvements be severed, removed, sold, encumbered or mortgaged, without the prior written consent of Lender. In the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of covered personal property or by any separate security agreement, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title.

(b) Restoration. Borrower shall promptly repair, restore, or rebuild any Improvements on the Premises which may become damaged or be destroyed; provided, however, that if Lender has elected to apply insurance loss proceeds toward payment of the Note as provided in Sections 2.4(d) and 2.4(e), the provisions of this Section 2.5(b) shall not apply. The Improvements shall be restored or rebuilt as to be of at least equal value and substantially the same character as prior to the damage or destruction.

(c) No Waste. Borrower shall not permit, commit, or suffer any waste, impairment, or deterioration of the Premises or any part or improvement, and shall keep and maintain the Premises and every part in good repair and condition and effect repairs that Lender may require, and, from time to time, make all needful and proper replacements and additions so that the Improvements will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Borrower shall not suffer or permit the Premises to be abandoned or to be used for a purpose other than that for which the Premises are presently used, or represented to Lender to be used or permitted to be used.

(d) Use Restrictions. Borrower shall not subject the Premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the Premises or any part, and shall promptly notify Lender of, and appear in and defend, at its sole cost and expense, any proceedings seeking to effect any of the foregoing.

(e) Plan Approval. No improvement on the Real Estate shall be constructed unless plans and specifications therefor have been first submitted to Lender and approved by it as entailing no prejudice to the Obligations or the security therefor. Borrower shall not cause or permit the person, firm or other entity responsible for the management of the Premises to be changed without Lender's prior written consent which shall not be unreasonably withheld or delayed.

## 2.6 Compliance with Governmental and Other Requirements.

(a) Compliance. Borrower shall comply with all applicable Laws relating to the Premises or the use thereof and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under Section 2.4 and to preserve and



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extend any rights, consents, licenses, permits, privileges, franchises and concessions (including rights, consents, licenses, permits, privileges, franchises and concessions relating to land use development, landmark preservation, construction, access, water rights, noise, pollution, zoning variances, special exceptions and nonconforming uses) which are applicable to the Premises or which have been granted to or contracted for by Borrower in connection with any existing or presently contemplated use of the Premises.

(b) Lender's Approval of Changes. In the event that any Improvements must be materially altered or removed to enable Borrower to comply with the provisions of this Section 2.6, Borrower shall not commence any alterations or removals without Lender's prior approval of the need therefor and the plans and specifications. After approval, Borrower, at its sole cost and expense, shall immediately effect the alterations or removal required and approved by Lender. Borrower shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage to encroach onto or otherwise rely upon the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower assigns to Lender any rights to give consent for all or any portion of the Premises or any interest therein.

(c) No Encroachments. No Improvement shall encroach onto or otherwise rely upon any land not subject to the lien of this Mortgage to fulfill any governmental or municipal requirement.

## 2.7 Liens, Encumbrances.

(a) No Liens. Subject to the provisions of Section 2.12, Borrower shall keep the Premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature regardless of:

- (i) whether the same arise voluntarily or involuntarily on the part of Borrower; and
- (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Mortgage, and shall furnish to Lender satisfactory evidence of the payment and discharge of any liens, charges, and encumbrances, asserted or claimed to exist against the Premises, except for any lien or encumbrance expressly consented to by Lender, with respect to which Borrower shall pay, when due, the related obligations, and upon Lender's request, furnish to Lender satisfactory evidence of payment or payments.

(b) Subordination of Liens. Without in any way limiting Lender's right to withhold its consent to Borrower granting or creating a lien against all or any part of the Premises which is subordinate to the lien of this Mortgage, any lien for which consent is given shall be subject and subordinate to all leases pertaining to the Premises whether then in existence or thereafter arising, and further subject to any renewals, extensions, modifications, releases, increases, changes or exchanges pertaining to the Obligations, without the consent of any subordinate lien holder and without any obligation to give notice of any kind, regardless of whether or not expressed in the consent or in the document granting the subordinate lien.

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**2.8 Stamp Tax.** If at any time the United States of America or any state, local or municipal government shall require Internal Revenue or other documentary stamps on this Mortgage or on the Note, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the Obligations, then the principal of the Obligations and the accrued interest shall be and become due and payable at the election of Lender thirty (30) days after the mailing of notice of election to Borrower. However, the election shall be unavailing and this Mortgage and the Note shall be and remain in effect if Borrower lawfully may pay for any stamps or tax, including interest and penalties thereon, to or on behalf of Lender and Borrower does in fact pay, when payable, for all stamps or tax, as the case may be, including interest and penalties thereon.

**2.9 Effect of Change in Laws Regarding Taxation.** In the event of the enactment, after the date of this Mortgage, of any Law of the United States of America or of the State of Illinois which deducts from the value of the land for the purpose of taxation any lien thereon, or imposes upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens required to be paid by Borrower, or changes in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations or the holder, then, and in any event, Borrower, upon demand by Lender, shall pay the taxes or assessments, or reimburse Lender therefor. If, however, in the opinion of counsel for Lender:

- (a) it might be unlawful to require Borrower to make payment, or
- (b) the making of payment might result in the imposition of interest beyond the maximum amount permitted by applicable law,

then, and in any event, Lender may elect, by notice in writing given to Borrower, to declare all of the Obligations to be and become due and payable within thirty (30) days from the giving of notice.

Notwithstanding the foregoing, Borrower shall not be obligated to pay any portion of Lender's federal or state income tax.

**2.10 Authority.** Borrower is lawfully seized of the Premises, the same are free from all liens and encumbrances except for permitted by Lender exceptions.

**2.11 Eminent Domain.**

(a) **Notice of Proceeding.** Borrower shall give Lender immediate notice of any action or proceeding for the taking through condemnation of all or any part of the Premises, including severance and consequential damage and change in grade of streets, and shall deliver to Lender copies of any papers served in connection with any action or proceeding of which Borrower has notice

(b) **Awards to Lender.** Lender is authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Borrower's name, any action or proceeding described in Section 2.11(a) above. All compensation, awards, damages, claims, rights of action and proceeds and the right thereto (collectively "**Awards**") are assigned by

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Borrower to Lender and Lender is authorized to collect and receive from any Governmental Authority any Awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises by any Governmental Authority for the taking, by condemnation or eminent domain, assigned from Borrower to Lender. Lender is authorized to give appropriate receipts and acquittances. Borrower shall make, execute and deliver to Lender at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any further assignments and instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning to Lender all Awards heretofore and hereafter to be made to Borrower for any taking, either permanent or temporary, under any proceeding described in Section 2.11(a) above.

(c) Application. The proceeds of all Awards shall be paid to Lender and may be applied by Lender, at its option, after the payment of all of its expenses in connection with proceedings, including costs and reasonable attorneys' fees, to the reduction of the Obligations or to restoring the Improvements (in which event the same shall be paid out in the same manner as is provided with respect to insurance proceeds in Sections 2.4(d) and 2.4(e)), all without affecting the security interest created by this Mortgage; provided however that if any taking described above does not result in the termination of any leases and despite such taking Borrower's operation of the Premises remains economically viable, then such Awards shall be paid out in the same manner as is provided with respect to insurance proceeds in Sections 2.4(d) and 2.4(e). Interest shall be allowed to Borrower on any Award paid to or held by Lender at the rate not less than the lowest rate offered by the Lender to commercial customers in the ordinary course of business from time to time on demand deposit accounts. Borrower shall execute further assignments of any Awards as Lender may require.

**2.12 Right to Contest Taxes and Mechanics' Liens.** Notwithstanding anything to the contrary under Sections 2.3 and 2.7 are subject to the rights Borrower shall have the right to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the Premises which right, however, is conditional upon:

(a) Any contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the Premises to satisfy the same,

(b) Borrower giving Lender written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within thirty (30) days after Borrower receives actual notice of the filing thereof,

(c) Borrower either causing any contested matter to be insured over by a title insurer qualified to do business in the State of Illinois and acceptable to Lender pursuant to an endorsement to the title insurance policy in form and substance reasonably acceptable to Lender or making and thereafter maintaining with Lender or other depository as Lender may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Lender's sole discretion, be acceptable to Lender, and in either case having a present value equal to the amount herein specified) in an amount not less than 150% of the amount

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which, in Lender's reasonable judgment, determined from time to time, shall be sufficient to pay in full any contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination adverse to Borrower or in the event Borrower fails to prosecute any contest as required, and

(d) Borrower diligently prosecuting any contest by appropriate legal proceedings or other appropriate means. In the event Borrower shall fail to prosecute any contest with reasonable diligence or shall fail to maintain sufficient funds, or other security on deposit as hereinabove provided, Lender may at its option, liquidate the securities deposited with Lender, and apply the proceeds and other monies deposited with Lender in payment of, or on account of, any taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.

## 2.13 Financial Reporting.

(a) If requested by Lender, the Borrower shall deliver to the Lender on or prior to the Starting Date, financial statements for the period of its existence, consisting of a balance sheet, statement of income and expense, statement of retained earnings, statement of sources and uses of cash prepared on the accrual basis of accounting, and statement of Contingent Liabilities.

(b) Thereafter not less frequently than quarterly the Borrower shall deliver to the Lender financial statements for the period of its existence, consisting of a balance sheet, statement of income and expense, statement of retained earnings, statement of sources and uses of cash prepared on the accrual basis of accounting, and the financial statements shall be certified to be true, correct and not misleading in any material respect by the Borrower.

(c) Within One Hundred Twenty (120) days after the end of each fiscal year, the Borrower shall deliver to the Lender financial statements for the period of its existence, consisting of a balance sheet, statement of income and expense, statement of retained earnings, statement of sources and uses of cash prepared on the accrual basis of accounting, and statement of Contingent Liabilities, and the financial statements shall be certified to be true, correct and not misleading in any material respect by the Borrower.

## ARTICLE 3. PROVISIONS RELATING THE SECURITY INTEREST

**3.1 Grant of Security Interest.** As to any of the property which does not form a part and parcel of the Real Estate, this Mortgage is a Security Agreement under the Uniform Commercial Code as enacted in the State of Illinois (the "**UCC**") and creates on behalf of Lender as Secured Party (as the term is defined in the UCC) a security interest in personal property, rents and Fixtures and a fixture filing in the Fixtures. No security interest is granted in or attaches to any trade fixtures or personal property of any lessee or purchaser of any part of the Real Estate.

**3.2 Execution of Security Agreement and Financing Statement.** Borrower, within ten (10) days after request, shall execute, acknowledge and deliver to Lender any security agreement, financing statement, or other similar Mortgage, in form satisfactory to Lender, covering all property of any kind whatsoever owned by Borrower which, in the sole opinion of

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Lender, is essential to the operation of the Premises and concerning which there may be any doubt as to whether the title to same has been conveyed, or a security interest perfected, by this Mortgage under the laws of the State of Illinois and execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as Lender may request in order to perfect, preserve, maintain, continue, and extend the security interest. Borrower further agrees to pay to Lender, on demand, all costs and expenses (including reasonable attorney, paralegal, legal assistant and law clerk fees) incurred by Lender in connection with the preparation, execution, recording, filing, and refileing of any document. To the extent that this Mortgage operates as a security agreement under the Uniform Commercial Code, Lender shall have all rights and remedies conferred for the benefit of a Secured Party.

**3.5 Certain Acts of Lender.** Lender, at its sole option, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may:

- (a) release any part of the Premises or any person liable for any Obligations, without in any way affecting the liability under this Mortgage or the Loan Documents, and without in any way affecting the priority of the lien of this Mortgage,
- (b) agree with any person obligated on the Obligations to extend the time for payment of any part or all of the Obligations,
- (c) accept a renewal note or notes,
- (d) take or release other or additional security for the Obligations,
- (e) consent to any plat, map or plan of the Premises,
- (f) consent to the granting of any easement,
- (g) join in any extension or subordination agreement,
- (h) agree in writing with Borrower to modify the rate of interest or period of amortization of the Obligations or change the time of payment or the amount of the monthly installments, or
- (i) waive or fail to exercise any right, power or remedy granted by law, this Mortgage or the Loan Documents.

Any agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person personally obligated for the Obligations, but shall, as applicable, extend the lien as against the title of all persons having any interest in the Premises which interest is subject to this Mortgage.

## ARTICLE 4. PROVISIONS RELATING TO ASSIGNMENT OF RENTS AND LEASES

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**4.1 Assignment of Rents and Leases.** Borrower presently assigns to Lender all of Borrower's interest and rights as lessor in and to all leases now or hereafter affecting the Real Estate and/or the Improvements or any part thereof, whether written or verbal, and all rents, issues, proceeds and profits accruing and to accrue from the Real Estate and/or the Improvements, whether payable pursuant to any present or future leases or otherwise arising out of any letting of or any agreement for the sale, occupancy or use of the Real Estate and/or the Improvements or any portion which may have been heretofore or hereafter made or agreed to by Borrower, together with any deposits and profits now due and/or which may become due and any guaranties executed in connection therewith (which are pledged primarily and on a parity with the Real Estate, and not secondarily).

**4.2 Rents and Leases.**

(a) **Lender Authority to Collect.** Pursuant to the assignment made by Borrower in the preceding section, Lender is entitled to receive all rents, issues, proceeds and profits accruing and to accrue from the Premises pursuant to any leases. Borrower grants and confers upon Lender the right, power and authority to collect all rents, issues, proceeds and profits and Borrower appoints Lender its true and lawful agent and attorney-in-fact, at the option of Lender, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue in the name of Borrower, for all rents, issues, profits and proceeds accrued but unpaid and in arrears at the date of an Event of Default as well as all rents, issues, profits and proceeds thereafter accruing and becoming payable during the continuance of any Event of Default, and to apply the same to the Obligations. However, Borrower shall have the right to collect all rents, issues, profits and proceeds (but not in advance unless the written approval of Lender has first been obtained), and to retain and enjoy the same, as long as an Event of Default shall not have occurred. Upon request of Lender, Borrower shall execute and deliver to Lender the following:

- (i) a specific assignment, in recordable form, of any lease, sublease, license, concession or other agreement now or hereafter affecting all or any portion of the Premises to furnish evidence of the assignment made by this Mortgage; and
- (ii) other instruments as Lender may deem necessary, convenient or appropriate in connection with the payment and delivery directly to Lender of all of the rents, issues, profits and proceeds accruing and to accrue under any of the leases of all or any portion of the Premises. Borrower acknowledges that to facilitate the performance of its obligations under the Loan Documents, the assignment of the rents, issues, profits and proceeds and of Borrower's right, title and interest in and to leases, is intended to be an absolute assignment from Borrower to Lender and not merely the granting of a security interest.

Lender may require Borrower to execute and deliver a separate document, in recordable form, to evidence this absolute assignment and its terms. The document shall set forth such other terms and conditions as Lender may deem necessary or appropriate.

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(b) Lender Not Obligated to Perform under Leases. Nothing in this Mortgage or in any Loan Document shall be construed to obligate Lender, expressly or by implication, to perform any of the covenants of Borrower, as lessor, lessee or assignor, under any of the leases assigned to Lender or to pay any sum of money or damages provided to be paid by the lessor or lessor's assignee, each and all of which covenants and payments Borrower agrees to perform and pay.

(c) Lessee Attornment. In the event of the enforcement by Lender of the remedies provided for by law or by this Mortgage, the lessee under each lease of all or any part of the Premises subordinate to the lien of this Mortgage shall, at the option of Lender, attorn to any person succeeding to the interest of Borrower, as a result of enforcement and shall recognize any successor in interest as lessor under the lease without change in the terms or other provisions. However, the successor in interest shall not be bound by any payment of rent for more than one month in advance of any amendment or modification to any lease made without the prior consent of Lender or the successor in interest.

(d) Lender's Right to Subordinate. At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any leases of all or any part of the Premises, upon the execution by Lender and recording, at any time hereafter, in the Office of the Recorder in and for the county wherein the Real Estate is situated, of a unilateral declaration to that effect.

**4.3 Inspection of Premises.** Borrower shall permit Lender and its agents to inspect the Premises at all reasonable times and subject to the rights of any tenant, access shall be permitted for inspections upon reasonable advance notice.

**4.4 Access by Lender.** Borrower shall upon request deliver to Lender duplicate originals or certified copies of all leases, agreements and documents relating to the Premises. Borrower shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and upon written demand therefor shall allow Lender to examine and copy books and records and all supporting vouchers and data any time and from time to time, on request, at its office or at other locations as may be mutually agreed upon.

## ARTICLE 5. ENVIRONMENTAL MATTERS

**5.1 Definitions.** The following words and phrases, as used herein, shall have the following respective meanings:

**"Environmental Laws"** shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation relating to:

- (i) releases, discharges, emissions or disposals to air, water, land or ground water,
- (ii) the withdrawal or use of ground water,

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- (iii) the use, handling or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde,
- (iv) the treatment, storage, disposal or management of or exposure to toxic, hazardous or other controlled, prohibited or regulated substances or petroleum, crude oil or any fraction thereof, and
- (v) the transportation, storage, disposal, management or release of gaseous or other liquid substances; including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous Solid Waste Amendments of 1984, 42 U.S.C. §6901, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., the Occupational, Safety and Health Act of 1970, 29 U.S.C. §651, et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §7401, et seq. and the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251, et seq., and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder.

**"Governmental Authority"** shall mean the United States of America, any state, territory or district thereof, and any other political subdivision or body politic created pursuant to any applicable law, statute, ordinance, order, decree, rule or regulation, and any court, agency, department, commission, bureau, board or instrumentality of any of the foregoing.

**"Hazardous Substance"** shall mean:

- (i) any hazardous or toxic substance, chemical or waste or any pollutant or contaminant defined as such in any law or hereafter existing Environmental Law,
- (ii) asbestos,
- (iii) petroleum, crude oil or any fraction thereof which is not otherwise specifically listed as a hazardous substance under any Environmental Law,
- (iv) polychlorinated biphenyls and
- (v) radioactive materials.

**"Person"** shall mean any individual, corporation, partnership, association, joint-stock company, limited liability company, trust, unincorporated association, joint venture, court, Governmental Authority, or any other similar entity.

**"Tenant"** shall mean any Person, other than Borrower, in possession of all or any portion of the Premises at any time from and after the date hereof.



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**5.2 Covenants Regarding Environmental Compliance.** Borrower hereby covenants and agrees that, until the Loan, together with all accrued interest thereon, and all other fees and charges payable to the Lender under the Loan Documents, is paid in full:

(a) No Hazardous Substances. Borrower will not use, generate, manufacture, produce, store, release, discharge, pour, inject, or dispose of on, under or about the Premises or transport to or from the Premises any Hazardous Substance or authorize any other Person to do so, except to the extent:

- (i) reasonably required in connection with the business activities or operations of Borrower and each Tenant at the Premises permitted under the Mortgage, and
- (ii) in accordance with the following Section 5.2(b).

(b) Borrower Compliance. Borrower shall comply with, shall keep and maintain the Premises in material compliance with and shall not cause or permit the Premises to be in material violation of, any Environmental Law.

(c) Required Notice by Borrower. Borrower shall give immediate written notice to Lender of:

- (i) any pending or threatened litigation or proceeding of which Borrower has written notice before, or inquiry by, any Governmental Authority in which any Person alleges the presence, release or threat of release, placement or disposal of any Hazardous Substance on, under or in the Premises, or the migration of any Hazardous Substance from or to other real property adjoining the Premises;
- (ii) all written communications and claims made or threatened by any Person against Borrower, the Premises or any Tenant with respect to any loss or injury related to the presence, release, placement or disposal of any Hazardous Substance on, under or in the Premises,
- (iii) receipt of written notice by Borrower of any fact, occurrence or condition relating to the release or presence of any Hazardous Substance from, at or in the vicinity of the Premises that could adversely affect the Premises or the value or the use of the Premises; and
- (iv) any written notice that any Governmental Authority has determined that there is a release or threat of release of any Hazardous Substance on, under or in the Premises.

(d) Lender Right to Participate in Legal Proceedings. Lender shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Premises in connection with any Environmental Law and shall have its attorneys' fees in connection therewith paid by Borrower.

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## 5.3 Representations and Warranties Relating to Environmental Matters.

Borrower represents and warrants to Lender that, to Borrower's knowledge:

(a) No Violations. Neither the Premises nor Borrower nor any Tenant is in violation of any Environmental Law or subject to any existing, pending or, to Borrower's knowledge, threatened investigation or proceeding by any Governmental Authority with respect to a violation of any Environmental Law of which Borrower has actual notice.

(b) No Notices Received. Neither Borrower nor any Tenant has received any notice of any proceeding or inquiry by any Governmental Authority with respect to the presence, release or threat of release of any Hazardous Substance on, under or about the Premises or the migration of Hazardous Substances from or to other real property adjoining the Premises.

(c) No Permits Required. Neither Borrower nor any Tenant is required by any Environmental Law to obtain any permits or licenses to construct or use any improvements, fixtures, equipment or machinery forming a part of the Premises, or used in connection with existing business activities or operations of Borrower and/or any Tenant at the Premises.

(d) No Hazardous Substances. The present and intended use thereof will not result in, and based upon the Report of Environmental Consulting Group, Inc. dated January 29, 2003, and the actual knowledge of Borrower, the prior use of the Premises has not resulted in, the use, generation, manufacture, production, storage, discharge, disposal or release of any Hazardous Substance on, under, in or about the Premises, except as permitted under Section 5.2(a).

(e) No Underground Storage Tanks. Based upon the Report of Environmental Consulting Group, Inc. dated January 29, 2003, and the actual knowledge of Borrower, there are no underground storage tanks or other storage vessels or containers under the surface of the Premises.

(f) Use of Premises. The Premises have not been used as a sanitary landfill or dump or for industrial waste disposal, chemical storage or any similar uses.

(g) No Wetlands. The Premises do not contain any wetlands, as that term is defined in 33 CFR §320, *et seq.*

## ARTICLE 6. DUE ON SALE/ENCUMBRANCE

6.1 Prohibited Transfers. Except for a Permitted Transfer (as hereafter defined), Borrower, without the prior written consent of Lender (not to be unreasonably withheld), shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance, sale, assignments, transfer, lien, pledge, encumbrance, mortgage, security interest or alienation of all or any portion of, or any interest in, the Property or the Borrower, whether effected directly, indirectly, voluntarily, involuntarily, by operation of law or otherwise. If any of the foregoing shall occur without Lender's prior written consent and shall fail to be rescinded within 30 days after the occurrence of same, then the same shall conclusively be deemed to increase the risk to Lender and immediately constitute an Event of Default hereunder.

## 6.2 Permitted Transfers.

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(a) The transfer of direct or indirect ownership interests in any of DBK or DRL or their respective constituent members by and among any the members or persons owning such ownership interests or to trusts created for the benefit of any of the foregoing persons or members of their families or transfers that occur by inheritance, devise or bequest or by operation of law upon the death of a natural person owning any such direct or indirect ownership interest, provided that, after such transfer, the Control Conditions (as hereinafter defined) are satisfied;

(b) The transfer of direct or indirect ownership interest in any of DBK or DRL or their respective constituent members to unrelated third parties, provided that, after such transfer, the Control Conditions (as hereinafter defined) are satisfied; and

(c) The conveyance of all or any portion of the Mortgaged Property between and among DBK or DRL (the "**Co-Tenants**"), provided that, after such conveyance, the Mortgaged Property the Control Conditions are satisfied.

## 6.3 Definitions.

(a) As used herein, the "**Control Conditions**" shall mean:

- (i) that, as of a particular point in time and after taking into account any prior transfers or conveyances permitted hereunder: (A) at least 2 of Laurence Ashkin, Arthur Slaven and John McLinden are managers of the limited liability company or each of the limited liability companies, as applicable, that own title to the Mortgage Property (the "Title Holders"), and (B) the majority of the direct or indirect ownership interests in the Title Holders are owned in the aggregate by any or all of the Guarantors (as hereinafter defined) or by trusts created for the benefit of the Guarantors or members of their families or by members of the families of the Guarantors or parties that acquire a direct or indirect ownership interest by inheritance, devise or bequest or by operation of law upon the death of a natural person owning any such direct or indirect ownership interest;
- (ii) Mortgagor shall have provided Mortgagee notice of such transfer together with copies of all instruments effecting such transfer not less than ten (10) days after the date of such transfer; and
- (iii) no Event of Default shall have occurred and remain uncured.

(b) As used herein, "**Guarantors**" shall mean Laurence Ashkin, Arthur Slaven, John McLinden, Sol Barket and Sherwood Blitstein.

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## ARTICLE 7. DEFAULTS

### 7.1 Default and Remedies.

(a) Default under Note. It shall constitute an "**Event of Default**" under this Mortgage when and if any Event of Default occurs under the Note.

(b) Default under Mortgage. It shall constitute an Event of Default under this Mortgage if there is a default under any section of this Mortgage which is not cured within thirty (30) days after written notice thereof from Lender (which 30-day period shall be extended for such time as Borrower is diligently pursuing the cure of such default).

(c) Remedies of Lender upon Default. In addition to any other remedy specified in any of the Loan Documents, if any Event of Default under this Mortgage shall occur, Lender may, at its option:

- (i) declare the entire amount of the Obligations to be immediately due and payable, without notice or demand (each of which is expressly waived by Borrower) whereupon the same shall become immediately due and payable,
- (ii) institute proceedings for the complete foreclosure of this Mortgage,
- (iii) institute proceedings to collect any delinquent installment or installments of the Obligations without accelerating the due date of the entire amount of the Obligations by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of the Obligations only, and any sale of the Premises under a foreclosure proceedings shall be subject to, and shall not affect the unmatured part of the Obligations, and this Mortgage shall be and continue as a lien on the Premises securing the unmatured Obligations,
- (iv) take steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in this Mortgage or any of the Loan Documents, or in aid of the execution of any power granted, or for any foreclosure, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Lender shall elect,
- (v) with respect to any part of the Premises constituting property of the type in respect of which a security interest granted thereon is governed by the UCC, exercise all rights, options and remedies of secured parties under the UCC, including the right to possession of any property or any part thereof, and the right to enter, without legal process, any premises where any property may be found, it being agreed and understood by Borrower

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that any requirement of the UCC for reasonable notification shall be sent by mailing written notice to Borrower at its address set forth below at least ten (10) days prior to sale or other event for which notice is required, or

- (vi) enforce this Mortgage in any other manner permitted under the Laws of the State of Illinois.

(d) Lender Entitled to Costs of Suit. In any suit to foreclose the lien of this Mortgage, including any partial foreclosure pursuant to Section 7.1(c)(iii), or enforce any other remedy of Lender under this Mortgage or any of the Loan Documents there shall be allowed and included, as additional Obligations in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, paralegal, legal assistant and law clerk fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title commitments, title reports, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Lender may deem necessary either to prosecute a suit or to evidence to bidders at any sale which may be had pursuant to any decree the true condition of the title to or value of the Premises.

(e) Lender Entitled to Possession upon Default. Upon the occurrence of an Event of Default, whether or not the entire principal of the Obligations is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien or before or after sale, forthwith, upon application by Lender Borrower shall surrender to Lender and Lender shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agent or attorneys, to the fullest extent permitted by any applicable Laws, Lender in its discretion may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Borrower or the then manager of the Premises, and may exclude Borrower, its agents, or servants, wholly therefrom and may, as attorney-in-fact or agent of Borrower, or in its own name as Lender and under the powers herein granted:

- (i) hold, operate, manage, and control the Premises and conduct the business, if any, either personally or by its agents, and with full power to use measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, granting full power and authority to exercise each and every of the rights, privileges and powers granted at any times hereafter, without notice to Borrower,
- (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same,
- (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien, except as set forth in a Subordination

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Attornment and Non-Disturbance Agreement or other writing executed by Lender,

- (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any leases, and the options or other provisions to be contained shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser,
- (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to Lender may seem judicious as permitted under the Loan Documents,
- (vi) insure and reinsure the Premises and all risks incidental to Lender's possession, operation and management, and
- (vii) receive all avails, rents, issues and profits; granting full power and authority to exercise each and every of the rights, privileges and powers granted at any times hereafter without notice to Borrower.

Lender shall not be obligated to perform or discharge, nor does it undertake to perform or discharge, any obligation, duty or liability under any leases. Borrower shall and does agree to indemnify and hold Lender harmless of and from any liability, loss or damage (except for the gross negligence or willful misconduct of Lender) which it may or might incur under leases or under or by reason of the assignment thereof and of and from any claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any leases. Should Lender incur any liability, loss or damage (unless due to the gross negligence or willful misconduct of Lender), under any leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured, and Borrower shall reimburse Lender therefor immediately upon demand.

(f) Application of Funds upon Possession by Lender. Any avails, rents, issues and profits of the Premises received by Lender after having possession of the Premises, or pursuant to any assignment to Lender under the provisions of this Mortgage or of any separate assignment of rents or assignment of leases, shall be applied in payment of or on account of the following, in the order as Lender (or in case of a receivership, as the court) may determine:

- (i) to the payment of the operating expenses of the Premises, including reasonable compensation to Lender or the receiver and its agent or agents,

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if management of the Premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring lessees and entering into leases and the payment of premiums of insurance hereinabove authorized,

- (ii) to the payment of taxes, special assessments, and water taxes and other charges now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of this Mortgage,
- (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the Premises, and of placing priority in condition as will, in the sole judgment of Lender or receiver, make the Premises readily rentable,
- (iv) to the payment of any Obligations or any deficiency which may result from any foreclosure sale, or
- (v) with respect to any surplus or remaining funds, to the person or persons as shall be legally entitled to same.

(g) Borrower Consent to Appointment of Receiver. Upon or at any time after the filing of any action to foreclose this Mortgage and subject to applicable law, Borrower consents, upon application by Lender, to the appointment of a receiver of the Premises. Subject to applicable law, the appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for receiver, of the person or persons, if any, liable for the payment of the Obligations and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. The receiver shall have the power to take possession, control, and care of the Premises and to collect the rents, issues, and profits of the Premises during the pendency of any foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Borrower), as well as during any further times when Borrower, its heirs, administrators, executors, successors, or assigns, except for the intervention of any receiver, would be entitled to collect rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises, during the whole of the period. To the extent permitted by applicable Law, the receiver may be authorized by the court to extend or modify any then existing leases to make new leases, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations, it being understood and agreed that any leases and the options or other provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

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(h) Sale of Premises upon Foreclosure. All or any portion of the Premises or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to this Mortgage shall be sold in one parcel as an entirety, or in parcels and in the manner or order as Lender, in its sole discretion, may elect, to the maximum extent permitted by the Laws of the state in which the Premises are situated. At any sale, Lender may bid for and acquire, as purchaser, the Premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Obligations due the amount of Lender's bid.

(i) Distribution of Proceeds of Sale. The proceeds of any sale of the Premises shall be distributed and applied in the following order of priority:

- (i) on account of all costs and expenses incident to the foreclosure proceedings, including all items as are mentioned in Section 7.1(d),
- (ii) all other items which, under the terms, constitute Obligations additional to that evidenced by the Note, with interest thereon, at the default interest rate specified in the Note,
- (iii) all principal and interest remaining unpaid on the Note in the order as Lender may, in its sole discretion, determine, and
- (iv) any overplus to the person or persons as shall be legally entitled thereto.

(j) Right of Offset. The Borrower agrees that subject to the provisions of Illinois Law and the Loan Documents and upon an Event of Default under the Note or this Mortgage or any of the Loan Documents, the Lender may, at its option, without being required to do so, offset all money, bank or other deposits or credits now or hereafter held by the Lender or owed by the Lender to the Borrower against all amounts due under the Note or against any other amounts which may be due the Lender from the Borrower. Any offset amounts may be applied in any order and manner elected by Lender. When the Obligations have been fully paid, any remaining deposits shall be paid to Borrower or to the persons or persons as may be legally entitled thereto. Upon the occurrence of an Event of Default, any deposits pledged as additional security for the prompt payment of the Obligations and any other indebtedness shall be irrevocably applied by the Lender for the purposes for which made and shall not be subject to the direction or control of Borrower.

(k) Lender Entitled to Deficiency Decree. At any foreclosure proceeding, if the Premises shall be sold for a sum less than the total amount of the indebtedness for which judgment is given, the judgment creditor shall be entitled to the entry of a deficiency decree against Borrower and against the property of Borrower for the amount of the deficiency and Borrower does irrevocably consent to the appointment of a receiver for the Premises and the property of Borrower and of the avails, rents, issues and profits after sale until the deficiency decree is satisfied in full.

(l) No Defense. No action for the enforcement of the lien of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action of law upon the Note.



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(m) Acceptance of Partial Payment not Waiver by Lender. To the extent permitted by applicable Law, acceptance by Lender of any payment which is less than payment in full of all amounts due and payable at the time of payment shall not constitute a waiver of Lender's right to exercise its option to declare the whole of the principal of the Obligations then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of Lender at that time or any subsequent time, nor nullify any prior exercise of the option or the rights of Lender without its express consent.

(n) Borrower Liable for Prepayment Premium and Costs of Suit. In case, after legal proceedings are instituted to foreclose this Mortgage, tender is made of the entire Obligations due, Lender shall be entitled to reimbursement for expenses incurred in connection with the legal proceedings, including expenditures as are enumerated above, and any expenses shall be so much additional Obligations, and no suit or proceedings shall be dismissed or otherwise disposed of until any fees, expenses, and charges shall have been paid in full.

(o) Failure to Exercise Right not a Waiver. No delay in the exercise of or failure to exercise any remedy or right accruing on the occurrence of any Event of Default shall impair any remedy or right or be construed to be a waiver of any Event of Default or acquiescence, nor shall it affect any subsequent Event of Default of the same or of a different nature.

(p) Lender Entitled to Rescind Acceleration of Maturity. Acceleration of maturity, once made by Lender, may at the option of Lender be rescinded, and any proceedings brought to enforce any rights or remedies may, at Lender's option, be discontinued or dismissed, whereupon, Borrower and Lender shall be restored to their former positions, and the rights, remedies and power of Lender shall continue as if acceleration had not been made or proceedings had not been commenced, as the case may be.

(q) Lender's Rights Cumulative and Concurrent. The rights and remedies of Lender as provided in this Mortgage and the Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Borrower, any guarantor or the Premises, or any one or more of them, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the Premises are situated. If Lender elects to proceed under one right or remedy under this Mortgage, or the Loan Documents, Lender may at any time cease proceeding under the right or remedy and proceed under any other right or remedy under this Mortgage or the Loan Documents.

(r) Completion of Work. In the event any work is being performed on the Premises, then upon the occurrence of an Event of Default, in addition to any other remedies, at Lender's election, Lender may enter upon the Premises and complete the work.

(s) Other Rights of Lender. To implement the rights of Lender, in addition to any other remedies which Lender may have or under any of the Loan Documents, Lender may in its sole discretion do any one or more of the following:

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- (i) enter upon the Premises and complete the Project and employ watchmen, all at the risk, cost and expense of Borrower (except for those matters arising out the gross negligence or willful misconduct of Lender);
- (ii) at any time discontinue any work commenced in respect of the Project and change any course of action undertaken by it and not be bound by any limitations or requirements of time whether set forth in any of the Loan Documents or otherwise;
- (iii) assume any contract made by Borrower in any way relating to the Project, including any architect, engineering or construction contract, and take over and use all or any part of the labor, materials, supplies and equipment contracted for by Borrower, whether or not previously incorporated into the Project; and
- (iv) in connection with any work undertaken by Borrower pursuant to the provisions of this Section 7.1(r), perform any one or more of the following:
  - (A) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials, supplies and equipment in connection with any construction of the Project;
  - (B) pay, settle or compromise all bills or claims which may become liens against the Project, or which have been or may be incurred in any manner in connection with completing the Project or for the discharge of liens, encumbrances or defects in the title of the Project; and
  - (C) take or refrain from taking such action hereunder as Lender from time to time may determine.

Borrower shall be liable to Lender for all sums paid or incurred to construct and equip the Project whether the same shall be paid or incurred pursuant to the provisions of this Section 7.1(r) or otherwise. All payments made or liabilities incurred by Lender of any kind whatsoever (unless incurred due to Lender's gross negligence or willful misconduct) shall be paid by Borrower to Lender upon demand with interest at the default rate specified in the Loan Documents from the date of payment by Lender to the date of payment by Borrower and shall be secured by this Mortgage. For purposes of exercising the rights granted in this Section 7.1(r), Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact with full power of substitution to execute, acknowledge and deliver any instruments and to do and perform any acts in the name of and on behalf of Borrower upon the occurrence of an Event of Default. This power of attorney shall be a power coupled with an interest and cannot be revoked.

**7.2 Lender's Performance of Defaulted Acts.** If an Event of Default shall occur, Lender may, but need not, make any payment or perform any act required of Borrower in any form and manner deemed expedient by Lender. By way of illustration and not in limitation, Lender may, but need not:

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- (a) make full or partial payments of principal, interest, penalties or late charges on prior encumbrances, if any,
- (b) purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim,
- (c) redeem from any tax sale or forfeiture affecting the Premises,
- (d) contest any tax or assessment,
- (e) collect rents,
- (f) prosecute collection of any sums due with respect to the Premises, and
- (g) make repairs to the Premises.

If an Event of Default shall occur, Lender is authorized to make or advance, in the place and stead of Borrower, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate governmental authority without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and Lender is further authorized to make or advance in the place and stead of Borrower any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose and authorized, but not enumerated in this Section 7.2, and may do so whenever, in Lender's sole judgment and discretion, any advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Mortgage, and in connection with any advance, Lender, at its option, may and is authorized to obtain a continuation abstract or report of title or commitment for title insurance or title insurance policy prepared by an abstractor or title insurance company of Lender's choosing. All monies paid or incurred in connection therewith, including reasonable attorney's fees, and any other monies advanced by Lender to protect the Premises and the lien, shall be so much additional Obligations, and shall become immediately due and payable by Borrower to Lender without notice and with interest thereon at the default interest rate specified in the Note. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Borrower or Event of Default.

**7.3 Suits to Protect the Property.** Lender shall have the power:

- (a) To institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Real Estate by any acts which may be unlawful or which violate this Mortgage;
- (b) To preserve or protect Lender's interest in the Real Estate and in the income, revenues, rents and profits arising therefrom; and
- (c) To restrain the enforcement of or compliance with any legislation or other government enactment, rule or order that may be unconstitutional or otherwise invalid, if the

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enforcement of or compliance with such enactment, rule or order would impair Lender's security. All payments made or costs or expenses incurred by Lender in connection with this paragraph, including reasonable attorneys' fees and costs, whether or not suit is filed and, if filed, for all appeals, shall be secured by this Mortgage and shall be immediately repaid by Borrower to Lender on demand, with interest thereon from the date incurred until the date repaid by Borrower at the same rate as provided by the Note.

## ARTICLE 8. GENERAL TERMS

### 8.1 Future Advances.

(a) Parity of Future Advances. All future advances made by Lender at any time before full payment of the Obligations, including obligatory advances under any of the Loan Documents and advances made at the option of Lender, shall, together with interest thereon, be on a parity with, and not subordinate to, the Obligations, although there may be no advance made at the time of execution of this Mortgage and although there may be no Obligations outstanding at the time any advance is made.

(b) Limits on Future Advances. All future advances shall be secured in accordance with all covenants and agreements contained herein; provided, that the amount of principal secured and remaining unpaid shall not, including the amount of advances, exceed two hundred per cent (200%) of the original principal amount of the Note; further that if Lender shall make future advances, Borrower shall repay all advances in accordance with the note or notes, or agreement and agreements, evidencing the same, which shall be payable no later than the maturity of this Mortgage and shall include other terms as Lender shall require.

8.2 Partial Invalidity. Borrower and Lender intend and believe that each provision in this Mortgage comports with all applicable Laws. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage is found by a court of competent jurisdiction to be in violation of any applicable Laws, and if the court should declare any portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Borrower and Lender that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if any illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein or therein, as the case may be, and that the rights, obligations and interest of Borrower and Lender under the remainder of this Mortgage shall continue in full force and effect. If under the circumstances, interest in excess of the limit allowable by applicable Law shall have been paid by Borrower in connection with the Obligations, the excess shall be applied by Lender to the unpaid principal balance of the Obligations in the manner Lender may in its sole discretion determine, or refunded to Borrower in the manner to be determined by Lender and if any excess interest has accrued, Lender shall eliminate the excess interest so that under no circumstances shall interest on the Obligations exceed the maximum rate allowed by applicable Law.

8.3 Subrogation. In the event the proceeds of the Obligations, or any part thereof, or any other amount paid out or advanced by Lender shall be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any

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part thereof, Lender shall be subrogated to such other lien or encumbrance and to any additional security held by the holder and shall have the benefit of the priority of all of same.

**8.4 Lender's Right to Deal with Transferee.** In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, Lender is authorized and empowered to deal with vendee or transferee with reference to the Premises, or the Obligations, or with reference to any of the terms or conditions, as fully and to the same extent as it might with Borrower, without in any way releasing or discharging Borrower from Borrower's covenants and undertakings, specifically including Section 2.6 and without Lender waiving its rights to accelerate the Obligations in the event of a breach of Section 2.6.

**8.5 Expenses Incurred by Lender.** Any costs, damages, expenses or fees, including reasonable attorneys' fees, paralegal and legal assistant fees incurred by Lender in connection with:

- (a) sustaining the lien of this Mortgage or its priority,
- (b) obtaining any abstract, title opinion, title report, title searches, commitment for title insurance or title insurance policy for the Premises,
- (c) protecting the Premises,
- (d) protecting or enforcing any of Lender's rights hereunder or the other Loan Documents,
- (e) recovering any Obligations,
- (f) any litigation or other legal proceedings (including bankruptcy, probate and administrative law proceedings) affecting this Mortgage or the Premises, or
- (g) preparing for the commencement, defense or participation in any threatened litigation or proceedings, or as otherwise enumerated in Section 7.1(c)

shall be so much additional Obligations and shall be immediately due and payable by Borrower, without notice, with interest thereon at the default interest rate specified in the Note.

**8.6 Giving of Notice.**

Any notice, demand, consent, authorization, request, approval or other communication given or required shall contain a clear and concise statement of the purpose of the notice, shall reference this Mortgage and shall be effective and valid only if in writing, signed by the party giving notice and delivered in person by a commercial messenger service regularly retaining receipts for delivery, a reputable overnight express courier or delivery service from whom a receipt is obtained, by facsimile or email transmission (to be followed immediately by an original sent by one of the other enumerated means), or, if mailed, sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Lender:

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National City Bank of Michigan/Illinois  
2021 Spring Road  
Suite 600  
Oak Brook, Illinois 60523  
Attention: Katherine Wolkow  
Phone: 630-954-3156  
Facsimile: 630-954-3735  
Email: katherine.wolkow@nationalcity.com

With mandatory copy to:

Rooks Pitts  
10 S. Wacker Drive, Suite 2300  
Chicago, Illinois 60606  
Attention: George M. Gilkerson, Jr.  
Phone: 630-245-0400  
Facsimile: 630-245-0140  
Email: ggilkerson@rookspitts.com

To Borrower:

DELRAY BK, L.L.C. and  
DELRAY RL, L.L.C.

c/o Mary Koberstein, Esq.  
Centrum Properties, Inc.  
225 W. Hubbard St., 4th Floor  
Chicago, Illinois 60610  
Telephone: 312-832-2500 x42  
Facsimile No: 312-832-2525  
Email: mkoberstein@centrumproperties.com

With mandatory copy to:

Piper Rudnick  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attention: Kenneth Hartmann  
Phone: 312-368-4034  
Facsimile: 312-236-7516  
Email: kenneth.hartmann@piperrudnick.com

All notices shall be considered given on the date when delivered (refusal of delivery shall constitute delivery), or if mailed, upon the date of receipt of notice as evidenced by the return receipt with respect to notices received by the sender, addressed to the parties to be notified at

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the addresses set forth above or to any other addresses as any party may hereafter specify to the others by like notice.

**8.7 Time is of the Essence.** It is specifically agreed that time is of the essence of this Mortgage. The waiver of any of the options, rights or remedies of Lender shall not at any time thereafter be held to be abandonment of such rights.

**8.8 Lender's Lien for Service Charge and Expenses.** At all times, regardless of whether any proceeds of the Note have been disbursed, this Mortgage shall secure (in addition to any proceeds of any Obligations disbursed from time to time) the payment of any loan commissions, origination fees, service charges, liquidated damages, expenses and advances due to or incurred by Lender in connection with the Obligations. Borrower agrees to reimburse Lender upon demand for all fees and expenses, including reasonable attorneys' fees, incurred by Lender in connection with the preparation and negotiation of this Mortgage and the Loan Documents.

**8.9 Modifications.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

**8.10 Covenants to Run with the Real Estate.** All the covenants of Borrower shall run with and touch and concern the Real Estate.

**8.11 Captions.** The captions and headings of various Sections are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions.

**8.12 Construction.** This Mortgage, all disputes related hereto, and all claims and controversies arising hereunder, shall be governed by and construed and enforced according to the laws of the state in which the Real Estate is located.

**8.13 Binding on Successors and Assigns; Certain Definitions.**

(a) This Mortgage and all provisions and covenants of Borrower shall extend to and be binding upon Borrower's successors and assigns and all persons claiming under or through Borrower, and the word "Borrower" when used herein shall include and refer to, in addition to Borrower:

- (i) all persons liable for the payment of the Obligations (provided any Guarantor shall only be liable to the extent set forth in the Guaranty), whether or not such persons shall have executed the Note or this Mortgage,
- (ii) Borrower's successors and assigns, and
- (iii) all owners from time to time of the Premises.

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(b) The word "**Lender**" shall include the successors and assigns of Lender, and the holder or holders, from time to time, of the Note.

(c) The following words and phrases shall be construed as follows: "any" shall be construed as "any and all"; "include" and "including" shall be construed as "including but not limited to"; and "will" and "shall" shall each be construed as mandatory. The words "hereto," "herein" and "hereunder" and any similar terms shall refer to this Mortgage as a whole and not to any particular paragraph or section. The word "hereafter" shall mean after the date of this Mortgage and the word "heretofore" shall mean before the date of this Mortgage.

(d) Words of the masculine, feminine or neuter gender shall mean and include the corresponding words of the other genders, and words implying the singular number shall mean and include the plural number and vice versa. References to and other words implying persons shall include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(e) All references to any agreement or instrument (including this Mortgage) shall be to the agreement or instrument as in effect from time to time, including any amendments, replacements, restatements, modifications, extensions, renewals and/or supplements.

**8.14 Further Assurances.** Borrower shall execute, acknowledge and deliver to Lender and to any subsequent holder of the Note from time to time upon demand (and pay the costs of preparation and recording) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to re-affirm, to correct and to perfect the evidence of the Note and the lien of Lender to all or any part of the Premises intended to be mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications, and will do or cause to be done all further acts and things as may be necessary fully to effectuate the intent of this Mortgage, provided that Borrower's obligations and liabilities under the Loan Documents shall not thereby be increased.

**8.15 Recording and Filing.** Borrower, at its expense, will cause this Mortgage and all supplements for which constructive notice must be given to protect Lender, at all times to be recorded and filed, and re-recorded and refiled, in a manner and in places as Lender shall request, and will pay all recording, filing, re-recording, re-filing, taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the Premises are situated.

**8.16 Waivers by Borrower.** To the extent permitted by all applicable Laws, Borrower shall not apply for or avail itself of any appraisal, valuation, reinstatement, redemption, stay, extension, or exemption laws or any so called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but waives the benefit of such laws. Borrower, for itself and all who may claim through or under it, waives any right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Borrower waives any rights of redemption, including redemption from judgment of foreclosure and/or from sale under any order or decree of



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foreclosure, pursuant to rights herein granted, on behalf of Borrower and all persons beneficially interested therein, if any, and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable Laws.

**8.17 Condition of the Premises.** As of the date hereof, the condition of the Premises is substantially the same as that shown on the survey delivered to Lender in connection with the loan evidenced by the Note and Borrower has taken no action, nor suffered any action to be taken, which might adversely affect Borrower's interest in the Premises, or Borrower's ability to perform its covenants.

**8.18 After Acquired Property.** Any property hereafter acquired and placed, installed or incorporated on or into the Premises, which is of the kind or nature herein provided, or is intended to be and becomes subject to the lien, shall *ipso facto*, and without any further conveyance, assignment or act of Borrower, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein, but nevertheless, Borrower shall from time to time, if requested by Lender, execute and deliver any and all further assurances, conveyances and assignments as Lender may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

**8.19 Business Loan Recital.**

(a) The Note was executed and delivered in Oak Brook, Illinois and is governed by the laws of the State of Illinois without reference to choice of law or conflict of law principles. The loan evidenced by the Note constitutes a business loan which comes within the purview of Subparagraph (1)(c) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended from time to time (815 ILCS 205/4(1)(a)-(n), inclusive), and is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, et seq. It is security for all advances as set forth under Section 8.1 above, but not to exceed the amount set forth in that Section 8.1.

(b) No clause or provision contained in this Mortgage or any of the Loan Documents shall be construed or operate:

- (i) to raise the interest rate set forth in the Note above the lawful maximum, if any, in effect from time to time in the applicable jurisdiction for loans to borrowers of the type, in the amount, for the purposes, and otherwise of the kind contemplated; or
- (ii) to require the payment or the doing of any act contrary to law, but if any clause or provision contained shall otherwise operate to invalidate this Mortgage and/or any of the Loan Documents, in whole or in part, then
  - (A) the clauses or provisions shall be deemed modified to the extent necessary to be in compliance with applicable Law, or

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- (B) to the extent not possible, shall be deemed void as though not contained and the remainder of this Mortgage and the Loan Documents shall remain operative and in full force and effect.

**8.20 No Merger.** It being the desire and intention of the parties hereto that this Mortgage and the lien do not merge in fee simple title to the Premises, it is understood and agreed that should Lender acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

**8.21 No Partnership or Joint Venture.** Borrower and Lender acknowledge and agree that in no event shall Lender be deemed to be a partner or joint venturer with Borrower. Without limitation, Lender shall not be deemed to be a partner or joint venturer on account of its becoming a Lender in possession or exercising any rights pursuant to this Mortgage, the Loan Documents or otherwise.

**8.22 No Liability on Lender.** This Mortgage is intended only as security for the obligations herein set forth. Notwithstanding anything contained herein to the contrary, Lender shall not be obligated to perform or discharge and Borrower undertakes to perform or discharge, any obligation, duty or liability of Lender, whether hereunder, under any of the leases affecting the Premises, under any contract relating to the Premises or otherwise, and Borrower shall and does agree to indemnify against and hold Lender harmless of and from:

- (a) any liability, loss or damage which Lender may incur under or with respect to any portion of the Premises or under or by reason of its exercise of rights hereunder, and
- (b) any claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Premises or affecting any rights of Lender.

Unless and until an Event of Default occurs and Lender takes possession of the Premises, Lender shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Lender in its exercise of the powers granted to it, and Borrower expressly waives and releases any liability. Should Lender incur any liability, loss or damage under any of the leases affecting the Premises or under or by reason, or in the defense of any claims or demands, Borrower agrees to reimburse Lender immediately upon demand for the full amount, including costs, expenses and reasonable attorneys' fees. Notwithstanding the foregoing, Borrower shall not be obligated to indemnify Lender for any losses that Borrower caused by (a) the gross negligence, willful misconduct, fraud or bad faith of any Lender, (b) any claims arising after the date Lender (or any purchaser at a foreclosure sale) took possession and control of, or actually acquired title to, the Property,

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provided that the loss was not caused by the direct or indirect actions or inaction of Borrower or (c) any breach of a regulatory or contractual obligation by or on behalf of Lender.

**8.23 Consent and Approval.** Whenever in this Mortgage or as a matter of law it is provided or held that Lender's consent or approval shall not be unreasonably withheld or the actions of Lender shall be reasonable or not unreasonable, the remedy of Borrower in the event Borrower shall claim and establish that Lender has unreasonably withheld consent or approval or has acted unreasonably, shall be limited to injunction or declaratory judgment and in no event shall Lender be liable for a money judgment.

**[THE NEXT PAGE IS THE SIGNATURE PAGE]**


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IN WITNESS WHEREOF, Borrower has signed these presents the day and year first above written.

**BORROWER:**

**DELRAY BK, L.L.C.,**  
an Illinois limited liability company

By:   
Name: \_\_\_\_\_  
Its: Manager

**DELRAY RL, L.L.C.,**  
an Illinois limited liability company

By:   
Name: \_\_\_\_\_  
Its: Manager

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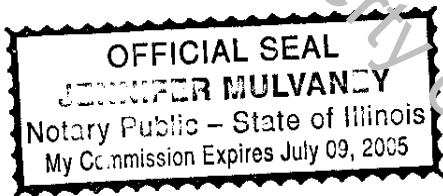
STATE OF ILLINOIS     )

COUNTY OF COOK     )

I, Jennifer Mulvaney, a notary public in the County and State aforesaid, do certify that John Halinden personally known to me to be the Manager of **DELRAY BK, L.L.C.**, and who 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 the instrument in his capacity as Manager, as his own free and voluntary act and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and seal of office this 17<sup>th</sup> day of April, 2003.

Jennifer Mulvaney  
Notary Public



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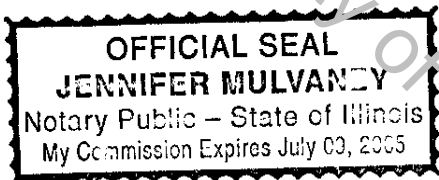
STATE OF ILLINOIS )

COUNTY OF COOK )

I, Jennifer Mulvaney, a notary public in the County and State aforesaid, do certify that John McIndoe personally known to me to be the Manager of **DELRAY RL, L.L.C.**, and who 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 the instrument in his capacity as Manager, as his own free and voluntary act and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and seal of office this 17<sup>th</sup> day of April, 2003

Jennifer Mulvaney  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL PROPERTY

PARCEL 1:

LOTS 1, 2, 3, 4 AND 5 IN A. J. STOCKHOFF'S SUBDIVISION OF LOTS 44 TO 48 INCLUSIVE IN BLOCK 10 IN AVONDALE, BEING PHILPOT'S SUBDIVISION OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 25, AND LOTS 1, 2, 5 AND 6 IN BRAND'S SUBDIVISION OF THE NORTHEAST ¼ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1 AND 2 IN OWNERS DIVISION OF LOTS 1 TO 5 IN BLOCK 10 IN AVONDALE IN THE NORTH EAST ¼ OF THE NORTH EAST ¼ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 3239 W. BELMONT, CHICAGO, ILLINOIS

P.I.N.s:

- 13-26-206-001-0000 1 of 7
- 13-26-206-002-0000 2 of 7
- 13-26-206-003-0000 3 of 7
- 13-26-206-004-0000 4 of 7
- 13-26-206-005-0000 5 of 7
- 13-26-206-040-0000 6 of 7
- 13-26-206-041-000 7 of 7