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Cook County Recorder 35.00



This document prepared by/
After recording return to:

Barry R. Katz
Deutsch, Levy & Engel, Chtd.
225 West Washington Street
Suite 1700
Chicago, Illinois 60606

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES is made as of December 13, 1999, by Deming I, L.L.C., an Illinois limited liability company, whose mailing address is c/o James W. Purcell, 1213 Touhy Avenue, Park Ridge, Illinois, 60068, (hereinafter called "Assignor") to LASALLE BANK NATIONAL ASSOCIATION, 135 South LaSalle Street, Suite 1225, Chicago, Illinois 60603, Attention: Patrick M. Buehring (hereinafter called "Assignee").

WITNESSETH

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all right, title and interest of the Assignor and each of them in, to and under all present leases of the parcel of property described in EXHIBIT "A" attached hereto and made a part hereof (collectively the "Premises") [including those leases described on the SCHEDULE OF LEASES (if any) described in Exhibit B attached hereto and made a part hereof] together with all future leases hereinafter entered into by any lessor affecting the Premises, and all guaranties, amendments, extensions and renewals of said leases and each of them (all of which are hereinafter collectively called the "Leases") and all rents, income and profits which may now or hereafter be or become due or owing under the leases and each of them, or on account of the use of the Premises.

This Assignment is made for the purposes of securing:

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A. The payment of the indebtedness (including any extensions and renewals thereof) evidenced by a certain Mortgage Note of Assignor of even date herewith, in the principal sum of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000.00) (the "Note") and secured by a certain MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") of Assignor of even date herewith, encumbering the Premises; and

B. The payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of the Mortgage and all other instruments constituting security for the Note; and

C. The performance and discharge of each and every term, covenant and condition of Assignor contained in the Note, and Mortgage, of even date herewith, all Loan Documents, as defined in the Mortgage, and in all other instruments constituting security for the Note.

Assignor covenants and agrees with Assignee as follows:

1. There is no present lease of the Premises not listed on the Schedule of Leases attached hereto as "EXHIBIT B".

2. The sole ownership of the entire landlords' interest in the Leases is vested in Assignor. Assignor has not, and shall not: (a) perform any act or execute any other instrument which might prevent Assignee from fully exercising its rights under any term, covenant or condition of this Assignment; (b) execute any assignment or pledge of rents, income, profits or any of the Leases except an assignment or pledge securing the Indebtedness secured hereby or as permitted by the terms and provisions of the Mortgage; (c) except as specifically provided in a current lease, accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (d) make any lease of the Premises except as permitted by the terms and provisions of the Mortgage.

3. Each of those Leases on the Schedule of Leases are valid and enforceable in accordance with its terms and none has been or will be altered, modified, amended, terminated, canceled, renewed or surrendered nor has any term or condition thereof been waived in any manner whatsoever, except as heretofore approved in writing by Assignee.

4. Mortgagor may modify any existing lease or enter into any new lease without the consent of Mortgagee, so long as the rentals received by Mortgagor are market rentals for equivalent properties in the Lincoln Park, Chicago, Illinois area; provided, however, that with respect to any commercial lease, if Assignor receives base rent of less than \$2.00 per square foot, then such lease shall be subject to Assignee's prior written consent.

5. To the best of Assignor's knowledge, there is no default now existing under any of the Leases and there exists no state of fact which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; and that Assignor will fulfill and perform each and every covenant and condition of each of the Leases by the landlord thereunder to be fulfilled or

performed and, at the sole cost and expense of Assignor, enforce (short of termination of any of the Leases) the performance and observance of each and every covenant and condition of all such Leases by the tenants thereunder to be performed and observed.

6. Assignor shall give prompt notice to Assignee of each notice received by Assignor or any of them claiming that a default has occurred under any of the Leases on the part of the landlord, together with a complete copy of each such notice.

7. Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of any landlord and any tenant under any of the Leases.

8. Without Assignee's prior written consent in each case, Assignor will not suffer or permit any of the Leases to become subordinate to any lien other than the lien of the Mortgage, this Assignment and general real estate taxes not delinquent.

9. This Assignment is absolute and is effective immediately; however, until notice is sent by Assignee to the Assignor in writing that an event of default has occurred under the Note, the Mortgage or under any other instrument at any time constituting security for the Note (each such notice is hereafter called a "Notice"), and has continued beyond the expiration of any applicable cure period, Assignor may receive, collect and enjoy the rents, income and profits accruing under the Leases.

10. If any event of default occurs at any time under the Note, Mortgage or any other instrument constituting additional security for the Note and is not cured after notice and within the applicable cure period, if any, Assignee may at its option receive and collect when due all such rents, income and profits from the Premises and under any and all Leases of all or any part of the Premises. Assignee shall thereafter continue to receive and collect all such rents, income and profits until such event of default is cured and during the pendency of the foreclosure proceedings, and (if there is a deficiency) during the redemption period (if any).

11. Assignor hereby irrevocably appoints Assignee its true and lawful attorney-in-fact, with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor (from and after the service of a Notice) to demand, collect, receive and give complete acquittance for any and all rents, income and profits accruing from the Premises, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or in the name of Assignor otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. All present and future tenants of the Premises are hereby expressly authorized and directed, following the occurrence of an event of default and the expiration of any applicable cure period, to pay to Assignee, or to such nominee as Assignee may designate in a writing delivered to and received by such tenants, all amounts due Assignor or any of them pursuant to the Leases.

All present and future tenants are expressly relieved of all duty, liability or obligation to Assignor in respect of all payments so made to Assignee of such nominee.

12. After service of a Notice, Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Assignee or its designee to enter upon the Premises, or any part thereof, with or without force and with or without process of law, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor and each of them relating thereto, and may exclude the Assignor and its agents and servants wholly therefrom. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times (after service of a Notice) without further notice to Assignor, with full power to use and apply all of the rents and other income herein assigned to payment of the costs of managing and operating the Premises and to payment of all Indebtedness and liability of Assignor to Assignee, including but not limited to: (a) the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises or of making the same rentable as set forth in the Mortgage, all costs and reasonable attorney's fees incurred in connection with the enforcement of this Assignment; and (b) principal and interest payments due from Assignor to Assignee on the Note and the Mortgage; all in such order and for such time as set forth in the Mortgage.

13. Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of any landlord under any of the Leases. Assignee does not hereby assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor or any of them under any of the Leases.

14. Except for the illegal, intentional or negligent acts of Assignee, Assignor hereby agrees to indemnify Assignee and to hold Assignee harmless from any liability loss or damage including, without limitation, reasonable attorneys' fees which may or might be incurred by Assignee under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any term, covenant or agreement contained in any of the Leases.

15. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the performance or observance of any term, condition, covenant or agreement contained in any of the Leases, or for any waste of the Premises by any tenant under any of the Leases or any other person or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

16. Assignee may: (a) take or release other security; (b) release any party primarily or secondarily liable for any of the Indebtedness secured hereby; (c) grant extensions, renewals or indulgences with respect to such Indebtedness; and (d) apply any other security therefor held by Assignee to the satisfaction of such Indebtedness; in each case without prejudice to any of Assignee's other rights hereunder or under any other security given to secure the Indebtedness secured hereby.

17. Assignee may, after an event of default under the Mortgage and expiration of any applicable cure period, at its option although it shall not be obligated to do so, perform any Lease covenant for and on behalf of the Assignor and each of them, and all monies expended in so doing shall be chargeable to the Borrower, with interest thereon at the rate set forth in the Note applicable to a period when a default exists under the Note, and shall be added to the Indebtedness secured hereby, and shall be immediately due and payable.

18. Waiver of, or acquiescence by Assignee in, any default by the Assignor, or failure of the Assignee to insist upon strict performance by the Assignor of any covenant, condition or agreement in this Assignment or otherwise, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

19. The rights, remedies and powers of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, all other rights, remedies and powers which Assignee has under the Note and all instruments constituting security for the Note, and at law and in equity.

20. If any provision contained in this Assignment or its application to any person or circumstances is to any extent invalid or unenforceable, the remainder of this Assignment and the application of such provisions to persons or circumstances (other than those as to which it is invalid or unenforceable) shall not be affected, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

21. All communications provided for herein shall be in writing and shall be deemed to have been given (i) when served personally, (ii) 1 business day after being sent by Federal Express or other overnight carrier with guaranteed next-day delivery, or (iii) 3 days after being mailed by United States certified mail, return receipt requested, postage prepaid, addressed if to Assignor at c/o Donal P. Barry, Sr., 1213 Touhy Avenue, Park Ridge, Illinois, 60068, or if to Assignee at 135 South LaSalle Street, Suite 1225, Chicago, Illinois, 60603, Attention: Patrick Buehring or at such other address as shall be designated by any party hereto in a written notice given to each other party pursuant to this paragraph, or at such other address as shall be designated by any party hereto in a written notice given to each other party pursuant to this paragraph.

22. The term "Assignor" and "Assignee" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

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23. This Assignment may not be amended, modified or changed nor shall any waiver of any provisions hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

24. The validity and interpretation of this Assignment of Rents and Leases shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the said Assignor has caused this instrument to be signed and sealed as of the date first above written.

Deming I, L.L.C., an Illinois limited liability company

By: **BARRY PROPERTIES, L.L.C.**, an Illinois Limited Liability Company



Its: Manager

By: 

Print Name: Donal Barry, Sr.

Title: Manager

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I,  a Notary Public in and for said County, in the State aforesaid, do hereby certify that  is personally known to me to be the Manager of Barry Properties, L.L.C., the Manager of Deming I, L.L.C., an Illinois Limited Liability Company, and the same person whose name is subscribed to the foregoing instrument, that said person appeared before me this day in person and acknowledged that he signed the foregoing instrument as their free and voluntary act for the use and purpose therein set forth.

GIVEN under my hand and Notarial Seal this 13 day of December 1999.


Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

The southwesterly 46.75 feet of Lot 5 in Johnsons subdivision in the subdivision of Lot 3 and the southerly ½ of Lot 2 (except the east 50 feet thereof) in Deming's subdivision of part of out Lot 'B' in Wrightwood a subdivision of the southwest 1/4 of section 28, township 40 north, range 14, east of the third principal meridian, in Cook County, Illinois.

Property Address: 482-484 Deming Place, Chicago, Illinois

Permanent Index Number: 14-28-318-011-0000

Property of Cook County Clerk's Office

EXHIBIT "B"
SCHEDULE OF LEASES

^{vacant}
6 Apartment Leases and one Retail Lease ~~as shown in Rent Roll attached hereto.~~
to See, Inc dated 6/17/99

Property of Cook County Clerk's Office