

# UNOFFICIAL COPY

99339980

4253/0476 03 001 Page 1 of 8  
1999-04-08 15:05:19  
Cook County Recorder 35.00

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This document prepared by and  
after recording should be returned to:

Herbert J. Linn  
Pedersen & Houpt  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60601-3224



## NON-DISTURBANCE AND ATTORNMENT AGREEMENT

#17788695 DA CWA  
THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into this the 30<sup>th</sup> day of MARCH, 1999, by and among Delray Farms, L.L.C., a Delaware limited liability company ("Tenant"), Associated Bank/Gladstone Norwood, a State Banking Corporation ("Lender") and 2300 South Cicero L.L.C., an Illinois limited liability company ("Landlord").

### RECITALS:

A. Landlord and Tenant executed a Lease, dated as of March 30, 1999 (the "Lease"), a memorandum of which may be recorded simultaneously herewith, covering a certain Premises therein described located on a parcel of real estate, a legal description of which is attached hereto and incorporated herein by this reference as Exhibit A (said parcel of real estate and the Premises being sometimes collectively referred to herein as the "Property").

B. Landlord has executed a mortgage (the "Mortgage"), dated March 30, 1999 in favor of Lender, and recorded on 4.8.99, 1999, as Document No. 99339977 in the Office of the Recorder of Deeds of Cook County, Illinois.

C. It is a condition to the Mortgage that the Mortgage shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the Lease and to the leasehold estate created thereby.

D. The parties hereto desire to assure Tenant's possession and control of the Property under the Lease upon the terms and conditions therein contained.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and premises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

BOX 333

## AGREEMENT:

1. The Lease is and shall be subject and subordinate to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all future advances made thereunder.

2. Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage which encumbers the Property, or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee's sale, the Lease shall continue in full force and effect as a direct lease between the then owner of the Property covered by the Mortgage and Tenant, upon, and subject to, all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including any extensions therein provided. Tenant does hereby agree to attorn to Lender or to any such owner as its landlord, and Lender hereby agrees that it will accept such attornment.

3. Notwithstanding any other provision of this Agreement, Lender shall not be (a) liable for any default of any landlord under the Lease (including Landlord), except that Lender agrees to cure any default of Landlord that is continuing as of the date Lender forecloses the Property within thirty (30) days from the date Tenant delivers written notice to Lender of such continuing default, unless such default is of such a nature to reasonably require more than thirty (30) days to cure and then Lender shall be permitted such additional time as is reasonably necessary to effect such cure, provided Lender diligently and continuously proceeds to cure such default; (b) subject to any offsets or defenses which have accrued prior to the date of foreclosure, unless Tenant shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted Landlord under the Lease; (c) bound by any rent that Tenant may have paid under the Lease more than one month in advance; (d) bound by any amendment or modification of the Lease hereafter made without Lender's prior written consent; and (e) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender.

4. If Lender sends written notice to Tenant to direct its rent payments under the Lease to Lender instead of Landlord, then Tenant agrees to follow the instructions set forth in such written instructions and deliver Rent payments to Lender; however, Landlord and Lender agree that Tenant shall be credited under the Lease for any Rent payments sent to Lender pursuant to such written notice.

5. All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by certified or registered U.S. mail, postage prepaid, return receipt requested, and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above:

# UNOFFICIAL COPY

99339980

Tenant: Delray Farms, L.L.C.  
820 West Jackson  
Suite 600  
Chicago, Illinois 60607

with a copy to: Herbert J. Linn  
Pedersen & Houpt  
161 N. Clark Street  
Chicago, Illinois 60601

Lender: James Olis  
Associated Bank/Gladstone Norwood  
5200 North Central Avenue  
Chicago, Illinois 60630

Landlord: c/o Central Park Produce, Inc.  
3604 West Grand Avenue  
Chicago, Illinois 60651  
Attention: James Bousis

with a copy to: Bill George Stotis  
Stotis & Baird Chartered  
311 South Wacker Drive, Suite 2675  
Chicago, Illinois 60606-6620

All notices delivered as set forth above shall be deemed effective three (3) days from the date deposited in the U.S. mail

6. Said Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of Tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Property. In the event the Property or any part thereof shall be taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of the parties to any condemnation award or insurance proceeds shall be determined and controlled by the applicable provisions of the Lease.

7. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Mortgage.

8. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be

awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

9. Tenant shall not be enjoined as a party/defendant in any action or proceeding which may be instituted or taken by reason or under any default by Landlord in the performance of the terms, covenants, conditions and agreements set forth in the Mortgage.

**[SIGNATURE PAGE FOLLOWS]**

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, the parties hereto have caused this Non-Disturbance and  
Attornment Agreement to be executed as of the day and year first above written.

**LENDER**

Associated Bank/Gladstone Norwood

By [Signature]  
Its ATTY

**TENANT**

Delray Farms, L.L.C.

By [Signature]  
Its Co-Exec

**LANDLORD**

2300 South Cicero, L.L.C.

By [Signature]  
Its MEMBER

Property of Cook County Clerk's Office

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7 IN BLOCK 6; AND ALSO THAT PART OF 23RD PLACE (ORIGINALLY HULBURT AVENUE) LYING SOUTH OF LOT 10 IN BLOCK 5 LYING NORTH OF LOT 1 IN SAID BLOCK 6; AND ALSO LOTS 3 THROUGH 10 IN SAID BLOCK 5; AND ALSO THAT PART OF LOTS 1 AND 2 IN SAID BLOCK 5 LYING SOUTH OF THE SOUTH RIGHT OF WAY OF RELOCATED 23RD STREET; ALL IN SHONT'S AND DRAKE'S ADDITION TO CHICAGO IN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 28 IN TOWNSHIP 39 NORTH AND IN RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN CICERO TOWNSHIP, COOK COUNTY, ILLINOIS.

Permanent Index Numbers: 16-28-210-032  
16-28-210-033  
16-28-210-034  
16-28-210-035  
16-28-210-036  
16-28-210-037  
16-28-214-032  
16-28-214-033  
16-28-214-034  
16-28-214-035  
16-28-214-036

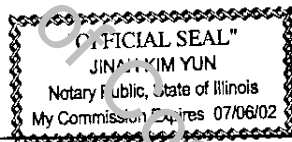
Address of Property: 2300 South Cicero  
Cicero, Illinois

TENANT ACKNOWLEDGMENT

State of Illinois )
) SS.
County of Cook )

I, Jinah Kim Yun, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Stefan Kaluzny, personally known to me to be the Co-Chief Operating Officer of Delray Farms, L.L.C., a Delaware limited liability company, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such Co-Chief Operating Officer, he signed and delivered the said Instrument of said Company as his free and voluntary act and as the free and voluntary act and deed of said Company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 30th day of March, 1999.



[Handwritten Signature]
Notary Public

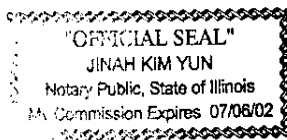
My Commission expires:

LANDLORD ACKNOWLEDGMENT

State of )
) SS.
County of Cook )

I, Jinah Kim Yun, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that James Bousis, personally known to me to be the member of 2300 South Cicero L.L.C., an Illinois limited liability company, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such member, he signed and delivered the said Instrument of said Company as his free and voluntary act and as the free and voluntary act and deed of said Company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 30th day of March, 1999.



[Handwritten Signature]
Notary Public

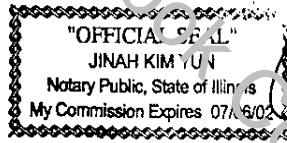
My Commission expires:

LENDER ACKNOWLEDGMENT

State of Illinois )  
 ) SS.  
County of Cook )

I, Jinah Kim Yun, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Jim Wellandt, personally known to me to be the Attorney and Agent of Associated Bank / Gladstone Newark, a banking corporation of the State of Illinois, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such Attorney and Agent, he signed and delivered the said Instrument of said Bank as his free and voluntary act and as the free and voluntary act and deed of said Bank, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 20 day of March, 1999.



Jinah Kim Yun  
Notary Public

My Commission expires: \_\_\_\_\_