

THIS INSTRUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:



Steven Dallas
Regas, Frezados, Harp & Dallas
111 W. Washington St.
Suite 1525
Chicago, IL 60602
(312) 236-4400

FOR RECORDER'S USE ONLY

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES, is made this 10th day of February, 2003,
by **Michael J. Carey, Jr., and Michael A. Distasio, Sr.** ("Assignor"), in favor of SECURITY BANK
OF DUPAGE, having its principal office at 1112 S. Washington, Naperville, Illinois 60540
("Assignee").

ALIA MICHAEL A. DISTASIO M.A.

RECITALS

A. The Assignor executed and delivered a note (the "Note") of even date herewith, payable to the order of Assignee, in the principal amount of One Million Fifty Six Thousand and 00/100 Dollars (\$1,056,000.00) (the "Loan") and, as security therefor, executed and delivered to Assignee its mortgage (the "Mortgage"), of even date with the Note, conveying, *inter alia*, the land legally described on Exhibit A attached hereto and made a part hereof and commonly known as **1388 State Street, Lemont, Illinois 60439** (the "Land") and the improvements constructed and to be constructed thereon (the "Improvements") (the Land and Improvements are collectively referred to herein as the "Mortgaged Premises").

B. As additional security for payment of the Loan, together with interest and all other sums due and owing to Assignee pursuant to Note and Mortgage (collectively the "Indebtedness"), and the performance of all of the terms, covenants, conditions and agreements contained in the Mortgage, and in the other "Loan Documents" (as such term is defined in Mortgage) (the Note, Mortgage and other Loan Documents are collectively referred to herein as the "Loan Papers"), Assignor has agreed to assign to Assignee all of its right, title and interest in and to "Rents" (as such term is hereafter defined) and all lease agreements and other occupancy or rental agreements (collectively the "Leases") applicable to the use and occupancy of the Mortgaged Premises by any person, firm or entity (the "Tenants") which may be executed or agreed to, either orally or in writing, by Assignor, as landlord.

BOX 333-CT

RE9944271-DA-TMS (3043)

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NOW, THEREFORE, in consideration of the disbursement of the proceeds of the Loan for the direct or indirect benefit of Assignor and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Assignor agrees as follows:

1. GRANT OF SECURITY INTEREST: Assignor hereby grants a security interest in and sells, assigns, transfers and sets over unto Assignee one hundred per cent (100%) of Assignor's right, title and interest in and to the Leases and all rents, earnings, avails, build out reimbursements, expense pass-throughs, common area maintenance fees and charges and any and all other sums at any time due and owing to Assignor under or in connection with any Lease, and Assignor's interest in all security deposits and escrow accounts established or maintained in connection with any Lease (all of which are collectively referred to herein as "Rents").

2. PRESENT ASSIGNMENT: Assignor agrees that this Assignment of Rents and Leases is absolute and effective immediately and is made for the purpose of securing payment of the Indebtedness and performance and discharge of each and every obligation, covenant and agreement required of Assignor pursuant to Loan Papers; PROVIDED, HOWEVER, until occurrence of an "Event of Default" (as defined in Mortgage), Assignee shall not exercise any rights granted to it pursuant hereto and Assignor may receive, collect and enjoy the Rents as Assignor's sole property.

3. NO PRIOR ASSIGNMENT: Assignor represents and warrants that no part of the Rents have been previously assigned.

4. ASSIGNOR'S COVENANTS RE: LEASES: Assignor shall observe and perform all of the obligations imposed upon the landlord named in the Leases and Assignor shall:

- a). not do or permit any act or occurrence which would impair the security of Assignee in the Rents and/or Leases;
- b). not collect any part of the Rents more than forty-five (45) days in advance of the time when the same shall become due;
- c). not execute any other assignment of Assignor's interest, as landlord, in the Leases or Rents;
- d). not alter, modify or change the terms and conditions of any Lease, nor cancel or terminate any Lease, or accept a surrender thereof, without the prior written consent of Assignee;
- e). at Assignee's request, execute and deliver all such further assurances and assignments as Assignee shall, from time to time, require; and

- f). within ten (10) days following Assignee's request therefor, furnish to Assignee: (i) a current rent roll in such form and content as Assignee may reasonably request certified by Beneficiary to Assignee as true and correct; and (ii) a true and complete copy of each Lease.

5. RIGHT TO COLLECT RENTS: Assignor shall have the right, so long as there shall exist no Event of Default under the Mortgage nor any default by landlord under any Lease ("Lease Default"), to collect Rents when due (but not more than forty-five (45) days prior thereto), and to retain, use and enjoy the same for Assignor's own benefit and for the benefit of the Mortgaged Premises.

6. ASSIGNEE'S RIGHTS OF ACTION: Assignor agrees that any time following an Event of Default or a Lease Default, Assignee may at its option (but without obligation to do so) either in person or through its agent or a receiver appointed by a court of competent jurisdiction: (i) without in any way waiving such Event of Default or Lease Default, as the case may be; and (ii) without regard to the adequacy of other security for repayment of the Indebtedness; and (iii) with or without instituting any legal action or proceeding:

- a). take possession of the Mortgaged Premises to the extent permitted by law, and hold, manage, lease and operate the same on such terms and for such periods of time as Assignee may deem proper;
- b). with or without taking possession of the Mortgaged Premises, institute suit in its own name to enforce the terms of the respective Leases and to otherwise collect and receive Rents in its own name, including (without limitation) Rents past due and unpaid for periods prior to the occurrence of an Event of Default, with full power to make, from time to time, all settlements and compromises with respect to Rents and Leases at any time in dispute; and
- c). apply Rents received to the payment (in such order of priority as the Assignee, in its sole discretion, may determine desirable) of:
 - i). any and all costs and expenses incurred in managing the Mortgaged Premises (including, but not limited to, leasing commissions incurred in obtaining or retaining Tenants for the Mortgaged Premises, the salaries, fees and wages of any managing agent of the Mortgaged Premises and other employees, agents or contractors of Assignee providing management or maintenance services to the Mortgaged Premises);
 - ii). any and all expenses of operating and maintaining the Mortgaged Premises (including, but not limited to, all taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for all insurance coverages which

Assignee may deem necessary for the proper or efficient operation of the Mortgaged Premises);

- iii). any and all costs of alteration, renovation, repair or replacement of the Mortgaged Premises as may be necessary or desirable to prevent waste or loss of value of the Mortgaged Premises or otherwise incurred in the ordinary course of operating or managing the Mortgaged Premises;
- iv). any and all expenses incident to the taking and retaining of possession of the Mortgaged Premises; and
- v). the Indebtedness and all costs, expenses and attorneys' fees incurred by Assignee in the collection thereof and/or in the protection of Assignee's security for repayment thereof;

7. NON-LIABILITY OF ASSIGNEE: Assignor agrees that:

- a). Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Mortgaged Premises following the occurrence of an Event of Default or Lease Default or by reason of any other act or omission of Assignee in managing the Mortgaged Premises thereafter, unless such loss is caused by the willful misconduct or gross negligence of Assignee;
- b). Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability of Assignor pursuant hereto or pursuant to any Leases;
- c). Assignor shall, and does hereby agree to, indemnify and hold Assignee harmless from and against any and all liability, loss or damage which may or might be incurred by reason of any matter referred to in Section 7.a) or 7.b) hereof 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 of the terms, covenants, conditions and/or agreements required of Assignor pursuant hereto or pursuant to any Lease; PROVIDED, HOWEVER, that such indemnification shall not include any liability, loss or damage which may be incurred by Assignee by reason of the willful misconduct or gross negligence of Assignee; and
- d). If Assignee incurs any liability pursuant hereto or pursuant to any Lease or in defense of any such claim or demand, the amount thereof (including all costs, expenses and reasonable attorneys' fees incurred by Assignee by reason thereof, whether incurred before or following the exercise of Assignee's rights pursuant hereto or pursuant to any Lease), shall be secured by the Mortgage and Assignor shall reimburse Assignee therefor, immediately upon demand. In the event of a failure by Assignor to fulfill

Assignor's obligations and undertakings pursuant hereto, Assignee may, at Assignee's sole option, declare Indebtedness immediately due and payable.

8. LIMITATION OF ASSIGNEE'S DUTIES: Assignor agrees that, except as otherwise herein expressly provided, this Assignment of Rents and Leases shall not operate to place upon Assignee any responsibility for the control, care, management or repair of Mortgaged Premises or for the performance of any of the terms, covenants, conditions and agreements required of Assignor, as landlord, pursuant to Leases. Additionally, this instrument shall not make Assignee responsible or liable for any:

- a). waste committed on Mortgaged Premises by Tenants or any other person, firm or entity;
- b). dangerous or defective condition of or on the Mortgaged Premises; or
- c). negligence in the management, upkeep, repair or control of the Mortgaged Premises resulting in loss, injury or death to any Tenant, licensee, employee or stranger (except that if Assignee shall take affirmative steps to manage, provide upkeep, repair or control the Mortgaged Premises, Assignee shall have a duty to do so without committing grossly negligent, reckless or willfully wrongful acts).

9. RIGHT OF TENANTS AND OTHERS TO RELY UPON DEMAND BY ASSIGNEE: Assignor agrees that any affidavit, certificate, letter or written statement of any officer, agent or attorney of Assignee which shall set forth or assert that: (i) Assignee is then the holder of the Indebtedness evidenced or secured by the Loan Papers; (ii) an Event of Default or Lease Default has occurred; and (iii) Assignee demands payment of Rents (as defined herein) to be made to Assignee or as Assignee may direct; shall be and constitute sufficient evidence to Tenants and third parties (x) of the factual basis for each such statement (upon which such Tenants and third parties shall have absolute right to rely without further inquiry to Assignor, Assignee or any other source) and (y) of the validity, effectiveness and continuing force and effect of this Assignment of Rents and Leases. Assignor hereby authorizes and directs Tenants and such third parties, upon receipt of the foregoing, to pay Rents to Assignee or as Assignee may in writing direct, until otherwise notified by Assignee to the contrary.

10. TERMINATION UPON FULL PAYMENT: Upon payment of the Indebtedness in full, this Assignment of Rents and Leases shall terminate and be of no further force or effect and upon demand by Assignor, Assignee shall promptly execute, in recordable form, an express release hereof and deliver the same to Assignor.

11. NON-IMPAIRMENT:

A. Assignor agrees that Assignee may: (i) take or release any other security for payment of the Indebtedness; (ii) release any party primarily or secondarily liable for the Indebtedness; and/or (iii) apply any other security in its possession or under its control to the satisfaction of Indebtedness; without prejudice to any of Assignee's rights hereunder or under any of the other Loan Papers.

B. Nothing contained in the Loan Papers shall be deemed to release, affect or impair the Indebtedness or the rights of Assignee to enforce its remedies pursuant hereto and/or pursuant to the Loan Papers, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

12. THE TERM "LEASES" INCLUDES "SUBLEASES": Assignor agrees that the term "Leases" shall include, without limitation, any and all subleases thereof and all extensions or renewals of Leases and subleases thereof.

13. INTERPRETATION: Assignor agrees that: (a) the rights and remedies granted or conferred upon Assignee hereunder are in addition to all other rights and remedies granted or conferred upon Assignee under the Loan Papers; (b) nothing contained herein, and no act done or omitted to be done by Assignee pursuant to the powers and rights granted to it hereunder, shall be deemed to be a waiver by Assignee of its rights and remedies pursuant to the Loan Papers; and (c) this Assignment of Rents and Leases is made without prejudice to any of the rights and remedies possessed by Assignee under the Loan Papers. The right of Assignee to collect the Indebtedness and to enforce any security therefor in its possession or control may be exercised by Assignee either prior to, concurrently with or subsequent to any action taken by it pursuant hereto or pursuant to the Loan Papers. This instrument shall be governed and construed in accordance with the internal laws of the State of Illinois (without giving effect to any "law of conflicts" which would require this instrument or the rights and duties arising hereunder to be construed pursuant to the laws of any other jurisdiction).

14. NOTICES: Assignor agrees that any and all notices required or permitted to be given hereunder may be served by a party or such party's attorneys, shall be in writing and shall be deemed served, if by personal delivery, on the date the same is actually received by the addressee thereof; or, if by mail, on the next business day after the same is deposited with the United States Postal Service (or its successor) for mailing by Certified Mail, Return Receipt Requested, postage fully prepaid, addressed as hereinafter set forth; or, if by overnight messenger service (i.e. Federal Express) on the date of delivery by such overnight messenger service to the address as hereinafter set forth. Notices by mail and by overnight messenger service shall be addressed as follows or to such other address as the party entitled to receive such notice may, from time to time hereafter, designate in writing by giving written notice pursuant hereto:

If to Assignee: Security Bank of DuPage
1112 S. Washington
Naperville, Illinois 60540

With copy to: Regas, Frezados, Harp & Dallas
111 W. Washington St.
Suite 1525
Chicago, IL 60602
Attn: Steven Dallas
File No. 22-2655

If to Assignor: Michael J. Carey, Jr., and
Michael A. Distasio, Sr.
1388 State Street
Lemont, Illinois 60439

With copy to: Michael D. Malicki, P. C.
241 South Frontage Road, Suite 42
Burr Ridge, Illinois 60527

15. BINDING EFFECT: Assignor agrees that this Assignment of Rents and Leases and all covenants and warranties herein contained shall inure to the benefit of Assignee, its successors, assigns, participants, grantees and legal representatives and shall be binding upon Assignor, their respective heirs, executors, administrators, successors, permitted assigns, grantees and legal representatives.

16. SEVERABILITY: Each provision hereof is intended to be severable, and the invalidity or unenforceability of any portion of this Assignment of Rents and Leases shall not affect the validity or enforceability of the remainder hereof provided the overall intentions of the parties and the purposes of this Assignment of Rents and Leases, each as expressed herein, are not materially impaired.

17. HEADINGS: The headings set forth herein are for convenience of reference only and shall not be deemed to impair, enlarge or otherwise affect the substantive meaning of any provision to which such heading may relate.

IN WITNESS WHEREOF, the Assignor has caused this Assignment of Rents and Leases to be executed as his free, voluntary and duly authorized acts as of the day and year first above written.

ASSIGNOR:

[Signature]
Michael J. Carey, Jr.

[Signature]
Michael A. Distasio, Sr. *AKA MICHAEL A. DISTASIO*

[Signature]
MICHAEL A. DISTASIO

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 10th day of February, 2003, by Michael J. Carey, Jr., and Michael A. Distasio, Sr.

[Signature]
Notary Public

My Commission Expires: 4/18/04



EXHIBIT A

The North 290.0 Feet of the South 305 Feet of the East 255.50 Feet of Lot 15 in County Clerk's Division in Section 32, Township 37 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof recorded April 30, 1880 as Document 269447, in Book 15 of Plats, Page 49, Cook County, Illinois.

Permanent Index Number: 22-32-300-051-0000

Commonly known as: 1388 State Street, Lemont, Illinois 60439

Property of Cook County Clerk's Office