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2003-04-04 13:44:25

Cook County Recorder 44.50



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Document prepared by and after recording return to:

Mark S. Richmond, Esq.
Katz Randall Weinberg & Richmond
333 West Wacker Drive
Suite 1800
Chicago, Illinois 60606

KRWR File No.: 15314.00200
CLA Loan No.: 153324

THIS SPACE RESERVED FOR RECORDER'S USE ONLY.

6NT 02-0522

**ASSIGNMENT OF RENTS AND LEASES
(Palos Park Walgreens)**

THIS ASSIGNMENT made this 14th day of November, 2002, by **HFPWAL, LLC**, an Illinois limited liability company, whose address is c/o Inter-Continental Real Estate and Development Corporation, 15750 South Harlem Avenue, Orland Park, Illinois 60462 (herein called the "**Assignor**") to **CANADA LIFE INSURANCE COMPANY OF AMERICA**, whose address is c/o Mid-North Financial Services, Inc., 265 West Wacker Drive, Suite 202, Chicago, Illinois 60606, Attn: Joan von Leesen (herein called the "**Assignee**").

WITNESSETH, That:

FOR VALUE RECEIVED, Assignor hereby grants, transfers, assigns and sets over to Assignee all of the right, title and interest of Assignor in and to (i) all of the rents, issues, profits and avails and other sums of every kind and nature (including, but not limited to payments or contributions for taxes, operating expenses and the like) payable by tenants (or guarantors) under Leases, as hereinafter defined (all herein generally called "**Rents**"), of and from the Premises described in **Exhibit A** attached hereto and made a part hereof (herein called the "**Premises**"), (ii) all leases (herein generally called "**Leases**") now or hereafter existing on all or any part of the Premises including, but not limited to, that certain lease of the Premises (herein called the "**Existing Lease**") more particularly described in **Exhibit B** attached hereto and made a part hereof, if any, and any and all guarantees of any of the obligations of the tenant under any or all of the Leases, (iii) rights and claims for damages against tenants arising out of defaults under Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) or replacement Section thereto of the Bankruptcy Code of the United States and (iv) the proceeds (herein called "**Proceeds**") payable upon exercise of any option including an option to terminate or an option to purchase contained in any Lease.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS AGREED AS FOLLOWS:

1. Assignor hereby grants, transfers and assigns to Assignee all of the right, title and interest of Assignor in and to the Leases, in and to the Proceeds and possession of the Premises, including any and all of the Rents now due, or which may hereafter become due under and by virtue of any lease (including the Existing Lease) whether written or oral, or any letting of or any agreement for the use or occupancy of any part of the Premises which may have been heretofore or may be hereafter made or agreed to between Assignor or any other present, prior or subsequent owner of the Premises or any interest therein or which may be made or agreed to by the Assignee, its successors or assigns under the powers herein granted, and any tenant or occupant of all or any part of the Premises, for the purpose of securing:

- (a) Payment of the indebtedness evidenced by that certain note in the principal sum of \$2,750,000.00 (such note is herein called the "Note") and any extensions, modifications or renewals thereof, executed by Assignor, and dated of even date herewith, payable to the order of Assignee, and secured by, among other things, a Mortgage and Security Agreement (herein generally called the "Mortgage") of the same date, to Assignee, as mortgagee, upon the Premises, and filed for record in the proper office of the County and State where the Premises are located; which Mortgage and Note are held by or for the benefit of the Assignee.
- (b) Payment of all other sums with interest thereon becoming due and payable to the Assignee herein and in the Note, Mortgage and any of the other agreements evidencing or securing the loan evidenced by the Note (collectively, the "Loan Documents") contained.
- (c) Performance and discharge of each and every term, provision, condition, obligation, covenant and agreement of Assignor herein and in the Note, Mortgage and any of the other Loan Documents contained.

2. Assignor represents and agrees that (a) Assignor is lessor under the Existing Lease, in each case either directly or as successor in interest to the named lessor thereunder; (b) the Existing Lease is not in default; (c) Assignor is entitled to receive all of the Rents and to enjoy all the other rights and benefits mentioned herein and assigned hereby; (d) the same have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of these presents be sold, assigned, transferred or set over by the Assignor or by any person or persons whomsoever except subject to this Assignment; and (e) the Assignor has good right to sell, assign, transfer and set over the same and to grant to and confer upon the Assignee the rights, interests, powers and/or authorities herein granted and conferred.

3. Assignor will, from time to time, execute upon request of the Assignee, any and all instruments requested by the Assignee to carry this instrument into effect or to accomplish any other purposes deemed by the Assignee to be necessary or appropriate in connection with this Assignment or the Premises including, without limitation, specific assignments of any Lease

or agreement relating to use or occupancy of the Premises or any part thereof now or hereafter in effect and not specifically defined herein as the Existing Lease, as may be necessary or desirable, in the opinion of Assignee, to constitute the same as the Existing Lease hereunder.

4. This Assignment shall in no way operate to restrict or prevent the Assignee from pursuing any remedy which it now or hereafter may have because of any present or future breach of the terms or conditions of the Mortgage, the Note or any other Loan Documents.

5. The Assignee shall not in any way be responsible for failure to do any or all of the things for which rights, interests, powers and/or authority are herein granted it; and the Assignee shall not be responsible for or liable upon any of the agreements, undertakings or obligations imposed upon the lessor under any Lease or other agreement with respect to the Premises.

6. The Assignee shall be accountable only for such cash as it actually receives under the terms hereof.

7. Failure of the Assignee to do any of the things or exercise any of the rights, interests, powers and/or authorities hereunder shall not be construed to be a waiver of any of the rights, interests, powers or authorities hereby assigned and granted to the Assignee and shall not operate as an estoppel against Assignee in any respect, or be deemed to amend any provision hereof or any other Loan Documents.

8. The Assignee shall assign this Assignment of Rents and Leases and any and all rights accruing thereunder to any subsequent assignee and holder of the Note and Mortgage for which this Assignment of Rents and Leases is given as additional security.

9. It is understood that the assignment of the Leases and of the Rents of and from the Premises as effected hereby is an absolute assignment which is effective as of the date hereof and, upon demand by Assignee to the lessee under any Lease or to any person liable for any of the Rents of and from the Premises or any part thereof, such lessee or person liable for any of such Rents shall be, and is hereby authorized and directed to, pay to or upon the order of Assignee, and without inquiry of any nature, all rents then owing or thereafter accruing under said Leases or any other instrument or agreement, oral or written, giving rise to an obligation to pay Rents in connection with the Premises.

10. So long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby, or in the performance of any obligation, covenant or agreement herein or in the Note, Mortgage or other Loan Documents contained, Assignee shall not demand from lessees under said Leases or other persons liable therefor, any of the Rents hereby assigned but shall permit the Assignor to collect, upon but not prior to accrual, all such Rents from the Premises and the Leases and to retain and enjoy the same; provided that, notwithstanding the provisions of this Section 10, all lessees under said Leases and all other persons liable for Rents of and from the Premises shall comply with any demands for Rents made by Assignee pursuant to the provisions of this Assignment of Rents and Leases without regard to whether or not the same are made in compliance with this Section 10.

11. Upon or at any time after default in the payment of any indebtedness evidenced by the Note or secured hereby or by the Mortgage, or in the performance of any term, provision, condition, obligation, covenant or agreement herein or in the Note, Mortgage or Loan Documents contained, and the expiration of any period of grace with respect to any such default as provided for herein or in the Note or Mortgage contained, the Assignee may declare all sums secured hereby immediately due and payable and may, at Assignee's option, without notice, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Premises and each and every part and parcel thereof; and in connection therewith, the Assignee may make, cancel, enforce or modify Leases (including the Existing Lease), fix or modify Rents, repair, maintain and improve the Premises, employ contractors, subcontractors and workmen in and about the Premises, obtain and evict tenants, in its own name sue for or otherwise collect or reserve any and all Rents including those past due and unpaid, employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of Assignee's rights hereunder and pay the reasonable fees and expenses thereof, and otherwise do and perform any and all acts and things which Assignee may deem necessary or appropriate in and about the Premises for the protection thereof or the enforcement of Assignee's rights hereunder or under the Note or Mortgage; and any and all amounts expended by Assignee in connection with the foregoing shall constitute so much additional indebtedness secured hereby and by the Mortgage; provided that (a) Assignee shall apply any monies collected by Assignee, as aforesaid, less costs and expenses incurred, as aforesaid, upon any indebtedness secured hereby in such order and manner as Assignee may determine and (b) the entering upon and taking possession of the Premises, the collection of Rents, the exercise of any of the rights hereinabove specified and the application of collections, as aforesaid, shall not cure, waive, modify or affect any default hereunder or under the Note or Mortgage.

12. Any tenants or occupants of any part of the Premises (including, without limitation, all persons claiming any interest as lessee under the Existing Lease) are hereby authorized to recognize the claims and demands of Assignee hereunder without investigating the reason for any action taken by the Assignee or the validity or the amount of indebtedness owing to the Assignee or the existence of any default hereunder or under the Note or Mortgage or the application to be made by the Assignee of any amounts to be paid to the Assignee; and: (a) the sole signature of the Assignee shall be sufficient for the exercise of any rights under this Assignment of Rents and Leases and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises and (b) checks for all or any part of the Rents collected under this Assignment shall be drawn or made payable to the exclusive order of the Assignee.

13. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under the Leases, nor shall this Assignment operate to place upon Assignee responsibility for the control, care, management or repair of the Premises or the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Premises by the lessee under any Lease or any other party, 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, licensee, employee or stranger; and

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nothing herein or in the Mortgage contained, and no exercise by Assignee of any of the rights herein or in the Mortgage conferred shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof.

14. The Assignor hereby agrees to indemnify, defend and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all 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 the Leases; and should the Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be secured hereby and by the Mortgage, and Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of Assignor so to do, the Assignee may declare all sums secured hereby immediately due and payable.

15. The Assignee has not received nor been transferred any security deposited by any lessee with the lessor under the terms of the Existing Lease and the Assignee assumes no responsibility or liability for any security so deposited.

16. Assignor will not, without Assignee's prior written consent, (a) modify, change, alter, supplement, amend, surrender or accept surrender of any of the Leases or any guaranty thereof and any attempt at any of the foregoing shall be void; (b) execute any other assignment or pledge of the Rents from the Premises or any part thereof, or of the Assignor's interest in any of the Leases, except to Assignee; (c) execute any new Lease; (d) permit any Leases to become subordinate to any lien other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent; or (e) execute hereafter any Lease unless there shall be included therein a provision providing that lessee acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by landlord under such Lease unless such sums have actually been received in cash by Assignee as security for lessee's performance under such Lease.

17. Assignor has not, and will not, accept Rent in advance under any Lease (including the Existing Lease) excepting only monthly rents for current months which may be paid in advance.

18. Assignor will (a) at Mortgagee's request, cause this Assignment to be served upon the lessee under each Lease; (b) at Assignor's sole cost and expense, cause this Assignment to be recorded and filed and re-recorded and re-filed in each and every public office in which such filing and recording may be necessary to constitute record notice of this Assignment and the terms and provisions hereof as applicable to the Premises; (c) at all times promptly and faithfully abide by, discharge or perform all of the covenants, conditions and agreements contained in each Lease; (d) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed; (e) appear in and defend any

action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor, as lessor, and of the lessees thereunder, and pay all costs and expenses of Assignee, including reasonable attorneys' fees in any such action or proceeding in which Assignee may appear; (f) furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all lessees of the Premises, or any part thereof, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder; and (g) exercise within five (5) days of the demand therefor by Assignee, any right to request from the lessee under any Lease a certificate with respect to the status thereof.

19. Upon payment in full of all indebtedness secured hereby, this Assignment of Rents and Leases shall become and be void and of no effect.

20. This Assignment applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns and: (a) wherever the term "Assignor" is used herein, such reference shall be deemed to mean each Assignor whose name appears below, severally, and all such Assignors, jointly and severally, and their respective heirs, legatees, devisees, executors, successors and assigns; (b) wherever the term "Assignee" is used herein, such term shall include all successors and assigns, including each and every from time to time owner and holder of the Note, of the Assignee named herein, each of whom shall have, hold and enjoy all of the rights, powers and benefits hereby afforded and conferred upon Assignee as fully and with the same effect as if such successors and assigns of Assignee were herein by name designated as Assignee; and (c) the term "Existing Lease" shall refer to the lease described in **Exhibit B** if so attached hereto.

21. In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee; and the Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Assignment that Assignee may elect.

22. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronics facsimile transmission thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

23. Nothing herein contained shall be deemed to imply the consent of Assignee to any Lease containing an option, right of first refusal or similar right to purchase all or any part of the Premises and no Lease shall contain or provide for such right, and no such right shall have any force or effect or be enforceable against the Premises or any part thereof, without the prior written consent of Assignee.

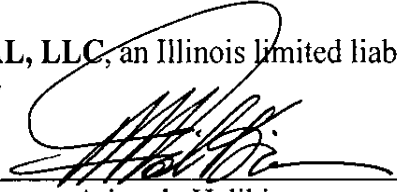
24. This Assignment is executed by the Assignor, and is payable only out of the property specifically described in this Assignment and the Mortgage, by the enforcement of the provisions contained in this Assignment, the Mortgage and the other Loan Documents and out of any other property, security or guaranties given for the indebtedness evidenced by the Note; and accordingly:

- (a) No personal liability shall be asserted or be enforceable against the Assignor personally or against its successors or assigns because of or in respect of this instrument, all such liability, if any, being expressly waived by Assignee;
- (b) In case of default hereunder, the sole remedies of the Assignee shall be (i) foreclosure of the Mortgage in accordance with the terms and provisions in the Mortgage set forth, (ii) enforcement of this Assignment and other Loan Documents, (iii) enforcement of or realization upon any other property and security given for such indebtedness, and/or (iv) enforcement of any obligation or liabilities of Assignor, the shareholder(s), partners(s) or beneficiary or beneficiaries of Assignor or other party, as the case may be, under any separate agreement;
- (c) Nothing herein contained shall be deemed a waiver by Assignee of any right which Assignee may have pursuant to Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Code of the United States to file a claim for the full amount of the indebtedness evidenced by the Note or to require that all collateral or security for the indebtedness evidenced by the Note shall continue to secure the entire amount of the indebtedness evidenced by the Note in accordance with the Loan Documents;
- (d) Nothing herein contained shall limit the right of the Assignee to name Assignor as a party defendant in any action or suit for judicial foreclosure and sale under the Mortgage so long as no judgment in the nature of a deficiency judgment shall be enforced against Assignor except to the extent of the Premises or such other collateral or shall affect or impair the liability or obligation of any guarantor, co-maker, indemnitor or other person who by separate instrument (including without limitation that certain Indemnity Agreement of even date herewith from Assignor and Aristotle Halikias) shall be or become liable upon or obligated for any of the indebtedness evidenced by the Note or any of the covenants or agreements contained in the Loan Documents.

IN WITNESS WHEREOF, the Assignor has executed this Assignment of Rents and Leases as of the day, month and year first above written.

ASSIGNOR:

HFPWAL, LLC, an Illinois limited liability company

By:  _____

Name: Aristotle Halikias

Title: Manager

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, CAROL A. SYLVESTER, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Aristotle Halikias**, manager of **HFPWAL, LLC**, an Illinois limited liability company 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 to me that he, being thereunto duly authorized, signed and delivered said instrument as the free and voluntary act of said general partnership, as sole member of said limited liability company and as his own free and voluntary act, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 14 day of NOVEMBER, 2002.

Carol A Sylvester

Notary Public

My Commission expires:

July 5, 2005

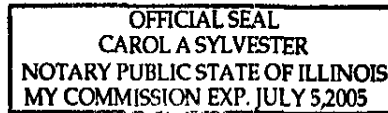


EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT A IN ICD'S RESUBDIVISION OF LOT 7 AND CONNELL'S RESUBDIVISION OF LOT 8 IN DOWD'S SUBDIVISION OF THE WEST 35 ACRES OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, STATE OF ILLINOIS.

RECORDED ON AUGUST 25, 2001 AS DOCUMENT NO. 0010782588 IN THE OFFICE OF THE COOK COUNTY RECORDER.

PARCEL 2:

EASEMENTS FOR INGRESS AND EGRESS OVER AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN DECLARATION OF EASEMENTS AND RESTRICTIONS RECORDED AS DOCUMENT 0020730450.

PARCEL 3:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT GRANT RECORDED AS DOCUMENT NO. 90071696.

P.I.N.s: 23-34-100-018 (affects Parcel 1)
23-34-100-064 (affects easement Parcel 2 and other property)
23-34-100-062 (affects easement Parcel 2 and other property)
~~23-34-100-063 (affects easement Parcel 3 and other property)~~
23-34-100-061 (affects easement Parcel 3 and other property)

Address: 13023 S. LaGrange Road
Palos Park, Illinois

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EXHIBIT B

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Leases

Lease dated October 5, 2001, between Republic Bank of Chicago, Trustee of Trust No. 1364 under trust agreement dated April 24, 1996, Assignor's predecessor-in-interest, as Landlord, and Walgreen Co., as Tenant, as amended from time to time.

Property of Cook County Clerk's Office