

# UNOFFICIAL COPY



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Eugene "Gene" Moore Fee: \$38.00  
Cook County Recorder of Deeds  
Date: 05/19/2003 08:57 AM Pg: 1 of 8

THIS INSTRUMENT PREPARED BY:  
Bruce A. Salk  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:  
Oak Brook Bank  
1400 Sixteenth Street  
Oak Brook, Illinois 60523  
Attn: John Bonino

## JUNIOR ASSIGNMENT OF RENTS AND OF LESSOR'S INTEREST IN LEASES

This Assignment of Rents and of Lessor's Interest in Leases, made as of this 8<sup>th</sup> day of May, 2003, by OLD IRVING PONTE LLC, an Illinois limited liability company (the "Assignor").

### WITNESSETH:

**WHEREAS**, EDGEWATER SQUARE LLC, an Illinois limited liability company, has executed three mortgage notes (hereinafter individually referred to as a "Note" and collectively referred to as the "Notes") of even date herewith, payable to the order of OAK BROOK BANK (hereinafter referred to as "Assignee") as follows:

- A. Mortgage Note in the principal amount of Five Million Five Hundred Forty Thousand and 00/100 (\$5,540,000.00) Dollars; and
- B. Mortgage Note in the principal amount of Two Million Five Hundred Thousand and 00/100 (\$2,500,000.00) Dollars; and
- C. Mortgage Note in the principal amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars; and

**WHEREAS**, to secure the payment of the Notes, Assignor has executed a mortgage and security agreement of even date herewith (hereinafter referred to as the "Mortgage") conveying to Assignee the real estate legally described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Premises"); and

**WHEREAS**, Assignor desires to further secure the payment of principal and interest due under the Notes, including any and all modifications, renewals, amendments, extensions and refinancings thereof, the payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of this assignment, the Notes or the Mortgage, and the performance

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and discharge of each and every obligation, covenant and agreement of Assignor contained herein, in the Notes, in the Mortgage or in any other loan document executed in connection with the Notes (hereinafter collectively referred to as the "Assignor's Obligations");

**NOW, THEREFORE**, for and in consideration of the foregoing, and for valuable consideration, the receipt whereof is hereby acknowledged, and to secure the payment and performance of Assignor's Obligations, Assignor does hereby assign, transfer and grant unto Assignee: (i) all the rents, issues, security deposits and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use, sale, or occupancy of the Premises or any part thereof, which may be made or agreed to by Assignee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all the said leases and agreements (hereinafter collectively referred to as the "Leases") and security deposits, and all the avails thereof, to Assignee, and (ii) without limiting the generality of the foregoing, all and whatever right, title and interest Assignor now or hereafter has in and to any Lease now or hereafter encumbering all or any portion of the Premises, all on the following terms and conditions:

1. Assignor does hereby appoint irrevocably Assignee its true and lawful attorney in its name and stead (with or without taking possession of the Premises), to rent, lease, or let all or any portion of said Premises to any party or parties at such price and upon such terms, in its discretion as it may determine, and to collect all of said avails, rents, issues, deposits, and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the Leases, written or verbal, or other tenancy existing or which may hereafter exist on said Premises, with the same rights and powers and subject to the same immunities, exoneration of liability, and rights or recourse and indemnity as the Assignee would have upon taking possession of said Premises pursuant to the provisions hereinafter set forth. The foregoing rights shall be exercised only after a default by Assignor that is not cured within any applicable cure period.

2. With respect to any currently existing Leases, Assignor covenants that Assignor is the sole owner of the entire Lessor's interest in said Leases; that said Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever; that the lessees respectively named therein are not in default under any of the terms, covenants or conditions thereof; that no rent reserved in said Leases has been assigned; and that no rent for any period subsequent to the date of this assignment has been collected more than thirty (30) days in advance of the time when the same became due under the terms of said Leases.

3. Assignor, without cost, liability or expense to Assignee, shall (i) at all times promptly and faithfully abide by, discharge, and perform all of the covenants, conditions and agreements contained in all Leases of all or any portion of the Premises, on the part of the landlord thereunder to be kept and performed, (ii) 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, (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of landlord or of the lessees thereunder, (iv) transfer and assign to Assignee upon request of Assignee, any lease or Leases of all or any part of the Premises heretofore or hereafter entered into, and make, execute and deliver to Assignee upon demand, any and all instruments required to effectuate said assignment, (v) furnish Assignee, within

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ten (10) days after a request by Assignee so to do, a written statement containing the names of all lessees, terms of all Leases, including the spaces occupied, the rentals payable and security deposits, if any, paid thereunder, (vi) exercise within ten (10) days of any demand therefor by Assignee any right to request from the lessee under any of the Leases of all or any part of the Premises a certificate with respect to the status thereof, and (vii) not, without Assignee's prior written consent: (a) execute an assignment or pledge of any rents of the Premises or of any of the Leases of all or any part of the Premises, except as security for the indebtedness secured hereby, (b) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, (c) agree to any amendment to or change in the terms of any of the Leases, which substantially reduces the rent payable thereunder or increases any risk or liability of the lessor thereunder, except that Assignor may permit or consent to any assignment or subletting of all or a portion of the Premises as permitted by a lease approved by Assignee.

4. So long as there shall exist no default by Assignor in the payment or in the performance of any of the Assignor's Obligations, Assignor shall have the right to collect at the time of, but not more than thirty (30) days prior to, the date provided for the payment thereof, all rents, security deposits, income and profits arising under the Leases and to retain, use and enjoy the same.

5. Upon or at any time after default in the payment or in the performance of any of the Assignor's Obligations and the expiration of any applicable cure period and without regard to the adequacy of any other security therefor or whether or not the entire principal sum secured hereby is declared to be immediately due, forthwith, upon demand of Assignee, Assignor shall surrender to Assignee and Assignee shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agent or attorneys, and Assignee in its discretion may enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers, and accounts of Assignor or the then manager of the Premises relating thereto, and may exclude Assignor and its agents or servants, wholly therefrom and may, as attorney in fact or agent of Assignor, or in its own name as Assignee and under the powers herein granted: (i) hold, operate, manage, and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such 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, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor, (ii) cancel or terminate any of the Leases or any sublease for any cause or on any ground which would entitle Assignor to cancel the same, (iii) elect to disaffirm any other Leases or any sublease made subsequent to the Mortgage or subordinate to the lien thereof, (iv) extend or modify any of the 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 indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Assignor and all persons whose interests in the Premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs,

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decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises as to Assignee may seem judicious, (vi) insure and reinsure the Premises and all risks incidental to Assignee's possessions, operations, and management thereof, and (vii) receive all avails, rents, issues and profits.

6. Any avails, rents, issues and profits of the Premises received by Assignee pursuant hereto shall be applied in payment of or on account of the following, in such order as Assignee may determine: (i) to the payment of the operating expenses of the Premises, including reasonable compensation to Assignee or its agent or agents, 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 tenants and entering into Leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of the 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 said property in such condition as will, in the judgment of Assignee, make the Premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds, to the Assignor, its successors, or assigns, as their rights may appear.

7. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises after default or from any other act or omission of Assignee in managing the Premises after default unless such loss is caused by the willful misconduct and bad faith of Assignee. Nor shall Assignee be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty, or liability under said Leases or under or by reason of this assignment and Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under any of the Leases or under 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 obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in the Leases. Should Assignee incur any such liability under the Leases, or under or by reason of this assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and be immediately due and payable. This assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon Assignee, nor for the carrying out of any of the terms and conditions of any of the Leases, nor shall it operate to make Assignee responsible or liable for any waste committed on the Premises by the tenants or any other parties or for any dangerous or defective conditions 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. Nothing herein contained shall be construed as constituting the Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereinafter contained.

8. Upon payment in full of the principal sum, interest and indebtedness secured hereby, this assignment shall be released by Assignee at the expense of Assignor.

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9. Assignor hereby authorizes and directs the lessee named in each of the Leases, and any other or future lessee or occupant of the Premises, upon receipt from Assignee of written notice with a copy to Assignor at the address set forth in the Mortgage to the effect that Assignee is then the holder of the Notes and Mortgage and that a default exists thereunder or under this assignment, to pay over to Assignee all rents, security deposits, and other sums, if any, arising or accruing under said lease and to continue to do so until otherwise notified by Assignee.

10. Assignee may take or release other security for the payment of said principal sum, interest and indebtedness; may release any party primarily or secondarily liable therefor; and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this assignment.

11. The term "Leases" as used herein means (i) each of the Leases hereby assigned and any extension or renewal thereof, and (ii) any present and future guaranty of any Lease.

12. Nothing contained in this assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Notes, the Mortgage or any of the other Loan Documents (as defined in the Notes), and this assignment is made without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Notes, Mortgage and all other Loan Documents. The right of Assignee to collect said principal sum, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with or subsequent to any action taken by it hereunder.

13. This assignment and the covenants therein contained shall inure to the benefit of Assignee and any subsequent holder of the Notes and Mortgage and shall be binding upon Assignor, its successors and assigns and any subsequent owner of the Premises.

14. This document shall be construed and enforced according to the laws of the State of Illinois.

**IN WITNESS WHEREOF**, Assignor caused these presents to be executed in its name and on its behalf, at the day and year first above written.

OLD IRVING POINTE LLC, an Illinois limited liability company

By: CA Development, Inc., an Illinois corporation,  
its managing member

By:   
J. Paul Bertsche, Vice President

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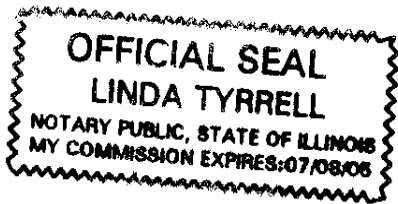
STATE OF ILLINOIS     )  
                                  )  
COUNTY OF Cook     )     SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that J. Paul Bertsche personally known to me as the Vice President of CA DEVELOPMENT, INC., an Illinois corporation, the managing member of OLD IRVING POINTE LLC, an Illinois limited liability company and 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, sealed and delivered the said instrument as such Vice President of said corporation, on behalf of said limited liability company, as his own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 8th day of May, 2003.

Linda Tyrrell  
Notary Public

My Commission Expires: 7/8/05



**UNOFFICIAL COPY****EXHIBIT "A"**

PIN: 13-22-108-036

ADDRESS: 3860 North Milwaukee Avenue, Chicago, Illinois

**PARCEL 1:**

LOTS 4 TO 9 BOTH INCLUSIVE IN BLOCK 10 IN GROSS' MILWAUKEE AVENUE ADDITION TO CHICAGO, A SUBDIVISION IN THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 13-22-108-053

ADDRESS: 3850 North Milwaukee Avenue, Chicago, Illinois

**PARCEL 2:**

THAT PART OF LOTS 10 THROUGH 21, BOTH INCLUSIVE, IN BLOCK 10 IN GROSS MILWAUKEE AVENUE ADDITION TO CHICAGO, A SUBDIVISION OF BLOCKS 18, 23, 24, 25 AND THAT PART LYING SOUTH AND WEST TO CENTER LINE OF MILWAUKEE AVENUE OF BLOCKS 19 AND 22, ALL IN GRAYLAND, IN THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, DESCRIBED AS FOLLOWS:

BEGINNING ON NORTHEASTERLY LINE OF SAID TRACT BEING ALSO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF NORTH MILWAUKEE AVENUE, 206.13 FEET FROM THE NORTHEASTERLY CORNER OF SAID TRACT; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS EAST AND PARALLEL WITH THE EAST LINE OF SAID TRACT, SAID EAST LINE ALSO BEING THE WEST RIGHT OF WAY OF NORTH KENTON AVENUE, 72.77 FEET; THENCE NORTHWESTERLY ALONG AN ARC CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 67.00 FEET, CHORD LENGTH 8.28 FEET, CHORD BEARING NORTH 53 DEGREES 10 MINUTES 34 SECONDS WEST, 8.29 FEET; THENCE NORTH 49 DEGREES 38 MINUTES 00 SECONDS WEST TANGENT TO THE LAST DESCRIBED COURSE AND PARALLEL WITH THE NORTHEASTERLY LINE OF SAID TRACT, 19.52 FEET; THENCE NORTH 00 DEGREES 00 MINUTES AND 00 SECONDS WEST AND PARALLEL WITH THE EAST LINE OF SAID TRACT, 73.44 FEET TO A POINT ON NORTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 49 DEGREES 38 MINUTES 00 SECONDS EAST ALONG SAID NORTHEASTERLY LINE, 28.22 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PIN NO. 13-22-108-002  
13-22-108-003  
13-22-108-004

ADDRESS: 3874 NORTH MILWAUKEE, CHICAGO

PARCEL 3:

LOTS 1, 2, 3 AND 51 IN BLOCK 10 IN GROSS MILWAUKEE AVENUE ADDITION TO CHICAGO, A SUBDIVISION IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, EXCEPT THAT PART LAYING NORTHWESTERLY FROM A LINE, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHEASTERLY LINE OF SAID LOTS, 193.84 FEET, NORTHWESTERLY FROM THE SOUTHEASTERLY LINE OF SAID LOT 9, THENCE SOUTH 40 DEGREES 22 MINUTES 00 SECONDS WEST, 76.83 FEET, THENCE NORTH 49 DEGREES 38 MINUTES 00 SECONDS WEST, 1.82 FEET; THENCE SOUTH 40 DEGREES 22 MINUTES 00 SECONDS WEST, 48.17 FEET; THENCE SOUTH 49 DEGREES 38 MINUTES 00 SECONDS EAST, ALONG LINE 125.00 FEET SOUTHWESTERLY AND PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOTS 49.58 FEET, ALSO BOUNDED BY EAST AND WEST 16 FOOT PUBLIC ALLEY; EAST LINE OF N. KILPATRICK AVE., SOUTH LINE OF W. BYRON ST., SOUTHWESTERLY LINE OF N. MILWAUKEE AVE., IN COOK COUNTY, ILLINOIS.

COOK County Clerk's Office