

UNOFFICIAL COPY



Doc#: 0414833157
Eugene "Gene" Moore Fee: \$46.00
Cook County Recorder of Deeds
Date: 05/27/2004 10:59 AM Pg: 1 of 12

This instrument was prepared by and,
after recording, return to
Randall S. Kulat
MELTZER, PURTILL & STELLE,
LLC
1515 East Woodfield Rd.
Second Floor
Schaumburg, IL 60173-5431

Permanent Real Estate
Tax Index No.:
See **Exhibit A**

Address:
2423 North Kennicott Drive
Arlington Heights, Illinois

ASSIGNMENT OF RENTS AND LEASES

Re: Greenbrier Apartments Conversion, Arlington Heights, Illinois

THIS ASSIGNMENT OF RENTS AND LEASES is made and delivered as of this 8/4
day of April, 2004, by is made by and between **GREENBRIER DEVELOPMENT
ASSOCIATES, LLC**, an Illinois limited liability company ("Assignor"), to and for the benefit
of **OAK BROOK BANK**, an Illinois banking corporation ("Assignee").

RECITALS

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor (i) in and to all of the rents, issues and profits of and from the Premises described in **Exhibit A** attached hereto and made a part hereof (the "Premises"); (ii) in and to all leases and subleases (the "Leases") now or hereafter existing on all or any part of the Premises; (ii) in and to all leases and subleases (the "Leases") now or hereafter existing on all or any part of the Premises (which term includes the particular leases of the apartment units comprising a portion of the Premises (the "Existing Leases")); (iii) in and to all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all of Assignor's interest in any tenant improvements and fixtures located on the Premises.

BOX 355-611

Property of Cook County Clerk's Office

5015
24032923
08ASSTSC06791

UNOFFICIAL COPY

THIS ASSIGNMENT OF RENTS AND LEASES IS GIVEN TO SECURE:

(a) Payment by Assignor when due of (i) the indebtedness evidenced by that certain mortgage note (the "Note") in the principal amount of Seven Million Six Hundred Seventy-Five Thousand and no/100 Dollars (\$7,675,000.00) made by Assignor and delivered to Assignee simultaneously with the execution and delivery of this Assignment, and any and all renewals, extensions or refinancings thereof; (ii) any other obligations, liabilities or indebtedness which may be due and owing from Assignor to Assignee, or by any co-maker or guarantor of the Note, whether such obligations, liabilities or indebtedness are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several due or to become due, howsoever created, evidenced or arising and howsoever acquired by Assignee, and any and all renewals, extensions or refinancings thereof; and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and attorneys' fees.

(b) Observance and performance by Assignor of the covenants, terms, conditions and agreements contained in the Note, this Assignment, the Mortgage and Security Agreement ("Mortgage") of even date herewith made by Assignor to Assignee and creating a first mortgage lien on the Premises, the Conversion Mortgage Loan Agreement ("Loan Agreement") with respect to the Premises between Assignor, Guarantor (as defined therein) and Assignee, the Security Agreement ("Security Agreement") made by Assignor to Assignee with respect to the Premises and any other document or instrument evidencing or securing the Note or delivered to induce Assignee to disburse the proceeds thereof. The Mortgage, Security Agreement, Loan Agreement, this Assignment and all such other documents and instruments evidencing or securing the Note and delivered to induce Assignee to disburse the proceeds thereof are hereinafter collectively referred to as the "Loan Documents".

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Representations and Warranties of Assignor. Assignor represents and warrants to Assignee that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is the lessor under all Leases, in each case either directly or as successor in interest to the named lessor thereunder;

(c) There is no other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

UNOFFICIAL COPY

(d) Assignor has not heretofore executed any instrument or performed any act which may or might prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation; and

(e) To Assignor's knowledge, no tenant is in material default under any Lease.

2. Covenants of Assignor. Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall observe and perform all of the material covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and, Assignor shall not do or suffer to be done anything to impair the security thereof, or without the express written consent of Assignee, (i) release the liability of any tenant thereunder, which consent shall not be unreasonably withheld, (ii) permit any tenant thereunder to withhold the payment of rent or to make monetary advances and off-set the same against future rentals, (iii) permit any tenant thereunder to claim a total or partial eviction, (iv) permit any tenant thereunder to terminate or cancel any Lease, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(b) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(c) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder without the prior written consent of Assignee;

(d) Assignor shall not alter, modify or change the material terms and provisions of any Lease or give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease (other than any Lease in which the tenant thereunder is in default) without the prior written consent of Assignee, which approval shall be deemed given if Assignee fails to notify Assignor that Assignee's consent is being withheld within five (5) business days after the Assignee has received, (i) Assignor's request for consent (which request to be effective, shall specifically and conspicuously refer to such five (5) day deemed consent provision), and (ii) all other information reasonably necessary for Assignee to adequately evaluate such request;

(e) Assignor shall not accept a surrender of any Lease other than any Lease in which the tenant thereunder is in default, or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder other than any Lease in which the tenant thereunder is in default;

UNOFFICIAL COPY

- (f) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Assignee, which approval shall be deemed given if Assignee fails to notify Assignor that Assignee's consent is being withheld within five (5) business days after the Assignee has received, (i) Assignor's request for consent (which request to be effective, shall specifically and conspicuously refer to such five (5) day deemed consent provision), and (ii) all other information reasonably necessary for Assignee to adequately evaluate such request;
- (g) Assignor shall not waive or excuse the obligation to pay rent under any Lease, except for granting indulgences in the ordinary course of business;
- (h) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant, subject to reasonable and prudent property management standards;
- (i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;
- (j) Assignor shall give prompt notice to Assignee of any notice of any material default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder;
- (k) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenant(s) thereunder, subject to reasonable and prudent property management standards;
- (l) Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent and mechanics liens being contested in accordance with the Loan Agreement; and
- (m) In the event that any tenant under any Lease is or becomes 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, Assignor covenants and agrees that if any such Lease 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. 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 in accordance with the provisions of paragraph 6 below.

UNOFFICIAL COPY

3. Rights Prior to Default. So long as Assignor is not in default hereunder, Assignee shall not demand from tenants under the Leases or any other person liable thereunder, any of the rents, issues, income and profits assigned hereunder, and Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance of the date, provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

(a) Failure by Assignor to pay when due any installment of principal or interest, or failure to pay any other amount payable, pursuant to the Note, the Mortgage, this Assignment, the Loan Agreement or any of the other Loan Documents.

(b) Failure by Assignor to promptly perform any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Assignor under this Assignment, the Loan Agreement, the Note, the Mortgage or any other Loan Document, after ten (10) days written notice thereof from Assignee; provided, however, that in the event that such failure cannot be cured within said ten (10) day period and Assignor otherwise diligently commences to cure within said ten (10) days, then Assignor shall have a period not to exceed sixty (60) days after the date of the original notice to cure the same, and an Event of Default shall not be deemed to exist during said sixty (60) day period unless the continued operation or safety of the Premises, or the priority, validity or enforceability of the lien created by the Mortgage, this Assignment or any other Loan Document or the value of the Premises is materially impaired, threatened or jeopardized.

(c) The existence of any material inaccuracy or untruth in any representation, or warranty contained in this Assignment, the Loan Agreement or any other Loan Documents, or in any statement or certification as to facts delivered to Assignee by Assignor pursuant hereto or any other Loan Documents.

(d) At any time, Assignor files for itself a bankruptcy petition, or is adjudicated a bankrupt or insolvent, or institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of its creditors, or seeks or consents to the appointment of any receiver, trustee or similar officer for all or substantially all of its property.

(e) The commencement of any involuntary petition in bankruptcy against Assignor, or any guarantor or co-maker of the Note, or the institution against Assignor, or any guarantor or co-maker of the Note, of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal,

UNOFFICIAL COPY

state or other statute or law, or the appointment of a receiver, trustee or other officer for all or any substantial part of the property of Assignor, or any guarantor or co-maker of the Note, which shall remain undismissed or undischarged for a period of ninety (90) days.

(f) Any sale, transfer, lease, assignment, conveyance, lien or encumbrance made in violation of the Loan Agreement or Mortgage.

(g) The death or legal incompetence of the guarantor of the Note.

5. Rights and Remedies Upon Default. At any time upon or following the occurrence of any one or more Events of Default hereunder, Assignee may, at its option, exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event or Events of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor or co-maker of the Note from any obligation hereunder, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien granted by the Loan Documents.

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits due or to become due of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee

UNOFFICIAL COPY

shall become immediately due and payable by Assignor with interest thereon until paid at an annual rate (the "Default Rate") equal to four percent (4%) plus the Loan Rate (as defined in the Note) then in effect under the Note and shall be secured by this Assignment.

6. Application of Proceeds. All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more events of default under the provisions of paragraph 4 of this Assignment shall be applied as follows:

(a) First, to reimbursement of Assignee for any and all expenses (including court costs and attorneys' fees) of: taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income and profits thereof, including without limitation, salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary and proper; operating and maintaining the Premises, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance provided in the Mortgage; the cost of all alterations, renovations, repairs or replacements of or to the Premises which Assignee may deem necessary and proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Assignee for and of all sums expended by Assignee pursuant to paragraph 5(d) above to make any payment or do any act required herein of Assignor, together with interest thereon as provided herein;

(c) Third, to reimbursement of Assignee for and of all other sums with respect to which Assignee is indemnified pursuant to paragraph 7 below, together with interest thereon as provided herein;

(d) Fourth, to reimbursement of Assignee for and of all other sums expended or advanced by Assignee pursuant to the terms and provisions of or constituting additional indebtedness under any of the Loan Documents, with interest thereon as provided therein;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to payment of the unpaid balance of the principal sum of the Note; and

(g) Seventh, any balance remaining to Assignor, its successors and assigns.

7. Limitation of Assignee's Liability. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises following the occurrence of any one or more Events of Default under the provisions hereof or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of any one or more Events of Default under the provisions hereof. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe,

UNOFFICIAL COPY

perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless of and from, any and all liability, loss or damage which Assignee may or might incur under any Lease or under or by reason of this Assignment and of 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 observe or perform any of the covenants, terms, conditions and agreements contained in any Lease, other than any liability, loss or damage resulting from Assignee's negligence or willful misconduct. Should 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 claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate from and after ten (10) days after notice, and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or 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, occupant, licensee, employee or stranger. 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. Assignee has not received nor been transferred any security deposited by any tenant with the lessor under the terms of any Lease and Assignee assumes no responsibility or liability for any security so deposited.

8. Non-Waiver. Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the guaranty thereof or any of the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments; and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

9. Further Assurances. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may reasonably request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

UNOFFICIAL COPY

10. Security Deposits. Assignor hereby acknowledges that Assignee has not received nor been transferred any security deposited by any tenant with lessor under the terms of any Leases and that Assignee assumes no responsibility or liability for any security so deposited.

11. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

12. Benefit. This Assignment is made by Assignor, and is binding upon Assignor, its successors and permitted assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns, including without limitation, the holder from time to time of the Note.

13. Written Modifications. This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

14. Duration. This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the Loan Documents.

15. Governing Law. This Assignment shall be governed by and construed in accordance with the substantive laws of the State of Illinois.

16. Notices. All notices and demands which are required or permitted to given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Mortgage.

17. Counterparts. This Assignment may be executed and delivered by any party hereto by way of counterpart, which, when taken together with all executed counterparts hereof shall constitute a single agreement; provided, however, that any counterpart, when taken separately from other counterparts shall be fully binding and enforceable as against the party signatory thereto, without respect to the other counterparts.

(the balance of this page is intentionally left blank)

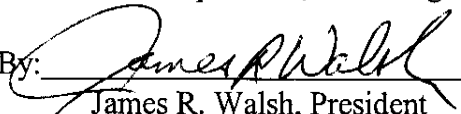
UNOFFICIAL COPY

Assignor has executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR:

GREENBRIER DEVELOPMENT ASSOCIATES, LLC, an Illinois limited liability company

By: JRW PROPERTIES INC., an Illinois corporation, its Manager

By: 
James R. Walsh, President

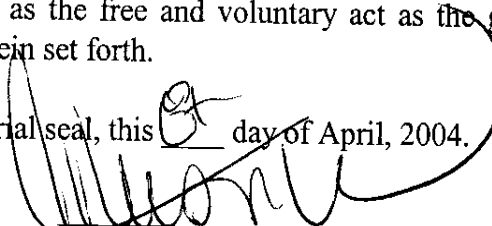
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James R. Walsh, the President of JRW Properties Inc., the Manager of GREENBRIER DEVELOPMENT ASSOCIATES, LLC, an Illinois limited liability company ("Assignor"), and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of the Manager of Assignor appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act as the general partner of Assignor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 8 day of April, 2004.



NOTARY PUBLIC

(SEAL)



UNOFFICIAL COPY

EXHIBIT A

Legal Description of the Real Estate

LOT 524 (EXCEPT THE NORTHEASTERLY 150 FEET OF LOT 524 AS MEASURED PERPENDICULAR TO THE MOST NORTHEASTERLY LINE OF SAID LOT 524) AND LOTS 521, 522, 525 AND 526 IN GREENBRIER IN THE VILLAGE GREEN UNIT NUMBER 12, BEING A SUBDIVISION OF PART OF THE EAST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ AND PART OF THE WEST $\frac{1}{2}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 03-18-113-021-0000
03-18-205-003-0000
03-18-206-003-0000
03-18-207-007-0000
03-18-207-011-0000

Address: 2423 North Kennicott Drive, Arlington Heights, Illinois