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Cook County Recorder

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Property of Cook County Clerk's Office

ASSIGNMENT OF LEASES AND RENTS

Dated as of 19th day of JUNE, 2001

from

INTERCONTINENTAL FUND III 29 NORTH WACKER DRIVE, LLC

as Assignor,

to

MELLON BANK, N.A.,

as Assignee

11A

29 North Wacker Drive, Chicago, Illinois

This instrument prepared by and after recording return to:

Michael J. Haroz, Esq.
Goulston & Storrs, P.C.
400 Atlantic Avenue
Boston, MA 02110

BOX 333-CTI

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ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of June 19, 2001, made by INTERCONTINENTAL FUND III 29 NORTH WACKER DRIVE LLC having an office at c/o Intercontinental Real Estate Corporation, 1270 Soldiers Field Road, Boston, MA 02135-1003, Attn: Paul J. Nasser ("Assignor"), to MELLON BANK, N.A., a national banking association having an office at 1735 Market Street, Attention: Real Estate Finance Department – 4th Floor, Philadelphia, PA 19103 ("Assignee").

WITNESSETH:

WHEREAS, pursuant to a Term Loan Agreement of even date herewith between Assignor and Assignee (as the same may be amended, modified or supplemented from time to time, the "Loan Agreement"), Assignee has agreed to make a loan of Thirteen Million Five Hundred Twenty Thousand and 00/100 Dollars (\$13,520,000) to Assignor (the "Loan");

WHEREAS, the Loan is evidenced by a Note of even date herewith made by Assignor to Assignee (as the same may be extended, renewed, refinanced, refunded, amended, modified or supplemented from time to time, and any replacement or successor note, the "Note");

WHEREAS, the Note is secured by, *inter alia*, a Mortgage and Security Agreement of even date herewith made by Assignor to Assignee, intended to be recorded with the Cook County Registry of Deeds immediately prior to the recordation of this Assignment (as the same may be amended, modified or supplemented from time to time, the "Mortgage", capitalized terms used herein and not otherwise defined herein having the meanings assigned to them in the Mortgage); and

WHEREAS, the execution and delivery of this Assignment by Assignor is a condition to Assignee's obligation to make the Loan;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor hereby assigns, transfers, grants and conveys unto Assignee, its successors and assigns, all of its right, title and interest in, to and under all existing and future leases covering, and all agreements for any use of, all or any part of the Land described in Exhibit A hereto, the Improvements located thereon and the other Mortgaged Property, and all extensions, renewals and guarantees thereof and all amendments and supplements thereto (collectively, the "Leases"), including without limitation the following:

(a) all rents, revenues, issues, income, receipts, profits and other amounts now or hereafter becoming due to Assignor under the Leases (whether due for the letting of space, for services, materials or installations supplied by Assignor or for any other reason whatsoever), including without limitation all insurance, tax and

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other contributions, insurance proceeds, condemnation awards, damages following defaults by tenants under the Leases ("Tenants"), cash or securities deposited by Tenants to secure performance of their obligations under the Leases, and all other extraordinary receipts, and all proceeds thereof, both cash and non-cash (all of the foregoing being hereinafter collectively called the "Rents") and all rights to direct the payment of, make claim for, collect, receive and receipt for the Rents;

(b) all claims, rights, privileges and remedies on the part of Assignor, whether arising under the Leases or by statute or at law or in equity or otherwise, arising out of or in connection with any failure by any Tenant to pay the Rents or to perform any of its other obligations under its Lease;

(c) all rights, powers and privileges of Assignor to exercise any election or option or to give or receive any notice, consent, waiver or approval under or with respect to the Leases; and

(d) all other claims, rights, powers, privileges and remedies of Assignor under or with respect to the Leases, including without limitation the right, power and privilege (but not the obligation) to do any and all acts, matters and other things that Assignor is entitled to do thereunder or with respect thereto.

subject, however, to the right of Assignor (i) to receive and use the Rents during any period for which rent payments are directed by Assignee to be paid to Assignor pursuant to the provisions of Section 5 hereof, such direction being in effect as of the date hereof (provided that, notwithstanding such direction, Assignor shall have no right to receive and use Rents after the occurrence of an Event of Default); and (ii) until the occurrence of an Event of Default, to exercise all of Assignor's other rights, powers, privileges, and remedies under the Leases, in each case to the extent not prohibited by Section 3 hereof or by any other Loan Document;

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever;

AND, Assignor hereby agrees with Assignee as follows:

1. Representations and Warranties. Assignor hereby represents and warrants to Assignee that (a) Assignor has not assigned, transferred, mortgaged, pledged or otherwise encumbered any of its right, title and interest in, to and under the Leases and the Rents and no part of such right, title and interest is subject to any lien or other encumbrance, except in favor of Assignee, (b) each Lease is a legal, valid and binding obligation of the Tenant thereof, enforceable in accordance with its terms, (c) no default exists by Assignor or any Tenant under any of the Leases and (d) no Rents have been received by Assignor in advance of the time when the same became due under the terms of the Leases.

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2. Affirmative Covenants. Assignor hereby covenants with Assignee that Assignor shall (a) perform and observe all covenants and agreements to be performed and observed by Assignor under the Leases in all material respects, (b) enforce, short of termination of the Leases, the performance and observance of all covenants and agreements to be performed or observed by Tenants under the Leases, (c) appear in and defend any action or proceeding arising out of or in connection with any of the Leases, (d) promptly give Assignee copies of any notices of default given or received by Assignor under any of the Leases, and (e) if requested by Assignee, from time to time use diligent efforts to cause the Tenants under such Leases to execute and deliver to Assignee within 20 days after notice if delivered by hand, telex or facsimile, and within 20 days after notice if delivered by mail, such certificate or certificates as to the status of such Leases, the rent, additional rent and other charges payable thereunder, and the Tenant's and Assignor's compliance with the terms hereof as shall be in form and substance satisfactory to Assignee (it being understood that Assignor shall include in each Lease a clause obligating Tenant to execute and deliver such certificate or certificates to Assignor and its mortgagees as often as may be requested).

3. Negative Covenants. Assignor hereby covenants with Assignee that Assignor shall not (a) assign, transfer, mortgage, pledge or otherwise encumber, or permit to accrue or suffer to exist any lien or other encumbrance on or in, any of the right, title and interest of Assignor in, to and under the Leases and the Rents, except in favor of Assignee, (b) except to the extent otherwise permitted under the Loan Agreement, enter into any Lease without first obtaining Assignee's written approval of such Lease, the terms and conditions thereof and the Tenant thereof, (c) amend or modify any of the terms of any Lease if such amendment would require Lender's consent under the Loan Agreement if it were a new Lease (in which event such consent shall be given or withheld in accordance with the provisions of the Loan Agreement), (d) accept any prepayment of Rents under any Lease earlier than one month in advance of its due date, (e) terminate any Lease or consent to the cancellation or surrender of any Lease, other than in connection with the enforcement of Assignor's rights in the ordinary course of business, (f) give or join in any material waiver, consent or approval with respect to any Lease, (g) settle or compromise any claim against any Tenant arising out of or in respect of any Lease, (h) waive any default under or breach of any Lease or (i) take any other action in connection with any Lease which would materially impair the value of the rights or interests of Assignor or Assignee thereunder or therein. The requirement of approval of Leases (or of any other documents or matters) by Assignee, pursuant to this Assignment or any other Loan Document, shall be for Assignee's protection only and shall not be considered an assumption by Assignee of any responsibility to Assignor or any other person with respect to the adequacy, sufficiency, advisability or terms of any of the Leases (or of any of such other documents or matters), and no approvals by Assignee of Leases (or of any of such documents or matters) and no waiver by Assignee of, or consent or approval by Assignee with respect to, any covenant of Assignor contained herein or in any other Loan Document shall give rise to any liability by Assignee to Assignor or any other person.

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4. Right of Assignee To Cure Assignor Defaults. If Assignor shall fail to pay, perform or observe any of its covenants hereunder, Assignee may pay, perform or observe the same and collect the cost thereof from Assignor all as more fully provided in the Mortgage or the other Loan Documents (as referred to in the Mortgage).

5. Right of Assignee to Direct Payment of Rents. The assignment set forth above includes the full and complete assignment by Assignor to Assignee of all right, power and privilege of Assignor to direct the party to whom Rents are to be paid. Such assignment of the right to direct payment of Rents is unconditional and unrestricted and may be exercised by Assignee at any time, and from time to time, after the occurrence of any Event of Default and any such direction that is given may be revoked or reinstated by Assignee at any time and from time to time. The Tenants shall be, and hereby are, irrevocably authorized to rely upon and act in accordance with any notice or demand by Assignee for the payment to Assignee or its nominee of any Rents which may then be or thereafter become due under the Leases, and shall have no duty to inquire whether any such notice or demand by Assignee conflicts with any provision of this Assignment.

6. Covenant of Assignee. By its acceptance hereof, Assignee covenants with Assignor that Assignee will not direct Tenants to pay Rents to any party other than Assignor unless and until there has occurred an Event of Default. The assignment of the right to direct payment of Rents referred to in Section 5 hereof is not in any way conditioned on or subject to the foregoing covenant. Any direction by Assignee for the payment of Rents, even if in violation of such covenant, shall be valid and enforceable against Assignor, Assignor hereby waiving any right to seek specific performance of such covenant.

7. Assignee Not Liable; Indemnification. Anything contained herein or in any of the Leases to the contrary notwithstanding, (a) Assignor shall at all times remain solely liable under the Leases to perform all of the obligations of Assignor thereunder to the same extent as if this Assignment had not been executed, (b) neither this Assignment nor any action or inaction on the part of Assignor or Assignee shall release Assignor from any of its obligations under the Leases or constitute an assumption of any such obligations by Assignee and (c) except to the extent required by applicable law, Assignee shall not have any obligation or liability under the Leases or otherwise by reason of or arising out of this Assignment, nor shall Assignee be required or obligated in any manner to make any payment or perform any other obligation of Assignor under or pursuant to the Leases, or to make any inquiry as to the nature or sufficiency of any payment received by Assignee, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which have been assigned to Assignee or to which it may be entitled at any time or times. Assignor shall and does hereby agree to indemnify Assignee and hold it harmless from and against any and all liability, loss or damage which it may or might incur, and from and against any and all claims and demands whatsoever which may be asserted against it, in connection with or with respect to the Leases or this Assignment, whether by reason of any alleged obligation or undertaking on its part to perform or discharge any of the covenants or agreements contained in the Leases or otherwise. Should Assignee incur any such liability, loss or damage in

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connection with or with respect to the Leases or this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be paid by Assignor to Assignee immediately upon demand, together with interest thereon at the Default Rate (as defined in the Note) until paid.

8. Default. If an Event of Default shall occur, Assignee may, without notice and irrespective of whether or not the Secured Obligations shall then be due and payable, and without regard to the adequacy of the security for the Secured Obligations, (a) enter and take possession of the Mortgaged Property or any part thereof, and upon such entry, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper, and (b) whether or not Assignee has so entered and taken possession of the Mortgaged Property or any part thereof, perform any of the obligations and exercise any of the rights, powers, privileges and remedies of Assignor, and do any and all acts, matters and other things that Assignor is entitled to do, under or with respect to the Leases, including without limitation making, enforcing, modifying, terminating or accepting surrenders of Leases, obtaining or evicting Tenants, setting or modifying Rents, directing the Tenants to make payments or Rents directly to Assignee or its nominee and collecting and receiving Rents. Assignee shall apply any Rents received by it, first to the payment of all expenses which Assignee may be authorized to incur under the provisions of this Assignment, the Mortgage or any of the other Loan Documents (including, without limitation, the cost of all renovations, repairs, replacements, alterations, additions or improvements to the Mortgaged Property and all expenses incident to entering and taking possession of the Mortgaged Property and managing, leasing and operating the same), and then to the payment of the Secured Obligations in such order as Assignee shall determine with the remainder to be paid to the party or parties legally entitled thereto. The Tenants shall be, and hereby are, irrevocably authorized to rely upon and act in accordance with any notice or demand by Assignee for the payment to Assignee or its nominee of any Rents which may then be or thereafter become due under the Leases, or for the performance of any of the Tenants' obligations under the Leases, and shall have no duty to inquire whether any such notice or demand by Assignee conflicts with any provision of this Assignment.

9. Mortgage Foreclosure. Upon foreclosure of the Mortgage, or delivery of a deed in lieu of foreclosure, all right, title and interest of Assignor in, to and under the Leases shall thereupon vest in and become the absolute property of the purchaser of the Mortgaged Property in such foreclosure proceeding, or the grantee in such deed, without any further act or assignment by Assignor. Nevertheless, Assignor shall execute, acknowledge and deliver from time to time such further instruments and assurances as Assignee may require in connection therewith and hereby irrevocably appoints Assignee the attorney-in-fact of Assignor in its name and stead to execute all appropriate instruments of transfer or assignment, or any instrument of further assurance, as Assignee may deem necessary or desirable, and Assignee may substitute one or more persons with like power, Assignor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof.

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10. Absolute Assignment. This Assignment is an absolute assignment from Assignor to Assignee and not merely the granting of a security interest.

11. Further Assurances. From time to time upon the request of Assignee, Assignor shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as Assignee may deem necessary or desirable to confirm this Assignment, to carry out the purpose and intent hereof or to enable Assignee to enforce any of its rights hereunder, including without limitation joining with Assignee in letter to the Tenants informing them of Assignee's rights under Section 5 hereof and directing them to make payments of Rents in accordance with Assignee's instructions.

12. Amendments, Waivers, Etc. This Assignment cannot be amended, modified, waived, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of such amendment, modification, waiver, change, discharge or termination is sought.

13. No Implied Waiver, Cumulative Remedies. No course of dealing and no delay or failure of Assignee in exercising any right, power or privilege under this Assignment or any other Loan Documents shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. Without limiting the generality of the foregoing, Assignee may take or release any security for the Secured Obligations, may release any party primarily or secondarily liable for any of the Secured Obligations, may grant extensions, renewals or indulgences with respect to any of the Secured Obligations, and may apply any security held by it the satisfaction of the Secured Obligations, all without prejudice to any of its rights hereunder, whether any such action is taken prior to, simultaneously with or subsequent to any action taken by Assignee hereunder. The rights and remedies of Assignee under this Agreement are cumulative and not exclusive of any rights or remedies which Assignee would otherwise have under the other Loan Documents, at law or in equity.

14. Notices. All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Assignment shall be in writing (including facsimile communication) unless otherwise expressly permitted hereunder and shall be sent by first-class mail or first-class express mail, or by fax with confirmation in writing mailed first-class, in all cases with charges prepaid, and any such properly given notice shall be effective when received or tendered for receipt. All notices shall be sent to the applicable party at its address stated on the first page hereof or in accordance with the last unrevoked written direction from such party to the other party hereto. A copy of any notice sent to Assignor shall be sent to Hale & Dorr LLP, 60 State Street, Boston, Massachusetts 02109, Attention: Keith R. Barnett, Esq., and a copy of any notice sent to Assignee shall be sent to Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110-3333, Attention: Michael J. Haroz, Esq.. Assignee may rely on any notice (including telephoned communication) purportedly

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made by or on behalf of Assignor, and shall have no duty to verify the identity or authority of the person giving such notice.

15. Termination; Survival. Upon payment and performance in full of the Secured Obligations and termination of the Loan Agreement, this Assignment shall terminate, provided that all obligations of Assignor to indemnify Assignee shall survive such payment and performance.

16. Severability. If any term or provision of this Assignment or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

17. Jurisdiction. Assignor irrevocably (a) agrees that Assignee may bring suit, action or other legal proceedings arising out of this Assignment, the Loan Agreement, the Mortgage or any other Loan Document, or the transactions contemplated hereby or thereby, in the courts of the Commonwealth of Massachusetts or the courts of the United States for the District of Massachusetts; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which Assignor may have to the laying of the venue of any such suit, action or proceeding in any of such courts; and (d) waives any right it may have to a jury trial in connection with any suit, action or proceeding arising out of this Assignment, the Loan Agreement, the Mortgage or any other Loan Document or the transactions contemplated hereby or thereby.

18. Governing Law. This Assignment, except as otherwise provided in Section 18, and each of the other Loan Documents has been negotiated and executed in the Commonwealth of Massachusetts, and shall in all respects be governed, construed, applied and enforced in accordance with the internal laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

Notwithstanding the foregoing choice of law:

(i) matters relating to the creation, perfection, priority and enforcement of the liens on and security interests in the Mortgaged Property or other assets situated in the State of Illinois, including by way of illustration, but not in limitation, actions for foreclosure, for injunctive relief, or for the appointment of a receiver, shall be governed by the laws of the State of Illinois;

(ii) Assignor shall comply with applicable law in the State of Illinois to the extent required by the law of such jurisdiction in connection with the foreclosure of the security interests and liens created under the

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Assignment and the other Loan Documents with respect to the Mortgaged Property or other assets situated in Illinois; and

(iii) provisions of Federal law and the law of the State of Illinois shall apply in defining the terms Hazardous Materials, Environmental Laws and Laws applicable to the Mortgaged Property as such terms are used in this Loan Assignment and the other Loan Documents.

Nothing contained herein or any other provisions of the Loan Documents shall be construed to provide that the substantive laws of the State of Illinois shall apply to any parties' rights and obligations under any of the Loan Documents, which, except as expressly provided in clauses (i), (ii) and (iii) of this Section 18, are and shall continue to be governed by the substantive law of Commonwealth of Massachusetts, except as set forth in clauses (i), (ii) and (iii) of this Section 18. In addition, the fact that portions of the Loan Documents may include provisions drafted to conform to the law of the State of Illinois or provide for payments to be made at Assignee's office in the Commonwealth of Pennsylvania, is not intended, nor shall it be deemed, in any way, to derogate the parties, choice of law as set forth or referred to in this Assignment or in the other Loan Documents. The parties further agree that the Assignee may enforce its rights under the Loan Documents including, but not limited to, its rights to sue the Assignor or to collect any outstanding indebtedness in accordance with applicable law.

19. Successors and Assigns. This Assignment shall bind Assignor and its successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns.

20. Limited Recourse. The liability of the members, officers, directors, employees, partners or owner of any legal or beneficial interest in Assignor, for the obligations of Assignor hereunder shall be limited as provided in Section 5.16 of the Mortgage.

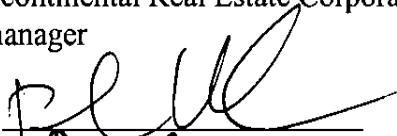
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IN WITNESS WHEREOF, Assignor has duly executed and delivered this Assignment as of the date and year first above written.

INTERCONTINENTAL FUND III
29 NORTH WACKER DRIVE, LLC,
a Massachusetts limited liability company

By: Intercontinental Real Estate Corporation.
its manager

By: 
Name: PETER PALANJIAN
Its: PRESIDENT + TRUSTEE

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF SUFFOLK)

On this, the 13th day of June, 2001, before me, a Notary Public, the undersigned officer, personally appeared Peter Palanjanian who acknowledged himself to be the authorized representative of Intercontinental Real Estate Corporation, a Massachusetts corporation and the manager of Intercontinental Fund III 29 North Wacker Drive, LLC, a Massachusetts limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal


My Commission Expires: 12/31/04

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Exhibit A

Parcel 1:

Lots 1 to 9, both inclusive, in the Assessor's Division of Lot 4 in Block 53 in the original town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Easement for the benefit of Parcel 1 for ingress and egress over and upon the West 6 feet of Lot 3 in Block 53 in original town of Chicago aforesaid, created by agreement made by and between Chicago Telephone Company, a corporation of Illinois and Marie Lefens, and others dated September 13, 1916 and recorded November 9, 1916 as Document Number 5989236 as modified by Instrument dated May 3, 1921 and recorded May 6, 1921 as Document Number 7136314, all in Cook County, Illinois.

Property Address: 29 North Wacker Drive, Chicago, Illinois

Perm Tax#

17-09-453-013-0000

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