

# UNOFFICIAL COPY

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Cook County Recorder

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WHEN RECORDED MAIL TO:

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Katten Muchin Zavis Rosenman  
525 West Monroe Street, Suite 1600  
Chicago, Illinois 60661  
Attn: Daniel J. Perlman, Esq.



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PROPERTY OF COOK COUNTY RECORDER  
SPACE ABOVE THIS LINE FOR RECORDER'S USE

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") (herein so called), made as of December 2, 2002, by DODI SCHAUMBURG L.L.C., an Illinois limited liability company (the "Assignor"), whose mailing address is 450 East Devon Avenue, Suite 250, Itasca, Illinois 60143, to GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation (the "Assignee"), whose mailing address is 600 Steamboat Road, Greenwich, Connecticut 06830.

### RECITALS:

The following recitals are true and correct:

A. Assignor has executed and delivered to Assignee a Promissory Note (hereinafter, together with all amendments thereto and modifications thereof, called the "Note") of even date herewith in the principal sum of \$11,000,000.00 and as security for the Note Assignor has executed and delivered in favor of Assignee a certain Mortgage, Assignment of Rents and Security Agreement (hereinafter, together with all amendments thereto and modifications thereof, called the "Instrument") of even date herewith covering certain real estate located in the County of Cook, State of Illinois, and more particularly described in Exhibit A which is attached hereto and incorporated herein by reference, together with all buildings, improvements and other property more particularly described in the Instrument, and all fixtures, furnishings, machinery, equipment and other tangible property owned by Assignor and located on or used in connection with such real property (all of which real and personal properties are hereinafter called the "Property"). The Note, this Assignment, the Instrument, the Environmental Indemnity Agreement (herein so called), dated of even date herewith, executed by Assignor and Assignee, and any other agreement or instrument now or hereafter evidencing, governing or securing the loan (the "Loan") evidenced by the Note are hereinafter collectively called "Loan Documents" and singularly called a "Loan Document". All capitalized words used but not otherwise defined herein shall have the meanings ascribed thereto in the Instrument.

B. In connection with the execution and delivery of the Note, Assignee has required that Assignor absolutely assign to Assignee all of Assignor's right, title and interest in, to and under any and all leases (hereinafter collectively referred to as the "Leases" and singularly as a "Lease") now or hereafter in existence (as amended or supplemented from time to time) and

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covering space in or applicable to the Property, and Assignor desires and intends by this instrument to absolutely assign to Assignee all of Assignor's right, title and interest in, to and under the Leases.

THEREFORE, Assignor agrees as follows:

1. Assignor does hereby absolutely and unconditionally grant, transfer, bargain, sell, assign, convey, and set over unto Assignee, its successors and assigns, as security for the indebtedness secured by the Instrument, all of the right, title and interest of Assignor in, to and under the Leases, together with all rents, earnings, income, profits, benefits and advantages arising from the Property and from said Leases and all other sums due or to become due under and pursuant thereto, and together with any and all guarantees of or under any of said Leases, and together with all rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases, including, without limitation, the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, insurance proceeds, moneys and security payable or receivable under the Leases or pursuant to any of the provisions thereof, whether as rent or otherwise, the right to accept or reject any offer made by any tenant pursuant to its Lease to purchase the Property and any other property subject to the Lease as therein provided and to perform all other necessary or appropriate acts with respect to such Leases as agent and attorney-in-fac for Assignor, and the right to make all waivers and agreements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which the Assignor is or may become entitled to do under any such Lease. It is intended by Assignor that this Assignment constitute a present, absolute assignment of the Leases, and not an assignment for additional security only. Notwithstanding the provisions of this Section 1, so long as no Event of Default has occurred, Assignor shall have the revocable right and revocable license to occupy the Property as landlord or otherwise and to collect, use and enjoy the rents, issues and profits and other sums payable under and by virtue of any Lease (but only as the same become due under the provisions of such Lease) and to enforce the covenants of the Leases, provided that after any such Event of Default, any amounts collected by Assignor shall be held by Assignor in trust for the benefit of Assignee for use in the payment of all sums due on the Loan.

2. This Assignment is made and given and shall remain in full force and effect until: (a) the payment in full of all principal, interest and other sums due under the Note; and (b) the performance and observance by Assignor of all of the terms, covenants and conditions to be performed or observed by Assignor under the Note and the other Loan Documents.

3. Assignor represents, warrants, covenants and agrees: (a) that Assignor has good right and authority to make this Assignment, and Assignor holds the entire and unencumbered rights of the landlord under each of the Leases; (b) that neither Assignor nor any predecessor lessor has heretofore alienated, assigned, pledged or otherwise disposed of or encumbered the Leases, which remains effective as of the date hereof, or any of the sums due or to become due thereunder, and that neither Assignor nor any predecessor lessor has performed any acts or executed any other instruments which might prevent Assignee from operating under any of the terms and conditions of this Assignment or which would limit Assignee in such operation; (c)

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that Assignor has not accepted or collected rent or any other payments under any Lease, other than required security deposits, for any period subsequent to the current period for which such rent or other payment has already become due and payable; (d) that Assignor has not executed or granted any amendment or modification whatever of any of the Leases, either orally or in writing, which deviate from the Lease terms shown in the rent roll (the "Rent Roll") delivered by Assignor to Assignee in connection with the execution of the Note; (e) except as expressly stated in the Rent Roll, there is no default under any of the Leases now existing and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, would constitute an event of default under any of the Leases; (f) that Assignor will observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the Note, the Instrument, this Assignment or any other Loan Document and any Lease, on the part of Assignor to be kept, observed and performed; (g) to enforce the performance of each and every obligation, term, covenant, condition and agreement in said Leases by any tenant to be performed; (h) to appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with said Leases, or the obligations, duties or liabilities of Assignor or any tenant thereunder, and upon request by Assignee to do so in the name and on behalf of Assignee, but at the expense of Assignor; (i) that Assignor will, upon the request of Assignee, execute and deliver to Assignee such further instruments and do and perform such other acts and things as Assignee may deem reasonably necessary or appropriate to make effective this Assignment and the various covenants of Assignor herein contained, and to more effectively vest in and secure to Assignee the sums due or hereafter to become due under the Leases, including, without limitation, the execution of such additional assignments as shall be deemed necessary by Assignee effectively to vest in and secure to Assignee all rents, income and profits from any and all Leases; (j) that Assignor will from time to time, deliver to Assignee a true, correct and complete copy of each and every Lease then affecting all or any portion of the Property; and (k) that in the event any warranty or representation of Assignor herein shall be false, misleading or materially inaccurate, or Assignor shall default in the observance or performance of any obligation, term, covenant or condition hereof, then, in each instance at the option of Assignee, the same shall constitute and be deemed to be a default hereunder, under the Note and under the Instrument, thereby giving Assignee the absolute right to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all rights and remedies provided thereunder and hereunder as well as such remedies as may be available at law or in equity.

4. Assignor covenants and agrees that it will not, without in each instance the prior written consent of Assignee, or except as permitted in the Instrument: (a) enter into any new Lease except for an Exempt Lease; (b) cancel any Lease nor accept a surrender thereof except for an Exempt Lease; (c) reduce the rent payable under any Lease nor accept payment of any installment of rent in advance of the due date thereof except for an Exempt Lease; (d) change, amend, alter or modify any Lease or any of the terms or provisions thereof, nor grant any concession in connection therewith except for an Exempt Lease; (e) consent to the release or reduction of the obligations of the tenant under any Lease except for an Exempt Lease; (f) assign, pledge, encumber or otherwise transfer any Lease or Assignor's rights thereunder; (g) consent to an assignment of tenant's interest under any Lease or to a subletting thereof, except to the extent any such assignment or subletting is specifically authorized by such Lease; or (h) incur any indebtedness to the tenant or guarantor of any Lease, for borrowed money or otherwise, which may under any circumstances be availed of as an offset against the rent or other payments

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due thereunder; and any of the above acts, if done without the consent of Assignee, shall be, at the option of Assignee, null and void and shall constitute a default hereunder.

5. Assignor hereby consents to and irrevocably authorizes and directs the tenants under the Leases and any successor to the interest of any of said tenants, upon demand and notice from Assignee of Assignee's right to receive the rents and other amounts due under such Leases, to pay to Assignee the rents and other amounts due or to become due under the Leases, and said tenants shall have the right to rely upon such demand and notice from Assignee and shall pay such rents and other amounts to Assignee without any obligation or right to determine the actual existence of any default or event claimed by Assignee as the basis for Assignee's right to receive such rents and other amounts and notwithstanding any notice from or claim of Assignor to the contrary, and Assignor shall have no right to claim against said tenants for any such rents and other amounts so paid by said tenants to Assignee.

6. Upon the occurrence of an Event of Default, the right and license granted to Assignor in Section 1 above shall be automatically revoked and Assignee, at its option, shall have the complete right, power and authority (a) without taking possession, to demand, collect and receive and sue for the rents and other sums payable under the Leases and, after deducting all reasonable costs and expenses of collection (including, without limitation, attorneys' fees) as determined by Assignee, apply the net proceeds thereof to the payment of any indebtedness secured hereby; (b) to declare all sums secured hereby immediately due and payable, and, at its option, exercise any or all of the rights and remedies contained in the Note and in the Loan Documents; and (c) without regard to the adequacy of the security, with or without process of law, personally or by agent or attorney, or by a receiver to be appointed by court, then and thereafter to enter upon, take and maintain possession of and operate the Property, or any part thereof, together with all documents, books, records, papers, and accounts relating thereto and exclude Assignor and its agents and servants therefrom, and hold, operate, manage and control the Property, or any part thereof, as fully and to the same extent as Assignor could do if in possession and in such event, without limitation and at the expense of Assignor, from time to time cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the Property, or any part thereof, as Assignee deems judicious, and pay taxes, assessments and prior or proper charges on the Property, or any part thereof, and insure and reinsure the same, and lease the Property, or any part thereof, for such terms and on such terms as Assignee deems desirable, including leases for terms expiring beyond the maturity of the indebtedness secured by the Loan Documents and cancel any lease or sublease thereof for any cause or on any ground which would entitle Assignor to cancel the same.

7. After payment of all proper charges and expenses, including the just and reasonable compensation for the services of Assignee, its attorneys, agents, clerks, servants and others employed by Assignee in connection with the operation, management and control of the Property and the conduct of the business thereof, and such further sums as may be sufficient to indemnify Assignee from and against any liability, loss or damage on account of any matter or thing done in good faith in pursuance of the rights and powers of Assignee hereunder, Assignee may, at its option, credit the net amount of income which Assignee may receive by virtue of this Assignment and from the Property to any and all amounts due or owing to Assignee from Assignor under the terms and provisions of the Note and the Loan Documents. The balance of

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such net income shall be released to or upon the order of Assignor. The manner of the application of such net income and the item or items which shall be credited shall be within the sole discretion of Assignee.

8. The acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall neither be deemed or construed to constitute Assignee a mortgagee in possession nor at any time or in any event to impose any obligation whatsoever upon Assignee to appear in or defend any action or proceeding relating to the Leases or the Property, or to take any action hereunder, or to expend any money or incur any expenses, or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any tenant and not assigned and delivered to Assignee, or render Assignee liable in any way for any injury or damage to person or property sustained by any person or entity in, on, or about the Property.

9. Assignor agrees that the collection of rents and the application thereof as aforesaid or the entry upon and taking of possession of the Property, or any part thereof, by Assignee shall not cure or waive any default, or waive, modify or affect any notice of default under the Note or the Loan Documents, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect. If Assignee shall hereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

10. The rights and remedies of Assignee hereunder are cumulative and not in lieu of, but are in addition to, any rights or remedies which Assignee shall have under the Note, any of the Loan Documents, or at law or in equity, which rights and remedies may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any action taken hereunder. The rights and remedies of Assignee may be exercised from time to time and as often as such exercise is deemed expedient, and the failure of Assignee to avail itself of any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

11. The right of Assignee to collect and receive the rents assigned hereunder or to take possession of the Property, or to exercise any of the rights or powers herein granted to Assignee shall, to the extent not prohibited by law, also extend to the period from and after the filing of any suit to foreclose the lien created under any of the Loan Documents which cover the Property, including any period allowed by law for the redemption of the Property after any foreclosure sale.

12. Assignor agrees to indemnify, defend and hold Assignee harmless of, from and against any and all liability, loss, damage or expense, which Assignee may or might incur 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 the part of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, loss or damage under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including

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costs, expenses and reasonable attorneys' fees, together with interest thereon at the same rate of interest as provided in the Note with respect to the principal indebtedness of Assignor to Assignee, shall be secured by this Assignment and by the Loan Documents, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

13. In addition to the above, upon the occurrence of an Event of Default, Assignor expressly consents to the appointment of a receiver for the Property, without notice, either by the Assignee or a court of competent jurisdiction, to take all acts in connection with the Property permitted by law or in equity and to deduct from any and all rents received from the Leases an amount approved by the court to compensate such receiver for its actions.

14. All notices to the parties hereunder shall be given in accordance with the Instrument. Notices to tenants may occur by any commercially reasonable means.

15. This Assignment shall be assignable by Assignee and all representations, warranties, covenants, powers and rights herein contained shall be binding upon, and inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

16. This Assignment may be executed, acknowledged and delivered in any number of counterparts and each such counterpart shall constitute an original, but together such counterparts shall constitute only one instrument.

17. If any one or more of the provisions of this Assignment, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Assignment and all other applications of any such provision shall not be affected thereby.

18. Upon a sale, conveyance, transfer or exchange of all or a part of the Property, the term "Assignor" as used herein shall include the transferee or grantee in such transaction. The preceding sentence shall not be deemed to permit any sale, conveyance, transfer or exchange which is prohibited or restricted by the terms of any Loan Document.

19. This Assignment shall be governed by the law of the state in which the Property is located and applicable federal law.

20. If there is any conflict between the terms of this Assignment and the provisions pertaining to assignment of rents and leases in the Instrument, Assignee shall have the right to select the applicable provision.

21. The obligations of Assignor hereunder are subject to limitations on recourse as provided in the Instrument.

22. THE ASSIGNOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THE ASSIGNOR MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THE NOTE, THE INSTRUMENT, THIS

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ASSIGNMENT, ANY OTHER LOAN DOCUMENT, ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

23. The Assignee shall have the right to assign, in whole or in part, the Note, the Instrument, this Assignment and any other Loan Document and all of its rights hereunder and thereunder, and all of the provisions herein and therein shall continue to apply to the Loan. The Assignee shall have the right to participate the Loan with other parties.

24. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original.

25. This Assignment is being executed in connection with the making of the Loan pursuant to the terms of the Note. The Assignor's liability under this Assignment shall be limited to the same extent provided in the Note and the Instrument.

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

ASSIGNOR:

DODI SCHAUMBURG L.L.C., an Illinois limited liability company

By: Dodi Schaumburg Management, Inc.,  
an Illinois corporation, its manager

By: *Iran S. Novick*  
Name: IRAN S. NOVICK  
Its: VICE PRESIDENT

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STATE OF ILLINOIS     )  
                                  ) SS:

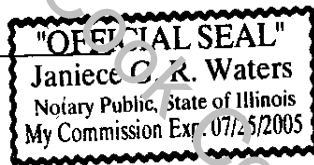
COUNTY OF COOK     )

I, Janiece G.R. Waters, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Dan S. Novick, the Vice President of Dodi Schaumburg Management, Inc., the manager in Dodi Schaumburg L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, 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 of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2 day of December, 2002.

Janiece G.R. Waters  
Notary Public

My commission expires \_\_\_\_\_



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## EXHIBIT A

### LEGAL DESCRIPTION

#### Parcel 1

Lot 1 in Town Square Resubdivision, being a Resubdivision of Lot 2 of Town Square Shopping Center Subdivision, and Lots 1 and 2 of Wilk's Subdivision, and part of the Northeast 1/4 of the Southwest 1/4 of Section 22, Township 41 North, Range 10 East of the Third Principal Meridian, lying and being in the Village of Schaumburg, Cook County, Illinois.

#### Parcel 2

Easements for the benefit of Parcel 1 contained in the Declaration of Easements and Protective Covenants for Town Square Shopping Center recorded April 25, 1996 as Document 96328988.

07-22-301-046-0000

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