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ASSIGNMENT OF LANDLORD'S  
INTEREST IN RENTS AND LEASES

MIDWAY REALTY ASSOCIATES L.P. II

to

PROVIDENCE LIFE INSURANCE COMPANY,  
on behalf of its Harvest Real Estate Annuity Account (P)

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DEPT-01 RECORDING

123.

County: Cook

T#4444 TRAM 0331 02/18/87 13:35:00

City: Alsip

#6610 # 17 \* - 37 - 0 87096220

State: Illinois

COOK COUNTY RECORDER

Dated: February 2, 1987

Permanent Tax Numbers 24-21-300-022, Volume 246

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Record and return by mail to:

DEMOV, MORRIS & HAMMERLING  
40 West 57th Street  
New York, New York 10019  
Attention: Lawrence A. Kestin, Esq.

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## ASSIGNMENT OF LANDLORD'S INTEREST IN RENTS AND LEASES

THIS ASSIGNMENT made this 2nd day of February, 1987, by MIDWAY REALTY ASSOCIATES L.P. II, a Texas limited partnership (the "Assignor") having an address c/o Bernstein & Gershman, 300 Garden City Plaza, Garden City, New York 11530, to PROVIDENCE LIFE INSURANCE COMPANY, a New Jersey insurance company, acting on behalf of Harvest Real Estate Annuity Account (P) (the "Assignee") having its principal office at One Bridge Plaza, Fort Lee, New Jersey 07024.

### W I T N E S S E T H:

In consideration of the sum of Ten and no/100 (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby grants, transfers and assigns to Assignee all of the right, title and interest of Assignor in, to and under all of the Leases (as defined in paragraph 6 hereof) now or hereafter relating to the premises and improvements thereon located, described in Schedule A attached hereto and generally known as Leaseway Transportation Warehouse, which is located just off Interstate Route 294 in Alsip, Cook County, Illinois (the "Premises"), and the rents, issues and profits therefrom, including any security deposited thereunder, which Leases cover certain space located at the Premises.

1. This Assignment is given as security for:

A. Payment of an indebtedness owing by Assignor to Assignee in the principal amount of \$4,000,000.00 (the "Loan"), which Loan shall be secured by a mortgage on the Premises in the principal amount of

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\$4,000,000.00 (the "Mortgage"), and further secured in whole or in part by this Assignment, standard UCC-1 financing statements and such other loan documents evidencing, securing or delivered in support of the Loan as may be required by Assignee.

B. Payment of all principal, unpaid and accrued interest, the Contingent Interest (as defined in the Note), the Additional Contingent Interest (as defined in the Note) and any other sums due or payable under the Mortgage and the note secured thereby (the "Note").

C. Performance and discharge of each and every obligation, covenant and agreement of Assignor herein or arising from the Note or the Mortgage.

2. To protect the security of this Assignment, Assignor covenants and agrees:

A. To faithfully abide by, perform and discharge each and every obligation, covenant and agreement under the Leases to be performed by the landlord thereunder.

B. At the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement under the Leases to be performed by the tenant thereunder.

C. Not to modify or amend the Leases, or to permit a surrender thereof, or in any way alter, extend or renew the terms of the Leases, except as may now be permitted thereunder.

D. Not to accept the prepayment of rents under the Leases more than one (1) month in advance, or to waive, excuse, condone or in any manner release or discharge the tenants thereunder of or from the obligations, covenants, conditions and agreements to be performed by said

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tenants, including the obligation to pay the rental called for thereunder in the manner and at the place and time specified therein.

E. Expressly to release, relinquish and surrender unto Assignee, all of its right, power and authority to amend, modify or in any way alter the terms or provisions of the Leases, and any attempt on the part of the Assignor to exercise any such right without the written authority and consent of Assignee shall constitute a breach of the terms of the Assignment entitling Assignee to declare all sums secured by this Assignment immediately due and payable.

F. At Assignor's sole cost and expense, to 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 the landlords and tenants thereunder, and to pay all costs and expenses of Assignee, including attorneys' fees and disbursements, in any action or proceeding concerning the Leases in which Assignee may appear.

G. In the event Assignor fails to make any payment or do any act as herein provided, then Assignee, after ten (10) days written notice (which notice may be concurrent with any other notice given to Assignor under or pursuant to the terms of the Mortgage) to or demand on Assignor (except where Assignee shall reasonably determine there exists an emergency, in which event no notice or demand shall be required), but without releasing Assignor from any obligation hereunder, may make or do the same (but without the obligation so to make or to do) in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including, without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge

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each and every obligation, covenant and agreement of landlord under the Leases and, in exercising any such powers, to pay necessary costs and expenses, employ counsel and incur and pay attorneys' fees and disbursements.

H. To pay immediately upon demand all sums expended by Assignee under or in connection with the authority granted in this Assignment, together with interest thereon at the rate of eighteen (18%) percent per annum.

3. It is mutually agreed that:

A. So long as there shall exist no default by Assignor which shall remain uncured beyond any applicable grace period (except with respect to a default of the nature described in Article 18(1) or (m) of the Mortgage, in which event no such grace period shall apply) (i) in the payment of any indebtedness secured by this Assignment, or (ii) in the performance of any obligation, covenant or agreement herein, or (iii) under the Note, Mortgage and all other instruments executed in connection therewith, Assignor shall have a license to collect all rents, issues and profits under the Leases (but not prior to their accrual) and to retain, use and enjoy the same. Assignor shall hold the current rents, issues and profits under the Leases, or an amount sufficient to discharge all current sums due on the Loan, in trust for payment of sums due under the Loan.

B. Upon or at any time after a default which shall remain uncured beyond any applicable grace period (except with respect to a default of the nature described in Article 18(1) or (m) of the Mortgage, in which event no such grace period shall apply) in the payment of any indebtedness secured by this Assignment, or in the performance of any

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obligation, covenant or agreement contained herein or in the Note or Mortgage, Assignee may declare all sums secured hereby immediately due and payable and Assignee may, at its option, without notice and without regard to the adequacy of security for the indebtedness hereby secured, with or without bringing any action or proceeding, and with or without a receiver (i) enter upon, take possession of, manage and operate the Premises or any part thereof, (ii) make, cancel, enforce or modify the Leases, (iii) obtain and evict tenants, and fix or modify rents, (iv) do any acts which Assignee deems proper to protect the security hereof, (v) to take possession and control of any security deposited under the Leases, and (vi) either with or without taking possession of all or any part of the Premises, in its own name sue for or otherwise collect and receive such rents, issues and profits, including those past due and unpaid, and collect any security deposited under the Leases, and apply the same, less costs and expenses of operation and collection, including attorneys' fees and disbursements, upon any indebtedness secured by this Assignment. The entering upon and taking possession of all or any part of the Premises or the security, the collection of such rents, issues and profits and any security, and the application thereof as aforesaid shall not cure or waive any default, or waive, modify or effect notice of default under the Note or Mortgage, or invalidate any act done pursuant to such notice.

C. Nothing contained in this Assignment shall impose or create any obligation or liability whatsoever, expressed or implied, upon Assignee, with respect to or in any manner arising out of the Leases assigned as security hereunder. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or

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discharge, any obligation, duty or liability under the Leases or under or by reason of this Assignment.

D. Assignor shall and does hereby agree to indemnify and to hold Assignee free and harmless of and from any and all liability, loss or damage which Assignee may or might incur under the Leases or under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to be performed or discharged under any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees and disbursements, shall be secured hereby, and Assignor shall reimburse Assignee therefor immediately, upon demand and, upon the failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

E. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon Assignee, nor the fulfillment of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Premises by the tenants under the Leases or any other parties, or for any dangerous or defective condition existing at 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.

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4. Upon the payment in full of all indebtedness secured by the Mortgage and this Assignment, this Assignment shall be and become void and of no effect.

5. It is understood that the Leases (as defined in paragraph 6 hereof) are and shall remain subordinate and inferior in status and lien to the lien of the security interest created pursuant to the Mortgage, and nothing herein contained shall affect or impair the paramount lien of the Mortgage.

6. The term "Leases" as herein used means the Leases hereby assigned or any extensions, replacements or renewals thereof and any Leases subsequently executed by Assignor covering all or any part of the Premises.

7. Any notices, demands, certifications, requests, communications or the like ("Notices") required to be given hereunder shall be given by registered mail, postage prepaid, and addressed to Assignor c/o Bernstein & Gershman, 300 Plaza, Garden City, New York 11530, with a copy to Newman, Tannenbaum, Helporn, Syracuse & Hirschtritt, 900 Third Avenue, New York, New York 10022-4775, Attention: Robert E. Helporn, Esq., and to Assignee c/o Resources Variable Account Management Corp., 656 Third Avenue New York, New York 10017 with a copy to Demov, Morris & Hammerling, 40 West 57th Street, New York, New York 10019, Attention: Lawrence A. Kestin, Esq. or such other address as such party may for itself hereafter designate in writing in like manner for the purpose of receiving Notices hereunder. Notice shall be deemed given two (2) business days after such Notice shall have been deposited with the United States Postal Registry Clerk.

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8. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

9. This Assignment may not be changed, terminated or modified orally or in any manner other than by an agreement in writing signed by the parties sought to be charged therewith.

10. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original.

12. Any waiver by Assignee of any provision of this Assignment or of any right, remedy or option hereunder shall not be controlling, nor shall it prevent or estop Assignee from thereafter enforcing such provision, right, remedy or option, and the failure or refusal of Assignee to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Assignment by Assignor shall not be construed as a waiver or relinquishment for the future of any such term or provision, but the same shall continue in full force and effect, it being understood and agreed that Assignee's remedies and options hereunder are and shall be cumulative and are in addition to all other rights, remedies and options of Assignee in law or in equity or under any other agreement.

13. All personal pronouns used in this Assignment whether used in the masculine, feminine or neuter gender shall include all other genders; the singular shall include the plural and vice versa.

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14. In the event that any provision of this Assignment or the application thereof to Assignor or any circumstance in any jurisdiction governing this Assignment shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Assignment and the application of any such invalid or unenforceable provision to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Assignment.

15. Partners or members of Assignor shall have no personal liability with respect to the obligations entered into herein on behalf of Assignor. The obligations of Assignor under this Assignment may be enforced only against the interest of Assignor in the Premises and against the rents, issues and profits thereof and Assignee, by its acceptance hereof, agrees that no judgment shall, in any event, be entered against the partners or members of Assignee in any action under this Agreement, except that the partners and members of Assignor shall not be released personally to the extent that they have received rentals or other revenues or payments in respect of the Premises less than 91 days prior to the occurrence of a default under any of the Loan Documents that has not been used for payment of debt service on the Loan, real estate taxes and/or ordinary and necessary operating expenses relating to the Premises as determined by Providence in its sole reasonable discretion; provided,

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however, that the provisions of this paragraph shall in no way affect Assignee's other remedies or Assignee's rights or liens in and to the Premises, or any part thereof, or the enforcement of any other covenant under this Assignment.

16. Except for this Assignment, there exists no other assignment of any of the right, title and interest of Assignor in, to and under any of the Leases.

17. Assignee is hereby appointed by Assignor as its true and lawful attorney-in-fact in its name, place and stead to perform and comply with all of the obligations of Assignee hereunder.

18. Assignor hereby represents and warrants to Assignee that, to the best of its knowledge as of the date hereof, (1) no default exists under

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the Leases, (ii) all of the Leases are in full force and effect and (iii) Assignor has delivered to Assignee true and complete copies of the Leases.

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

ATTEST:

*MA Bernstein*

MIDWAY REALTY ASSOCIATES L.P. II

By: MIIGP Associates L.P.,  
general partner

By: *[Signature]*  
Richard S. Gershman,  
general partner

By: *[Signature]*  
Marshall A. Bernstein,  
general partner

By: MRIIGP Corp., general partner

By: *[Signature]*  
As: *[Signature]*

WITNESS:  
*Carol A. Meyer*

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THIS INSTRUMENT WAS PREPARED BY:

Lawrence B. Brownridge, Esq.  
Demov, Morris & Hammerling  
40 West 57th Street  
New York, New York 10019  
(212) 757-5050

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STATE OF NEW YORK )  
 : SS.:  
COUNTY OF NEW YORK )

On the 2nd day of February, 1987, before me personally came Richard S. Gershman, to me known, who, being by me duly sworn, did depose and say that he is a general partner of MRIIGP Associates, L.P., the limited partnership, described in the foregoing instrument; and which executed same as a general partner in the Illinois limited partnership known as Midway Realty Associates, L.P. II, and that he executed same on behalf of said partnership as the free act and deed of said partnership.

Kathy L. Andriko  
Notary Public

STATE OF NEW YORK )  
 : SS.:  
COUNTY OF NEW YORK )

KATHY L. ANDRIKO  
Notary Public, State of New York  
No. 4766925  
Qualified in New York County  
Commission Expires February 28, 1989

On the 2nd day of February, 1987, before me personally came Marshall A. Bernstein, to me known, who, being by me duly sworn, did depose and say that he is a general partner of MRIIGP Associates, L.P., the limited partnership, described in the foregoing instrument; and which executed same on as a general partner in the Illinois limited partnership known as Midway Realty Associates, L.P. II, and that he executed same on behalf of said partnership as the free act and deed of said partnership.

Kathy L. Andriko  
Notary Public

STATE OF NEW YORK )  
 : SS.:  
COUNTY OF NEW YORK )

KATHY L. ANDRIKO  
Notary Public, State of New York  
No. 4766925  
Qualified in New York County  
Commission Expires February 28, 1989

On the 2nd day of February, 1987, before me personally came Marshall A. Bernstein, to me known, who, being by me duly sworn, did depose and say that he is the Vice President of MRIIGP Corp. the corporation described in the foregoing instrument and which executed same as a general partner in the Illinois limited partnership known as Midway Realty Associates L.P. II, and that he signed his name thereto by order of the board of directors of said corporation.

Kathy L. Andriko  
Notary Public

KATHY L. ANDRIKO  
Notary Public, State of New York  
No. 4766925  
Qualified in New York County  
Commission Expires February 28, 1989

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## SCHEDULE "A"

Land in the Cook County, State of Illinois, described as:

### PARCEL 3-A:

That part of the West two-thirds of the Southwest Quarter of Section 21, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, bounded and described as follows:

Beginning at the point of intersection of the East line of the West 33.00 feet of said Southwest Quarter of Section 21, with a line which is 1766.00 feet South from and parallel with the North line of said Southwest Quarter, and running

Thence South along said East line of the West 33.00 feet of the Southwest Quarter of Section 21, a distance of 373.00 feet to an intersection with a line which is 2139.00 feet South from and parallel with the North line of said Southwest Quarter of Section 21;

Thence East along said parallel line, a distance of 1137.78 feet to a point which is 599.85 feet, measured along said parallel line, West from the East line of said West two-thirds of the Southwest Quarter of Section 21;

Thence Southeastwardly along the arc of a circle, convex to the Northeast, Tangent to said parallel line, and having a radius of 420.0 feet, a distance of 529.45 feet to an intersection with a line which is 200.00 feet, measured perpendicularly, West from and parallel with the East line of the West two-thirds of the Southwest Quarter of Section 21, which point of intersection is 2430.79 feet, measured along said parallel line, South from the North line of said Southwest Quarter of Section 21;

Thence North along said last described parallel line, a distance of 373.00 feet;

Thence Norhtwestwardly along the arc of a circle, convex to the Northeast and having a radius of 420.00 feet, a distance of 529.45 feet to a point which is 1766 feet South from the North line of said Southwest Quarter of Section 21, and 599.85 feet, measured parallel with said North line of the Southwest Quarter, West from the East line of said West two-thirds of said Southwest Quarter; and

Thence West along a line which is 1766.00 feet South from and parallel with the North line of said Southwest Quarter (said parallel line being tangent to said last describe circle) a distance of 1137.70 feet to the point of beginning.

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