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03-14-403-046-0000 03-14-405-017-00

as Assignor

and

Greenwich Capital Markets, Inc., as Assigned

ASSIGNMENT OF LEASES AND RENTS

As of December 19, 1997

Capitol Commerce Center Wheeling, Illinois

(Cook County)

Permanent Indea Nos.;

03-14-403-009-0000 03-14-403-010-0060 03-14-403-014-0000 03-14-403-015-0000 03 14-403-016-0000 🚴 14-403-920-900a **)4-403-023-0000** 02-14-403-024-0000 03-14-403-025-0000 03-14-403-026-0000 03-14-403-927-0000 03-14-40: 035-0000 03-14-403-036-000 D3-14-403-042-000 03-14-403-043-000

03-14-403-044-0000 03 14 403-045-0000

RECORD AND RETURN TO:

Battle Fowler LLP Park Avenue Tower 75 East 55th Street New York, New York 10022 Attention: Dean A. Stiffle, Esq.

C/M 11254-0052 661956-2

BOX 333-CTI

#### ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents entered into as of the 19th day of December, 1997, by Transwestern Capitol Commerce, L.L.C., a Delaware limited liability company having an office c/o Transwestern Investment Company, L.L.C., Three First National Plaza, Surte 4030, Chicago, Illinois 60602-4232 (hereinafter referred to as "Assignor"); and Greenwich Capital Markets, Inc., a Delaware corporation having an office at 600 Steamboat Road, Greenwich, Connecticut 06830 (hereinafter referred to as "Assignoe").

#### PRELIMINARY STATEMENT

- A. All capitalized terms as used in this Assignment shall, unless oth case defined in this Assignment, have the meanings given to such terms in Exhibit A attached hereto.
- b. Pasignor is the owner of a fee estate in the premises described in **Exhibit B** attached hereto (hereinafter referred to as the "Premises");
- C. Assigner has on the terms, covenants and provisions set forth in the Credit Agreement extended to Borrowers a revolving credit facility in the original principal sum of up to, but not in excess of, \$50,000,000 (hereinafter referred to as the "Credit Facility"), which Credit Facility is evidenced by, and payable together with interest thereon in accordance with the provisions of, the Credit Facility Note.
- of the collateral poll for the Credit Facility in accordance with the previsions of the Tredit Agreement, and in connection therewith, and as consideration therefor, Assignor has agreed to assign to Assignor, in the manner hereinatter provided, all right, title and interest of Assignor now owned, or hereafter adquired, in and to (i) all leases, licenses and other agreements (hereinatter collectively referred to as the "Leases") now or hereafter entered into and aftecting or relating to the use or occupancy of the Premises or of the improvements now or hereafter energy (the "Improvements"), and (ii) the rents, income, revenues, receipts, accounts, accounts receivable, issues and profits of or derived from or relating to the Premises or the Improvements or any portion thereof and whether payable under the Leases or otherwise (hereinatter collectively referred to as the "Rents").
- E. MOW, THEREFORE, in consideration of the extension of the Credit Facility and other good and valuable consideration, the receipt of which is hereby a knowledged, and additionally for securing the payment of the Debt and the abservance and performance by Borrowers of all of the terms, dovenants and provisions of the Credit Facility Documents on Borrowers' part to be observed or performed, Assignor hereby assigns to Assignee, all of Assignor's right, citle and interest now owned, or hereafter acquired, in and to the Leases and the Rents, and Assignor hereby represents and warrants to and covenants and agrees with Assignee as follows:
- 1. Except as expressly set forth to the contrary in **Exhibit C** attached hereto, Assignor represents and warrants that as of the date hereot (1) Assignor is the owner and holder of the landlord's interest

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under the Leader, 111, there are no prior or subordinate assignments of the Leases or it my puttion of the Rents due and payable or to become due and payable thereunder which are presently outstanding, (iii) the Leases have not been modified or amended, (iv) all of the Leases are in full force and effect and the respective terms thereof have commenced pursuant to the provisions thereot, (V) the premises demised under each of the Leases have been completed and the tenints under the Leases have taken possession of the premises demised thereunder on a rent paying basis, (vi) norther Assignor nor, to Assignor's hest knowledge, any tenant under the Leases is in default under any of the terms, sevenumber to provisions of the Leases and Assignor knows of no event which, but for the passage of time of the giving of notice or both, would Constitute an event of default under any of the Leases, (Vii) neither Assignor not, to Assignor's best knowledge, any tenant under the Leases has commenced any action or given or served any notice for the purpose of terminating any of the Legal oprovided, however, Assignor has not necesived any such notice from any tenance. (Viii All Rents due and payable under the Leases have been paid in full and us such Fents have been paid more than one (1) month in advance of the due dates thereof, and (ix) to Assignor's best knowledge, there are no offsets or befores to the payment of any portion of the Rents,

Assignor shall, at its sole cost and expense, (1) fulfill and perform, or cause to be fulfilled and performed, in all material temperts, each and every term, covenant and provision of the Leases on the part of the lundlers therearder to be observed and performed, (ii) promptly send copies of all notices of detault which Assignor shall send or receive under the Leases to Assigner, ((ii) enforce, short of termination thereof, the observance and part image or each and every material term, covenant and provision of the Leases on the rist of the tenants thereunder to be observed and performed and ((1)) appear in and defend any action or proceeding arising under or in any manner connected with the Leases or with the obligations and undertakings of the landlord or the tenants thereunder.

- Assignor shall not, without the prior consent of Assignee, it imither transfer, sell, assign pledge, encumber or grant a security interest in all or any portion of the Rents or the Leases, (ii) accept prepayments of installments of the Rent: for a period of more than one (1) month in advance, (iii) make or suffer to be made any Lease, including any renewal of an existing Lease (other than renewals at rents and on other terms expressly reserved in such Lease) other than in accordance and in a manner consistent with the provisions of the Credit Agreement, (iv) consent to or permit the assignment or subjetting of any leasehold estate created under any Lease (other than in accordance with the express provision, of such Lease), (v) terminate, modify or amend, or consent to the termination, modification or amendment of, any hease or any term thereof other than in accordance and in a manner consistent with the provisions of the Credit Agreement, (vi) commence or continue proceedings to evict, remove or dispossess the tenant under any Lease, other than in accordance and in a manner consistent with the provisions of the Gredit Agreement, or (vii) waive, cancel, release, modify, excuse, wondone, set mott, compromise of in any manner release or discharge the tenant under any hease, other than in accordance and in a manner consistent with the provisions of the Credit Agreement.
- 4. This Assignment shall not be deemed or construed to obliqute Assignee to take any action or incur any expense or perform or discharge any obliquation, duty or liability under the Leases, and Assignor hereby agrees to indemnify and hold harmless Assignee, Assignee's affiliates, subsidiaries, directors, officers and employees from and against all losses,

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costs, damages, penalties, judgments, liabilities and expenses (including, withour limitation, reasonable attorneys! fees and disbursements), which any of them may pay or inpur under the Leases or under or by reason of this Assignment and from and against all claims and demands whatsoever which may be asserted against Assignee or Assignee's affiliates, subsidiaries, directors, officers or employees by reason of any alleged obligation or undertaking on the part of Assigned to perform or discharge any of the terms, covenants or provisions contained in the Leases, provided, however, that the aforemaid indemnification shall not apply to any such loss, cost, damage, penalty, judgment, liability or expense which is incurred by Assignee as a result of its gross nealt pence or willful misconduct. Should Assignee incur any such loss, cost, damage, penalty, judgment, liability or expense (including, without limitation, reasonable attorneys' fees and all expenses of litigation or preparation theretor whether or not Assignee is a party thereto) under the Leases of under or by reason of this Assignment, the amount thereof, together with interest on such amount at the rate of interest from time to time applicable to the Credit Facility Note from the date such amounts were incurred by, to the date of payment to, Assignee or such other parties, shall be secured by the Credit Facility Documents, and Assignor shall reimburse Assignee therefor within ten (10) days after demand. The obligations of Assigner under this paragraph shall survive the termination of this Assignment.

Ascomer hereby absolutely and unconditionally assigns to Assignee, all right, title and interest of Assigner in and to all Leases and Rents, it being intended by Assignor that this Assignment constitutes a present, do dute essimment aid not an assignment for additional security only. Nevertheless, subject to be provisions of this Assignment hereinafter set forth, Assignee grants to Assignor a revocable license to operate and manage the Property and to collect the Rents. Assignor shall collect and hold the Rents, at an amount sufficient to discharge all current sums due on the Debt, in trust for use in the payment of the Debt. Subject to the provisions of paragraph 11 of the Credit Agreement, apen the occurrence of a Springing Lockbox Event and without the need for notice or demand, the license granted to Assign  $\sigma$  shall subsmatically be revoked, and Assignee shall be entitled to take possession of all Bents, whether or not Aslighee enters upon or takes control of the Ereperty. Following such revocation. Assignee may, but shall not be obligated to, collect the Rents, and provided such Springing Lockbox. Event has essured as a result of the occurrence of an Event of Default, Assignee may retain and apply the Rents toward payment of the Debt in such order, priority and proportions as Assignee in its discretion, shall deem proper, or to the specifion, maintenance and repair of the Property, and irrespective. I whether Assignee small have declared the Debt to be immediately be and payable, or shall have commenced a foreclosure of the Mortgage of shall have applied or arranged for the appointment of a receiver, In addition to the taregoing rights of Assigner, and at all times adject to the provisions of paragraph II of the Credit Agreement, Assignee shall have the absolute and inconditional right following the occurrence of a Springing Lockbox Event, and without prior notice (except as expressly set forth in the Credit Agreement) to Assignor, (i) to deliver the Tenant Notices to the tenants under the Leades, or (ii) in the event such Springing Lockbox Event has occurred as a result of the occurrence of an Event of Default, to otherwise natity the tenants under the Leanes that all Rents should be paid directly to for at the direction of Assignee. It Assignee exercises its tights pursuant to the preceding sentence, Assignor shall tacilitate in all reasonable ways the collection of the Rents by Assignee, and without implying the necessity therefor will, upon demand of Assignee, execute written notices

(or supplemental netices if notices were previously sent but are then currently being requested by Assignee) to the tenants under the Leases directing the tenants under the Leases to pay the Rents to or at the direction of Assignee, which Kents (if after the occurrence of an Event of Default) may be retained and applied by Assignee toward the payment of the Debt in such order, priority and proportions as Assignee, in its sole discretion, shall deem proper, or to the operation, maintenance and repair of the Property.

- Upon, or at any time after, the occurrence of an Event of Default, Assignee shall have the right, at its option, to enter upon and take over and assume the management, operation and maintenance of the Property and to perform all necessary and proper acts and to expend such sums out of the income of the broperty as may be necessary in connection therewith, in the same manyer and to the same extent as Assignor theretofore might do, including the right of effect new Leases, cancel or surrender the Leases, alter, modify or amend the provisions thereof, or make concessions to the tenants thereunder and Assignor receby releases and waives all claims against Assignee arising out of such ware generat, operation and maintenance (unless resulting directly from the gross leadingence or willful misconduct of Assignee). Assignor shall, from time to time, at its expense, execute, deliver, file and record any statement, assignment, instrument, document, agreement or other paper and take any other action (including any filings of financing or continuation statements under the Unitorm Commercial Code) that from time to time may be necessary or that Assignee may reasonably request, in order to create, preserve, pertect, contrim or validate the assignment of the Leases and Rents made pursuant to the provision, of this Assignment of to enable Assignee to obtain the full benefits of this Assignment, or to enable Assignee to exercise and entorce my of its rights, powers and remedies hereunder. To the extent permitted by apply table law, Assigner hereby authorizes Assignee, and appoints Assignee as its true and lawful attorney (with full power of substitution, in the name of Assigner, to execute and tile financing statements or continuation statements without Assignor's signature appearing thereon.
- Assignee upon the Property as hereinabove provided, shall be construed as to constitute Assignee as a mortgagee in possession.
- 9. Nothing contained in this Assignment is intended or shall be construed to prevent Assignee in the exercise of its discretion from toreclosing the Mortgage or otherwise entorcing the provincions thereof or of any of the other Credit Facility Documents, in whole or it part, in accordance with their terms.
- No alteration, extension, renewal, change, modification, release, amendment, compromise or cancellation, in whole or in part, of any term, revenant or provision of any of the other Credit Pacifity Documents shall after this Assignment in any manner or diminish or release any of the rights of Assignment hereunder.
- That Assignee institute any action or proceeding in law or in equity against any other pirty, it exhaust its remedies under any of the other Credit Faulity Departments as a condition precedent to exercising its rights and remedies under this Assignment. All remedies afterded to Assignee by reason of this Assignment are separate and cumulative remedies and it is agreed that no one of such remedies whether exercised by Assignee or not, shall be deemed to be in exclusion of any of the other remedies available to Assignee and

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shall not in any manner limit or prejudice any other legal or equitable remedies which Assignee may have, including, but not limited to, all rights and remedies of Assignee under any of the other Credit Facility Documents.

- all other Leases affecting the Property or any portion thereof presently in effect or hereafter entered into by Assignor or in which Assignor shall otherwise have an interest shall be covered by the provisions of this Assignment and all such Leases and all of Assignor's right, title and interest in all such Leases, and the rents, additional rents, charges, issues, profits and other sums payable thereunder, are hereby assigned to Assignee until the end of the respective terms thereof and any renewals or extensions thereof, subject to all of the terms, covenants and provisions of this Assignment. Assignor shall deliver a true and correct copy of each such Lease to Assignee promptly after the execution and delivery of the same, together with a copy of the execute. Terms Notice. Assignor shall, upon the request of Assignee, execute and seliver in resordable form all instruments which Assignee may reasonably sequent to further evidence and confirm such assignment of each such Lease.
- This Assignment shall be binding upon Assignor, and its successors and assigns and shall inure to the benefit of Assignee, and its successors and assign.
- 13. This Assignment may only be modified, altered, amended, or terminated by an agreement in writing executed by the parties hereto.
- 14. Any notice, correst, demand, statement or consent made hereunder or in connection herewith shall be in writing and shall be sent in the manner specified in the Credit Agreement.
- 15. It any term, covenant or condition of this Assignment shall be held to be invalid, illegal or unencorpeable in any respect, this Assignment shall be construed without such provision.
- It. This Assignment also secures any and all future obligations and indebtedness arising under or in connection with the Credit Agreement, the Martgage and any of the other Credit Facility Documents, which future obligations and indebtedness shall have the same priority as it all such future obligations and indebtedness were made on the cate of execution hereof. Nothing in this paragraph, or in any provision of this Assignment shall be deemed either (a) an obligation on the part of Assignment future advances of any sort other than as expressly set forth in the Credit Agreement or (b) an agreement on the part of Assignee to increase the amount of the Credit Facility.
- i'. This Assignment shall be governed by and construed under the laws of the State in which the Property is located.

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

TRANSWESTERN CAPITOL COMMERCE, L.L.C.

By: Business Properties Funding Co., L.L.C., its sole member

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COUNTY OF CARK) SS. MARRIEN BOK.

the State attresardy do hereby certify that Dicerce (a) A(max) the of Eusiness Properties Funding Co., L.L.C., the sole member of Transwestern Capital Commerce, L.L.C., a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the tormjoing instrument appeared before me this day in person and asknowledged that he signed and delivered the said instrument as his own free and volvatury act as Manager and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Municipal Set Totth

Well under my hand and notarial seal, this Stk

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> OFFICIAL BEAL MARY D. KLAUS NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 12-6-2001 Clary's Office

### **UNOFFICIAL COPY**

#### EXHIBIT A (Definitions)

Assignee: The term "Assignee" as used in this Assignment shall have the meaning given to such term in the preamble to this Agreement.

<u>Assignor</u>: The term "Assignor" as used in this Assignment shall have the meaning given to such term in the preamble to this Agreement.

BDP Funding: The term "BDP Funding" as used in this Assignment shall mean Business bevelopment Funding Co., L.L.C., a Delaware limited liability company.

<u>BDVLLC</u>: The term "BDPLLC" as used in this Assignment shall mean Business Development Properties, L.L.C., a belaware limited liability company.

Borrowers: The term "Borrowers" as used in this Assignment shall collectively mean BFLC, BFFLC, BF Funding, BFF Funding and all other parties which, from time to time suice quent to the date hereof, execute and deliver to Assignee a Joinder and Assumption Agreement in accordance with the provisions of paragraph 9 of the Credit Agreement, and who are, as a result thereof, designated as a "Borrower" or an "Additional Borrower", under and pursuant to the provisions of the Credit Agreement.

BP Funding: The term "BP Finding" as used in this Assignment shall mean Business Properties Funding Co., L.L.C., a Delaware limited Hability company.

BPLLC: The term "BPLLC" as used in this Assignment shall mean Business Properties, L.L.C., a Delaware limited liability company.

Credit Agreement: The term "Credit Agreement" as used in this Assignment shall mean that certain Revolving Credit Agreement dated as of December 4, 1997 among Assignee, BPLLC, BPFLLC, BP Function and BDP Funding, as the same may be modified or amended from time to time, and pursuant to the provisions of which the Credit Pacility is being extended by Assignee to Borrowers.

<u>Credit Facility:</u> The term "Credit Facility" as used in this Assignment shall have the meaning given to such term in paragraph C of the Preliminary Statement of the Assignment.

<u>Credit Facility Documents</u>: The term "Credit Facility Documents" as used in this Assignment shall have the meaning given to such term in the Credit Agreement.

<u>Credit Facility Note:</u> The term "Credit Facility Note" as used in Glis Assignment shall have the meaning given to such term in the Credit Agreement.

<u>Debt</u>: The term "Debt" as used in this Assignment shall have the meaning given to such term in the Credit Agreement.

Event of Default: The term "Event of Default" as used in this Assignment shall have the meaning given to such term in the Credit Agreement.

Improvements: The term "Improvements" as used in this Assignment shall have the meaning given to such term in paragraph P of the Preliminary Statement of this Assignment.

C/M 11254,0052 661956-2

Leases: The term "Leases" as used in this Assignment shall have the meaning given to such term in paragraph D of the Fieliminary Statement of this Assignment.

Mortgage: The term "Mortgage" as used in this Assignment shall mean that pertain Mortgage dated is of the date besent given by Assignor to Assignee, as security for the payment of the Debt and the observance and performance by Borrowers of the terms, covenants and provisions of the Credit Facility Document on Borrowers' part to be observed and performed, and encumbering Assignor's right, title and interest in and to the Property and intended to be duly recorded in Cook County, Illinois.

<u>Premises</u>: The term "Fremises" as used in this Assignment shall have the meaning eigen to such term in paragraph B of the Preliminary Statement of this Assignment.

<u>Property:</u> The term "Property" as used in this Assignment shall collectively mean the Pre'alles in the Improvements.

Rents: The term "Pents" as used in this Assignment shall have the meaning given to such term in paragraph P of the Preliminary Statement of this Assignment.

Springing Lockbox Event: "The term "Springing Lockbox Event" as used in this Assignment shall have the meaning given to such term in the Credit Agreement.

Tenant Notices: The term "Tenant Notices" as used in this Assignment shall have the meaning street to such commin the Credit Agreement.



#### EXHIBIT &

#### LEGAL DESCRIPTION

#### PARCEL 1

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LOTS 2, 3, and 4 IN THE RESUBDIVISION OF LOTS 1 AND 4 IN FREED AND GRAIS SUBDIVISION AND PART OF LOT 1 IN BOWE'S SUBDIVISION IN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2

LOTS 2 AND 3 IN FREED AND GRAIS SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST MA OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. No.: 03-14-406-009-0005 03-14-403-010-0000 P.I.N. No.: P.I.N. No.: 03-14-403-014-0000 P.I.N. No.: 03-14-403-018-0000 P.I.N. No.: 03-14-403-015-0000 P.I.N. No.: 03-14-403-017-0000 P.I.N. No.: 03-14-403-020-0000 P.I.N. No.: 03-14-403-023-0000 P.I.N. No.: 03-14-403-024-0000 P.I.N. No.: 03-14-403-025-0000 P.I.N. No.: 03-14-403-026-0000 P.I.N. No.: 03-14-403-027-0000 P.I.N. No.: 03-14-403-035-0000 P.I.N. No.: 03-14-403-036-0000 P.I.N. No.: 03-14-403-042-0000 P.I.N. No.: 03-14-403-043-0000 P.I.N. No.: 03-14-403-044-0000 P.I.N. No.: 03-14-403-045-0000 P.I.N. No.: 03-14-403-046-0000

Property Addresses: 5110-5150, 5210-5280, 6210-6250, 6310-6360 Capitol Drive, and additional vacant land in Capitol Commerce Center, Wheeling, Illinois

County Clark's Office

EXHIBIT C

(Exception to Representations and Warranties)

Matters previously disclosed to Assignee.