

UNOFFICIAL COPY

339 963-1111

**COOK COUNTY
RECORDER
JESSE WHITE
BRIDGEVIEW OFFICE**

97377661

85/29/97

LJ06 MCH 9:26
RECORDING # 61.00
97377661 M
0006 MCH 9:27

85/29/97

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS, made and entered into as of May 13, 1997, from COMBINED CENTRE RPFIII ASSOCIATES LIMITED LIABILITY COMPANY (hereafter referred to as "Borrower"), whose address for notice is c/o General Electric Investment Corporation, 3002 Summer Street, P.O. Box 7900, Stamford, Connecticut 06904-7900, Attn: General Counsel, to Providian Life and Health Insurance Company, whose address for notice is c/o Providian Capital Management Real Estate Services, Inc., 400 W. Market Street, Louisville, KY 40202 (hereafter referred to as "Lender");

W I T N E S S E T H, That:

FOR VALUE RECEIVED, and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower does hereby absolutely, presently, and irrevocably assign, grant, sell, transfer, and convey to Lender, its successors and assigns, all of Borrower's right, title, and interest in, to, and under all leases, subleases, tenant contracts, and rental agreements, whether written or oral, now or hereafter affecting all or any part of the Property, as hereafter defined, and any agreement for the use or occupancy of all or any part of said Property which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of the foregoing and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Borrower or in

97377661

Address: 500, 555 and
707 Skokie Boulevard
Northbrook, Illinois
P.I. Nos.
04-02-402-030
06-02-412-023
-2-424-034

This instrument prepared by
and mail to: Box 15 JFC

Richard L. Wood 2407987
Brown, Todd & Heyburn PLLC
3200 Providian Center
Louisville, Kentucky 40202-3303



Handwritten initials and number: JFC 6100

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Borrower becoming entitled to the payment of money for the use or occupancy of the Property or any part thereof whether such user or occupier is tenant, invitee, or licensee (all of the foregoing hereafter referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees, and licensees are hereafter referred to collectively as "Tenants" and individually as "Tenant" as the context requires), which Leases cover portions of certain land located in Cook County, Illinois, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the terms "Property" and "Premises," wherever used herein, shall mean the aforesaid land and all improvements now or hereafter situated thereon); together with all of Borrower's right, title, and interest in and to all income, rents, issues, royalties, profits, rights and benefits and all Tenants' security and other similar deposits derived with respect to the Leases and with respect to the Property, including, without limitation all rents, payments in lieu of rent, expense contributions, and other similar such payments (collectively hereafter referred to as "Income") and the right to collect the same as they become due, it being the intention of the parties hereto to establish an absolute transfer and assignment of all of the Leases and the Income to Lender and not just to create a security interest.

TO HAVE AND TO HOLD unto Lender, its successors and assigns forever, subject to and upon the terms and conditions hereafter set forth. This Assignment has been made in connection with the execution of the Loan Documents (as hereinafter defined).

ARTICLE I

REPRESENTATIONS, WARRANTIES, AND COVENANTS

1.01 Representations, Warranties, and Agreements of Borrower. Borrower hereby represents, warrants, and agrees as follows:

- (a) Borrower is the sole holder of the landlord's interest under the Leases, is entitled to receive the Income from the Leases and from the Property, and has the full right to sell, assign, transfer, and set over the same and to grant to and confer upon Lender the rights, interests, powers, and authorities herein granted and conferred;
- (b) Except to secure the approved secondary financing on the Property as described in Paragraph 7 of Exhibit D to the Mortgage (defined in Paragraph 1.04 below), Borrower has made no pledge or assignment of the Leases or Income, prior to the date hereof which is currently effective, and Borrower shall not, after the date hereof, make or permit any such pledge or assignment other than to Beneficiary;

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97377661

- (c) To the best of Borrower's knowledge, Borrower has neither done any act nor failed to do any act which would prevent Lender from, or materially limit Lender in, acting under any of the provisions of this Assignment;
- (d) The Leases described in the rent roll provided to Lender in connection herewith are, to the best of Borrower's knowledge, valid, enforceable, and in full force and effect, subject to applicable bankruptcy, insolvency, and debtor relief laws, rules and regulations, and Borrower has delivered to Lender a true, complete, and correct copy of the Lease form presently in use with respect to the Property or any part thereof;
- (e) Except as otherwise disclosed to Lender in writing, all Leases provide for rental to be paid monthly, in advance, and Borrower has not accepted, and shall not, after the date hereof, accept or permit payment of rental or other Income (other than security, or similar deposits) under any of the Leases for more than one (1) month in advance of the due date thereof;
- (f) To the best of Borrower's knowledge, no security deposit has been made by any Tenant under any Lease except as set forth in the rent roll;
- (g) To the best of Borrower's knowledge, except as disclosed to Lender in writing, there exists no default or event of default or any state of facts which would or could, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of Borrower or by any Tenant under the terms of any of the Leases;
- (h) Neither the execution and delivery of this Assignment or any of the Leases, nor the performance of each and every covenant of Borrower under this Assignment and the Leases, nor the satisfaction of each and every condition contained in this Assignment, conflicts with, or constitutes a breach or default under, any agreement, indenture, or other instrument to which Borrower is a party or is subject, or, to the best of Borrower's knowledge, any law, ordinance, administrative regulation, or court decree which is applicable to Borrower; and
- (i) No action has been brought or, to the best of Borrower's knowledge, is threatened, which would interfere in any way with the right of Borrower to execute this Assignment and perform all of Borrower's obligations contained in this Assignment and in the Leases.

1.02 Covenants of Borrower. Borrower hereby covenants and agrees as follows:

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

157-157-157

- (a) Borrower shall (i) fulfill, perform, and observe each and every condition and covenant of landlord or lessor contained in each of the Leases; (ii) at no cost or expense to Lender, enforce, to the extent consistent with prudent business practice, the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the Tenants thereunder; (iii) to the extent consistent with prudent business practice, enforce the Leases and all remedies available to Borrower against the Tenants in the event of default under any Lease by any Tenant; (iv) appear in and defend, to the extent consistent with prudent business practice, any action arising out of, or in any manner connected with, any of the Leases, or the obligations or liabilities of Borrower as the landlord thereunder, or of the Tenant or any guarantors thereunder; and (v) execute such additional documents as Lender may reasonably require to evidence and confirm this Assignment;
- (b) Subject to the terms of subparagraph (i) below, Borrower shall not, without the prior written consent of Lender, such consent not to be unreasonably withheld or delayed, (i) enter into any lease of all or any part of the Property or any amendment to any such lease, or consent to any subletting or assignment for which the consent of Borrower is required, (ii) waive or release any Tenant from the performance or observance by such Tenant of any obligation or condition of any of the Leases except in the ordinary course of business and consistent with prudent business practice; (iii) permit the prepayment of any rents under any of the Leases or other Income (other than security or similar deposits) for more than one (1) month prior to the due date thereof, (iv) discount any future accruing rents under the Leases or other Income except in the ordinary course of business and consistent with prudent business practice; (v) grant any rental concessions in connection with any of the Leases except in the ordinary course of business and consistent with prudent business practice; or (vi) except to secure the approved secondary financing on the Property as described in Paragraph 7 of Exhibit D to the Mortgage, assign its interest in, to, or under the Leases or the Income to any person or entity other than Lender;
- (c) Borrower shall, subject to the exculpation provision set forth in Article IV of this Assignment, protect, indemnify, and hold Lender harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable attorneys' fees and court costs) imposed upon or incurred by Lender by reason of this Assignment or in exercising, performing, enforcing, or protecting its rights, title, or interests set forth

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

herein, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Assignment;

- (d) Borrower shall not do, or fail to do, any act if such action or failure would constitute a violation of any of the Leases, or commit any act or omission that would create in any Tenant a right to cease or reduce payment of rent or terminate its Lease or otherwise adversely affect or impair the benefits of this Assignment;
- (e) Borrower shall authorize and direct, and does hereby authorize and direct, each and every present and future Tenant of the whole or any part of the Property to pay all rental to Lender during the continuation of an acceleration of the Indebtedness by Lender following the occurrence of an Event of Default, upon receipt of written demand from Lender so to do, without requiring any determination of Lender's right thereto;
- (g) Borrower shall furnish to Lender, within ten (10) days after a written request by Lender to do so, a written affidavit sworn to (subject to the terms of Paragraph 4.01 hereof) and signed by Borrower setting forth the rent roll information specified in Paragraph 1.16 of the Mortgage, and stating whether, to Borrower's knowledge, any defaults, off-sets or defenses exist or are claimed under or in connection with any of said Leases; and
- (h) Neither this Assignment nor the exercise of rights hereunder shall be deemed to make Lender a mortgagee in possession.
- (i) Notwithstanding the foregoing provisions of subparagraph (b), no consent shall be required from Lender for any lease, or any amendment to any lease, or any subletting or assignment of any lease, which in each case demises less than 5,000 square feet and is for a primary term of five years or less, whether or not there is a renewal term, providing Borrower is acting in Borrower's best judgment and in the best interest of the Property and the tenant, or sublessee or assignee, as the case may be, is not an affiliate of Borrower and such instrument is on substantially fair market terms pursuant to an arms-length agreement on a form previously approved by Lender without material modification.

1.03 Right to Collect Rents and Termination.

- (a) Provided that there exists no continuing acceleration of the Indebtedness by Lender following the occurrence of an Event of Default, as defined in Paragraph 2.01 below,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

14025-1-3-1980

Borrower shall have the right under a limited license granted hereby, and Lender hereby grants to Borrower a limited license ("License"), to collect upon, but not prior to accrual, all of the Income, and Borrower shall receive such Income and hold the same, as well as the right and the license to receive such Income, as a trust fund to be applied, and Borrower hereby covenants to apply the Income, to the payment of interest and principal becoming due on account of Indebtedness (hereinafter defined), and to the satisfaction and discharge of the Obligations (hereinafter defined), including specifically, but without limitation, to the payment of taxes and assessments upon the Property before payment of penalty or interest are due thereon, to the cost of such insurance, maintenance and repairs as may be required by the terms of the Loan Documents and in satisfaction of all obligations under the Leases, all prior to the application by Borrower of the Income for any other purposes. To the extent Borrower collects Income, the Income collected shall be applied first to the reduction or repayment of the unpaid and matured Indebtedness and to the performance and discharge of the Obligations. Thereafter, Borrower may use the balance of the Income collected in any manner not inconsistent with the Loan Documents. Income received by Borrower pursuant to the foregoing license shall not constitute payment to Lender, and therefore will not be credited to the Indebtedness, unless and until paid by Borrower to Lender.

- (b) Borrower acknowledges that this Assignment is an absolute transfer and assignment of all Leases and the Income to Lender. Upon termination as determined by Lender of the Borrower's obligations to Lender with respect to the Property as set out in the Loan Documents, Lender shall relinquish its rights to the Leases and Income and return said rights granted by this Assignment to the Borrower. A recording of a valid release of the Mortgage shall automatically constitute a release and termination of this Assignment without further action on the part of Lender, but upon Borrower's written request, Lender agrees to execute such other and further releases reasonably deemed necessary by Borrower. Borrower hereby indemnifies and agrees, subject to the exculpation provision set forth in Article IV of this Assignment, to hold each Tenant free and harmless from and against all liability, loss, cost, damage or expense suffered or incurred by Tenant by reason of its compliance with any demand for payment of Income by Lender contemplated by this Assignment.

1.04 Certain Definitions. As used herein, the following terms have the meanings set forth opposite each such term:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9
7
3
7
7
6
6
1

"Note" shall mean the promissory note of even date herewith in the original principal sum of \$16,200,000.00 executed by Borrower payable to Lender, and all renewals, extensions, modifications and rearrangements thereof.

"Mortgage" shall mean the Mortgage, Assignment of Rents, Security Agreement and Financing Statement of even date herewith executed by Borrower granting a first mortgage lien on the Property in favor of Lender, as security for the Note, and all renewals, extensions, modifications and rearrangements thereof.

"Loan Documents" shall mean the Note, the Mortgage, this Assignment, and all other documents executed by Borrower in connection with, as evidence of or as security for payment of the Indebtedness.

"Indebtedness" shall have the same meaning herein as in the Mortgage.

"Obligations" shall have the same meaning herein as in the Mortgage.

ARTICLE II

DEFAULT

2.01 Events of Default. The term "default" or "event of default," or "Event of Default", wherever used in this Assignment, shall mean any one or more of the following events:

- (a) The occurrence of any default or event of default under any of the Loan Documents and the expiration of any applicable notice and/or cure period;
- (b) The failure by Borrower duly and fully to comply with any covenant, condition, or agreement of this Assignment which is not cured within the notice and cure period set forth in the applicable clause of subparagraph 2.01(a) of the Mortgage; or
- (c) The material breach of any material representation or warranty of Borrower contained in this Assignment.

2.02 Remedies. For so long as any default or event of default has occurred and is continuing after the expiration of any applicable notice, grace and/or cure period, whether before or after the accrued and unpaid portion of the Indebtedness is accelerated or whether before or after the exercise by Lender of any default remedies contained in any of the Loan Documents, Lender may, at its option, with or without notice or demand of any kind (and Borrower waives notice of intent to accelerate of any kind), exercise any or all of the following remedies:

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (a) Declare any part or all of the accrued and unpaid portion of the Indebtedness to be due and payable, whereupon the same shall become immediately due and payable;
- (b) Terminate the License and/or as Borrower's attorney-in-fact, coupled with an interest, Lender being hereby so irrevocably designated, (i) demand, collect, receive, sue for, attach, and levy, the Income and endorse checks or drafts evidencing the payment of Income, and apply the Income without taking possession of the Property, (ii) if Lender so elects, control, operate, and manage, at the expense of Borrower, the Property and exercise and perform all rights and obligations of Borrower under the Leases (including the curing of any or all defaults under the Leases) or such part of the Property or Leases as Lender shall elect, and (iii) exercise, enforce, perform, and protect all other right, title, and interest which is granted by Borrower herein or granted in any one or more of the other Loan Documents. More specifically, but without limiting in any way the immediately preceding sentence, Lender shall be entitled in the event of such a default and for so long as such default is continuing to collect, receive, sue for, attach, levy, and apply all Income as herein authorized and may (A) use such measures as Lender may deem necessary or desirable to enforce the payment of such Income, or, in the event option (ii) above is elected, to secure possession of all or any part of the Property or Leases, (B) institute, conduct, or defend any legal action in connection with the Loan Documents, Property, or Leases, as Lender may deem necessary or desirable, (C) from time to time, make any or all repairs, replacements, and alterations to the Property as Lender may deem necessary or desirable, (D) insure and reinsure the Property on such terms as Lender shall deem necessary or desirable, (E) lease the Property or any part or parts thereof in such parcels and for such periods and on such terms as Lender deems desirable, including Leases for terms expiring after the maturity of the indebtedness secured by the Loan Documents, (F) cancel or modify any Lease with or without cause, and/or (G) take whatever measures Lender from time to time deems necessary or desirable to exercise, enforce, perform, or protect Lender's right, title, or interest in any or all of the Loan Documents including, without limitation, appointment of a receiver as a matter of strict right and without notice. Notwithstanding the foregoing, the assignment contained herein is intended to be absolute, unconditional and presently effective. It shall never be necessary for Lender to institute legal proceedings of any kind whatsoever to enforce the provisions of this Paragraph 2.02(b), and no affirmative action by Lender shall be required in order to secure the Income. It is the intention of the parties that, subject to Paragraph

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97377661

1.03(a) above, Lender shall have the right to the Income immediately upon the occurrence of an event of default, as defined in Paragraph 2.01 above;

(c) Apply the Income collected pursuant to this Assignment in whatever order of priority Lender, in its sole discretion may elect, against (i) all costs and expenses (including, without limitation, attorneys' fees) incurred in connection with the operation of the Property, the performance of Borrower's obligations under the Leases, and collection of the Income thereunder, including, without limitation, all expenses for the management, maintenance, repairs, replacements, alterations, special assessments, taxes, and insurance, (ii) all of the costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in the collection of any or all of the Indebtedness including, without limitation, all costs, expenses, and attorneys' fees incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Indebtedness, (iii) all other expenses pertaining to any part or all of the Property or the Leases, (iv) any or all unpaid principal, accrued but unpaid interest, and any other amount due, with respect to the Indebtedness, and (v) any or all unpaid principal of the Indebtedness; provided, however, that Income to be credited to the Indebtedness will be pro tanto credited only to the extent that such Income is actually received by Lender and not disbursed by Lender in payment of expenses or costs pursuant to clauses (i) through (iii) above.

2.03 Right to Exercise Remedies. Lender shall have full right to exercise any or all of the foregoing remedies for so long as an event of default has occurred and is continuing after the expiration of any applicable notice, grace and/or cure period without regard to the adequacy of security for any or all of the Indebtedness, without regard to other security, without releasing Borrower from any obligation, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, use, and operate, all or any portion of the Property which Lender in its sole discretion deems desirable, to effectuate any or all of the foregoing remedies, and shall be entitled to exercise, enforce, perform, and protect all of the aforesaid rights, titles, and interests available to Lender hereunder, as well as all other rights, titles, and interests available at law or in equity in and to the control, operation, and management of the Property and Leases. Lender shall not be held responsible for the failure to exercise diligence in taking any action permitted hereunder.

2.04 Expenses and Liabilities of Lender. At the expense of Borrower, Lender is hereby given the authority to employ agents,

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

11016779

attorneys, and others in exercising, enforcing, performing, or protecting Lender's rights, title, or interests herein following an event of default. To the extent that the Income is insufficient, Borrower agrees, subject to the exculpatory provisions set forth in Article IV hereof, to reimburse Lender for all monies advanced by Lender in so exercising, enforcing, performing, or protecting Lender's rights, titles, or interests herein, together with interest from day to day on all such advances by Lender, at a rate equal to the Default Rate specified in the Note (said interest rate being hereby incorporated herein by this reference). In the event Lender incurs any liability, loss, cost, or damage by reason of this Assignment, or in the defense of any claim or demand arising out of or in connection with this Assignment, the amount of such liability, loss, cost, or damage (including, without limitation, reasonable attorneys fees and other fees in connection with any appeal) shall be added to the Indebtedness, and shall bear interest from and after the date when paid (i) if not attributable to any act or omission by Borrower, at the Applicable Rate, or (ii) otherwise, at the default interest rate specified in the Note, from the date incurred until paid, and shall be payable on demand.

ARTICLE III

GENERAL PROVISIONS

3.01 No Waiver. The failure of Lender at any time to avail itself of any of the rights or remedies provided herein or in any of the other Loan Documents shall not be construed to be a waiver of any of such rights or remedies, but Lender shall have full power and authority to exercise, enforce, perform, or protect such rights and remedies at any time or times that it seems fit, subject to the other terms and conditions hereof. To be effective, any waiver of any of the terms, covenants, or conditions hereof must be in writing and shall be valid only to the extent clearly set forth in such writing. No exercise, enforcement, performance, or protective action taken with respect to any of the rights, titles, and interests assigned or granted herein shall be construed as a cure of any default in any of the Loan Documents.

3.02 Remedies Cumulative. By accepting this Assignment, the Lender shall in no manner be prejudiced in its right to exercise, enforce, perform, or protect any one or more rights, titles, or interests available to it in any of the Loan Documents or at law or in equity, including, without limitation, its rights to foreclose the lien of the Mortgage following an event of default or any other right, title, or interest granted to it by the terms of any of the Loan Documents or granted pursuant to applicable law or equity, it being intended that all of such rights, titles, and interests are cumulative and may be exercised, enforced, performed, or protected concurrently with or independently of any one or more of such rights, titles, or interests to the extent deemed advisable by Lender in the exercise of its sole discretion from time to time. It is intended that this clause shall be broadly construed so that

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9
7
3
7
7
6
6
1

all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the Indebtedness shall have been paid in full and all the Obligations have been performed.

3.03 Conflict. The absolute assignment of the Leases and Income contained in this Assignment is in addition to, and not in lieu of, the collateral assignment of the Leases and the Income contained in the Mortgage. It is the intent of Borrower and Lender that no conflict exists between the absolute assignment contained in this Assignment and the collateral assignment contained in the Mortgage. However, if and to the extent a conflict is perceived to exist as to the Leases or to the Income, such conflict shall be resolved in favor of the absolute assignment contained in this Assignment.

3.04 No Mortgagee in Possession. Exculpation of Lender. The acceptance by Lender of this Assignment, with all of the rights, privileges, powers and authority created hereby, shall not, prior to entry upon and taking possession of the Property by Lender, be deemed or construed to constitute Lender a "mortgagee in possession", nor thereafter or at any time or in any event obligate Lender to appear in or defend any action or proceeding relating to the Leases, the Income, 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 any Lease, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by any Tenant and not assigned and delivered to Lender, nor shall Lender be liable in any way for any injury or damage to persons or property sustained by any person, firm or corporation in or about Property.

3.05 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns subject to the limitations on the transfer of the Property contained in the Mortgage. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.06 Terminology. All personal pronouns used in this Assignment, whether used in the masculine, feminine, or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.07 Severability. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97377661

to the greatest extent permitted by law. The provisions of the Note, relating to the limitations on the amount of interest to be paid on the Indebtedness are incorporated herein by reference.

3.08 Applicable Law. This Assignment shall be governed by, enforced under and interpreted in accordance with the laws of the State of Illinois (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than permitted under Illinois law).

3.09 No Third Party Beneficiaries. This Assignment is made solely for the benefit of Lender and its assigns. No Tenant, nor any other person, shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and except for the indemnification rights afforded to Tenants herein, no person other than the Lender shall be deemed to be a beneficiary of any provisions of this Assignment.

3.10 No Oral Modifications. Neither this Assignment, nor any provisions hereof, may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

3.11 Cross-Default. An Event of Default by Borrower under this Assignment shall constitute an event of default under all other Loan Documents.

3.12 Counterparts. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Assignment by signing any such counterpart.

3.13 Further Assurances. At any time and from time to time, upon written request by Lender, Borrower will make, execute, and deliver, or cause to be made, executed, and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further financing statements and continuation statements as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligations of Borrower under this Assignment. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such financing statements, and continuation statements as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the rights and remedies of Lender with respect to the Leases and the Income from the Property. Upon any failure by Borrower so

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

10-5-1-10-19
to do, Lender may make, execute, record, file, re-record and/or refile any and all such financing statements and continuation statements for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower to do so.

3.14 Notices. All notices hereunder shall be given in accordance with Paragraph 3.05 of the Mortgage, which Paragraph is hereby incorporated herein by this reference.

3.15 Modifications, etc. Borrower acknowledges that this Assignment is absolute and agrees that no modification or surrender of any security arrangements, security interests or collateral pledges shall affect the validity of this Assignment. So long as the Indebtedness remains unpaid, Borrower hereby consents and agrees that Lender may at any time, and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm, or corporation on its behalf or for its account, securing the Indebtedness; substitute for any collateral so held by it, other collateral of like kind, or of any kind; extend or renew the Note or any of the Loan Documents for any period; grant releases, compromises, and indulgences with respect to the Note or the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note or any other of the Loan Documents; or take or fail to take any action of any type whatsoever; and no such action which Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the Indebtedness or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way, or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Loan Documents and the Leases and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations, and modifications thereof.

3.16 Appointment of Attorney-in-Fact. Borrower hereby constitutes and appoints Lender, for so long as an event of default has occurred and is continuing after the expiration of any applicable notice, grace and/or cure period, its true and lawful attorney-in-fact, with full power of substitution, (i) to collect income and other sums due and to become due under the Leases and to endorse, either in the name of Borrower or in the name of Lender, any check made payable to Borrower or any assumed business name of Borrower representing income and other sums due and to become due under the Leases; (ii) to demand, sue for, attach, levy, recover and receive any premium or penalty payable upon the exercise by any Tenant under any Lease of a privilege of cancellation originally

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

provided in such Lease and to give proper receipts, releases and acquittances therefore; and (iii) after deducting expenses of collection, to apply the proceeds or net proceeds as a credit upon any portion of the Indebtedness or the Obligations selected by Lender, notwithstanding the fact that such portion of the Indebtedness (other than unaccrued interest) or the Obligations may not then be due and payable or that such portion of the Indebtedness or the Obligations is otherwise adequately secured. Borrower does hereby authorize and direct any Tenant to deliver Income and other sums to Lender in accordance with this Assignment, and Borrower hereby ratifies and confirms all that its said attorney, the Lender, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is coupled with an interest, is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Lender, its successors and assigns, so long as any part of the Indebtedness or Obligations remain unpaid and undischarged. Notwithstanding the foregoing, it is agreed that (Y) Lender shall not exercise its authority pursuant to this Paragraph 3.16 unless an event of default, after the expiration of any applicable notice, grace and/or cure period, then remains uncured, and (Z) this power of attorney shall terminate upon payment in full of the Indebtedness.

3.17 Performance at Borrower's Expense. The cost and expense of performing or complying with any and all of the Obligations shall be borne solely by Borrower, and no portion of such cost and expense (except to the extent that certain costs and expenses are included within the definition of "Indebtedness") shall be, in any way and to any extent, credited against any installment on or portion of the Indebtedness.

3.18 Limit on Interest. It is expressly stipulated and agreed to be the intent of the Borrower and Lender at all times to comply with applicable Illinois law governing the maximum rate or amount of interest payable on or in connection with the Loan Documents and the Indebtedness (or applicable United States federal law to the extent that it permits the Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Illinois law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under any of the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the loan evidenced by the Note, or if acceleration of the maturity of the Note or if any prepayment by Borrower results in Borrower having paid or the Lender having received any interest in excess of that permitted by law, then it is the express intent of Borrower and Lender that all excess amounts theretofore collected by the Lender be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

148507
148508
148509
148510
148511

fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of the Note or any other Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the applicable usury ceiling. To the extent United States federal law permits Lender to contract for, charge or receive a greater amount of interest, Lender will rely on United States federal law instead of Illinois law. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

3.19 Subordination, Non-Disturbance and Attornment Agreements. Lender hereby agrees to execute and deliver a Subordination, Non-Disturbance and Attornment Agreement in the then standard form of such Agreement used by Lender (with such changes to which Lender may consent, which consent will not be unreasonably withheld or delayed) for any lease of the Premises upon the satisfaction of the following conditions: (a) Borrower shall have requested such Agreement in writing from Lender and shall have furnished to Lender a copy of the proposed lease and such information, whether financial or otherwise, with respect to the proposed tenant as Lender may reasonably request and (b) Lender shall have approved the lease (which will not be unreasonably withheld or delayed), whether or not the approval or consent of Lender is required under Paragraph 1.02 (i) above. Borrower shall pay, within thirty (30) days of demand, the reasonable out-of-pocket attorney's fees and expenses incurred by Lender in connection with the request for any such Agreement, whether or not such Agreement is delivered.

ARTICLE IV

EXCULPATORY PROVISION

4.01 Exculpatory Provision. Except as hereafter provided, Lender agrees that: (i) Borrower, its members and their respective partners, officers, directors, employees, advisors, agents, affiliates, successors and assigns shall have no personal liability with respect to the payment or performance of any indebtedness or obligations evidenced or secured by, or otherwise pertaining to the Loan Documents, and Lender shall look solely to the Property and any other collateral for the Indebtedness for any recovery in the event of any default in respect of the Indebtedness or Obligations, (ii) if default occurs in the timely and proper payment of all or any part of such Indebtedness, any judicial or other proceedings

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

brought by Lender against Borrower, its members or any of their respective partners, officers, directors, employees, advisors, agents, affiliates, successors or assigns shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security titles, estates, assignments, rights and security interests now or at any time hereafter securing the payment of the Indebtedness, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Borrower, its members or any of their respective partners, officers, directors, employees, advisors, agents, affiliates successors or assigns other than the Property and any other collateral for the Indebtedness, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights and security interests securing the payment of the Indebtedness, no judgment for any deficiency upon such Indebtedness or any other money judgment, shall be sought or obtained by Lender against Borrower, its members or any of their respective partners, officers, directors, employees, advisors, agents, affiliates, successors or assigns; PROVIDED, HOWEVER, that, notwithstanding the foregoing provisions of this Paragraph 4.01, Borrower (but not any of its members, nor any of Borrower's or its members' respective partners, officers, directors, employees, advisors, or agents, affiliates, successors or assigns) shall be fully and personally liable at all times (a) for any actual damages resulting from fraud or Material Misrepresentation (as defined and limited below), and (b) for the Misapplication (as defined and limited below), to the extent of the funds so misapplied, of (i) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Property, to the full extent of such proceeds, (ii) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation of any portion of the Property, to the full extent of such proceeds or awards, or (iii) from and after written notice of a default and the expiration without cure of any applicable grace and/or cure period, income, rents, issues, profits and revenues arising or issuing after such date from or out of the Property or any portion thereof Nothing contained in this Paragraph 4.01 shall (A) be deemed to be a release or impairment of the Indebtedness or the lien of the Loan Documents upon the Property, or (B) preclude Lender from foreclosing the Loan Documents in case of any Event of Default or from enforcing any of the other rights of Lender except as expressly stated in this Paragraph 4.01.

"Material Misrepresentations" as used in subparagraph (a) of this Paragraph 4.01 shall be solely limited to (x) material misrepresentations made prior to and after the date hereof (as defined in the Note) by Borrower (but not by third parties, including without limitation any third party manager of the Property, on behalf of Borrower) to Lender, its agents or affiliates on behalf of Borrower, with respect to the creditworthiness, experience and/or management ability of Borrower; (y) material misrepresentations made after the date hereof by Borrower to Lender, its agents or affiliates, but not by third parties on behalf of Borrower (including, without limitation, any

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

100677661

third party manager of the Property), with respect to then current economic information of the Property required pursuant to Paragraph 1.16 of the Mortgage, including, but not limited to, income, expenses, taxes and insurance attributable to the Property; and (2) intentional material misrepresentations made from and after the date hereof by Borrower to Lender, its agents or affiliates, but not by third parties on behalf of Borrower (including, without limitation, any third party manager of the Property), with respect to hazardous materials located on the Property.

"Misapplication" as used in subparagraph (b) of this Paragraph 4.01 shall mean the application or retention of funds by Borrower for any purpose other than payment of debt service on the Indebtedness and any other indebtedness specifically allowed under the terms of the Loan Documents or for the payment of usual and customary operating expenses pertaining to the Property, or such other expenditures approved in writing by Lender.

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

BORROWER:

COMBINED CENTRE RPFIII ASSOCIATES
LIMITED LIABILITY COMPANY, a
Delaware limited liability company

By: Columbia Centre RPFIII Realty
Corporation, a Delaware
corporation, managing member

By: 

Name: Michael Strone

Title: EVP

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

14-0-1-10-1-10-10

STATE OF CONNECTICUT)
) SS.
COUNTY OF FALL RIVER)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that MICHAEL STRONG of CVP COLUMBIA CENTRE RPF III REALTY CORPORATION, a Delaware corporation, and managing member of COMBINED CENTRE RPF III ASSOCIATES LIMITED LIABILITY COMPANY, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such EV appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of MAY, 1997.

Casimir Deato
Notary Public

My Commission Expires 8-31-00

018 85
MAY 10 1997
E:USERS\441 PROVIDIA\COMBINED\ASSIGNSA.TEX
May 11, 1997

37377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RECEIVED
CLERK'S OFFICE
JAN 23 2013 10:21 AM

UNOFFICIAL COPY

EXHIBIT A - LEGAL DESCRIPTION

Parcel I (500 Skokie Boulevard):

Lot 2 in Lane Park Subdivision in the South East 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded July 15, 1976 as Document No. 23,560,771 in Cook County, Illinois.

Parcel II (500 Skokie Boulevard):

A Permanent non-exclusive easement for parking purposes as created by easement dated April 19, 1985 and recorded May 17, 1985 as Document 85025780, on, over and across that part of Lot 3 in Lane Park Subdivision in the Southeast 1/4 of Section 2, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, which part of said lot is bounded and described as follows: Beginning at the Northwestern corner of said Lot 3 and running thence East along the North line of said Lot 3 a distance of 152.04 feet; thence Southwesterly along a line which is perpendicular to the Westerly line of said Lot 3 a distance of 136.06 feet to a point on said Westerly line; thence Northwesterly along said Westerly line a distance of 67.85 feet to the point of beginning.

Parcel III (555 Skokie Boulevard):

Lot 3 in Northwood Blends, a Subdivision of part of Hughes, Brown, Moore Corporation Resubdivision of United Realty Company's Dundee Road Subdivision in the Southeast 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded January 12, 1968 as Document Number 20,377,823 (except that part of said lot 3 described as follows:

Beginning at the Southeast corner of said Lot 3; thence Westerly along the center line of vacated Maple Hill Drive, on a curve to the left having a radius of 524.13 feet, a distance of 410.77 feet to a point of tangency; thence continuing along said center line, tangent to the last described curve, taken as being South 66 Degrees, 15 Minutes, 30 Seconds West, for this description, a distance of 22.22 feet to the Northeastern line of Skokie Boulevard, being the Southwesterly line of said Lot 3, or the Southeasterly extension of said Southwesterly line; thence along said Northeastern line of Skokie Boulevard, taken as being North 26 Degrees, 07 Minutes, 00 Seconds West, for this description, a distance of 65 feet; thence parallel to and 65 feet Northwesterly of the foresaid center line of vacated Maple Hill Drive, North 66 Degrees, 15 Minutes, 30 Seconds East, a distance of 29.28 feet to a point of curve; thence concentric with and 65 feet Northerly of said center line, on a curve to the right having a radius of 589.13 feet, a distance of 231.87 feet to a point, said point being 128 feet Southwesterly from, measured at right angles to, the Northeastern line of said Lot 3; thence parallel to and 128 feet Southwesterly of said Northeastern line of Lot 3, North 26 Degrees, 06 Minutes, 00 Seconds West, a distance of 49.84 feet; thence at right angles to the last described line, North 63 degrees, 54 Minutes, 00

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Seconds East, a distance of 128 feet to a point in the aforesaid Northeasterly line of lot 3; thence along said Northeasterly line of lot 3, South 26 Degrees, 06 Minutes, 00 Seconds East, a distance of 95.40 feet to an angle point; thence continuing along said Northeasterly line, South 26 Degrees 45 Minutes 00 Seconds East, a distance of 129.60 feet to the point of beginning); in Cook County, Illinois.

Parcel IV (555 Skokie Boulevard Frontage Road Portion):

That part of vacated Henrici Drive (also known as Frontage Road) being that part of Block 11 in Hughes-Brown-Moore Corporation's Resubdivision of United Realty Company's Dundee Road subdivision in the Southeast 1/4 of Section 2, Township 42 North, Range 12, East of the Third Principal Meridian, according to the Plat thereof recorded June 21, 1927 as Document No. 9692524, described as follows: Beginning at the most Northerly corner of lot 3 in Northwood Pkws, a subdivision in the Southeast 1/4 of Section 2, aforesaid, according to the Plat thereof recorded January 12, 1968 as Document No. 20377823; thence Northeasterly along the Northeasterly extension of the Northwesterly line of said lot 3, 69.0 feet; thence Southeasterly along a line parallel with the Northeasterly line of said lot 3, 268.29 feet; thence Southwesterly along a line parallel with the Northwesterly line of said lot 3, 69.0 feet to an intersection with the Northeasterly line of said lot 3; thence Northwesterly along the Northeasterly line of said lot 3, 268.29 feet to the place of beginning, in Cook County, Illinois.

Parcel V (707 Skokie Boulevard):

Lot 1 in 707 Consolidated Subdivision, being a resubdivision of part of the Southeast 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded July 3, 1979 as Document Number 25,034,175 in Cook County, Illinois.

Parcel VI (707 Skokie Boulevard Frontage Road Portion):

That part of the East 1/2 of the Southeast 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the most Northerly corner of lot 1 in 707 Consolidated Subdivision, being a resubdivision of part of the Southeast 1/4 of Section 2, aforesaid; thence North 63 Degrees 27 Minutes 13 Seconds East along the Northeasterly extension of the Northwesterly line of said lot 1, 69.55 feet; thence South 26 Degrees 29 Minutes 35 Seconds East 292.80 feet; thence south 24 Degrees 38 Minutes 13 Seconds East, 94.41 feet; thence South 13 Degrees 24 Minutes 33 Seconds East, 100.37 feet; thence South 05 Degrees 16 Minutes 30 Seconds East, 100.15 feet; thence South 02 Degrees 12 Minutes 33 Seconds East, 82.27 feet to an intersection with an Easterly extension of the South line of said lot 1; thence North 89 Degrees 19 Minutes 56 Seconds West along said last described line, 63.43 feet to the Southeast corner of said lot 1; thence North 00 Degrees 49 Minutes 56 Seconds West along the East line of said lot 1, 195.60 feet to a

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

corner of said lot 1; thence North 26 Degrees 44 Minutes 37 Seconds West along the
Northeasterly line of said Lot 1, 447.95 feet to the place of beginning, in Cook
County, Illinois.

Permanent Tax Number: 04-02-402-030 Volume: 131
Affects Parcel I

04-02-412-023
Affects Parcel III

04-02-424-034
Affects Parcel V

Property of Cook County Clerk's Office

97377661

UNOFFICIAL COPY

Property of Cook County Clerk's Office