

98591673

8570/0057 16 001 Page 1 of 13
1998-07-09 12:35:20
Cook County Recorder 45 50

THIS INSTRUMENT WAS PREPARED BY
AND UPON RECORDATION RETURN TO:
Squire, Sanders, & Dempsey L.L.P.
350 Park Avenue, Fifteenth Floor
New York, New York 10022
Attention: Andrew L. Jagoda, Esq.



AFTER RECORDING, RETURN TO:
COMMONWEALTH LAND TITLE INSURANCE CO
5949 SHERRY LANE, SUITE 111
DALLAS, TX 75226

GARDEN TANGLEWOOD, LP as Assignor, to

GARDEN CAPITAL, L.L.C. as Assignee

ASSIGNMENT OF LEASES AND RENTS

Dated: As of June 1, 1998
Property Address: 2134 Goebbert Road
Arlington, Heights, Illinois
Real Estate Tax Parcel Nos.:
County: Cook County, Illinois
Principal Amount: Twenty-Eight Million Seven Hundred Twenty Thousand
Dollars (\$28,720,000.00)

UNOFFICIAL COPY

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated June 2, 1998 by and between GARDEN TANGLEWOOD, LP, a limited partnership formed and existing under the laws of the State of Delaware, having an address 10670 North Central Expressway, Dallas, Texas 75231 (hereinafter called the "Assignor"), and GARDEN CAPITAL, L.L.C., a limited liability company formed and existing under the laws of the State of Delaware, having an address 10670 North Central Expressway, Dallas, Texas 75231 hereinafter called "Assignee").

WITNESSETH, THAT FOR AND IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Assignor, Assignor hereby grants, transfers and assigns to Assignee, its successors and assigns, the entire lessor's interest in and to all leases, license agreements, tenancies and other use or occupancy agreements which cover any or all of those parcels of real property or the improvements thereon, situate and lying in Cook County, Illinois, which are described in Schedule A attached hereto as a part hereof (hereinafter called the "Property") (being all of the same real property covered by the Mortgage, as hereinafter defined), now or hereafter existing, all extensions and renewals thereof, and all modifications, amendments and guaranties thereof (each of which is hereinafter called a "Lease"):

TOGETHER WITH any and all rents, income, receipts, revenues, royalties, issues, profits, and other payments, payable to Assignor pursuant to any Lease, including, without limitation, cash or securities deposited under any Lease to secure performance by the tenants of their obligations under the Leases (all of which are hereinafter called collectively the "Rents"),

FOR THE EXPRESS PURPOSE of securing the payment and performance of the following obligations:

(1) the payment in full of the principal of, interest (including prepayment premiums, if any) on, and any other indebtedness evidenced by, or accruing under the provisions of, a Fee Owner Note of even date herewith in the original principal amount of Twenty-Eight Million Seven Hundred Twenty Thousand and 00/100 Dollars (\$28,720,000.00) executed and delivered by Assignor to Assignee, and any and all increases, modifications,

06-01-98

UNOFFICIAL COPY

amendments, extensions or renewals thereof (hereinafter called collectively the "Note"), and secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor to Assignee, covering the Property intended to be recorded among the Land Records of Cook County, Illinois (the "Mortgage");

(2) the payment in full of all other sums, and all interest accruing thereon, becoming due and payable to Assignee under the provisions of this Assignment, the Note, the Mortgage and/or any other Loan Documents (as defined in the Mortgage); and

(3) the performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein, or in the provisions of the Note, the Mortgage, and/or any other Loan Documents.

UPON THE TERMS which are hereinafter set forth:

Section 1. Assignor's Warranties and Representations. Assignor hereby warrants and represents to Assignee that:

1.1. Assignor is the sole owner of the entire lessor's interest in each Lease;

1.2. each Lease is valid and enforceable and has not been altered, modified or amended in any manner (except in the ordinary course of business) whatsoever except as expressly set forth herein or otherwise hereafter approved in writing by Assignee;

1.3. to the best of Assignor's information, knowledge and belief, the lessee named in each Lease is not in default in the performance of any of such lessee's obligations under any of the provisions thereof, except as disclosed in writing to Assignor;

1.4. no rent reserved in any Lease has been assigned or anticipated; and

1.5. except as otherwise hereafter approved in writing by Assignee, no rent for any period after the date of this Assignment has been collected more than one (1) month in advance of the time when it became due under the terms of any Lease, except for the payment of any security deposit under such Lease (provided, that no such security deposit shall be in an amount exceeding two (2) months' rent payable under such Lease).

Section 2. Assignor's Covenants. Assignor hereby covenants with Assignee:

2.1. to observe and perform all of the obligations imposed upon the lessor under each Lease, and not to do or knowingly permit to be done anything to impair the security thereof;

2.2. not to collect any of the Rents more than one (1) month in advance of the date on which they become due, without obtaining Assignee's prior written consent;

98501673

98501673

UNOFFICIAL COPY

2.3. not to execute any other assignment of the lessor's interest in any Lease, or any other assignment of rents arising or accruing from any Lease or from the Property, unless such assignment is given as additional security for a loan consented to in writing by Assignee;

2.4. intentionally omitted;

2.5. except in the ordinary course of business, not to distraint or commence an action of ejectment or any summary proceedings for dispossession of any lessee under any Lease without obtaining Assignee's prior written consent thereto, which consent shall not be unreasonably withheld;

2.6. not to alter the terms of any Lease or give any consent or exercise any option required or permitted by such terms without obtaining Assignee's prior written consent thereto (unless such option is granted pursuant to the terms of a lease approved by Assignee);

2.7. without obtaining Assignee's prior written consent, not to cancel or terminate any Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations, of the lessee thereunder, it being understood that any payment of any kind or nature paid or payable to Assignor as a result of any cancellation, termination, conveyance or transfer, whether or not Assignor has consented to such cancellation, termination, conveyance or transfer, shall be paid directly to Assignee to be held by Assignee at the election of Assignee as additional security for the indebtedness evidenced or secured by the Loan Documents or applied by Assignee against the indebtedness evidenced or secured by the Loan Documents and in furtherance thereof Assignor hereby irrevocably assigns such payments to Assignee, which assignment shall be irrevocable;

2.8. at the request of Assignee, to deliver to Assignee executed copies of any Lease entered into after the date hereof, and to transfer and assign each such Lease only in accordance with the provisions hereof;

2.9. not to alter the terms of any guaranty of any Lease, or cancel or terminate such guaranty, without obtaining Assignee's prior written consent thereto except as required under the terms of a lease approved by Assignee;

2.10. not to consent, where such consent by the lessor thereunder is a condition thereto or is otherwise required in connection therewith, to any assignment of or subletting under any Lease;

2.11. perform and observe all requirements of any governmental authority having jurisdiction over the Property relating to the Leases;

92501073

UNOFFICIAL COPY

2.12. deposit all security deposits received under any Lease into an account satisfying all requirements of such governmental authority, if required by applicable law;

2.13. promptly to execute and deliver to Assignee, at Assignee's request, all further assignments of Leases and such other and further assurances hereof as Assignee may from time to time reasonably require; and

2.14. not to enter into any new leases for the Property except as expressly permitted in the Mortgage and except on the Standard Lease Form (as defined therein).

Section 3. License to Collect Rents. This Assignment constitutes a present and absolute Assignment of the Leases, including all rents, now or hereafter accruing, provided, however, that so long as no Event of Default (as defined in the Mortgage) has occurred under this Assignment or under the Note, the Mortgage, any other Loan Document, or any Lease, Assignor shall have a license, terminable by Assignee upon the occurrence of any such default, to collect the Rents on or after, but not before, the respective dates set forth in the Leases on which the Rents become due, and to apply the Rents for the uses and purposes more particularly described in Section 10 of the Mortgage. Upon the occurrence of such Event of Default (as defined in the Mortgage), the license granted to Assignor shall be automatically and immediately revoked without notice to Assignor. Upon the revocation of such license, Assignee shall be entitled to notify all tenants under the Leases that Assignee will thereafter collect all Rents directly and not through Assignor unless and until the Event of Default (as defined in the Mortgage) is cured and the loan is reinstated.

Section 4. Lender's Rights on Default. Upon the occurrence of a default in Assignor's performance of any of its obligations hereunder or upon any Event of Default under the provisions of the Note, the Mortgage, or any other Loan Document, Assignee may, without in any way waiving such default, at its option and without regard to the adequacy of the security for the principal sum (including prepayment premiums, if any), interest and other amounts evidenced by the Note or secured hereby or by the Mortgage:

4.1. either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, terminate the license granted to Assignor hereunder and take possession of the premises described in any or all of the Leases and/or the Property, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee deems proper; and

4.2. either with or without taking possession of such premises or the Property, in its own name, demand, sue for or otherwise collect and receive all Rents (including those past due and unpaid) with full power to make from time to time all alterations, renovations, repairs or replacements to the Property or thereof as may seem proper to Assignee; and

88591673

UNOFFICIAL COPY

4.3. apply such Rents to:

4.3.1. the fees and/or wages of a managing agent and such other employees as Assignee may deem necessary or desirable in connection therewith, and all expenses of operating and maintaining the Property including, by way of example rather than of limitation, (a) all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, (b) all premiums for any insurance which Assignee deems necessary or desirable in connection therewith, (c) all costs of any alterations, renovations, repairs or replacements to such premises or the Property made by Assignee, and (d) all expenses incident to taking and retaining possession thereof;

4.3.2. the principal sum (including prepayment premiums, if any, then due), interest and all other amounts evidenced by, or accruing under, the provisions of the Note and secured hereby, or by the Mortgage; and

4.3.3. all reasonable costs and attorneys' fees incurred by Assignee in connection with any of the same all in such order of priority as to any of the items mentioned in the provisions of this Section as Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding.

4.4. Assignee's exercise of the option granted to it by the provisions of this Section, collection of the Rents, and application thereof as herein permitted shall not be considered a waiver by Assignee of any default under the provisions of the Note, the Mortgage, any other Loan Document, any Lease or this Assignment.

Section 5. Indemnification. Assignee shall not be liable for any loss sustained by Assignor because of any failure by Assignee to let such premises after the occurrence of any such Event of Default or any other act or omission of Assignee in managing such premises after any such Event of Default, unless such loss is caused by Assignee's gross negligence or willful misconduct and bad faith. This Assignment shall not operate to place upon Assignee any responsibility or liability for the control, care, management or repair of such premises or the Property, for performing any duty or obligation under the provisions of any Lease, for any waste committed on any such premises or the Property by any tenant or other person, for any dangerous or defective condition of any such premises or the Property, or for any negligence in the management, upkeep, repair or control thereof resulting in loss or injury or death to any tenant, licensee, employee or other person. Assignor hereby agrees to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may be incurred under any Lease or under or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of its obligations under any Lease accruing before the date Lender shall have acquired actual possession and control of the Property, unless such liability, loss or damage is caused by Assignee's gross negligence or willful misconduct and bad faith. If Assignee incurs any such liability under any Lease or under or by reason of this Assignment or in defense of any such claim or demand, the

92501873

UNOFFICIAL COPY

amount thereof and of any and all attorneys' fees or other expenses incurred by Assignee in connection therewith shall be secured hereby and Assignor shall reimburse Assignee therefor immediately upon demand and, upon Assignor's failure to do so, Assignee may, at its option, declare all sums evidenced by the Note or secured hereby or by the Mortgage to be immediately due and payable.

Section 6. Termination of Assignment. Upon payment in full of such principal sum, interest (including prepayment fees, if any) and all other sums owed to Assignee under the provisions of the Note, the Mortgage, this Assignment or any other Loan Document executed in connection therewith, this Assignment shall terminate and become of no further effect; provided, that the affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee that any of such principal sum, interest (including prepayment premiums, if any) or other sums remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may, and is hereby authorized to, rely thereon. Assignor hereby authorizes and directs the lessee under each present or future Lease and any other or future occupant of the premises described therein or in the Mortgage, upon receipt from Assignee of written notice that Assignee is then the holder of the Note and the Mortgage and that a default exists thereunder or under this Assignment, to pay over to Assignee all Rents arising or accruing under such Lease or from the Property and to continue so to do until otherwise notified in writing by Assignee.

Section 7. Acceptance or Release of Other Security or Parties. Assignee may accept or release other security for the payment of the principal sum, interest (including prepayment premiums, if any) and other sums evidenced by the Note or secured hereby or by the Mortgage, release any party primarily or secondarily liable therefor, and apply any other security held by it to the satisfaction of such principal sum (prepayment premiums, if any), interest or other sums evidenced by the Note or secured hereby or by the Mortgage, without prejudice to any of its rights under the provisions of this Assignment.

Section 8. Notices. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be (a) in writing, and (b) deemed to have been provided on the next business day after being sent by certified or registered mail in the United States mails, postage prepaid, return receipt requested, or by Federal Express or other similar overnight delivery service, to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to the other.

Section 9. General.

9.1. Amendment. This Assignment may be amended or supplemented by and only by an instrument executed and delivered by each party hereto.

9.2. Waiver.

99501673

UNOFFICIAL COPY

9.2.1. Assignee shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by Assignee in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

9.2.2. Without limiting the operation and effect of the provisions of paragraph 9.2.1 hereof, nothing in the provisions of this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted to it hereunder shall be deemed a waiver by Assignee of any of its rights and remedies under the provisions of the Note, the Mortgage or any other Loan Document executed in connection therewith, and this Assignment is made and accepted without prejudice to any of such rights and remedies. Assignee's right to collect such principal sum, interest (including prepayment premiums, if any) and other sums evidenced by the Note or secured hereby or by the Mortgage, and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with or after any action taken by it hereunder.

9.3. Applicable Law. This Assignment shall be given effect and construed by application of the law of the State where the Property is located.

9.4. Time of Essence. Time shall be of the essence of this Assignment.

9.5. Joint and Several. If Assignor consists of more than one person, then all of the obligations, covenants, agreements, representations and warranties of Assignor set forth herein shall be joint and several.

9.6. Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

9.7. Definitions and Construction. As used herein,

9.7.1. except as otherwise defined herein, all capitalized terms contained in this Agreement, shall have the same meaning herein as set forth in the Mortgage; and

9.7.2. all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph or subparagraph of this Assignment, and (d) to the "Assignor" shall be deemed to refer to each person hereinabove so named and its successors and permitted assigns hereunder.

9.8. Exhibits. Each writing or plat referred to herein as being attached hereto

99591673

UNOFFICIAL COPY

as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

9.9. Severability. No determination by any court, governmental body or otherwise that any provision of this Assignment or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

9.10. Benefit and Burden. This Assignment, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee and any subsequent holder or other owner of the Note and beneficiary under the Mortgage, and shall be binding upon Assignor, its successors and permitted assigns, and any subsequent owner of any or all of the Property.

9.11. Recordation. If Assignee requires that this Assignment (or any supplement, modification or amendment thereof) be recorded, the cost of such recordation and of all taxes and charges incident thereto (including all costs incurred in recording any notice or memorandum of Lease of which this Assignment gives notice) shall be paid by Assignor.

9/27/01 1673

UNOFFICIAL COPY

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly signed, sealed and delivered as of the day and year first above written.

GARDEN TANGLEWOOD, LP,
a Delaware limited partnership

By: Garden Capital Incorporated, a Nevada corporation,

Its: General partner

By: Carol Williams

Name: Carol Williams

Title: TREASURER

Property of Cook County Clerk's Office

99591673

UNOFFICIAL COPY

STATE OF New York)
)
COUNTY OF New York) SS

I, Andrew Jagoda, do hereby certify that Cara Williams, personally known to me to be the Treasurer, of Garden Capital Inc. a Nevada corporation the general partner of Garden Tanglewood, L.P. appeared before me this day in person and severally acknowledged that as such officer he signed and delivered the said instrument, pursuant to authority, given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation and partnership. Given under my hand and official seal, this 10th day of June, 1998.

Notary Public

My commission expires: _____

[SEAL]

Signature [Signature]

(Seal)

ANDREW L. JAGODA
Notary Public, State of New York
No. 02JA5041537
Qualified in Westchester County
Commission Expires April 3, 1999

My Commission Expires: _____

Signature _____ (Seal)

My Commission Expires: _____

92501673

UNOFFICIAL COPY

SCHEDULE A Legal Description

Parcel 1 (Phase I):

That parcel of land located in the County of Cook, State of Illinois and described as follows: That part of the North 3/4 of the West 1/2 of the Northwest 1/4 of Section 15, Township 41 North, Range 11 East of the Third Principal Meridian, lying South of Seegers Road, in Cook County, Illinois:

Beginning at the Southeast corner of the North 3/4 of the West 1/2 of the Northwest 1/4 of Section 15, Township 41 North, Range 11 East of the Third Principal Meridian; thence Westerly along the South line of the North 3/4 of the West 1/2 of the Northwest 1/4 of said Section 15, a distance of 858.86 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Northerly, a distance of 441.776 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Easterly, a distance of 120.83 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Northerly, a distance of 436.11 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Easterly, a distance of 546.34 feet; thence turning a right angle to the course of 90 degrees 32 minutes 32 seconds Southerly, a distance of 351.05 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Easterly, a distance of 200.00 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Southerly, a distance of 525.00 feet to the point of beginning, in Cook County, Illinois, (excepting from the above described tract that part of the land dedicated for public streets by Document Number 21541064).

Parcel 2 (Phase II):

That part of the North 3/4 of the West 1/2 of the Northwest 1/4 of Section 15, Township 41 North, Range 11 East of the Third Principal Meridian, lying South of Seegers Road, in Cook County, Illinois, described as follows:

Beginning at the Southwest corner of the North 3/4 of the West 1/2 of the Northwest 1/4 of Section 15, Township 41 North, Range 11 East of the Third Principal Meridian, thence Northerly along the West line of the said Section 15, a distance of 1168.26 feet; thence turning a right angle to the course of 89 degrees 25 minutes 01 seconds Easterly, a distance of 381.27 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Southerly, a distance of 181.10 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Easterly, a distance of 100.34 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Southerly, a distance of 258.14 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Easterly, a distance of 92.31 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Southerly, a distance of 287.16 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Westerly, a distance of 120.83 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Southerly, a distance of 441.776 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Westerly, a distance of 464.96 feet to the point of beginning, in Cook County, Illinois, (excepting from the above described tract that part of the land dedicated for public streets by Documents 21541064 and 22568064).

99591673

UNOFFICIAL COPY

Parcel 3 (Phase III):

That part of the North 3/4 of the West 1/2 of the North 1/4 of Section 15, Township 41 North, Range 11 East of the third Principal Meridian lying South of Seegers Road, in Cook County, Illinois; commencing at the Southwest corner of the North 3/4 of the West 1/2 of the Northwest 1/4 of Section 15, Township 41 North, Range 11 East of the Third Principal Meridian; thence Northerly along the West line of the Northwest 1/4 of the said Section 15 a distance of 1168.26 feet to a point of beginning; thence continuing Northerly along the West line of the Northwest 1/4 of said Section 15, a distance of 239.22 feet; thence turning a right angle to the course of 71 degrees 09 minutes 13 seconds Northeasterly, a distance of 467.09 feet; thence turning a right angle to the course of 3 degrees 41 minutes 20 seconds Northeasterly, a distance of 168.00 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Southeasterly, a distance of 213.00 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Northeasterly, a distance of 181.06 feet; thence turning a right angle to the course of 7 degrees 10 minutes 00 seconds Northeasterly, a distance of 290.87 feet; thence turning a right angle to the course of 97 degrees 57 minutes 00 seconds Southerly, a distance of 595.10 feet; thence turning a right angle to the course of 89 degrees 27 minutes 28 seconds Westerly, a distance of 546.34 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Southerly, a distance of 148.95 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Westerly, a distance of 92.31 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Northerly, a distance of 258.14 feet; thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Westerly, a distance of 100.34 feet; thence turning a right angle to the course of 90 degrees 00 minutes 00 seconds Northerly, a distance of 181.10 feet, thence turning a left angle to the course of 90 degrees 00 minutes 00 seconds Westerly, a distance of 381.27 feet to the point of beginning in Cook County, Illinois (excepting from the above described tract that part of the land dedicated for public streets by Document Numbers 21541064 and 22563065).

90501673