


Prepared by:

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Shelby Cnty Judge of Probate, AL
06/19/2007 04:09:05PM FILED/CERT

Recording requested by,
and after recording, return to:

GE Commercial Finance Business Property Corporation
Attn: Middle Market Risk
10900 Northeast Fourth Street, Suite 500
Bellevue, Washington 98004

Loan No.: 6324017-001

ASSIGNMENT OF RENTS AND LEASES

(3280 HIGHWAY 31 N.
SHELBY COUNTY, ALABAMA)

THIS ASSIGNMENT, made as of June 19, 2007, by CALERA 3280, LLC, a Delaware limited liability company, with a mailing address of 3280 Highway 31 N., Calera, Alabama 35040 ("Assignor"), in favor of GE COMMERCIAL FINANCE BUSINESS PROPERTY CORPORATION, a Delaware corporation, with a mailing address of Middle Market Risk, 10900 Northeast Fourth Street, Suite 500, Bellevue, Washington 98004 (together with its successors and assigns, "Lender"),

WITNESSETH :

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of Assignor in, to and under all written and oral leases and rental agreements with respect to the real property located in Shelby County, Alabama, commonly known as 3280 Highway 31 N., and more particularly, described in Exhibit A attached hereto and incorporated herein ("Property"), whether now in existence or hereafter entered into, including but not limited to the lease or leases described on Exhibit B attached hereto, and all guaranties, amendments, extensions, renewals and subleases of said leases and any of them, all of which are hereinafter called the "Leases," all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property, any award hereafter made in any bankruptcy, insolvency or reorganization proceeding in any state or federal court involving any of the tenants of the Leases, and any and all payments made by such tenants in lieu of rent.

This Assignment is made for the purpose of securing:

- A. The payment of the indebtedness (including any extensions or renewals thereof) evidenced by a certain Promissory Note ("Note") of Assignor of even date herewith in the principal sum of Fifteen Million Five Hundred Thousand and No/100 Dollars Dollars (\$15,500,000.00) and secured by a certain Commercial Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing ("Security Instrument") of even date herewith encumbering the Property; and
- B. The payment of all other sums with interest thereon becoming due and payable to Lender under the provisions of the Security Instrument and any other instrument constituting security for the Note; and
- C. The performance and discharge of each and every term, covenant and condition contained in the Note, Security Instrument and any other instrument constituting security for the Note.

Assignor represents, warrants, covenants and agrees with Lender as follows:

- 1. The sole ownership of the entire lessor's interest in the Leases is or shall be vested in Assignor, and Assignor has not, and shall not, perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.
- 2. The Leases are and shall be valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, canceled, renewed or surrendered nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Lender, which approval shall not be unreasonably withheld.
- 3. Without limiting the foregoing Assignor shall not reduce the amount of rent payable under any Lease or shorten the term of any Lease without notice to Lender and Lender's consent.
- 4. There are no defaults now existing under any of the Leases, and to the best of Assignor's knowledge, there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.
- 5. Assignor shall give prompt notice to Lender of any notice received by Assignor claiming that a default has occurred under any of the Leases on the part of Assignor, together with a complete copy of any such notice.
- 6. Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.

7. Assignor will not permit any Lease to become subordinate to any lien other than the Security Instrument.
8. All existing Leases are described on Exhibit B attached hereto and incorporated herein. Assignor has delivered to Assignee true and correct copies of all existing Leases and all amendments and modifications thereto.
9. Assignor shall not permit the assignment of the lessee's interest under any Lease without Lender's prior written consent, which consent shall not be unreasonably withheld, subject to Lender's then-current underwriting criteria for similar properties and transactions.

The parties further agree as follows:

This Assignment is an absolute, present assignment from Assignor to Lender, effective immediately, and is not merely an assignment for security purposes. Notwithstanding the foregoing, until a notice is sent to the Assignor in writing that an Event of Default (as defined in the Note and/or Security Instrument) has occurred under the terms and conditions of the Note or any other instrument constituting additional security for the Note (which notice is hereafter called a "Notice"), Assignor is granted a license to receive, collect and enjoy the rents, income and profits accruing from the Property.

If an Event of Default (as defined in the Note and Security Instrument) shall occur, Lender may, at its option, after service of a Notice, receive and collect all such rents, income and profits as they become due, from the Property. Lender shall thereafter continue to receive and collect all such rents, income and profits, until Lender shall otherwise agree in writing. All sums received by Assignor after service of such Notice shall be deemed received in trust and shall be immediately turned over to Lender.

Assignor hereby irrevocably appoints Lender as its true and lawful attorney-in-fact with power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Assignor, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, either in its own name or in the name of Assignor or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such rents. Such appointment is coupled with an interest and is irrevocable. Lender shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss is due to the gross negligence or willful misconduct of Lender.

Lender shall apply the rents received from Assignor's lessees, to accrued interest and principal under the Note. If no Event of Default remains uncured, amounts received in excess of the aggregate monthly payment due under the Note shall be remitted to Assignor in a timely manner. Nothing contained herein shall be construed to constitute Lender as a mortgagee-in-possession in absence of its physically taking possession of the Property.

Assignor also hereby irrevocably appoints Lender from and after service of Notice as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a Notice to pay any and all amounts due Assignor pursuant to the Leases to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

If an Event of Default shall occur, Lender is hereby vested with full power from and after service of a Notice to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Lender or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor relating thereto, and may exclude the Assignor, its agents and servants, wholly therefrom. Assignor hereby grants full power and authority to Lender to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Assignor to Lender, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Assignor to Lender on the Note and the Security Instrument, all in such order as Lender may determine (unless the order of applicable law is mandated by any applicable law). Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor in the Leases. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, unless the same shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Lender.

Waiver of or acquiescence by Lender in any default by the Assignor, or failure of Lender to insist upon strict performance by the Assignor of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under the Note or any other instrument constituting security for the Note, or at law or in equity.

If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

Any and all notices, elections, demands, or requests permitted or required to be made under this Assignment, including without limitation a Notice, shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address set forth above, or to such other party and at such other address within the United States of America as any party may designate as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of mailing by Express Mail, or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

Assignor hereby authorizes Lender to give written notice of this Assignment, which may include a copy hereof, at any time to any tenant under any of the Leases.

The terms "Assignor" and "Lender" shall be construed to include the legal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This Assignment may not be amended, modified or changed nor shall any waiver of any provisions hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. To the extent that anything in this Assignment shall conflict with anything contained in the "Assignment of Rents" provision contained at Section 24 of the Security Instrument, the provisions of this Agreement shall control.

Notwithstanding anything contained herein to the contrary, in no event shall this Assignment be deemed to reduce the indebtedness evidenced by the Note by an amount in excess of the actual amount of cash received by Lender under the Leases, whether before, during or after the occurrence of an Event of Default, and Assignor acknowledges that in no event shall the indebtedness secured hereby be reduced by the value from time to time of the rents, income and profits of or from the Property. In addition, Lender reserves the right, at any time, whether before or after the occurrence of an Event of Default, to recharacterize this Assignment as merely constituting security for the indebtedness of Assignor to Lender, which recharacterization shall be made by written notice delivered to Assignor. Lender's receipt of any rents, issues, and profits pursuant to this Assignment after the institution of foreclosure proceedings, either by court action or by the private power of sale contained in any mortgage now or hereafter securing

the Note, shall not cure an Event of Default, as defined in the Note, or affect such proceedings or sale.

WAIVER OF JURY TRIAL. ASSIGNOR AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVE ANY AND ALL RIGHTS THAT EACH PARTY TO THIS ASSIGNMENT MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR THE STATE OF ALABAMA, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS ASSIGNMENT, THE LOAN DOCUMENTS OR ANY TRANSACTIONS CONTEMPLATED THEREBY OR RELATED THERETO. IT IS INTENDED THAT THIS WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, CLAIMS AND/OR COUNTERCLAIMS IN ANY SUCH ACTION OR PROCEEDING. ASSIGNOR UNDERSTANDS THAT THIS WAIVER IS A WAIVER OF A CONSTITUTIONAL SAFEGUARD, AND EACH PARTY INDIVIDUALLY BELIEVES THAT THERE ARE SUFFICIENT ALTERNATE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS, INCLUDING, A TRIAL BY AN IMPARTIAL JUDGE, THAT ADEQUATELY OFFSET THE WAIVER CONTAINED HEREIN.

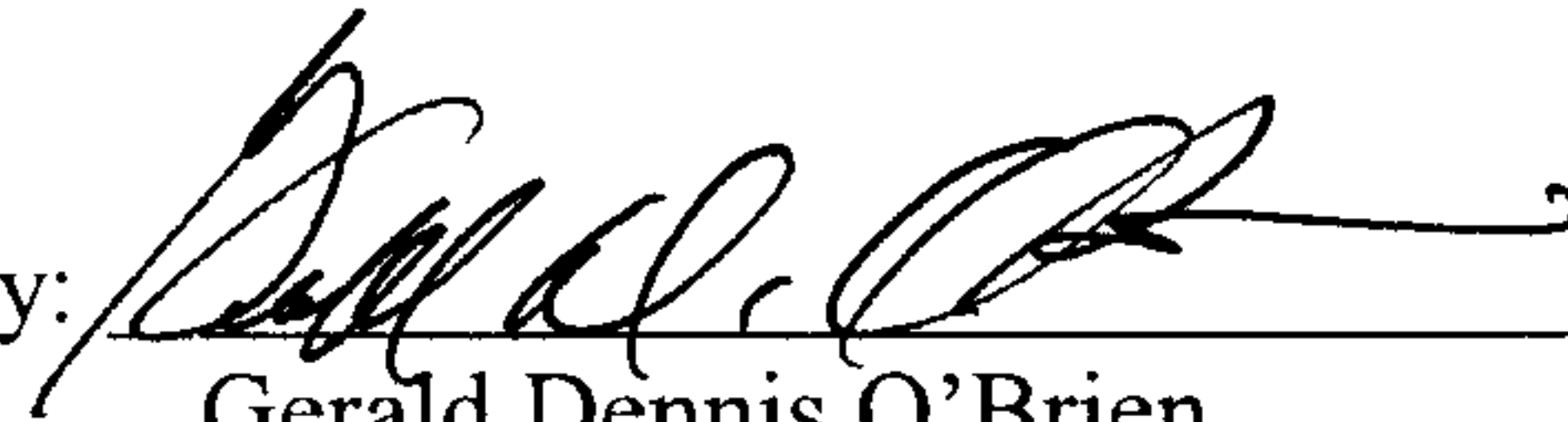
This Assignment shall be construed and enforced under the laws of the State of Alabama applicable to contracts made and to be performed therein (excluding choice-of-law principles).

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


ASSIGNOR:

CALERA 3280, LLC,
a Delaware limited liability company

By: 
Gerald Dennis O'Brien,
Manager

STATE OF Alabama
COUNTY Jefferson

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I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that Gerald Dennis O'Brien, as Manager of **CALERA 3280, LLC**, a Delaware limited liability company, and whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 19th day of June, 2007.

Margaret P. Soldo
Notary Public


My commission expires: 9-10-2010

NOTARY MUST AFFIX SEAL

Loan No.: 6324017-001

EXHIBIT A

(3280 HIGHWAY 31 N.
SHELBY COUNTY, ALABAMA)


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Legal Description:

Lot 1 of Shelby Commerce Park according to the plat thereof recorded in Map Book 31, Page 138, Probate Records of Shelby County, Alabama.

Rights under Declaration of Easements by Shelby Commerce Park, L.L.C. and joined by O'Brien, LLC and Dixon LLC dated November 8, 2005, and recorded November 14, 2005, as Instrument No. 20051114000593080.

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EXHIBIT B

(3280 HIGHWAY 31 N.
SHELBY COUNTY, ALABAMA)

List of Leases:

TENANT	DATE	AMENDED
Custom Marketing Services, Inc.	November 5, 2002	August 23, 2005 and June <u>19</u> , 2007