

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING  
RETURN TO:

Jenner & Block, LLC  
One IBM Plaza  
Chicago, Illinois 60611  
Attn: Julie M. Mandanas

0020758602

5024/0049 32 001 Page 1 of 14  
2002-07-11 10:04:00  
Cook County Recorder 47.00



*This space reserved for Recorder's use only*

## THIRD AMENDMENT TO LOAN DOCUMENTS

THIS THIRD AMENDMENT TO LOAN DOCUMENTS (this "Agreement") is made as of the 25<sup>th</sup> day of June, 2002, by and among BRE/ENTERPRISE DRIVE L.L.C., a Delaware limited liability company ("New Borrower"), BRE/CHICAGO PORTFOLIO L.L.C., a Delaware limited liability company ("New Guarantor"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

### RECITALS:

A. Pursuant to the terms of that certain Consent, Release and Assignment and Assumption of Mortgage and Related Loan Documents ("Loan Assignment") entered into as of the date hereof by and among Enterprise Drive, L.L.C. ("Original Borrower"), Lender and New Borrower, New Borrower assumed the obligations of Original Borrower to Lender, as such obligations have been modified by agreement of New Borrower and Lender.

B. Pursuant to the Loan Assignment, Lender has agreed to make a loan ("Loan") to New Borrower in the principal amount of Seven Million Four Hundred Forty Three Thousand Eight Hundred Eleven and No/100 Dollars (\$7,443,811.00), as evidenced by a new Promissory Note dated the date hereof in the principal amount of the Loan made payable by New Borrower to the order of Lender (the "New Note").

C. The New Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement dated as of May 17, 2000 from Original Borrower to Lender, recorded with the Recorder of Deeds in Cook, County, Illinois (the "Recorder's Office") on May 19, 2000, as Document No. 00364833, as amended by that certain First Amendment to Loan Documents dated as of October 31, 2000 and recorded on December 15, 2000 as Document No. 00985623 with the Recorder's Office ("Mortgage"), and that certain Second Amendment to Loan Documents dated as of May 17, 2001 and recorded on September 26, 2001 as Document No. 0010899769, which Mortgage

**BOX 333-CTI**

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encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("**Property**"), (ii) that certain Assignment of Leases and Rents dated as of May 17, 2000, from Original Borrower to Lender and recorded in the Recorder's Office on May 19, 2000, as Document No. 00364834, as amended by that certain First Amendment to Loan Documents dated as of October 31, 2000 and recorded on December 15, 2000 as Document No. 00985623 with the Recorder's Office, and that certain Second Amendment to Loan Documents dated as of May 17, 2001 and recorded on September 26, 2001 as Document No. 0010899769, (the "**Assignment of Leases**"); and (iii) certain other loan documents (the Mortgage, the Assignment of Leases, and the other documents originally evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "**Original Loan Documents**").

D. The Loan is further secured by (i) a Guaranty Of Non Recourse Exceptions dated as of the date hereof from New Guarantor to Lender (the "**New Guaranty**"), and (ii) an Environmental Indemnity Agreement dated as of the date hereof from New Borrower to Lender (the "**New Environmental Agreement**").

E. New Borrower and Lender desire to amend the Original Loan Documents in order to reflect the assignment and assumption of the Loan pursuant to the Loan Assignment.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the consent of Lender to the Loan Assignment, (iii) the agreements by Lender to modify the Original Loan Documents, as provided herein, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. Amendments to Original Loan Documents.

(a) Any and all references in the Original Loan Documents to (i) "Enterprise Drive, L.L.C." are hereby deleted and the term "BRE/Enterprise Drive L.L.C.," substituted therefore; (ii) "Prime Group Realty, L.P" are hereby deleted and the term "BRE/Chicago Portfolio L.L.C." substituted therefore; and (iii) "Prime" are hereby deleted. Pursuant hereto, any and all references in the Original Loan Documents to "Borrower," "Mortgagor," or "Assignor" shall be deemed to refer to New Borrower, and any and all references to "Guarantor" shall be deemed to refer to New Guarantor. Without limiting the foregoing: the phrase "that certain Guaranty of Payment of even date herewith from Prime Group Realty, LP, a Delaware limited partnership" in the first sentence of Section 1.1 of the Mortgage is hereby replaced with "that certain Guaranty of Non-Recourse Exceptions dated as of June 25, 2002 from BRE/Chicago Portfolio L.L.C., a Delaware limited liability company"; and clause (iv) in Section 2.25 (c) of the Mortgage is hereby deleted.

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(b) Any and all references in the Original Loan Documents to the "Note" shall be deemed to refer to the New Note, as the same may be amended, restated, supplemented or otherwise modified from time to time.

(c) Any and all references in the Original Loan Documents to the original principal amount of the Loan as "Eight Million Ninety Thousand Dollars (\$8,090,000)" shall be hereby deleted and the amount "Seven Million Four Hundred Forty Three Thousand Eight Hundred Eleven Dollars (\$7,443,811)" shall be substituted therefor.

(d) Any and all references to in the Original Loan Documents to "Loan Documents" shall be deemed to refer to Loan Documents as modified herein and as executed in connection with the New Note.

(e) Any and all references in the Original Loan Documents to (i) the "Environmental Indemnification Agreement" shall be deemed to refer to the Environmental Indemnity Agreement of even date herewith by and between New Borrower and Lender, as the same may be amended, restated, supplemented, or otherwise modified from time to time, and (ii) the "Collateral Pledge of Reserve Account and Disbursement Agreement" shall be deemed to refer to the Collateral Pledge of Reserve Account and Disbursement Agreement of even date herewith by and between New Borrower and Lender, as the same may be amended, restated, supplemented and otherwise modified from time to time.

(f) Any and all references in the Original Loan Documents to the "Guaranty of Payment" shall be deleted and "Guaranty of Non-Recourse Exceptions" substituted therefor, and references to "Guaranty" shall be deemed to refer to the New Guaranty.

(g) The words "c/o Prime Group Realty Trust, 77 West Wacker Drive, Suite 3900, Chicago, Illinois 60601" in the preamble shall be hereby deleted and replaced with "c/o Blackstone Real Estate Advisors L.P., 345 Park Avenue, 32nd Floor, New York, New York 10154"

(h) Paragraph 2.17(a) of the Mortgage is amended to insert the following sentences at the end of such subsection:

"Mortgagor shall not be permitted to transfer, sell or assign any interest in Mortgagor except that transfers of indirect interests in Mortgagor shall be permitted, provided that (x) after giving effect to any such transfer, the real estate investment fund commonly known as "Blackstone Real Estate Partners III" ("BREP III") continues to own directly or indirectly not less than 51% of the ultimate beneficial interests in Mortgagor and (y) BREP III continues to directly or indirectly control Mortgagor."

(i) In Paragraph 2.23(a) of the Mortgage "forty-five (45) days after the end of each fiscal quarter of Mortgagor" is hereby deleted and the phrase "sixty (60) days after the end of the first three fiscal quarters of Mortgagor each year during the term of the

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Loan and one hundred twenty (120) days after the end of the fourth fiscal quarter of Mortgagor each year during the term of the Loan". In Paragraph 2.23(b) of the Mortgage "forty-five (45) days after the end of each fiscal quarter of Guarantor" is hereby deleted and the phrase "sixty (60) days after the end of the first three fiscal quarters of Guarantor each year during the term of the Loan and one hundred twenty (120) days after the end of the fourth fiscal quarter of Guarantor each year during the term of the Loan".

(j) Paragraph 2.24 of the Mortgage is hereby deleted in its entirety and replaced with the following:

"Mortgagor covenants and agrees that, so long as the Note or the Loan is outstanding, Mortgagor will not permit the Debt Service Coverage Ratio (as defined in the Note) to be less than 1.30 to 1. If the Debt Service Coverage Ratio falls below 1.30 during the term of the Note or the Loan, Mortgagor shall make such deposits with Mortgagee as required by the Note and the Pledge Agreement (as defined in the Note), and such deposits will be disbursed to Mortgagor according to the terms of the Pledge Agreement, provided that if Mortgagor complies with the terms and conditions of the Collateral Pledge of Expense Reserve Account and Disbursement Agreement dated as of June 25, 2002, by and between Mortgagor and Mortgagee, the failure to meet the Debt Service Coverage Ratio shall not constitute a default hereunder."

(k) Paragraph 2.25(i) of the Mortgage is hereby deleted in its entirety and replaced with the following:

"(i) Mortgagor will not enter into any contract or agreement with any affiliate of the Mortgagor, except (x) a property management agreement with BRE Property Management of Illinois, L.L.C. ("BRE") or (y) for goods or services reasonably required in the conduct of Mortgagor's business and provided that any such transaction shall be effected by an enforceable agreement and only on arm's length terms competitive with those that may be obtained in the marketplace from unaffiliated Persons. Lender recognizes, and pursuant to the Loan Assignment, has consented to Mortgagor entering into that certain Management Agreement dated as of June 25, 2002 with BRE, as manager."

(l) The address information of the parties in Paragraph 17 of the Assignment of Leases and Paragraph 4.2 of the Mortgage is deleted in its entirety and replaced with the following:

If to	BRE/Enterprise Drive L.L.C.
Mortgagor/Assignor	c/o Blackstone Real Estate Advisors L.P.
(as applicable):	345 Park Avenue, 32 <sup>nd</sup> Floor

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New York, New York 10154  
Attention: Marshall Findley  
Facsimile: 212/583-5730

With a copy to: Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017-3954  
Attention: Gregory J. Ressa  
Facsimile: 212/455-2502

If to Mortgagee/Assignee  
(as applicable): LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Jay Palmer  
Facsimile: 312/904 6691

With a copy to: Jenner & Block, LLC  
One IBM Plaza  
Chicago, Illinois 60611  
Attention: Donald I Resnick  
Facsimile: 312/840-7656

(m) The second sentence of Paragraph 4.17(a) of the Mortgage is hereby deleted in its entirety and replace with the following:

"Said Note requires the payment to Mortgagee of a late charge of four percent (4%) of any amount of principal and/or interest that are not paid within five (5) days of the date when due and four percent (4%) of any other amount due under the terms and conditions of this Mortgage or the other Loan Documents not paid within ten (10) days of the date when due."

(n) Paragraph 4.20 of the Mortgage is hereby deleted in its entirety.

(o) Schedule I of the Assignment of Leases is hereby deleted and a new Schedule I, attached hereto, shall be substituted therefor.

2. **Representations and Warranties of Borrower.** New Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the New Note, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the New Note, the Mortgage or the other Loan Documents and New Borrower does not

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know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the New Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of New Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of New Borrower, New Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, New Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) New Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of New Borrower. This Agreement has been duly executed and delivered on behalf of New Borrower.

3. **Title Policy.** As a condition precedent to the agreements contained herein, New Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue Lender's title insurance policy No. 7941006 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

#### 4. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against New Borrower or New Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that New Borrower, New Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and New Borrower, New Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this

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Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with New Borrower or New Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) New Borrower, New Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of New Borrower, New Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the New Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

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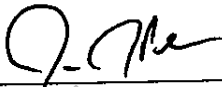


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**LASALLE BANK NATIONAL ASSOCIATION**

By:   
Name: Jay Palmer  
Title: Vice President

**NEW BORROWER:**

**BRE/ENTERPRISE DRIVE L.L.C.**, a Delaware limited liability corporation

By: BRE/Chicago Portfolio L.L.C., a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NEW GUARANTOR:**

**BRE/CHICAGO PORTFOLIO L.L.C.**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

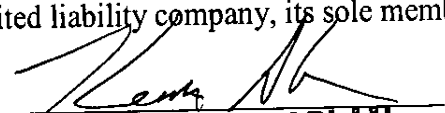
**LASALLE BANK NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NEW BORROWER:**

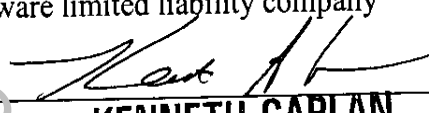
**BRE/ENTERPRISE DRIVE L.L.C.**, a Delaware limited liability corporation

By: BRE/Chicago Portfolio L.L.C., a Delaware limited liability company, its sole member

By:   
Name: **KENNETH CAPLAN**  
Title: **AUTHORIZED SIGNATORY**

**NEW GUARANTOR:**

**BRE/CHICAGO PORTFOLIO L.L.C.**, a Delaware limited liability company

By:   
Name: **KENNETH CAPLAN**  
Title: **AUTHORIZED SIGNATORY**

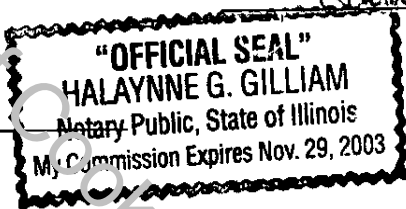
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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I Halayne G. Gilliam, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jay Palmer, Vice President of LASALLE BANK NATIONAL ASSOCIATION, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24<sup>th</sup> day of June, 2002.

Halayne G. Gilliam  
Notary Public



My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF \_\_\_\_\_ )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ of BRE/CHICAGO PORTFOLIO L.L.C., the sole member of BRE/ENTERPRISE DRIVE L.L.C., is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes herein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ of LASALLE BANK NATIONAL ASSOCIATION, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF Cook     )

I Annette Burtin, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **KENNETH CAPLAN AUTHORIZED SIGNATORY** BRE/CHICAGO PORTFOLIO L.L.C., the sole member of BRE/ENTERPRISE DRIVE L.L.C., is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of June, 2002.

Annette Burtin  
Notary Public

My Commission Expires: 7/9/2005

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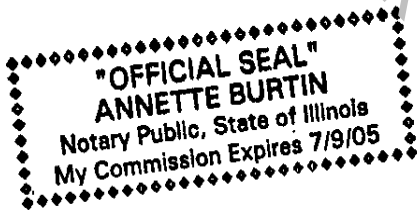
STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF Cook     )

I Annette Burtin, a Notary Public in and for said County, in the State  
aforesaid, DO HEREBY CERTIFY that ~~KENNETH CAPLAN~~ <sup>of</sup> ~~authorized signatory~~  
BRE/CHICAGO PORTFOLIO L.L.C., is personally known to me as the person whose  
name is subscribed to the foregoing instrument, appeared before me this day in person and  
acknowledged that he signed and delivered said instrument as his own free and voluntary act for  
the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of June, 2002.

Annette Burtin  
Notary Public

My Commission Expires: 7/9/2005



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## EXHIBIT A

### THE PROPERTY

That part of Lots 1 and 2, lying North of the following described line:

Beginning at a point on the West line of said Lot 2, that is 32.50 feet South of the Northwest corner of said Lot 2; thence South 89 degrees, 56 minutes, 35 seconds East to a point on the West right of way of Enterprise Drive, in Enterprise Centre Subdivision, being a subdivision of part of the Northeast 1/4 of Section 30, Township 39 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded on August 4, 1989 as Document 89357915, in Cook County, Illinois.

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5/12/2017



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## SCHEDULE I

### Existing Leases

1. National Studios, Inc.
2. American Cast Iron
3. Higgins & White
4. National Restaurant
5. Suburban Primary Health
6. Jupiter Brokerage Services
7. AMBI-Prestigio Foods
8. GSA Census Bureau
9. Cleft Lip and Palate
10. Total Quality
11. Cincinnati Inc.
12. Marley Company
13. Cognitive Rehabilitation
14. Partners in Design
15. Heartland Home Health
16. Chipolte Mexican Grill
17. GAB Robins North America
18. Metrocall
19. Prime Group Realty Trust
20. First American Title Insurance Company

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