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Cook County Recorder of Deeds
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Proskauer Rose LLP
1585 Broadway
New York, New York 10036
Attn: David J. Weinberger, Esq.

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8250004

OLIVERMcMILLAN GLENVIEW RESIDENTIAL, LLC,
as assignor

to

BARCLAYS CAPITAL REAL ESTATE INC.,
as assignee

ASSIGNMENT OF LEASES AND RENTS

Dated: ¹⁵ of November 30, 2004

Box 400-CTCC

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ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of the 30 day of November 2004, by OLIVERMcMILLAN GLENVIEW RESIDENTIAL, LLC, a Delaware limited liability company, ("Borrower"), as assignor, to BARCLAYS CAPITAL REAL ESTATE INC., a Delaware corporation (together with its successors and assigns, "Lender"), as assignee.

BACKGROUND

Borrower and Lender are entering into a certain Loan Agreement of even date herewith ("Loan Agreement") pursuant to which Lender will make a loan ("Loan") to Borrower in the maximum principal amount of \$28,400,000.00, or so much thereof as may be advanced pursuant to the terms of the Loan Agreement. The Loan will also be evidenced by Borrower's promissory note to Lender of even date herewith (the "Note"), and will be secured by, among other things, a mortgage, deed of trust, deed to secure debt or similar security instrument made by Borrower to Lender also of even date herewith ("Security Instrument") which encumbers the property described on Exhibit A hereto ("Property"). As a condition to making the Loan, Lender requires that Borrower assign to Lender all rents, leases and other profits arising out of the Property.

Borrower, OliverMcMillan Glenview Retail, LLC, a Delaware limited liability company ("Retail"), and Lender are entering into a certain Cross-Collateralization Agreement of even date herewith (the "Cross-Collateralization Agreement"), intended to be recorded in the real estate records in the county in which the Property is located, which cross-collateralizes and cross-defaults the Loan with a loan made by Lender to Retail in the maximum principal amount of 46,600,000.00 on the date hereof (the "Retail Loan").

NOW, THEREFORE, in consideration of the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Borrower agrees as follows:

ARTICLE 1

ASSIGNMENT

Section 1.01 Defined Terms. Capitalized terms used in this Assignment and not specifically defined in this Assignment have the meaning provided in the Loan Agreement.

Section 1.02 Assignment; Property Assigned. Borrower hereby irrevocably, absolutely and unconditionally assigns, sets over and transfers to Lender all of Borrower's right, title and interest in and to (but none of Borrower's obligations under) all current and future Leases and Rents arising with respect to the Property, all proceeds or streams of payment arising from the sale or other disposition of all or any of the Leases or Rents, and the right to receive and apply the Rents to the payment of the Debt and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties or with respect to the Rents (collectively, "Assigned Property"). Notwithstanding anything herein to the contrary, for as long as, but only as long as, the Loan and the Retail Loan are cross-collateralized

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and cross-defaulted pursuant to the terms of the Cross-Collateralization Agreement, (x) the term “Debt” as used herein shall be deemed to include the “Debt” (as defined in the Loan Agreement) and the “Debt” (as defined in the Retail Loan Agreement (as defined in the Cross-Collateralization Agreement)), and (y) without limiting the unconditional and absolute nature of this Assignment, this Assignment secures the “Obligations” (as defined in the Retail Loan Agreement), including, without limitation, the Retail Note (as defined in the Cross-Collateralization Agreement), in addition to the “Obligations” (as defined in the Loan Agreement) and the Note.

Section 1.03 Termination of Assignment. Upon payment in full of the Debt and release or discharge of the Security Instrument of record, this Assignment, and all of Lender’s right, title and interest in the Assigned Property, shall automatically terminate.

Section 1.04 Present Assignment; License to Collect. Borrower intends this Assignment to be a present, unconditional, absolute and executed assignment of the Assigned Property and not an assignment for security only. Nevertheless, subject to the terms of this Assignment, Lender hereby grants to Borrower a revocable license (a) to manage the leasing activities of the Property as contemplated by the Loan Agreement and (b) to collect and receive the Rents in trust for Lender and to apply the Rents to discharge all current amounts due on the Debt and to pay the current costs of managing, operating and maintaining the Property. So long as no Event of Default exists and subject to the provisions of the Lockbox Agreement, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear, and released from, Lender’s rights with respect to Rents under this Assignment. Upon the occurrence and during the continuance of an Event of Default, and without the necessity of notice or prior demand by Lender or Lender’s entering upon and taking and maintaining control of the Property (whether directly or through a receiver), the license granted hereunder to Borrower shall terminate automatically, and Lender shall be entitled to receive and collect the Rents as they become due and payable and exercise all of Borrower’s rights or the rights of lessor under the Leases and with respect to the Rents. Lender’s right to revoke the license granted to Borrower is in addition to all other rights and remedies available to Lender with respect to any Event of Default.

Section 1.05 Notices to Tenants. At any time on or after Lender’s demand for the Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Property instructing them to pay all Rents to Lender. Borrower agrees that each tenant may rely on Lender’s notice without inquiring further as to Lender’s right to receive the Rents and that no tenant shall be liable to Borrower for any amounts which are actually paid to Lender in response to such a notice. Borrower shall not interfere with, and shall cooperate with, Lender’s collection of the Rents. Nothing in this Section 1.05 shall be deemed to limit in any way Lender’s rights pursuant to the Lockbox Agreement.

Section 1.06 Borrower Bankruptcy. If a petition under the Bankruptcy Code is filed by or against Borrower, and Borrower determines to exercise its rights under the Bankruptcy Code to reject any Lease, Borrower shall give Lender written notice not less than ten (10) days prior to the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender has the right to serve Borrower within such ten-day period a notice stating (a) that Lender demands that Borrower assume the Lease and assign the Lease to Lender

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pursuant to Section 365 of the Bankruptcy Code and (b) that Lender agrees to cure Borrower's default under the Lease or provide adequate assurance of future performance under the Lease. If Lender so notifies Borrower, Borrower shall not seek to reject the Lease and shall assume and assign such Lease to Lender within thirty (30) days after Lender's notice is given.

ARTICLE 2

DEFAULT AND REMEDIES

Section 2.01 Events of Default. The occurrence of an "Event of Default" as that term is defined under the Loan Agreement shall constitute an "Event of Default" under this Assignment.

Section 2.02 Remedies. Upon the occurrence and during the continuance of an Event of Default (which has not been waived in writing by Lender), Lender, without notice or consent from Borrower, shall be entitled to exercise all rights and remedies as have been provided to Lender hereunder, under the other Loan Documents, by law or in equity. Such rights and remedies are cumulative and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right or remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Borrower in any instance will not entitle Borrower to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Assignment to be given). Lender may release other security for the Loan, may release any party liable for the Loan, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Loan, in each case without prejudice to its rights under this Assignment and without such action being deemed an accord and satisfaction or a reinstatement of the Loan. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies.

ARTICLE 3

LIMITATIONS ON LENDER LIABILITY

Section 3.01 No Mortgagee in Possession. Neither the granting of this Assignment to Lender, nor Lender's exercise of any rights or remedies under this Assignment, shall be construed to make Lender a "mortgagee in possession" of the Property in the absence of Lender itself taking actual possession of the Property.

Section 3.02 No Obligation for Lease Performance or Property Condition. Lender's acceptance of this Assignment shall not at any time obligate Lender to take any action with respect to the Leases, including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower. Without limiting the foregoing, this Assignment shall not operate to place on Lender

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any obligation or liability for: (a) the control, care, management or repair of the Property; (b) for carrying out any of the terms and conditions of the Leases; (c) any waste committed on the Property by tenants or any other parties; (d) any dangerous or defective condition of the Property (including, without limitation, the presence of any Hazardous Materials as defined in the Environmental Indemnity); or (e) any negligence in the management, upkeep, repair or control of the Property resulting in injury or death to any tenant or any other party or any loss of personal property. Borrower, for itself and any party claiming under or through Borrower, hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

Section 3.03 Accountability for Rents Received. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease the Property after an Event of Default

ARTICLE 4

MISCELLANEOUS PROVISIONS

Section 4.01 Governing Law. THIS ASSIGNMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES (I) THE PROVISIONS FOR THE CREATION, PERFECTION PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY (OTHER THAN THAT DESCRIBED IN CLAUSE (II) OF THIS SENTENCE) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY AND FIXTURES ARE LOCATED AND (II) WITH RESPECT TO THE PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC (INCLUDING, WITHOUT LIMITATION, THE LOCKBOX ACCOUNT, THE CASH MANAGEMENT ACCOUNT AND THE RESERVE ACCOUNTS), THE LAW OF THE JURISDICTION APPLICABLE IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UCC AS IN EFFECT IN THE STATE OF NEW YORK SHALL GOVERN. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS

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ASSIGNMENT AND THE NOTE, AND THIS ASSIGNMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

Section 4.02 Consent to Jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

William P. Persky
 OliverMcMillan
 733 8th Avenue, 3rd Floor
 San Diego, CA 92101

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED IN THE LOAN AGREEMENT SHALL BE DEEMED PERSONAL SERVICE OF PROCESS MADE IN NEW YORK, NEW YORK, AND DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN SAN DIEGO, CALIFORNIA, OR NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN SAN DIEGO, CALIFORNIA, OR NEW YORK, NEW YORK, OR (X) IS DISSOLVED WITHOUT LEAVING A SUCCESSOR OR (Y) DIES OR BECOMES LEGALLY INCAPACITATED, AS APPLICABLE.

Section 4.03 Incorporation from Loan Agreement. All provisions Articles 17 and 18, inclusive, of the Loan Agreement are incorporated into this Assignment by this reference, as if fully reproduced and stated herein.

Section 4.04 Further Assurances. Borrower, at Borrower's expense, agrees to take such further actions and execute such further documents as Lender reasonably may request

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to carry out the intent of this Assignment or to establish and protect the rights and remedies created or intended to be created in favor of Lender hereunder. Borrower agrees to pay all filing, registration or recording fees or taxes, and all expenses incident to the preparation, execution, acknowledgement or filing/recording of this Assignment or any such instrument of further assurance, except where prohibited by law so to do.

Section 4.05 No Third Party Beneficiary. Notwithstanding any provision of this Assignment to the contrary, this Assignment is not intended by the parties to create, and shall not create, benefits on behalf of any tenant or other occupant of the Property or anyone claiming rights through any tenant or other occupant of the Property.

Section 4.06 No Agency or Partnership. Nothing contained in this Assignment shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

Section 4.07 Limitation on Personal Liability. NOTWITHSTANDING ANY PROVISION HEREOF TO THE CONTRARY, BORROWER'S PERSONAL LIABILITY FOR PAYMENT OF THE DEBT AND PERFORMANCE OF THE OBLIGATIONS IS LIMITED HEREUNDER IN THE SAME MANNER AND TO THE SAME EXTENT AS EXPRESSLY PROVIDED IN THE LOAN AGREEMENT.

[Remainder of page is blank; signatures appear on next page.]

UNOFFICIAL COPY**EXHIBIT A**Legal Description of the Land

The following describes the Land:

Parcel 1: Lots 17, 19, 20 and 22 in Glen Town Center, a resubdivision of Lot 3 in GNAS mixed use retail center, in the West 1/2 of Section 27, Township 42 North, Range 12, East of the third principal meridian, according to the plat thereof recorded as document number 0020733381, in Cook County, Illinois.

Parcel 2: Easements for the benefit of Parcel 1 for parking, access, utility, and construction, as set forth in Declaration of Easements, Covenants, Conditions and Restrictions recorded July 2, 2002, as Document 0020733382 by the Village of Glenview and OliverMcMillan Glenview, LLC.

Parcel 3: Blanket Pedestrian Easement for the benefit of Parcel 1 and other property over and across Lot 1 in GNAS mixed use subdivision, as contained in plat recorded September 27, 2001 as Document 0010905146.

Parcel 4: Vehicular ingress and egress easement for the benefit of Parcel 1 over and across part of Lot 4 in GNAS mixed use subdivision, as contained in plat recorded September 27, 2001 as Document 0010905146.

Parcel 5: Easements for ingress and egress, structural support, use of facilities, residential building roof access, encroachments, common walls, ceilings and floors, utilities, HVAC equipment and facilities and mechanical rooms, over and across Lots 21, and part of Lot 12 in Glen Town Center aforesaid, for the benefit of Lot 20 and 22, in Parcel 1, as contained in Declaration of Covenants, Conditions, Restrictions and Easements dated as of November 2, 2004 by OliverMcMillan Glenview, LLC with respect to Glentown Center, Building D, Glenview, Illinois, to be recorded or intended to be recorded in the recorder's office of Cook County, Illinois, prior to the recording of this instrument.

Parcel 6: Easements for ingress and egress, structural support, use of facilities, residential building roof access, encroachments, common walls, ceilings and floors, utilities, HVAC equipment and facilities and mechanical rooms, over and across Lots 18, and part of Lot 15 in Glen Town Center aforesaid, for the benefit of Lot 17 and 19, in Parcel 1, as contained in Declaration of Covenants, Conditions, Restrictions and Easements dated as of November 2, 2004 by OliverMcMillan Glenview, LLC with respect to Glentown Center, Building E, Glenview, Illinois, to be recorded or intended to be recorded in the recorder's office of Cook County, Illinois, prior to the recording of this instrument.

Town Road, Glenview IL

04-27-103-028-0000

04-27-103-030-0000

04-27-103-031-0000

04-27-103-033-0000