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1998-12-03 11:04:24

Cook County Recorder 49.00



08095592

ASSIGNMENT OF LEASES AND RENTS

Dated as of October 30, 1998

Made by

GLENBOROUGH FUND IX LLC,
as Assignor,

to

ARCHON FINANCIAL, L.P.,
as Assignee

County: Cook
City : Westchester
State : Illinois

Premises: WESTBROOK COMMONS
3001-3075 Wolf Rd.
Westchester, Illinois

This document prepared by and after recording please return to:

Alan W. Lawrence, Esq.
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

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THIS ASSIGNMENT OF LEASES AND RENTS, dated as of October 30, 1998 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Assignment"), is made by GLENBOROUGH FUND IX LLC, a Delaware limited liability company ("Assignor"), having an address for notices c/o Glenborough Realty Trust Incorporated, 400 South El Camino Real, San Mateo, California 94402-1708, to ARCHON FINANCIAL, L.P., a Delaware limited partnership having an address at 600 East Las Colinas Boulevard, Suite 800, Irving, Texas 75039 ("Assignee").

W I T N E S S E T H:

WHEREAS, Assignor is the fee owner of the land described in Exhibit A hereto (such land, together with all improvements, structures, betterments, fixtures and equipment now or hereafter situated or located thereon, the "Security Property");

WHEREAS, Assignor and Assignee are parties to the Loan Agreement, dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which Assignee is making a loan to Assignor in the original principal amount of SEVENTY-FOUR MILLION SIX HUNDRED SIXTY-SEVEN THOUSAND ONE HUNDRED FIFTY-FIVE DOLLARS (\$74,667,155) (the "Loan") as evidenced by the Note (as defined in the Loan Agreement) made by Assignor in favor of Assignee;

WHEREAS, to secure Assignor's obligations under the Loan Agreement, the Note and the other Loan Documents (as defined in the Loan Agreement), Assignor has executed and delivered to Assignee the Security Instrument (as defined in the Loan Agreement) encumbering, inter alia, the Security Property; and

WHEREAS, Assignee was unwilling to make the Loan to Assignor unless Assignor in the manner hereinafter set forth assigned to Assignee as additional security for the payment of the Debt and the observance and performance by Assignor of the terms, covenants and conditions of the Note, the Loan Agreement, the Security Instrument and the other Loan Documents on the part of Assignor to be observed and performed, all of Assignor's right, title and interest in and to the Assigned Property (as defined herein).

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as additional security for (i) payment by Assignor of the outstanding aggregate principal amount set forth in, and evidenced by, the Note, together with all interest accrued and unpaid thereon and all other sums due to Assignee in respect of the Loan, including the Yield Maintenance Payment, if any, and any other sums due under the Note, the Loan Agreement, this Agreement, the Security Instrument or any other Loan Document and (ii) the performance by Assignor of all of the covenants and agreements contained in the Note, the Security Instrument and the other Loan

Documents, as the same may be amended, modified or supplemented, to be performed or observed by or on the part of Assignor (items (i) and (ii) being referred to herein as "Secured Obligations"), Assignor agrees as follows:

Section 1. (A) For all purposes of this Assignment, except as otherwise expressly provided herein:

"Lease" shall mean any lease, sublease, sub-sublease, license, letting, concession, occupancy agreement or other agreement (whether written or oral and whether now or hereafter in effect) including, without limitation, any Major Lease, existing as of the date hereof or hereafter entered into by Assignor or any prior owner of the Security Property with respect to subleases, pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Security Property, and every modification, amendment or other agreement relating to such lease, sublease, sub-sublease, or other agreement entered into in connection with such lease, sublease, sub-sublease, or other agreement and all agreements related thereto, and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Operating Agreements" shall mean with respect to the Security Property, reciprocal easement and/or operating agreements; covenants, conditions and restrictions; and similar agreements affecting the Security Property and binding upon and/or benefiting Assignor and other third parties.

"Tenant" shall mean any Person liable by contract or otherwise to pay monies (including a percentage of gross income, revenue or profits) pursuant to a Lease including, without limitation, any Major Tenant.

(B) Each capitalized term used herein, unless otherwise defined herein, shall have the meaning given such term in the Loan Agreement.

Section 2. TO SECURE the Secured Obligations, Assignor hereby pledges, grants, sells, assigns, conveys, delivers, transfers, hypothecates and sets over to Assignee, and grants to Assignee a security interest in, to have and to hold the same unto the Assignee and its successors and assigns forever, subject to the terms and conditions hereof, all of Assignor's right, title and interest now or hereafter acquired, in and to any and all Leases and existing Operating Agreements and any Leases and Operating Agreements that may hereafter be entered into by Assignor, and any modifications, renewals, extensions or replacements thereof, and any guaranties of the Tenant's obligations under any Lease (each such guaranty, a "Tenant Guaranty" and collectively, "Tenant Guaranties") and all right, title and interest of Assignor thereunder, including all claim, right and demand to receive, collect and retain all rents, security deposits and all other amounts due thereunder and under any modifications, renewals or extensions thereof (collectively, the "Assigned Property"), including:

(A) the immediate and continuing right to receive and collect all amounts payable by all Tenants, subtenants or other parties pursuant to the Leases, Operating

Agreements and Tenant Guaranties, including (i) all rents (including all amounts payable to Assignor on account of maintenance, repairs, taxes, insurance and common area charges or similar charges), income, revenues, issues, profits, insurance proceeds, condemnation awards and other payments, tenders and security payable to or receivable by Assignor under the Leases, the Operating Agreements or the Tenant Guaranties, (ii) all damages or other amounts payable in the event of any disposition, expiration or termination of any Lease or Operating Agreement pursuant to the terms thereof, by operation of law or otherwise, (iii) any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by Assignor under any Lease or Operating Agreement or otherwise, (iv) any award in the event of the bankruptcy of any Tenant or guarantor pursuant to a Tenant Guaranty or other party to an Operating Agreement, and (v) any security deposits, other security instruments, other deposits or prepayments with respect to any such Lease or Operating Agreement;

(B) all claims, rights, powers, privileges and remedies of Assignor, whether provided for in any Lease, Operating Agreement or Tenant Guaranty or arising by statute or at law or in equity or otherwise, consequent to any failure on the part of any Tenant to perform or comply with any term of any Lease, or any other party to comply with any Operating Agreement or Tenant Guaranty;

(C) all right to take all action upon the happening of a default under any Lease, Operating Agreement or Tenant Guaranty as shall be permitted by any such Lease, Operating Agreement, Tenant Guaranty or by applicable law, including the commencement, conduct and consummation of proceedings at law or in equity; and

(D) the full power and authority, in the name of Assignor or otherwise, to enforce, collect, receive and make receipt for any and all of the foregoing and to do any and all other acts and things whatsoever that Assignor is or may be entitled to do under any Lease, Operating Agreement or Tenant Guaranty.

Section 3. Except as otherwise required by applicable law or as provided for in the Loan Documents, any funds (subject to the terms of the Leases regarding security deposits) received by Assignee under this Assignment after the occurrence of an Event of Default (after the expiration of any notice or grace period, if any) may be applied by Assignee to the Secured Obligations in such order as Assignee may in its sole discretion determine to be appropriate, including, without limitation, the payment of costs and expenses in connection with the maintenance, operation, improvement and upkeep of the Security Property (including insurance premiums and taxes) and payment of amounts then due and payable under the Loan Agreement or the other Loan Documents. Assignee shall be accountable to Assignor only for monies actually received by Assignee or its agents pursuant hereto. Neither the collection of said funds and the application thereof as aforesaid, nor any act done or omitted pursuant to the power and rights granted to Assignee hereunder, shall cure or waive any Default or Event of Default or waive, modify or affect any notice of Default or Event of Default or invalidate any act done pursuant to such notice, nor shall the same be a waiver of any of Assignee's rights and remedies under the Note, the Security Instrument, the Loan Agreement or the other Loan

Documents, and this Assignment is made and accepted without prejudice to any of such rights and remedies.

Section 4. (A) This Assignment constitutes a present, absolute, effective, irrevocable and completed assignment by Assignor to Assignee of the Assigned Property, including without limitation such of the Assigned Property as constitutes personal property, and the right to collect all sums payable to Assignor thereunder and apply the same in accordance with Section 3 above, which is not conditioned upon Assignee being in possession of the Security Property. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, Assignor shall have an exclusive license to operate the Security Property, to enforce the obligations of Tenants under the Leases and of parties under the Operating Agreements and Tenant Guaranties, to exercise all the rights and remedies of the landlord under the Leases, the Operating Agreements and the Tenant Guaranties and to collect all rents and other amounts described herein, subject, however, in each case, to the terms and conditions of, and compliance with, the applicable Security Instrument and the Loan Agreement (including, with respect to the collection of such rents and other amounts, the terms of Article 9 of the Loan Agreement).

(B) If any Event of Default shall have occurred and be continuing, the license granted in Section 4(A) above shall immediately cease and terminate, without waiver of such Event of Default, with or without notice, and without any action or proceeding or the intervention of a receiver appointed by a court, and Assignee or an agent or receiver appointed by Assignee may, without regard for the adequacy of the security for the Secured Obligations, the commission of waste or the solvency of Assignor, without limiting any of Assignee's rights and remedies under any of the Loan Documents or otherwise available at law or in equity and subject to applicable statutory requirements, if any, do any or all of the following (but is under no obligation to do any of the following):

(i) exercise any of Assignor's rights under the Leases, Operating Agreements and Tenant Guaranties;

(ii) enforce the terms, conditions and obligations of the Leases, Operating Agreements and Tenant Guaranties;

(iii) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all rents or other payments that may then be or may thereafter become due, owing or payable with respect to the Leases, Operating Agreements and Tenant Guaranties;

(iv) demand that any sums held by Assignor with respect to any Lease, Operating Agreement or Tenant Guaranty (including any security deposits, other deposits or prepayments) be immediately remitted to Assignee;

(v) generally, do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about any portion of the

Security Property or with respect to the Leases, Operating Agreements and Tenant Guaranties as fully as allowed or authorized by this Assignment; and

(vi) enter into possession of the Security Property in accordance with the terms of Section 13 of the applicable Security Instrument for the purposes of exercising its rights under subsections (i) through (v) above.

(C) Assignor hereby appoints Assignee its true and lawful attorney, with full power of substitution and with power for Assignee, in its own name and capacity, or in the name and capacity of Assignor, to demand, collect, receive and give complete acquittances for any and all rents and other amounts described herein accruing from the Security Property, and at Assignee's discretion to file any claim or take or initiate any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents and other amounts described herein. **THIS POWER OF ATTORNEY IS COUPLED WITH AN INTEREST AND MAY NOT BE REVOKED BY ASSIGNOR UNTIL ALL OF ASSIGNOR'S OBLIGATIONS TO ASSIGNEE, WHETHER UNDER THE NOTE, THE MORTGAGE, THIS ASSIGNMENT AND/OR ANY OTHER LOAN DOCUMENT ARE FULLY DISCHARGED. ASSIGNEE SHALL NOTIFY ASSIGNOR OF ASSIGNEE'S EXERCISE OF THE POWER OF ATTORNEY AS REASONABLY PRACTICABLE THEREAFTER.**

(D) Assignee in respect of the Leases, Operating Agreements, Tenant Guaranties and Rents shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State in which such rights and remedies are asserted to the extent of such rights thereunder and additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted.

Section 5. If an Event of Default shall have occurred and be continuing, Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease or Operating Agreement by or on behalf of any lessee thereunder, including the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease or Operating Agreement under the U.S. Bankruptcy Code.

Section 6. If there shall be filed by or against Assignor a petition under the U.S. Bankruptcy Code, and Assignor, as lessor under any Lease or Operating Agreement, shall determine to reject such Lease or Operating Agreement pursuant to Section 365(a) of the U.S. Bankruptcy Code, then Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject such Lease or Operating Agreement. Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign such Lease or Operating Agreement to Assignee pursuant to

Section 365 of the U.S. Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under such Lease or Operating Agreement. If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject such Lease or Operating Agreement and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

Section 7. Assignor hereby irrevocably authorizes and directs each Tenant under a Lease and each other party under an Operating Agreement or Tenant Guaranty upon written instructions from Lender after the occurrence of an Event of Default to deliver directly to Assignee or its designated agent all checks and payments for all rents and other amounts accruing or due under such Tenant's Lease or such other party's Operating Agreement or Tenant Guaranty and to make such checks payable to such Person, and/or pay by direct deposit to such account, as Assignee may at any time and from time to time designate. The provisions of this Section 7 are not intended, as between Assignor and Assignee, to modify the terms and conditions set forth in the Loan Agreement under which Assignee may direct any Tenant or other party under an Operating Agreement or Tenant Guaranty.

Section 8. If an Event of Default shall have occurred, then:

(A) To the extent provided in the Loan Agreement, Assignor hereby irrevocably authorizes Assignee to notify each Tenant under a Lease and each other party under an Operating Agreement or Tenant Guaranty for the purposes contemplated by Section 7 and at Assignee's request, Assignor shall provide any confirming or separate notice to each such Tenant and other party as Assignee may request for the same purposes.

(B) Prior to receiving any notice from Assignee of Assignee's exercise of its rights under Section 7, Assignor shall have the right to receive, or have its property manager receive, payments from Tenants and the other party or parties to each Operating Agreement only in accordance with and subject to the terms of the other Loan Documents.

Section 9. Assignor shall comply with the terms of the Loan Agreement with respect to the execution, termination, amendment, modification or waiver of the provisions of any Lease, Operating Agreement or Tenant Guaranty. Neither the execution and delivery of this Assignment, the applicable Security Instrument or any other Loan Document, nor any action or inaction on the part of Assignee, shall release (i) any Tenant from any of its obligations or liabilities under its Lease or Operating Agreement, (ii) any party from any of its obligations or liabilities under its Operating Agreement, (iii) any guarantor from any of its obligations or liabilities under any Tenant Guaranty or (iv) Assignor from any of its obligations or liabilities under the Leases or the Operating Agreements, or constitute an assumption of any such obligation or liability under the Leases or Operating Agreements on the part of Assignee.

Section 10. This Assignment shall not be construed to bind Assignee to the performance of any of the covenants, conditions or provisions contained in any Lease,

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Operating Agreement or Tenant Guaranty or otherwise impose any obligation upon Assignee. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Security Property upon Assignee unless Assignee has taken actual possession of the Security Property and only with respect to Assignee's gross negligence and willful misconduct; nor shall it operate to make Assignee responsible or liable for any waste committed on the Security Property, including the presence of any Hazardous Substances (as defined in the Environmental Indemnity), or for any negligence by any Person other than Assignee in the management, upkeep, repair or control of the Security Property resulting in loss or injury or death to any Tenant, licensee, employee or third party. Nothing in this Assignment shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Security Property by Assignee.

Section 11. During the term hereof, all rights, powers and privileges of Assignee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and Assignor will not take any action under the Leases, the Operating Agreements, the Tenant Guaranties or otherwise which is inconsistent with this Assignment or any Loan Document or any of the terms hereof or thereof, and any such action inconsistent herewith or therewith, as well as any further assignment of any rents, issue or profits from the Security Property, shall be void. Assignor hereby waives any requirement that Assignee commence any foreclosure proceeding with respect to the Security Property or to any or all of the other properties and collateral securing payment of the Secured Obligations prior to enforcement of any remedies pursuant to this Assignment, including the right to commence and prosecute an action to appoint a receiver for rents and all other amounts due under any Leases, Operating Agreement or Tenant Guaranties. Assignor will, from time to time, upon request of Assignee, at Assignor's sole cost and expense, execute all instruments and further assurances and all supplemental instruments and take all such action as Assignee from time to time may reasonably request in order to perfect, preserve and protect the interests intended to be assigned to Assignee hereby or to enable Assignee to exercise or enforce its rights hereunder.

Section 12. Assignor hereby agrees that, except as permitted in the Loan Agreement, it will not, unilaterally or by agreement, subordinate, amend, modify, extend, discharge, terminate, surrender, waive or otherwise change any term of any of the Leases, Operating Agreements or Tenant Guaranties. If any of the Leases or Operating Agreements shall be amended, they shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto.

Section 13. All notices, demands, requests, consents, approvals and other instruments under this Assignment shall be in writing and shall be sent and deemed to have been actually or properly given if and when given in accordance with Section 12.6 of the Loan Agreement.

Section 14. Upon the payment, or the provision, in accordance with the applicable provisions of the Loan Agreement, the Security Instrument and the other Loan Documents, for the payment in full of the Secured Obligations, the assignment made herein and all rights hereunder assigned to Assignee shall cease and terminate and shall revert to

Assignor. Further, upon the partial repayment of, or provision for the partial Defeasance of, the Note and all other sums in an amount sufficient to cause the release of the Security Property from the Lien of the Security Instrument pursuant to the terms of Section 2.6 of the Loan Agreement, the assignment made herein and all rights hereunder assigned to Assignee in respect thereof shall cease and terminate and revert to Assignor.

Section 15. GOVERNING LAW; CONSENT TO JURISDICTION.

(A) THIS ASSIGNMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND GIVEN BY ASSIGNOR AND ACCEPTED BY ASSIGNEE IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN 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 BY THE LOAN DOCUMENTS, AND IN ALL RESPECTS, INCLUDING 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 AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE SECURITY PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT, AND THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ASSIGNOR OR ASSIGNEE ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY AT LENDER'S ELECTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND ASSIGNOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND ASSIGNOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. ASSIGNOR DOES HEREBY DESIGNATE AND APPOINT CT CORPORATION SYSTEM, WITH OFFICES AT 1633

BROADWAY, NEW YORK, NEW YORK 10019, OR AT SUCH OTHER OFFICE IN NEW YORK, NEW YORK, 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 OF ASSIGNOR MAILED OR DELIVERED TO ASSIGNOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON ASSIGNOR, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. ASSIGNOR (I) SHALL GIVE PROMPT NOTICE TO ASSIGNEE 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 NEW YORK, NEW YORK (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 16. This Assignment may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought. The covenants of this Assignment shall run with the land; and shall bind and inure to the benefit of Assignor, the successors and assigns of Assignor, all present and subsequent encumbrancers and Tenants of any portion of the Security Property. The covenants of this Assignment shall bind and inure to the benefit of Assignee, its successors and assigns.

Section 17. No right or remedy herein conferred upon or reserved to Assignee is intended to be exclusive of any other right or remedy contained herein or in any other Loan Document, and every right and remedy contained herein shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder, under each other Loan Document or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or under any other Loan Document, shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy available hereunder, under any other Loan Document or otherwise.

Section 18. This Assignment is given as security in addition to and not in derogation of, the security of the applicable Security Instrument (including the assignment of rents and grant of a security interest thereunder), and not as a part of the security of the applicable Security Instrument, for the purpose of securing payment of the Secured Obligations in their entirety.

Section 19. Assignor covenants and agrees to reimburse Assignee upon receipt of written notice from Assignee for all reasonable costs and expenses (including attorneys' fees and disbursements) incurred by or on behalf of Assignee in connection with enforcing or

preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Assignor, this Assignment, the Loan Agreement, the other Loan Documents, the Security Property or any other security given for the Loan, or enforcing any obligations of or collecting any payments due from Assignor under this Assignment, the Loan Agreement or the other Loan Documents. Any costs and expenses due and payable to Assignee hereunder which are not paid by Assignor within twenty (20) Business Days after demand shall bear interest at the Default Rate from the date of the payment or incurring thereof, whichever is earlier, and may be paid from any amounts in the Deposit Account (if applicable), with notice thereof to Assignor.

Section 20. No failure on the part of the Assignee or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Assignee or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. To the fullest extent Assignor may legally do so, Assignor waives all rights to a marshalling of the assets of Assignor, Assignor's partners, if any, and others with interests in Assignor, and of Assignor's properties and assets, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created.

Section 21. Wherever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Assignment.

Section 22. Subject to Section 16 above, this Assignment and the other Loan Documents are solely for the benefit of Assignee, its successors and assigns and the Assignor, and nothing contained in this Assignment or the other Loan Documents shall be deemed to confer upon anyone (including any Tenant or other party to an Operating Agreement) other than Assignee and Assignor any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein.

Section 23. The provisions of Section 12.24 of the Loan Agreement, relating to the exculpation of Assignor, are hereby incorporated herein by reference, as if set forth in full herein.

Section 24. All references herein to sections and exhibits are to sections and exhibits in or to this Assignment unless otherwise specified. Unless otherwise specified, the words "hereof", "herein" and "hereunder" and words of similar import when used in this Assignment shall refer to this Assignment as a whole and not to any particular provision of this Assignment. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

Section 25. This Assignment may be executed in several counterparts, each of which shall be an original and all of which shall collectively constitute but one and the same instrument.

Section 26. Except as otherwise expressly provided, in the event of a conflict between the terms and conditions of this Assignment and any provision of the Loan Agreement, the terms and provisions of the Loan Agreement shall prevail and be controlling.

[Signatures appear on the following page(s).]

Property of Cook County Clerk's Office

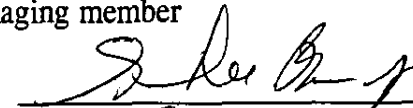
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IN WITNESS WHEREOF, this Assignment has been duly authorized, executed and delivered as of the date first above written.

Glenborough Fund IX LLC,
a Delaware limited liability company,

By: GRT IX, Inc., a Delaware corporation, its
managing member

By: 
Name: G. Lee Burns, Jr.
Title: Agent - In - Fact

Property of Cook County Clerk's Office

State of New York, County of New York ss.:

On October 29, 1998, before me, Allen Thomas, a notary public for said state, personally appeared G. Lee Sims, Jr., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Allen Thomas
Notary:
ALLEN THOMAS
Notary Public, State of New York
No. 01TH6014308
Qualified in Kings County
Commission Expires Oct. 5, 2000

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11-11-2009

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ALLEN THOMAS
Notary Public, State of New York
No. 0111014300
Qualified in Kings County
Commission Expires Oct. 8, 2009

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EXHIBIT "A"

ORDER NUMBER: 1401 007767149 D1
STREET ADDRESS: 3001-3075 WOLF ROAD
CITY: WESTCHESTER
TAX NUMBER: 15-29-300-022-0000

08095592

LEGAL DESCRIPTION:

PARCEL 1:

LOT 1 OF WESTBROOK COMMONS SUBDIVISION BEING A SUBDIVISION OF PART OF THE SOUTH 3/4 OF THE SOUTH 1/2 OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE VILLAGE OF WESTCHESTER, COOK COUNTY, ILLINOIS RECORDED AS DOCUMENT NO. 86450509 AND RE RECORDED AS DOCUMENT NO. 86591122.

PARCEL 2:

OUTLOTS A, B, AND D OF WESTBROOK COMMONS SUBDIVISION BEING A SUBDIVISION OF PART OF THE SOUTH 3/4 OF THE SOUTH 1/2 OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS RECORDED AS DOCUMENT NO. 86450509 AND RE RECORDED AS DOCUMENT NO. 86591122.

PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCELS FOR THE PURPOSE OF CONSTRUCTING, CONNECTING TO, TAPPING ON TO AND OTHERWISE USING CERTAIN UTILITIES AT POINT OR POINTS ON OUTLOTS, C AND E OF WESTBROOK COMMONS SUBDIVISION AFORESAID, AS CONTAINED IN DECLARATION OF EASEMENTS RECORDED DECEMBER 10, 1986 AS DOCUMENT 86591123, IN COOK COUNTY, ILLINOIS.