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1998-12-28 15:13:14  
Cook County Recorder 37.00



08177197

**ABSOLUTE ASSIGNMENT OF  
RENTS AND LESSOR'S  
INTEREST IN LEASES**

**ASSIGNOR:**

**HARRIS BANK PALATINE, N.A.,**  
as Trustee under Trust  
Agreement dated 4/1/96 and  
known as Trust No. 6670

**ASSIGNEE:**

**HOWARD SAVINGS BANK,**  
an Illinois-chartered  
savings bank

CTIL- 7784323-NX  
zc 40f9

RECORDER'S STAMP

THIS ABSOLUTE ASSIGNMENT, is made as of December 15<sup>th</sup>, 1998 by and between HARRIS BANK PALATINE, N.A., as Trustee under Trust Agreement dated April 1, 1996 and known as Trust No. 6670 ("Land Trustee") and BONGI DEVELOPMENT CORP. ("Beneficiary") in favor of HOWARD SAVINGS BANK ("Assignee"). Land Trustee and Beneficiary are hereinafter collectively called "Assignor". Beneficiary owns one hundred percent (100%) of the beneficial interest in the above Trust Agreement. 9

**WITNESSETH:**

Assignor, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, does hereby absolutely bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all right, title and interest of Assignor in, to and under the leases of the real estate described in Exhibit "A" attached hereto and made a part hereof (the "Premises") whether now in existence or hereafter entered into and all guaranties, amendments, extensions and renewals of said leases and any of them, all of which are hereinafter called the "Leases" and 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 Premises.

This Assignment is made for the purpose of securing:

A. The payment of the indebtedness (including any extensions or renewals thereof) evidenced by that certain Note (the "Note") of Assignor of even date herewith in the principal sum of THREE MILLION ONE HUNDRED THOUSAND AND 00/100THS (\$3,100,000.00) DOLLARS and secured by a certain Mortgage and Security Agreement ("Mortgage") dated of even date herewith encumbering the Premises; and

BOX 333-CTI

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B. The payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of the Mortgage 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, Mortgage and other instruments constituting security for the Note.

Assignor represents and warrants to, and covenants and agrees with Assignee as follows:

1. That the sole ownership of the entire lessor's interest in the Leases is, or, as to future Leases, shall be vested in Assignor, and that Assignor has not, and shall not, perform any acts or execute any other instruments which might prevent Assignee from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.

2. That the Leases are and shall be valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, cancelled, renewed or surrendered nor have any rents thereunder been collected more than one month in advance nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Assignee.

3. That none of the Leases shall be, except for the enforcement of the specific terms of the Leases, altered, modified, amended, terminated, cancelled, extended, renewed or surrendered nor will rents be collected more than one month in advance nor will any term or condition thereof be waived nor shall Assignor consent to any assignment or subletting by any lessee thereunder without the prior written approval of Assignee.

4. That, except for the leases previously reported to Assignee by Assignor in writing, there are no defaults now existing under any of the Leases and 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. That no lessee under any Lease has any defense, set-off or counterclaim against Assignor and that no lessee under any Lease has been granted any rent concessions not heretofore disclosed to Assignee in writing.

6. That Assignor shall, if requested by Assignee, give prompt notice to Assignee 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.

7. That 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.

8. That Assignor will not permit any Lease to become subordinate to any lien other than the lien of the Mortgage.

9. There shall be no merger of the Leases, or any of them, by reason of the fact that the same person may acquire or hold directly or indirectly the Leases, or any of them, as well as the fee estate in the Premises or any interest in such fee estate.

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The parties further agree as follows:

This Assignment is absolute and is effective immediately. Notwithstanding the foregoing, until a written notice is sent to Assignor advising that a default has occurred under the terms and conditions of the Note, Mortgage or any other instrument constituting additional security for the Note (which notice is hereafter called a "Notice"), Assignor may receive, collect and enjoy the rents, income and profits accruing from the Premises.

In the event of any default at any time in the Note, Mortgage or any other instrument constituting additional security for the Note, Assignee may, at its option after service of a Notice, receive and collect all such rents, income and profits as they become due, from the Premises and under any and all Leases of all or any part of the Premises. Assignee shall thereafter continue to receive and collect all such rents, income and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period.

Assignor hereby irrevocably appoints Assignee its true and lawful attorney with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor, from and after the service of a Notice, to demand, collect, receive and give complete acquittance for any and all rents, income and profits accruing from the Premises, and at Assignee's discretion to file any claim or take 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, income and profits. Lessees of the Premises are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases to Assignee or such nominee as Assignee may designate in a 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.

From and after service of a Notice, Assignee is hereby vested with full power 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 Assignee or its designee to enter upon the Premises, or any part thereof, with or without force and with or without process of law and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor relating thereto, and may exclude Assignor, its agents and servants, wholly therefrom. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, without further notice to Assignor, 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 Premises and of any indebtedness or liability of Assignor to Assignee, 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 Premises 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 Assignee on the Note and the Mortgage, all in such order as Assignee may determine. Assignee 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

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of the Premises, or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Premises by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger.

Assignor hereby agrees to indemnify, hold harmless and defend Assignee from and against any liability, loss or damage incurred by Assignee under the Leases until such time as Assignee shall actually take possession of the Premises. Nothing herein contained shall be construed as constituting Assignee a mortgagee in possession of the Premises in the absence of the actual taking of possession of the Premises by Assignee.

Waiver of or acquiescence by Assignee of any default by Assignor, or failure of Assignee to insist upon strict performance by 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 Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Assignee shall have under the Note, the Mortgage 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.

All Notices required or permitted under this instrument shall be in writing and shall be by: (i) hand delivery to the addresses for notices; or (ii) delivered by overnight courier service to the addresses for notices; or (iii) by certified mail, return receipt requested, addressed to the addresses for notice by United States Mail, postage prepaid.

All notices shall be deemed received upon the earliest to occur of: (i) the hand delivery of such notice to the addresses for notice; (ii) one day after the deposit of such notice with an overnight courier service addressed to the addresses for notice; or (iii) three days after depositing the notice in the United States Mail as set forth in (iii) above. All notices shall be addressed to the following addresses:

Assignor:

HARRIS BANK PALATINE, N.A.  
50 Brockway  
Palatine, IL 60067  
Attention: Land Trust Department

and

Assignor: EMERALD HILLS DEVELOPMENT, INC.  
an Illinois Corporation  
334 E. Colfax, Unit E  
Palatine, IL 60067  
Attention: Carl G. Bongiovanni

Assignee: Howard Savings Bank  
1700 Milwaukee Avenue  
Glenview, IL 60025  
Attention: Althea Prodromos, Esq.

With a copy to: Kemp & Grzelakowski, Ltd.  
1900 Spring Road  
Suite 500  
Oak Brook, IL 60523-1495  
Attention: James J. Kemp, Jr., Esq.

or to such other person or at such other place as any party hereto may by notice designate as a place for service of notice.

The term "Assignor" and "Assignee" shall be construed to include the heirs, personal 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.

This Assignment is executed by Harris Bank Palatine, N.A., not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Harris Bank Palatine, N.A. hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Harris Bank Palatine, N.A. personally to perform any covenant either expressed or implied herein contained, all such liability, if any, being expressly waived by every person now or hereafter claiming any right or security hereunder.

IN WITNESS WHEREOF, this Absolute Assignment of Rents & Leases has been executed as of the date first above written.

SEE EXCULPATORY RIDER ATTACHED  
HERETO AND MADE A PART HEREOF

HARRIS BANK PALATINE, N.A.,  
not personally, but as Trustee under Trust  
Agreement dated April 1, 1996  
and known as Trust No. 6670

ATTEST:

By: *Donna Mentner*  
Name: \_\_\_\_\_  
Title: AVP

By: *[Signature]*  
Name: \_\_\_\_\_  
Title: Penelope M. Johns, Asst. Vice President & LTO

ATTEST:

By: *[Signature]*  
Name: STEVEN M. JOHNSON  
Title: CONTROLLER

BONGI DEVELOPMENT CORP.

By: *[Signature]*  
Name: Carl G. Bongiovanni  
Title: President

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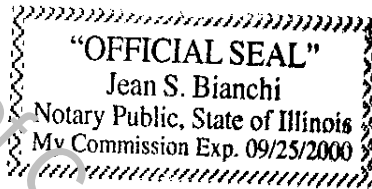
STATE OF ILLINOIS )  
COUNTY OF Cook ) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that TELEOPE MICHAS AUP, \_\_\_\_\_ President of Harris Bank Palatine, N.A., and DONNA GOENTHER AUP, \_\_\_\_\_ Secretary of said Bank are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank as Trustee as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 15 day of December, 1998.

My Commission Expires: 9/25/2000

Jean S. Bianchi  
Notary Public

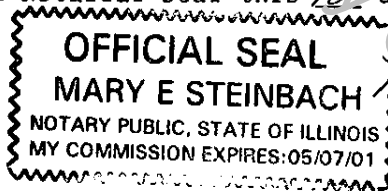


STATE OF ILLINOIS )  
COUNTY OF Cook ) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that CARL G. BONGIOVANNI, President and Carl G. Bongiovanni Secretary of Bongi Development Corp., an Illinois Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10<sup>th</sup> day of December, 1998.

My Commission Expires: 05/07/01



Mary E Steinbach  
Notary Public

This document prepared by and after recording return to:  
Eugene J. Rudnik, Jr.  
Kemp & Grzelakowski, Ltd.  
1900 Spring Road, Suite 500  
Oak Brook, IL 60523

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## EXHIBIT "A"

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 2, 3, 7, 9, 14, 51, 52, 53, 54, 60, 61, 62, 65, AND 71 IN EMERALD HILLS PHASE 1, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 7, 1996 AS DOCUMENT 56436786, IN COOK COUNTY, ILLINOIS.

P.I.N. 06-22-106-002-0000	06-22-106-003-0000
06-22-106-007-0000	06-22-106-009-0000
06-22-107-014-0000	06-22-107-001-0000
06-22-107-002-0000	06-22-107-008-0000
06-22-107-009-0000	06-22-107-010-0000
06-22-107-013-0000	06-22-107-019-0000
06-22-108-026-0000	06-22-108-027-0000

#### PARCEL 2:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, THENCE SOUTH 01 DEGREES 06 MINUTES 01 SECONDS WEST ALONG THE EAST LINE OF SAID NORTHWEST 1/4 A DISTANCE OF 1992.72 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING SOUTH 01 DEGREES 06 MINUTES 01 SECONDS WEST ALONG SAID EAST LINE A DISTANCE OF 697.72 FEET TO THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4, THENCE SOUTH 89 DEGREES 49 MINUTES 16 SECONDS WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4 AS STAKED AND OCCUPIED, SAID LINE ALSO BEING THE NORTH LINE OF OAK KNOLL FARMS UNIT 8-C RECORDED AS DOCUMENT NUMBER 90150262 A DISTANCE OF 1308.23 FEET TO A POINT AT THE SOUTHEAST CORNER OF THE WEST 1/2 OF SAID NORTHWEST 1/4, THENCE NORTH 00 DEGREES 55 MINUTES 26 SECONDS EAST ALONG THE EAST LINE OF SAID WEST 1/2 A DISTANCE OF 427.49 FEET, THENCE NORTH 81 DEGREES 57 MINUTES 42 SECONDS WEST A DISTANCE OF 475.92 FEET, THENCE NORTH 00 DEGREES 58 MINUTES 08 SECONDS EAST A DISTANCE OF 540.31 FEET, THENCE SOUTH 89 DEGREES 03 MINUTES 20 SECONDS EAST A DISTANCE OF 172.43 FEET, THENCE SOUTH 00 DEGREES 57 MINUTES 00 SECONDS WEST A DISTANCE OF 328.76 FEET, THENCE SOUTH 89 DEGREES 57 MINUTES 55 SECONDS EAST A DISTANCE OF 1609.80 FEET TO THE POINT OF BEGINNING ALL IN COOK COUNTY, ILLINOIS.

P.I.N. 06-22-100-021-0000

Commonly Known as: Emerald Hills Subdivision  
Route 59 and Schaumburg Road  
Streamwood, IL



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## EXCULPATORY RIDER

This instrument is executed by the Harris Bank Palatine, N.A. as Trustee under the provisions of a Trust Agreement dated 4-1-96, and known as Trust no. 6670, not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust and Harris Bank Palatine, N.A. warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Harris Bank Palatine, N.A. in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Harris Bank of Palatine, N.A. on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existant Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.