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Cook County Recorder 45.00



ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made and delivered as of the 15th day of November, 1999, by **BRÉ/GLENVIEW I, INC.** (c/o Blackstone Real Estate Advisors II, 345 Park Avenue, New York, New York 10154), a Delaware corporation ("Borrower"), to and for the benefit of **BANK ONE, ILLINOIS, NA**, a national banking association acting in its capacity as agent for the Lenders (as defined below) ("Agent").

RECITALS:

A. Bank One, Illinois, NA ("Bank One") and Landesbank Hessen-Thüringen Girozentrale ("Helaba"; Bank One and Helaba are collectively referred to herein as, the "Lenders") have agreed to make a loan to Borrower in the maximum aggregate principal amount of \$48,000,000 in accordance with the terms, provisions and conditions set forth in that certain Loan Agreement of even date herewith (the "Loan Agreement"), by and among Agent, Borrower and the Lenders.

B. A condition precedent to the Lenders' execution of the Loan Agreement and their agreement to the matters described therein is the execution and delivery by Borrower of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

This instrument was prepared by and, after recording, return to:

Permanent Real Estate Tax Index No.:
04-32-105-005

Schwartz, Cooper, Greenberger & Krauss,
Chartered
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: Martin I. Behn, Esq.

Common Address:
1000 Milwaukee Avenue
Glenview, Illinois

BOX 333-CT

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1. **Definitions.** All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Loan Agreement.

2. **Grant of Security Interest.** Borrower hereby grants, transfers, sets over and assigns to Agent (for the benefit of the Lenders), all of the right, title and interest of Borrower in and to (i) all of the rents, issues, profits, revenues, receipts, income, accounts, security deposits and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises") (including, without limitation, any such amounts that are collected by Borrower and maintained in any operating or other accounts or paid or disbursed by Borrower in contravention of the provisions of this Assignment); (ii) all leases and subleases (collectively, the "Leases"), now or hereafter existing, pertaining to all or any part of the Premises; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is given to secure:

(a) Payment by Borrower when due of (i) the indebtedness evidenced by the Notes and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to the Lenders by Borrower under or with respect to the Loan Documents, including, without limitation, any interest rate swap protection agreements, and any and all replacements, amendments and modifications thereof; and (iii) all costs and expenses reasonably paid or incurred by Agent (for the benefit of the Lenders) in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by Borrower of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefitting the Lenders which are evidenced or secured by or otherwise provided in the Notes, this Assignment or any of the other Loan Documents, together with all replacements, amendments and modifications thereof.

3. **Representations and Warranties of Borrower.** Borrower represents and warrants to Agent (for the benefit of the Lenders) that:

(a) This Assignment, as executed by Borrower, constitutes the legal and binding obligation of Borrower enforceable in accordance with its terms and provisions, subject only to applicable bankruptcy, reorganization, insolvency, moratorium and other similar laws affecting the enforcement of creditor's rights;

(b) Borrower is the lessor under all Leases;

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(c) Borrower has not made any other assignment of its entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has Borrower entered into any agreement to subordinate any of the Leases or Borrower's right to receive any of the rents, issues, income or profits assigned hereunder;

(d) Borrower has not executed any instrument or performed any act which may prevent Lender from operating under any of the terms and provisions hereof or which would limit Lender in such operation; and

(e) To Borrower's knowledge, there are no defaults under any Leases.

4. **Covenants of Borrower.** Borrower covenants and agrees that so long as this Assignment shall be in effect:

(a) Except as expressly provided in the Loan Agreement, Borrower shall not lease any portion of the Premises;

(b) Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Borrower shall not do or suffer to be done anything to impair the security thereof. Borrower shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to any tenant termination or cancellation of any Lease, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Borrower shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Borrower shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder;

(e) Borrower shall not modify the terms and provisions of any Lease in any adverse manner, nor shall Borrower give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions without the Lenders' consent, not to be unreasonably withheld or delayed, or cancel or terminate any Lease;

(f) Borrower shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely,

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a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder;

(g) Borrower shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law;

(h) Borrower shall not knowingly waive or excuse the obligation to pay rent under any Lease;

(i) Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all reasonably incurred costs and expenses of Agent, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Agent may appear;

(j) Borrower shall give prompt notice to Agent of any written notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder;

(k) Borrower shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall promptly notify Agent of any material breach by the tenant or guarantor under such Lease of which Borrower has actual notice;

(l) Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) Borrower shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Agent as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Agent (for the benefit of the Lenders) as security for tenant's performance under such Lease;

(n) Borrower shall furnish to Agent, within ten days after a request by Agent to do so, a written statement containing the names of all tenants and subtenants of the Premises, or any part thereof; and

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(o) If an Event of Default has occurred and is then continuing, and if any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Borrower covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Agent (which will not be unreasonably withheld or delayed), and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Borrower and Agent. Borrower hereby assigns any such payment to Agent (for the benefit of the Lenders) and further covenants and agrees that upon the request of Agent, it will duly endorse to the order of Agent (for the benefit of the Lenders) any such check, the proceeds of which shall be applied in accordance with the provisions of Paragraph 8 below.

5. **Rights Prior to Default.** So long as an Event of Default (as defined in Paragraph 6) has not occurred and is continuing, Agent (for the benefit of the Lenders) shall not demand from tenants under the Leases or any other person liable thereunder any of the rents, issues, income and profits assigned hereunder (collectively, the “Rents”), and Borrower shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all Rents assigned hereunder, and to retain, use and enjoy the same. Agent shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time. Immediately upon the occurrence of an Event of Default, all of Borrower’s rights in or to the Rents shall, to the maximum extent permitted by law, immediately terminate and all of the Rents (wherever located and in whoever’s possession or control) shall be immediately paid over to Agent (for the benefit of the Lenders). **ALL THIRD PARTIES ARE HEREBY EXPRESSLY PUT ON NOTICE OF THE PROVISIONS OF THE PREVIOUS SENTENCE AND SHALL BE REQUIRED TO TURN OVER TO AGENT (FOR THE BENEFIT OF THE LENDERS), UPON DEMAND, ALL MONIES RECEIVED WHICH CONSTITUTE RENTS HELD BY OR PAID TO ANY THIRD PARTY AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT, EXCEPTING ONLY RENTS PAID TO THIRD PARTIES NOT AFFILIATED WITH BORROWER IN EXCHANGE FOR SERVICES RENDERED AND APPROVED BY AGENT WITH RESPECT TO THE OPERATION OF THE PREMISES IN THE ORDINARY COURSE OF BUSINESS.** Notwithstanding the foregoing or any other provisions of this Assignment to the contrary, the provisions hereof are not intended to limit in any way any provisions of the Mortgage or any of the other Loan Documents requiring the deposit of the Rents into a lock-box or other similar arrangement.

6. **Events of Default.** An “Event of Default” shall occur under this Assignment upon the occurrence of (a) a breach of Borrower of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Loan Agreement or (b) any other Event of Default described in the Loan Agreement or the other Loan Documents.

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7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence and continuance of any Event of Default, Agent, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Borrower, without regard to the adequacy of the security for the obligations secured hereby, without releasing Borrower or any guarantor of the Notes from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Notes, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Agent may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Agent in the exercise of its reasonable judgment, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Agent deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Agent (for the benefit of the Lenders), without proof of default hereunder, upon receipt from Agent of written notice to thereafter pay all such rents and other amounts to Agent and to comply with any notice or demand by Agent for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Borrower shall facilitate in all reasonable ways Agent's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Agent; and

(d) Make any payment or do any act required herein of Borrower in such manner and to such extent as Agent may deem necessary, and any amount so paid by Agent shall, after notice to Borrower, become immediately due and payable by Borrower with interest thereon from the date of such notice until paid at the Default Rate and shall be secured by this Assignment.

8. **Application of Proceeds.** All sums collected and received by Agent (for the benefit of the Lenders) out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied as follows:

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(a) First, to reimburse Agent for all of the following expenses, together with court costs and reasonable attorneys' fees and including interest thereon at the Default Rate: (i) taking and retaining possession of the Premises; (ii) managing the Premises and collecting the rents, issues, income and profits thereof, including without limitation, salaries, fees and wages of a managing agent and such other employees as Agent may deem necessary and proper; (iii) operating and maintaining the Premises, including without limitation, payment of taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance required under the Mortgage or any of the other Loan Documents; and (iv) the cost of all alterations, renovations, repairs or replacements of or to the Premises which Agent may deem necessary and proper in the exercise of its reasonable judgment.

(b) Second, to reimburse Agent for all sums expended by Agent pursuant to Paragraph 7(d) above, together with interest thereon at the Default Rate;

(c) Third, to reimburse Agent for all other sums with respect to which Agent is indemnified pursuant to Paragraph 9 below, together with interest thereon at the Default Rate;

(d) Fourth, to reimburse Agent for all other sums expended or advanced by Agent pursuant to the terms and provisions of or constituting additional indebtedness under any of the other Loan Documents, together with interest thereon at the Default Rate;

(e) Fifth, to the payment of all accrued and unpaid interest under the Notes;

(f) Sixth, to payment of the unpaid principal balance of the Notes and any and all other amounts due thereunder or under the other Loan Documents; and

(g) Seventh, any balance remaining to Borrower, its respective legal representatives, successors and assigns or to such other parties which may be legally entitled thereto.

9. **Limitation of Agent's and the Lender's Liability.** Neither Agent nor the Lenders shall be liable for any loss sustained by Borrower resulting from Agent's failure to let the Premises or from any other act or omission of Agent in managing, operating or maintaining the Premises following the occurrence of an Event of Default, except for gross negligence or wilful misconduct of Agent. Neither Agent nor the Lenders shall be obligated to observe, perform or discharge, nor do Agent or the Lenders hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Borrower under or by reason of this Assignment. Borrower shall and does hereby agree to indemnify, defend (using counsel satisfactory to Agent) and hold Agent and the Lenders harmless from and against any and all liability, loss or damage which Agent or the Lenders may incur under any Lease or under

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or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against either Agent or the Lenders by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should either Agent or the Lenders incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Borrower with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Agent or the Lenders for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Agent or the Lenders responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, 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 tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Agent of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Lenders "mortgagees in possession" of the Premises, in the absence of the taking of actual possession of the Premises by the Lenders pursuant to the provisions hereof or of the Mortgage.

10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Agent pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Agent of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Agent (for the benefit of the Lenders) under the terms and provisions of such instruments, and Agent may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Agent may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **Further Assurances.** Borrower shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Agent may designate) and shall do or cause to be done such further acts, as Agent may reasonably request, in order to permit Agent to perfect, protect, preserve and maintain the assignment made to Agent (for the benefit of the Lenders) by this Assignment.

12. **Security Deposits.** Borrower hereby acknowledges that Agent has not received any security deposited by any tenant pursuant to the terms of the Leases and that Agent assumes no responsibility or liability for any security so deposited.

13. **Severability.** In the event that any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any

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administrative agency or any court, Agent and Borrower shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Benefit.** This Assignment is binding upon Borrower and its legal representatives, successors and assigns, and the rights, powers and remedies of the Lenders under this Assignment shall inure to the benefit of Lenders and their successors and assigns.

15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Borrower and Agent at the time of such amendment, modification or supplement.

16. **Duration.** This Assignment shall become null and void at such time as Borrower shall have paid the principal sum of the Notes, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

17. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

18. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Borrower and Agent, as the case may be, as specified in the Loan Agreement.

19. **Arbitration.** Agent and Borrower agree that upon the written demand of either Agent or Borrower, whether made before or after the institution of any legal proceedings, but prior to the rendering of any judgment in that proceeding, all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Assignment, the Notes, any of the other Loan Documents or otherwise, including without limitation, contract disputes and tort claims, shall be resolved by binding arbitration pursuant to the Commercial Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding held pursuant to this arbitration provision shall be conducted in Chicago, Illinois, or at any other place selected by mutual agreement of the parties. No act to take or dispose of the project or any of the other collateral securing the loan (the project and all such other collateral being hereinafter referred to as the "collateral") shall constitute a waiver of this arbitration provision or be prohibited by this arbitration provision. This arbitration provision shall not limit the right of either Agent or Borrower during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies, judicial or otherwise, for the purposes of realizing upon, preserving, protecting, foreclosing upon or proceeding under forcible entry and detainer for possession of, any real or personal property, and any such action shall not be deemed

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an election of remedies. Such remedies include, without limitation, obtaining injunctive relief or a temporary restraining order, invoking a power of sale, if applicable, under any deed of trust or mortgage, obtaining a writ of attachment or imposition of a receivership, or exercising any rights relating to personal property, including exercising the right of set-off, or taking or disposing of such property with or without judicial process pursuant to the code. Any disputes, claims or controversies concerning the lawfulness or reasonableness of an act, or exercise of any right or remedy concerning any collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral, shall also be arbitrated; provided, however, that no arbitrator shall have the right or the power to enjoin or restrain any act of either Agent or Borrower. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in any action brought by Agent or Borrower shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of any action for these purposes. The Federal Arbitration Act (Title 9 of the United States Code) shall apply to the construction, interpretation, and enforcement of this arbitration provision.

20. JURISDICTION AND VENUE. SUBJECT TO THE PROVISIONS OF SECTION 19 ABOVE, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF AGENT INITIATES SUCH ACTION, ANY COURT IN THE STATES OF ILLINOIS AND NEW YORK IN WHICH AGENT SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. SUBJECT TO THE PROVISIONS OF SECTION 19 ABOVE, BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY AGENT IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS AGREEMENT. BORROWER WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION (BUT SUBJECT TO THE PROVISIONS OF SECTION 19 ABOVE) SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY AGENT, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY AGENT, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVE THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

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21. **JURY WAIVER.** AGENT AND BORROWER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG AGENT AND BORROWER ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN AGENT AND BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT TO AGENT TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

22. **Exculpation.** Notwithstanding any provision hereof, but subject in all respects to the provisions of the Guaranty of even date herewith made by Blackstone Real Estate Partners II L.P., a Delaware limited partnership, Blackstone Real Estate Holdings II L.P., a Delaware limited partnership, Blackstone Real Estate Partners II.TE.1 L.P., a Delaware limited partnership, Blackstone Real Estate Partners II.TE.2 L.P., a Delaware limited partnership, Blackstone Real Estate Partners II.TE.3 L.P., a Delaware limited partnership, Blackstone Real Estate Partners II.TE.4 L.P., a Delaware limited partnership and Blackstone Real Estate Partners II.TE.5 L.P., a Delaware limited partnership (collectively the "Guarantors") [and the Environmental Indemnity Agreement of even date herewith made by the Guarantors (the "Indemnity Agreement")], no shareholder, director, officer, employee, agent, affiliate, partner or member of Borrower shall be personally liable by reason of any default in the payment or performance of the obligations of Borrower hereunder, the performance of any obligations in the Loan Documents or for any representation or warranty of Borrower hereunder or in the Loan Documents; provided, however, that the foregoing exculpation shall not impair or otherwise affect any of Agents's rights or remedies against any collateral now or hereafter pledged to Agent as security for the obligations of Borrower or against Borrower or any other person or entity liable for the obligations of Borrower.

IN WITNESS WHEREOF, Borrower has executed and delivered this Assignment as of the day and year first above written.

BRE/GLENVIEW I, INC., a Delaware corporation

By: _____

Title: _____

Mohit G...
VP

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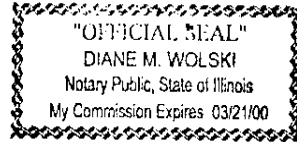
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Diane Wolski, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Marshall Findley, the Vice President of BRE/GLENVIEW I, INC., a Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12th day of November, 1999.

Diane M. Wolski

NOTARY PUBLIC



Property of Cook County Clerk's Office

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EXHIBIT A

Legal Description

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Parcel 1:

LOT 2 IN ZENITH'S SUBDIVISION OF THAT PART OF SECTION 32, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 19, 1990 AS DOCUMENT 90615521, LYING 40 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 32, LYING EAST OF THE EAST LINE OF THE NORTHERN ILLINOIS TOLL HIGHWAY, NORTHWESTERLY OF THE NORTHWESTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY RIGHT OF WAY, SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF MILWAUKEE AVENUE AS ESTABLISHED BY DOCUMENTS 13544871, 21412822 AND 23335308, AND SOUTH OF LOT 1 IN PARK CENTRAL SUBDIVISION RECORDED AS DOCUMENT 86017692, EXCEPTING THEREFROM MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 2, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF MILWAUKEE AVENUE; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF MILWAUKEE AVENUE, SOUTH 37 DEGREES, 44 MINUTES, 17 SECONDS EAST, A DISTANCE OF 180 FEET TO A POINT OF CURVATURE; THENCE A DISTANCE OF 62.83 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 40.00 FEET AND WHOSE CHORD OF 56.57 FEET BEARS NORTH 82 DEGREES, 44 MINUTES 28 SECONDS WEST TO A POINT OF TANGENCY; THENCE SOUTH 52 DEGREES, 15 MINUTES, 43 SECONDS WEST, A DISTANCE OF 223.54 FEET TO A POINT OF CURVATURE; THENCE, A DISTANCE OF 267.04 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHWEST, HAVING A RADIUS OF 170.00 FEET AND WHOSE CHORD OF 240.42 FEET BEARS SOUTH 07 DEGREES, 15 MINUTES, 43 SECONDS WEST TO A POINT OF TANGENCY; THENCE SOUTH 37 DEGREES, 44 MINUTES, 17 SECONDS EAST, A DISTANCE OF 105.00 FEET TO A POINT OF CURVATURE; THENCE, A DISTANCE OF 477.31 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 794.02 FEET AND WHOSE CHORD OF 470.16 FEET BEARS SOUTH 20 DEGREES, 31 MINUTES, 00 SECOND EAST TO A POINT OF COMPOUND CURVATURE; THENCE SOUTH 86 DEGREES, 42 MINUTES, 15 SECONDS WEST, A DISTANCE OF 100.00 FEET TO A POINT OF CURVATURE; THENCE, A DISTANCE OF 117.15 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 694.02 FEET AND WHOSE CHORD OF 117.0 FEET BEARS NORTH 08 DEGREES, 08 MINUTES, 11 SECONDS WEST TO A POINT ON A CURVE; THENCE, A DISTANCE OF 229.87 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 75.00 FEET AND WHOSE CHORD OF 149.89 FEET BEARS NORTH 19 DEGREES, 09 MINUTES, 59 SECONDS WEST TO A POINT ON A CURVE; THENCE, A DISTANCE OF 149.87 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 694.02 FEET AND WHOSE CHORD OF 149.58 FEET BEARS NORTH 31 DEGREES, 33 MINUTES, 04 SECONDS WEST TO A POINT OF TANGENCY; THENCE NORTH 37 DEGREES, 44 MINUTES, 17 SECONDS WEST, A DISTANCE OF 105.00 FEET TO A POINT OF REVERSE CURVATURE; THENCE, A DISTANCE OF 424.15 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHWEST, HAVING A RADIUS OF 270.00 FEET AND WHOSE CHORD OF 381.84 FEET BEARS NORTH 07 DEGREES, 15 MINUTES, 43 SECONDS EAST TO A POINT OF TANGENCY; THENCE NORTH 52 DEGREES, 15 MINUTES, 43 SECONDS EAST, A DISTANCE OF 223.54 FEET TO A POINT OF CURVATURE; THENCE, A DISTANCE OF 62.83 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 40.00 FEET AND WHOSE CHORD OF 56.57 FEET BEARS NORTH 07 DEGREES, 16 MINUTES, 21 SECONDS EAST TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

Parcel 2:

PERPETUAL, NON-EXCLUSIVE EASEMENT EASEMENTS FOR THE BENEFIT OF PARCEL 1, AS CREATED BY EASEMENT AGREEMENT RECORDED AS DOCUMENT 04060208, FOR THE PURPOSE OF CONSTRUCTION, MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION OF SANITARY SEWER LINES AND WATER MAINS AND ALL RELATED FIXTURES OVER LOT 1 OF AFORESAID SUBDIVISION AND THAT PART OF LOT 2 EXCEPTED IN PARCEL 1 AFORESAID.

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