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Eugene "Gene" Moore Fee: \$52.00
Cook County Recorder of Deeds
Date: 07/14/2003 08:26 AM Pg: 1 of 15

Loan No. V_36504

WILLOW POND FAMILY LIMITED PARTNERSHIP, a Wisconsin limited partnership, as
mortgagor
(Borrower)

to

JPMORGAN CHASE BANK, as mortgagee
(Lender)

ASSIGNMENT OF LEASES AND RENTS

Dated: July 10, 2003

PREPARED BY AND UPON
RECORDATION RETURN TO:

Stites & Harbison, PLLC
400 W. Market Street, Suite 1800
Louisville, Kentucky 40202
Attention: James R. Williamson, Esq.
Thomas J. Stipanowich, Esq.

Permanent Index #: _____

BOX 333-CTI

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Loan No. V_36504

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("**Assignment**") made as of the 10th day of July, 2003, by WILLOW POND FAMILY LIMITED PARTNERSHIP, a Wisconsin limited partnership, as assignor, having its principal place of business at 536 Rosedale Drive, Thiensville, Wisconsin 53092 ("**Borrower**"), to JPMORGAN CHASE BANK, a New York banking corporation, as assignee, having its principal place of business at 270 Park Avenue, New York, New York 10017 ("**Lender**").

RECITALS:

Borrower by its promissory note of even date herewith given to Lender is indebted to Lender in the principal sum of \$2,350,000.00 in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "**Note**"), with interest from the date thereof at the rates set forth in the Note, and with principal and interest to be payable in accordance with the terms and conditions provided in the Note, and with a final maturity date of August 1, 2023.

Borrower desires to secure the payment and performance of all of its obligations under the Note and the Obligations as defined in Article 2 of the Security Instrument (defined below).

ARTICLE 1- ASSIGNMENT

Section 1.1 **PROPERTY ASSIGNED.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby absolutely and unconditionally assigns and grants to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) **Leases and Rents.** All right, title and interest of Borrower in and to (i) the lease dated April 24, 2000 (as amended from time to time, the "**Primary Lease**") between Area Wide 71st & Pulaski, Inc., an Illinois corporation ("**Area Wide**"), predecessor in interest to Borrower, as lessor, and Walgreen Co., an Illinois corporation, as lessee ("**Tenant**"), as amended by that certain Amendment to Lease dated October 20, 2000 between Area Wide and Tenant, as further amended by that certain Second Amendment to Lease dated May 10, 2002 between Area Wide and Tenant, and (ii) all other leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Other Leases**") (the Primary Lease and the Other Leases are referred to collectively herein as the "**Leases**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, and all proceeds from the sale or other disposition of the Leases and all appurtenances in respect of or otherwise relating to the Primary Lease, including, but not limited

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to, all the estate and rights of the Borrower of, in and to (1) all modifications, extensions and renewals of the Primary Lease and all rights to renew or extend the term thereof, (2) all of Borrower's rights, if any, pertaining to deposits of the Tenant under the Primary Lease (including lessee security deposits, if any), (3) all other options, privileges and rights granted and demised to the Borrower under the Primary Lease, (4) all the right or privilege of the Borrower to terminate, cancel, abridge, surrender, merge, modify or amend the Primary Lease and (5) any and all possessory rights of the Borrower and other rights and/or privileges of possession, including, without limitation, the Borrower's right to elect to take possession of the Property; and all of the Borrower's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Primary Lease by the Tenant or any trustee, custodian or receiver pursuant to the U.S. Bankruptcy Code in the event that there shall be filed by or against the Tenant any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect;

(b) Rents. All rents, income, issues, revenues and profits arising from the Leases and renewals thereof and together with all rents, income, issues and profits from the use, enjoyment and occupancy of the Property (including, but not limited to, minimum rents, additional rents, percentage rents, deficiency rents, security deposits and liquidated damages following default under any Leases, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Borrower's rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejection of a Lease, together with any sums of money that may now or at any time hereafter be or become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas and mining Leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property) (all of the rights described above hereinafter collectively referred to as the "**Rents**").

(c) Bankruptcy Claims. All of Borrower's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(d) Lease Guaranties. All of Borrower's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "**Lease Guarantor**," collectively, the "**Lease Guarantors**") to Borrower (the "**Lease Guaranties**").

(e) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(f) Other. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other

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Obligations), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(g) Entry. The right, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(h) Power of Attorney. Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Article 5 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

Section 1.2 CONSIDERATION. This Assignment is made in consideration of that certain loan made by Lender to Borrower evidenced by the Note and secured by that certain mortgage and security agreement, deed of trust and security agreement, deed to secure debt and security agreement or similar real estate security instrument given by Borrower to or for the benefit of Lender, dated the date hereof, covering the Property and intended to be duly recorded (the "**Security Instrument**"). The principal sum, interest and all other sums due and payable under the Note, the Security Instrument, this Assignment and the Other Loan Documents (defined below) are collectively referred to as the "**Debt**." The documents other than this Assignment, the Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender which wholly or partially secure or guarantee payment of the Debt or otherwise related thereto and the Primary Lease are referred to herein as the "**Other Loan Documents**." Unless otherwise herein defined, all initially capitalized terms shall have the meanings given such terms in the Security Instrument.

ARTICLE 2- REPRESENTATIONS AND COVENANTS

Section 2.1 BORROWER'S REPRESENTATIONS. Borrower warrants to Lender that (a) Borrower is the sole owner of the entire lessor's interest in the Primary Lease; (b) the Primary Lease is valid, enforceable and in full force and effect and has not been altered, waived, released, impaired, modified or amended in any manner whatsoever in whole or in part except as disclosed to Lender; (c) neither the Primary Lease nor the Rents reserved in the Primary Lease has been assigned or otherwise pledged or hypothecated; (d) none of the Rents have been collected for more than one (1) month in advance; (e) Borrower has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property; (f) the premises demised under the Primary Lease has been completed and the Tenant has accepted the same and has taken possession of the same on a rent-paying basis; (g) there exist no rights of rescission, abatement, diminution, counterclaim, offset or defense to the payment of any portion of the Rents; (h) the Primary Lease contains customary and enforceable provisions which render the rights and remedies of the lessor thereunder adequate for the enforcement and satisfaction of the lessor's rights thereunder; (i) no default by the Borrower or the Tenant has occurred under the Primary Lease, nor is there any existing condition which, but for the passage of time or the giving of notice, or both, would result in a default under the terms of the Primary Lease; and (j) the Property is not subject to any lease other than the Primary Lease, no person has any possessory interest in the Property except under and pursuant to the Primary Lease and the Tenant is in occupancy of the Property.

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ARTICLE 3- COVENANTS

Section 3.1 ADMINISTRATION. Borrower covenants with Lender that Borrower (a) shall observe and perform all the obligations imposed upon the lessor under the Primary Lease and shall not do or permit to be done anything to impair the value of the Primary Lease as security for the Debt; (b) shall promptly send to Lender copies of all notices of default which Borrower shall receive under the Primary Lease; (c) shall not collect any Rents more than one (1) month in advance; (d) shall not execute any other assignment of lessor's interest in the Primary Lease or the Rents; (e) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Property as Lender shall from time to time require; and (f) subject to the terms of the Primary Lease, shall deliver to Lender, upon request, tenant estoppel certificates from the Tenant.

Section 3.2 ENFORCEMENT AND MODIFICATIONS. Borrower further covenants with Lender that Borrower (a) shall promptly send to Lender copies of all notices of default which Borrower shall send to Tenant; (b) shall not alter, modify or change the terms of the Primary Lease without the prior written consent of Lender, or cancel or terminate the Primary Lease or accept a surrender thereof or take any other action which would effect a merger of the estates and rights of, or a termination or diminution of the obligations of, Tenant thereunder; (c) intentionally omitted; (d) shall not consent to any assignment of or subletting under the Primary Lease not in accordance with its terms, without the prior written consent of Lender; (e) shall not waive, release, reduce, discount or otherwise discharge or compromise the payment of any of the Rents to accrue under the Primary Lease; and (f) shall not, without the prior written consent of Lender, pursue any remedy under the Primary Lease.

Section 3.3 RENTAL OFFSETS. If Borrower becomes aware that Tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against Rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against Rent, (ii) notify Lender thereof and of the amount of said set-offs, and (iii) within ten (10) days after such accrual for a valid set-off, reimburse Tenant or take such other steps as shall effectively discharge such set-off and as shall effectively assure that Rents thereafter due shall continue to be payable without set-off or deduction.

ARTICLE 4- TERMS OF ASSIGNMENT

Section 4.1 PRESENT ASSIGNMENT. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Unless provided to the contrary in the Cash Management Agreement between Borrower and Lender of even date herewith (the "**Cash Management Agreement**"), Borrower hereby presently, unconditionally and irrevocably designates Lender to receive, and directs the Tenant to pay to an account controlled by Lender or its designated servicer, all payments, payable or receivable under the Primary Lease (including, without limitation, all Rents and other sums payable to the landlord under the Primary Lease) and no such payment by Tenant shall be effective to discharge the obligation of Tenant under the Primary Lease to make such payment unless made to an account controlled by Lender in accordance with such designation and

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direction. In any event all Rents collected by Borrower shall be held in trust by Borrower for the sole and exclusive benefit of Lender, and Borrower shall, within one (1) business day after receipt of any Rents, pay the same to an account controlled by Lender. All payments received by Lender shall be applied as set forth in the Cash Management Agreement. The assignment to Lender evidenced by this Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions, or provisions contained in any of the Leases or otherwise to impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereinafter be requested by Lender to further evidence and confirm said assignment. Lender is hereby granted and assigned by Borrower the right to enter the Property for the purposes of enforcing its interest in the Leases and the Rents. Subject to the terms and conditions of the Loan Documents, Lender grants to Borrower a revocable license to retain possession of the Primary Lease and to exercise all rights of landlord under the Primary Lease (other than the collecting of Rents thereunder unless provided to the contrary in the Cash Management Agreement and the termination, modification or amendment of the Primary Lease). Upon a Default (as hereinafter defined), the license granted to Borrower herein shall automatically be revoked and Lender shall immediately be entitled to possess the Primary Lease and exercise all rights of landlord under the Primary Lease, whether or not Lender enters upon and takes control of the Property. Borrower hereby grants and assigns to Lender the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver.

ARTICLE 5- REMEDIES

Section 5.1 REMEDIES OF LENDER. Upon or at any time after the occurrence of a default under this Assignment or an Event of Default (a "**Default**"), Lender shall immediately be entitled to, subject to the terms of the Primary Lease, enter upon and take control of the Property. In addition, Lender may, at its option, without waiving such Default, subject to the terms of the Primary Lease, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all Lease Guaranties, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations,

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repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of a Default, Lender, at its option, may (i) complete any construction on the Property in such manner and form as Lender deems advisable, (ii) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (iii) either require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (iv) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 5.2 OTHER REMEDIES. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Note, the Security Instrument, or the Other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower under this Assignment, the Note, the Security Instrument, the Other Loan Documents or otherwise with respect to the loan secured hereby in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Note, the Security Instrument, or any of the Other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 5.3 [INTENTIONALLY OMITTED]

Section 5.4 OTHER SECURITY. Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 5.5 NON-WAIVER. The collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided by Lender shall not be considered a waiver of any default by Borrower under the Note, the Security Instrument, the Leases, this Assignment or the Other Loan Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note or the Other

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Loan Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument or the Other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 5.6 BANKRUPTCY.

(a) Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) Business Days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease 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 Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 6- NO LIABILITY, FURTHER ASSURANCES

Section 6.1 NO LIABILITY OF LENDER. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after a Default or from any other act or omission of Lender in managing the Property after a Default unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties or under

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or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by the Security Instrument and the Other Loan Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by the Security Instrument and the Other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Substances (as defined in the Environmental Indemnity), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 6.2 NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 6.3 FURTHER ASSURANCES. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

ARTICLE 7- SECONDARY MARKET

Section 7.1 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, the Security Instrument, this Assignment and the Other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement. Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor in such securities or any credit rating agency rating such securities (collectively, the "Investor") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any

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guarantor, the Tenant and the Property, whether furnished by Borrower, any guarantor or otherwise, as Lender determines necessary or desirable.

ARTICLE 8- DEPOSITS, RELOCATIONS

Section 8.1 SECURITY DEPOSITS. All security deposits of lessees, whether held in cash or any other form, shall be deposited in escrow with Lender.

ARTICLE 9- MISCELLANEOUS PROVISIONS

Section 9.1 CONFLICT OF TERMS. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

Section 9.2 NO ORAL CHANGE. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 9.3 CERTAIN DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment and the Other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 9.4 AUTHORITY. Borrower represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property.

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Section 9.5 INAPPLICABLE PROVISIONS. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

Section 9.6 DUPLICATE ORIGINALS; COUNTERPARTS. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 9.7 CHOICE OF LAW. This Assignment shall be governed by and construed in accordance with the applicable federal laws and laws of the state where the Property is located, without reference or giving effect to any choice of law doctrine.

Section 9.8 TERMINATION OF ASSIGNMENT. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Security Instrument duly executed by Lender, this Assignment shall become and be void and of no effect.

Section 9.9 NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

If to Borrower: Willow Pond Family Limited Partnership
536 Rosedale Drive
Thiensville, Wisconsin 53092
Attention: Jeanne Linnemanstons
Facsimile No.: (262) 512-9871

If to Lender: JPMorgan Chase Bank
c/o ARCap Servicing, Inc.
5605 North MacArthur Boulevard
Suite 950
Irving, Texas 75038
Attention: Clyde F. Greenhouse
Facsimile No.: (972) 580-0778

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With a copy to: Stites & Harbison, PLLC
 400 W. Market Street
 Suite 1800
 Louisville, Kentucky 40202
 Attention: James R. Williamson, Esq.
 Facsimile No.: (502) 587-6391

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section, the term “**Business Day**” shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Any party by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

Section 9.10 WAIVER OF TRIAL BY JURY. **BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

Section 9.11 SUBMISSION TO JURISDICTION. Borrower hereby irrevocably submits to the jurisdiction of any court of competent jurisdiction located in the state in which the property is located in connection with any proceeding arising out of or relating to this Assignment.

Section 9.12 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 9.13 HEADINGS, ETC. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 9.14 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Lender and any subsequent holder of the Security Instrument and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY**CHICAGO TITLE INSURANCE COMPANY**

ORDER NUMBER: 1401 008135516 D1
STREET ADDRESS: 71ST AND PULASKI
CITY: COUNTY: COOK
TAX NUMBER: 19-23-328-001-0000

LEGAL DESCRIPTION:**PARCEL 1:**

LOTS 17 TO 25 EXCEPT THAT PART OF LOTS 17 TO 25 LYING WEST OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF LOT 16, SAID POINT BEING 17.13 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT AS ORGINALLY PLOTTED; THENCE SOUTHERLY TO A POINT IN THE NORTH LINE OF LOT 20, SAID POINT BEING 20 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 20 AS ORGININALLY PLOTTED; THENCE SOUTHERLY TO A POINT ON THE NORTH LINE OF LOT 25, SAID POINT BEING 26 FEET EAST OF THE NORTHWEST CORNER OF LOT 25 AS ORGINALLY PLOTTED; THENCE SOUTH ALONG A CONTINUATION OF SAID LINE 14 FEET TO A POINT OF TANGENCY OF A CURVE CORNER TO THE SOUTHWEST HAVING A RADIUS OF 11 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE TO A POINT IN THE SOUTH LINE OF SAID LOT 25, SAID POINT BEING 37 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 25) IN BLOCK 13 IN W.D. MURDOCK'S MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 26 AND THE WEST 19 FEET OF LOT 27 EXECPT THE EAST 16.00 FEET AS DEDICATED BY DOCUMENT NO. 0020808934 AND AS SHOWN ON PLAT OF DEDICATION RECORDED AS DOCUMENT NUMBER 0020808935 IN BLOCK 13 IN W.D. MURDOCK'S MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 16 (EXCEPT THAT PART LYING WEST OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF LOT 16, SAID POINT BEING 17.13 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT AS ORGINALLY PLOTTED; THENCE SOUTHERLY TO A POINT IN THE NORTH LINE OF LOT 20, SAID POINT BEING 20 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 20 AS ORGININALLY PLOTTED) IN BLOCK 13 IN W.D. MURDOCK'S MARQUETTE COOK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOT 15 IN BLOCK 13 IN W.D. MURDOCK'S MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF (EXCEPT THE EAST 50 FEET) THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF

(CONTINUED)

UNOFFICIAL COPY**CHICAGO TITLE INSURANCE COMPANY**

ORDER NUMBER: 1401 008135516 D1
STREET ADDRESS: 71ST AND PULASKI
CITY: COUNTY: COOK
TAX NUMBER: 19-23-328-001-0000

LEGAL DESCRIPTION:

SECTION 23, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 5:

ALL OF THE NORTH-SOUTH 16 FOOT PUBLIC ALLEY LYING EAST OF THE EAST LINE OF LOTS 16 TO 25, BOTH INCLUSIVE, LYING WEST OF THE WEST LINE OF LOTS 15 AND 26, LYING WEST OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE WEST AND SOUTHWESTERLY LINES OF LOT 15 TO THE POINT OF INTERSECTION OF THE WEST AND NORTHWESTERLY LINES OF LOT 26, LYING SOUTH OF A LINE DRAWN FROM THE NORTHWEST CORNER OF LOT 15 TO THE NORTHEAST CORNER OF LOT 16 AND LYING NORTH OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF LOT 25 TO THE SOUTHWEST CORNER OF LOT 26 ALL IN BLOCK 13 IN W.D. MURDOCK'S MARQUETTE PARK ADDITION, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE EAST 50 FEET THEREOF), IN COOK COUNTY, ILLINOIS AS VACATED BY DOCUMENT NO. 0020808934.

AND;

ALL THAT PART OF THE EAST-WEST 16 FOOT INCREASING TO A 26 FOOT PUBLIC ALLEY LYING SOUTH AND SOUTHWESTERLY OF THE SOUTH AND SOUTHWESTERLY LINES OF LOT 15, LYING NORTH AND NORTHWESTERLY OF THE NORTH AND NORTHWESTERLY LINES OF LOT 26, LYING EAST OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE WEST AND SOUTHWESTERLY LINES OF LOT 15 TO THE POINT OF INTERSECTION OF THE WEST AND NORTHWESTERLY LINES OF LOT 26 AND LYING WEST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF THE EAST 16.00 FEET OF THE WEST 19.00 FEET OF LOT 27 IN BLOCK 13 IN W.D. MURDOCK'S MARQUETTE PARK ADDITION AFORESAID, SAID PUBLIC ALLEY AND PART OF PUBLIC ALLEY HEREIN VACATED BEING FURTHER DESCRIBED AS ALL OF THE NORTH-SOUTH 16 FOOT ALLEY TOGETHER WITH THE WEST 28.0 FEET, MORE OR LESS, THE EAST-WEST 16 FOOT INCREASING TO A 26 FOOT PUBLIC ALLEY IN THE BLOCK BOUNDED BY W. 70TH PLACE, W. 71ST STREET, S. PULASKI ROAD AND S. SPRINGFIELD AVENUE AS VACATED BY DOCUMENT NO. 0020808934.