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MILL PONDS PARTNERSHIP

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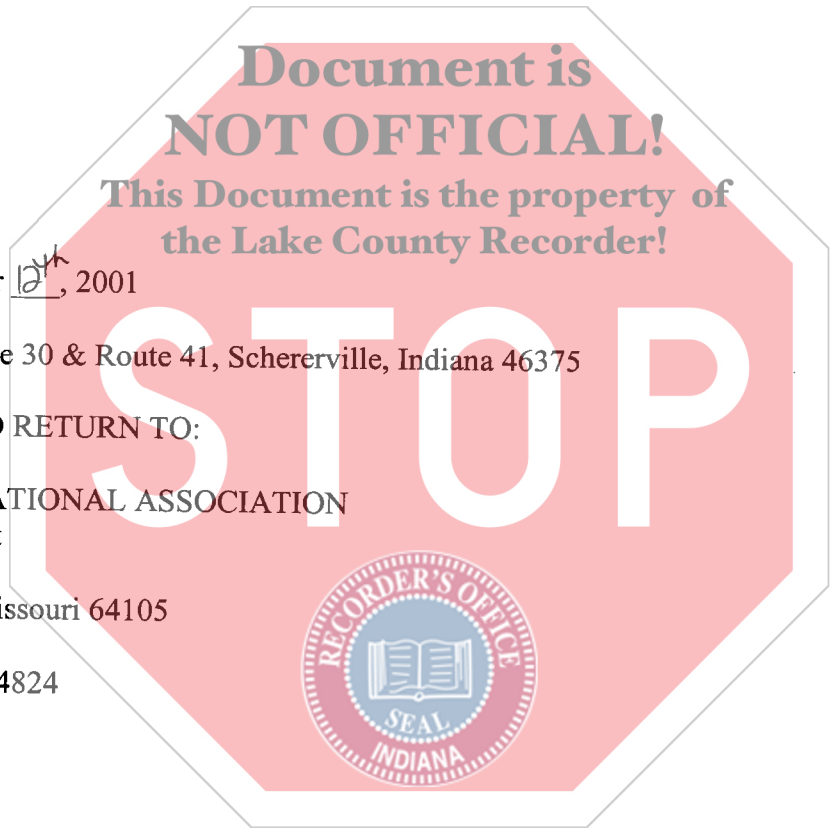
KEYBANK NATIONAL ASSOCIATION

ASSIGNMENT OF LEASES AND RENTS

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Chicago Title Insurance Company
2001-084638



Dated: October 12th, 2001

Location: Route 30 & Route 41, Schererville, Indiana 46375

RECORD AND RETURN TO:

KEYBANK NATIONAL ASSOCIATION
911 Main Street
Suite 1500
Kansas City, Missouri 64105

Loan No. 10014824

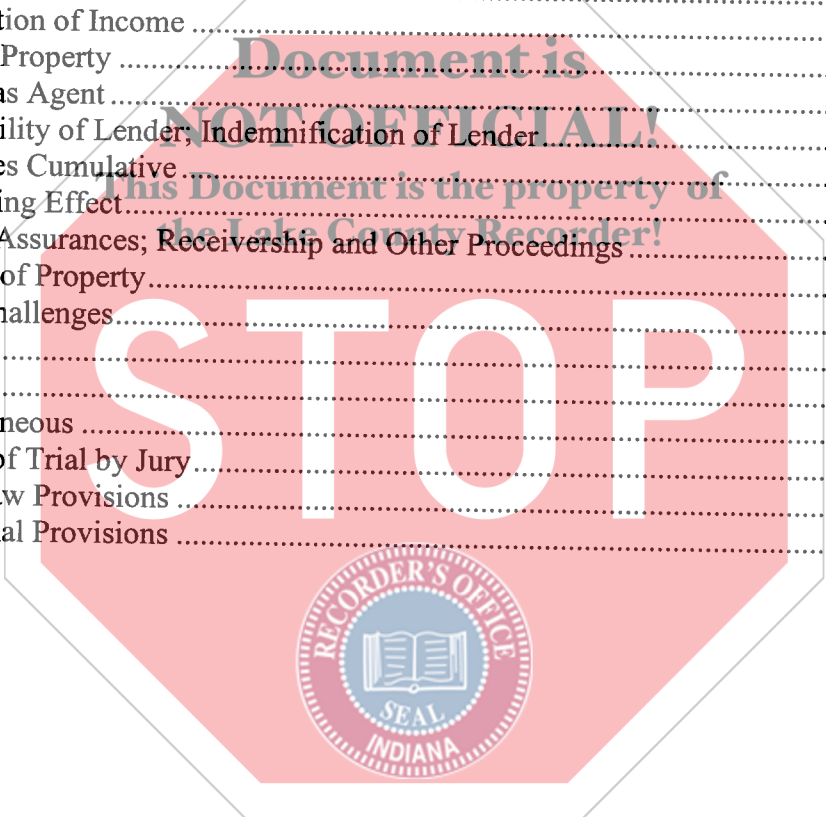
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ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (“Assignment”) is made as of October 12, 2001, by and between **MILL PONDS PARTNERSHIP**, an Illinois general partnership (“**Borrower**”) and **KEYBANK NATIONAL ASSOCIATION**, a national banking association (“**Lender**”).

Recitals of Fact

The following recitals are a material part of this instrument:

A. Borrower desires to borrow from Lender the principal sum of \$3,054,000.00 (the “**Loan**”) for the financing of certain property located in Lake County, Indiana, which is commonly known as the Walgreens -- Schererville, legally described on **Exhibit “A”** attached hereto and by this reference made a part hereof (the real estate, together with all improvements thereon and personal property associated therewith, is hereinafter collectively called the “**Property**”).

B. As security for the Loan, Borrower shall execute and deliver to Lender a first deed of trust, mortgage, or deed to secure debt (which is herein called the “**Security Instrument**”) encumbering the Property. The Security Instrument, the Promissory Note evidencing the Loan (“**Note**”) and all other documents and instruments evidencing and/or securing the Note or now or hereafter executed by Borrower or others in connection with or related to the Loan including any assignments of leases and rents, other assignments, security agreements, financing statements, guaranties, indemnity agreements (including environmental indemnity agreements), letters of credit, or escrow/holdback arrangements, together with all amendments, modifications, substitutions or replacements thereof, are sometimes herein collectively referred to as the “**Loan Documents.**” The Loan Documents are hereby incorporated by this reference as if fully set forth in this Assignment.

C. Borrower desires to assign to Lender the rents, leases, contracts and profits of and from the Property and the proceeds therefrom, as primary and not as secondary security for the payment of the Note and the Indebtedness (as such term is hereinafter defined), and for the performance of the obligations in the Security Instrument and the other Loan Documents.

Agreement

In consideration of the Loan from Lender to Borrower, which is of direct and substantial benefit to Borrower, the mutual covenants contained in this Assignment, and for other good and valuable considerations, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Assignment.** Borrower absolutely and unconditionally assigns, transfers, sets over and conveys to Lender the following, absolutely and not as additional security:

- (a) all present or future, written or oral leases, subleases, tenancies, subtenancies, licenses, contracts, contract rights, and occupancy and other agreements of any nature (all of the above hereinafter collectively the “**Leases**”). The foregoing assignment of the Leases includes without limitation: (i) all guaranties of any of the Leases, including guaranties of tenant performance and security therefor; (ii) all insurance proceeds under any of the Leases, including rental loss coverage and business interruption coverage; (iii) all awards, allowances, orders, judgments or settlements of claims in favor of Borrower and arising out of or connected with any of the Leases pursuant to any court proceeding, including any bankruptcy, reorganization, insolvency, or debtor proceeding; and (iv) all security deposits under any of the Leases; and
- (b) all contracts under which any payment or other performance is to be rendered by a third party or parties to Borrower as obligee, respecting or in connection with any part of the Property (collectively the “**Contracts**”); and
- (c) all guaranties, surety agreements, bonds, amendments, renewals or extensions of the Contracts (which items shall be included within the term Contracts as defined and used in this Assignment); and
- (d) all rights, benefits, powers, interests, remedies, and privileges accruing to or in favor of Borrower under any of the Contracts (collectively the “**Contract Rights**”); and
- (e) all rents, subrents, fees, issues, proceeds, profits, income, payments (including payments pursuant to the exercise of any purchase option by any tenant under any Lease), benefits and advantages of any kind from the Leases, the Contracts or otherwise payable with respect to the Property (the “**Rents**”); and

(f) all revenues from the Property other than Rents (the “**Profits**”).

2. **Indebtedness.** This Assignment secures payment of (a) the Note; (b) all indebtedness and obligations arising under the Security Instrument and the other Loan Documents; (c) all indebtedness and obligations arising pursuant to any instrument evidencing the advance of additional sums at Lender’s sole option, by Lender to, or on behalf of, Borrower; (d) any and all renewals or extensions of any such item of indebtedness or obligation or any part thereof; (e) any future advances which may be made by Lender to, or on behalf of, Borrower, whether made to protect the security for the repayment of the Note or otherwise, and whether or not evidenced by additional promissory notes or other evidences of indebtedness; and (f) all interest due on all of the same (all of the above are hereinafter collectively the “**Indebtedness**,” which term shall also include any part or portion thereof). Nothing herein shall be construed to obligate Lender to make any renewals or additional loans or advances, including, without limitation, increasing the amount of the Note as referred to herein.

3. **Term.** This Assignment shall remain in effect until all debts and other obligations evidenced by the Note or advanced under the Loan Documents are paid in full, or this Assignment is voluntarily released by Lender.

4. **Events of Default.** The occurrence of any of the following shall constitute an “**Event of Default**” under this Assignment: (a) the failure of Borrower to perform or to observe any agreement, covenant, or condition required under this Assignment; (b) the breach by Borrower of any representation or warranty given or made hereunder by Borrower or in any writing furnished or to be furnished by Borrower under this Assignment; or (c) an Event of Default under any of the Loan Documents.

5. **License to Borrower Prior to Default.** Notwithstanding that this Assignment is an absolute assignment of the Leases and Rents and not merely the collateral assignment of, or the grant of a lien or security interest in the Leases and Rents, Lender hereby grants to Borrower an exclusive license revocable upon occurrence of an Event of Default to possess, use and enjoy the Property and to collect and retain the Rents of and from the Property, unless and until an Event of Default occurs, as such term is defined herein or in the Note, the Security Instrument or in any of the other Loan Documents. Even before an Event of Default occurs, no rent or other payment in excess of one month in advance shall be collected or accepted by Borrower without the prior written consent of Lender.

6. **Lender's Remedies Upon Default.** Upon the occurrence of an Event of Default, Borrower's license to collect and retain the Rents under Section 5 above shall immediately terminate. Lender will have the right at its option to enforce and to exercise any or all of its rights under this Assignment or otherwise, but Borrower expressly agrees that Lender's exercise of any rights hereunder or Lender's affirmative act to collect the Rents or other income or to acquire possession of the Leased Property shall not be a prerequisite or precondition to the full enforceability of Lender's rights hereunder.

6.1 In such event, and upon Lender's election, Borrower shall deliver to Lender all of the Contracts and the original Leases, and all modifications, extensions, renewals, amendments, and other agreements relating thereto and to the Property. Any oral Contracts shall be described in a writing delivered by Borrower to Lender.

6.2 Lender, at its option, and without any notice whatsoever to Borrower, shall have the right and is hereby authorized to: (a) take possession and control of the Property; (b) manage and operate the Property; (c) preserve and maintain the Property; (d) make repairs and improvements to the Property which Lender at its sole discretion deems necessary; (e) collect all Rents from the Property; (f) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of leases, other occupancy agreements or contracts; (g) in the name of either Borrower or Lender enter into real or personal property leases, subleases or tenancy agreements, or other contracts or agreements, with such third parties as Lender may at its sole discretion select, and upon such terms and conditions as Lender in its sole discretion may determine; (h) sue for unpaid rents, payments or proceeds in the name of Borrower or Lender; (i) maintain actions for possession of property or for rent; (j) compromise or give acquittance for rents, payments or proceeds that may become due; (k) maintain suits on contracts and agreements; (l) delegate any and all rights and powers given to Lender by this Assignment; (m) have a receiver appointed; and (n) use such measures, legal or equitable, as in its sole discretion may carry out and effectuate the provisions of this Assignment. All such actions shall be taken at the expense of the Borrower, who agrees to reimburse Lender for all amounts expended, together with interest thereon from the date of expenditure at the Default Rate stated in the Note, upon demand.

7. **Appointment.** Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described in this Assignment, with the same force and effect as if executed by the Borrower, and Borrower ratifies and confirms any and all acts done or omitted to be done by

Lender, its agents, servants, employees or attorneys under the authority of such power of attorney.

8. **Instructions to Lessees.** This Assignment constitutes an irrevocable direction to and full authority from Borrower to any lessee, tenant, subtenant, occupant of premises, or other contracting party to pay directly to Lender, upon Lender's request, all Rents and other amounts which may be or become due to Borrower. No proof of default shall be required. Any lessee, tenant, subtenant or other contracting party is hereby irrevocably authorized by Borrower to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any rental or other amounts which may be or become due under its lease or contract, or for the performance of any obligations under such lease or contract. Borrower irrevocably agrees that the lessee, tenant, subtenant, or other contracting party following such instructions from Lender shall not be liable to Borrower or any person claiming under Borrower, for making any payment or rendering any performance to Lender. The lessee, tenant, subtenant, wholesaler, manufacturer, distributor, or other contracting party shall have no obligation or right to inquire whether any default has actually occurred or is then existing. By its execution of this Assignment, Borrower irrevocably makes and delivers the above instructions.

9. **Application of Income.** The Rents, payments, proceeds and income collected by Lender may be applied as follows, in whatever order Lender in its sole discretion may determine:

(a) To the payment of the operating expenses of the Property, including costs of management (which shall include reasonable compensation to the Lender and its agent or agents, if management be delegated to an agent or agents); improvements, alterations, replacements and repairs to the Property; placing the Property in such condition as will, in the judgment of Lender, make it readily rentable; premiums on fire, flood, tornado, casualty, liability or other insurance if Lender deems such insurance necessary; and any claims for damages arising out of the ownership or management of the Property.

(b) To the payment of the actual costs and expenses incurred by Lender in collecting such Rents, payments, proceeds and income, including commissions paid to secure tenants or lessees; reasonable attorneys' fees incurred in recovering the Property or any personal property from any lessee or other contracting party for any cause whatsoever and in the collection of unpaid Rents, payments, income or proceeds; and attorneys' fees incurred by Lender in connection with the enforcement of this Assignment or in protecting Lender or its interest in any of the collateral securing the Loan (including attorney's fees and litigation expenses related to or arising out of any lawsuit or proceeding brought by or against Lender in

any court or other forum, including actions or proceedings brought by or on behalf of Borrower's bankruptcy estate or any guarantor or indemnitor).

(c) To the payment of taxes, special assessments and insurance premiums which become due and delinquent on the Property; all obligations contained in the Loan Documents; and any liens or encumbrances on the Property or any personal property of Borrower.

(d) To the payment of bills for reasonable and necessary repairs and improvements on the Property.

(e) To the payment of any and all indebtedness, together with interest, evidenced by the Loan Documents, or any deficiency which may result from any foreclosure sale.

10. **Lien on Property.** If the Rents, payments, income and proceeds from the Property are insufficient to reimburse Lender for any expenses incurred by Lender pursuant to this Assignment, any unpaid disbursements shall be a lien on the Property with priority equal to the lien of the Security Instrument.

11. **Lender as Agent.** Lender is acting solely as agent of Borrower in taking any actions in connection with the Property. Lender assumes no liability in any other capacity. Lender shall not be obligated to perform any obligation or duty, or discharge any liability under any of the Contracts or Leases under or by reason of this Assignment.

12. **No Liability of Lender; Indemnification of Lender.**

12.1 Lender shall not in any way be liable to Borrower for any action or inaction of Lender, its employees or agents with respect to Lender's exercise of the powers granted Lender by this Assignment, including, without limitation, any liability relating to the renting or leasing of the Property after an Event of Default by Borrower, or damage to the Property (unless caused by the willful misconduct or gross negligence of Lender). Borrower expressly waives and releases Lender from all such liability.

12.2 Lender shall not be responsible for any failure to perform any covenants in any of the Leases or Contracts, either before or after the exercise of any assignments or remedies contained in this Assignment. Lender shall not be responsible for the condition or operation of

the Property or for any damage or harm to the Property or any additions, improvements, or fixtures to the Property. This Assignment shall not operate to place upon Lender any obligation for the control, care, management or repair of the Property, or for the discovery of or correction of any dangerous or defective condition on the Property, including without limitation any environmental matters described in the separate Environmental Indemnity Agreement, or any negligence in the management, upkeep, repair or control of the Property. Lender also shall not be liable to any person or entity for any accidents or other occurrences occurring on or with respect to any part of the Property, except for any such accidents or other occurrences resulting from the willful or grossly negligent actions of Lender.

12.3 Borrower shall save, defend, indemnify and hold Lender and its agents, employees, contractors, and managers harmless from and against any and all cost, expense, liability, damage, claim or assertion that may be incurred by or made against Lender or any such persons or entities arising from or related to the Leases, the Contracts, Contract Rights or Rents, or by reason of this Assignment, including without limitation any claims by reason of any alleged obligations and undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases or Contracts, or any right to maintain, inspect, manage or otherwise exercise any control or supervision over the Property or the condition thereof, or any claim described in the preceding subsection of this Assignment. Should Lender incur any such liability, loss or damage, Borrower shall on demand pay to Lender any and all cost, expense, liability, or damage arising therefrom plus costs, expenses and attorneys' fees and expenses, with interest from the date the cost or loss is incurred, at the Default Rate stated in the Note, and all of the foregoing shall be secured by this Assignment and by the other Loan Documents.

13. **Remedies Cumulative.** The remedies provided in this Assignment and in the other Loan Documents are cumulative and not mutually exclusive. The remedies can be exercised successively or concurrently, as many times as and whenever the occasion may arise, and the exercise of any one or more remedies shall not be a waiver of or preclude the exercise of any one or more remedies at the same or any later time for the same or any later default.

14. **Continuing Effect.** No judgment or decree which may be entered on any debt secured or intended to be secured by the Security Instrument or any other Loan Documents shall lessen the effect of this instrument, but this Assignment shall continue in full effect until the full payment and discharge of (a) all indebtedness and liability secured by the Security Instrument or any other Loan Documents, and (b) all expenses incurred by Lender relating to the Property.

This Assignment shall remain in full effect during the pendency of any foreclosure proceedings under any of the other Loan Documents, both before and after sale, until the issuance of a deed to the foreclosure sale purchaser.

15. Further Assurances; Receivership and Other Proceedings.

15.1 Upon Lender's request, Borrower shall execute any documents or instruments Lender may request, for the purpose of providing further evidence of this Assignment, to carry out the intent and terms of this Assignment, to evidence other amounts that may become payable from Borrower to Lender as referred to in this Assignment, or to accomplish any other purpose deemed appropriate by Lender.

15.2 Borrower consents and authorizes any court of competent jurisdiction to issue, *ex parte* and without any notice to Borrower or its counsel (which notice is hereby waived), any orders that may be appropriate, in Lender's sole discretion, to enforce the terms of this Assignment or to grant Lender such powers and authority as Lender may need to enforce this Assignment, including without limitation the appointment of a receiver for the Property. No bond shall be required of Lender. The parties recognize and agree that time will be of the essence in any such proceeding. Such receiver shall be entitled without notice to take possession of and protect the Property, operate the same, collect the Rents, Income and Profits therefrom, and otherwise exercise any rights or authority granted to Borrower in this Assignment or any other Loan Documents. Lender's right to the appointment of a receiver shall continue regardless of the value of the Property as security for the Indebtedness or the solvency of any person or corporation liable for the payment of such amount. Notwithstanding the appointment of any receiver, liquidator or trustee for Borrower, or of any of its property, or of the Property, Lender shall be entitled to retain possession and control of all Property now or hereafter held under this Assignment and any other Loan Documents, including, but not limited to, the Rents, Income and Profits.

16. Leasing of Property.

16.1 Borrower represents, warrants and covenants that (a) all the current Leases and Contracts have been properly executed by fully authorized agents of the parties and are now and shall at all times during the life of this Assignment be valid and enforceable obligations of Borrower and the other contracting parties; (b) none of the Rents have been collected for more than one (1) month in advance; (c) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same

on a rent-paying basis; (d) any future leases or subleases between Borrower and third parties shall at all times during the life of this Assignment be the valid and enforceable obligations of Borrower and the other contracting parties; (e) Borrower shall not default under nor permit any default to occur under any of the Contracts or Leases; (f) Borrower shall not knowingly or intentionally permit any occurrence or circumstances to arise which would give any third party any defense to, or counterclaim in, any action or proceeding to enforce rights under the Leases or any of the Contract Rights; (g) Borrower shall promptly notify Lender if any party to any of the Contracts or Leases (other than a tenant under a lease for the occupancy of a single-family residential unit) materially defaults or claims a material default under any of the Contracts or Leases, and send Lender copies of any (or summaries of any oral) relevant communications (other than communications with a tenant under a lease for the occupancy of a single-family residential unit); (h) Borrower has not executed or consented to any prior absolute or conditional assignments of any of the Leases, the Contracts, the Contract Rights or the Rents, and has entered into no modifications or amendments to the Leases except as set forth in the Rent Roll delivered to Lender, and will not (unless otherwise permitted under Section 16.2 hereof) do so throughout the term of this Assignment; (i) other than Leases for all or any part of the Property for residential purposes, for congregate care services or for mini-warehouse storage rentals (except for storage rentals of ten percent (10%) or more of the rentable square footage of such storage facility) (collectively, "Residential Leases"), true and correct copies of all leases in existence as of the date of this Assignment were delivered to Lender prior to the execution of this Assignment; and (j) the Contracts and Leases will (except when they expire by passage of time or are rightfully and in accordance with this Assignment terminated by Borrower) remain in full force and effect with no disadvantageous change in their terms.

16.2 Without obtaining Lender's prior written approval, Borrower shall not:

(a) materially modify or alter or change the terms of or extend any Lease or enter into any new or renewal Lease affecting the Property; provided, however, that no such approval is required if: (i) such Lease is written on a standard form of lease approved in writing by Lender ("Standard Form Lease") with no material changes to such Standard Form Lease; and (ii) all of the terms of such Lease equal or exceed the requirements set forth in the then applicable report of minimum acceptable lease terms provided by Borrower to Lender and approved by Lender in accordance with the terms and provisions of the Security Instrument; and (iii) such Lease is an arm's length transaction with an unrelated third party tenant; and (iv) an executed copy of such Lease (other than Residential Leases, unless requested by Lender) shall be furnished to Lender within ten (10) days after its execution; (v) such Lease is for less than 40%

of the rentable space of the Property; and (vi) such Lease provides that upon Borrower's request the tenant thereunder shall subordinate such Lease to the Security Instrument and shall agree to attorn to Lender and such subordination and attornment shall be evidenced by a written agreement executed by such tenant in form and substance satisfactory to Lender;

(b) other than Residential Leases, consent to any assignment of or subletting by any tenant under any of the Leases (except in accordance with the terms of such tenant's Lease);

(c) alter, modify, change, cancel or terminate any guaranty of any of the Leases;

(d) other than Residential Leases, cancel, terminate or accept a surrender of any of the Leases; or

(e) transfer or permit a transfer of the Property or of any interest therein, even if such a transfer is permitted under the Security Instrument, if such transfer would effect a merger of the estates and rights of, or a termination or diminution of the obligations of, tenants under any of the Leases; or

(f) modify, amend, supplement or replace the Standard Form Lease (Lender's approval under this Section 16.2(f) shall not be unreasonably withheld).

Notwithstanding anything herein to the contrary, Borrower shall not enter into, materially modify or alter, change the terms of, extend, renew, cancel or terminate any Lease of forty percent (40%) or more of the rentable space of the Property without Lender's prior written approval.

Each request by Borrower for Lender's written approval under this section shall be made in accordance with Section 19 hereof.

17. **Legal Challenges.** Borrower shall appear for itself (and for Lender, if Lender so requests) in any action or proceeding affecting the Property or the Leases, Contracts, Contract Rights, Rents or this Assignment, and shall at its own cost vigorously defend title to the Property and the enforceability of the Leases, Contracts, Contract Rights and this Assignment against all legal challenges. Where necessary or where requested by Lender, Borrower shall at its own cost institute any legal actions respecting the same. Borrower shall not challenge, and irrevocably

waives any challenge to, the legality or enforceability of this Assignment and all provisions of this Assignment.

18. **Set-Off.** Upon default by Borrower under this Assignment, Lender (or the holder or owner of any debt secured by this Assignment) shall immediately have the right without further notice to Borrower to set off against the Note and any other debts secured by this Assignment all debts of Lender (or such holder or owner) to Borrower, whether or not then due.

19. **Notices.** Any notice required or permitted to be given hereunder must be in writing and given (a) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such party; (c) by transmitting a facsimile copy to the correct facsimile phone number of the intended recipient; or (d) by depositing the same into the custody of a nationally recognized overnight delivery service for next day delivery addressed to the party to be notified. In the event of mailing, notices shall be deemed effective three (3) days after posting; in the event of overnight delivery, notices shall be deemed effective on the next business day following deposit with the delivery service; in the event of personal service or facsimile transmissions, notices shall be deemed effective when delivered. For purposes of notice, the addresses of the parties shall be the same addresses as those identified and set forth in the Note. From time to time either party may designate another or additional addresses for all purposes of this Assignment by giving the other party no less than ten (10) days advance written notice of such change of address.

20. **Miscellaneous.** The following provisions are additional terms of this Assignment:

20.1 Lender may take or release other security for the payment of the Indebtedness, 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 Indebtedness, without prejudice to any of its rights under this Assignment.

20.2 No waiver by Lender of any default shall operate as a waiver of any other default or of the same default on a future occasion.

20.3 All rights and remedies of Lender are cumulative and may be exercised successively or concurrently, and shall inure to the benefit of Lender's successors and assigns.

20.4 Nothing herein shall be interpreted to make Lender a “mortgagee in possession” in the absence of Lender’s taking of actual possession of the Property. Borrower hereby waives any claims against Lender by reason of Lender’s exercise of any remedies hereunder.

20.5 All obligations of Borrower shall bind its heirs, executors, administrators, trustees, custodians, successors and assigns.

20.6 This Assignment, including but not limited to this Section, may only be modified or amended by written documents and no oral amendment, waiver, extension or other modification hereof shall be enforceable, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Assignment; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Assignment; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Assignment.

20.7 This Assignment shall be governed by the law of the state where the real property collateral for the Loan is located without regard to the conflicts of law provisions thereof (“**Governing State**”).

20.8 BORROWER HEREBY CONSENTS TO PERSONAL JURISDICTION IN THE GOVERNING STATE. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS (“**ACTION**”) SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. BORROWER HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR PURPOSES OF ANY ACTION. Borrower hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought

against it or is not maintainable in those courts or that this Assignment may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

20.9 The captions of the sections of this Assignment are inserted for convenience only and shall not be used in the interpretation or construction of any provisions hereof.

20.10 If any provision of this Assignment is held invalid or unenforceable, the holding shall affect only the provision in question and all other provisions of this Assignment shall remain in full force and effect.

20.11 All references to Lender in this Assignment shall mean Lender and its employees and/or agents as the context indicates.

21. **Waiver of Trial by Jury.** **BORROWER AND LENDER EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS ASSIGNMENT, THE SECURITY INSTRUMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER.**

22. **Local Law Provisions.** In the event of any inconsistencies between the terms and conditions of this Section and any other terms and conditions of this Assignment (other than the terms and conditions of Section 23), the terms and conditions of this Section shall be binding.

22.1 **Application of Income.** Section 9(b) is amended by inserting the following after each reference to "attorneys' fees":

“(including, but not limited to support staff costs, amounts expended in litigation preparation, computerized research costs, telephone and facsimile expenses, mileage costs, deposition related expenses, postage costs, photocopy costs, process service fees, and costs of videotapes)”.


23. **Additional Provisions.** In the event of any inconsistencies between the terms and conditions of this Section and any other terms and conditions of this Assignment, the terms and conditions of this Section shall be binding.

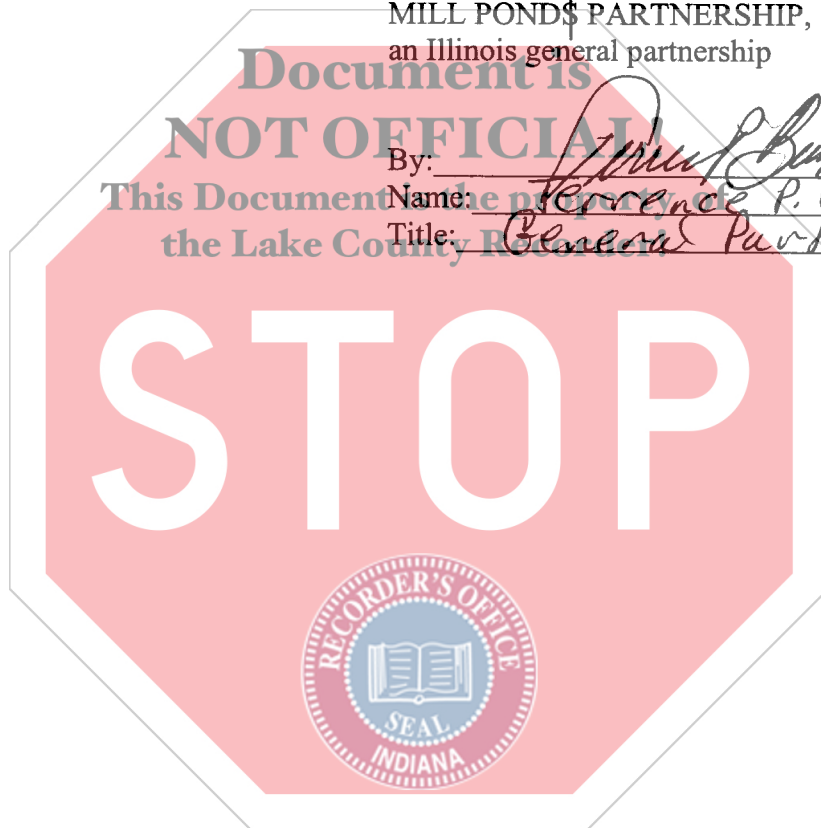
NONE.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above written.

Borrower:

MILL PONDS PARTNERSHIP,
an Illinois general partnership

By: 
Name: Lawrence P. Burk
Title: General Partner



STATE OF Illinois)
COUNTY OF DuPage) ss.

On this 8 day of October in the year 2001, before me,
DENICE A. GIERACH, a Notary Public in and for said state, personally appeared
Terrence P. Burkh, general partner in Mill Pond\$ Partnership, an Illinois general
partnership, known to me to be the person who executed the within instrument on behalf of said
partnership and acknowledged to me that s/he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the
day and year last above written.

Denice A. Gierach

Notary Public in and for Said County and State

STATE OF ILLINOIS
NOTARY PUBLIC, STATE OF ILLINOIS
DENICE A. GIERACH
MY COMMISSION EXPIRES 10/4/02

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This Document is the property of
the Lake County Recorder!

DENICE A. GIERACH
(Type, print or stamp the Notary's name below
his or her signature.)

My Commission Expires:

10/4/02

This Instrument Prepared By:

Jason W. Lee, Esq.
Polsinelli Shalton & Welte
700 West 47th Street, Suite 1000
Kansas City, Missouri 64112
Phone: (816) 753-1000
Fax: (816) 753-1536



EXHIBIT A

Parcel 1: Lot 1, Teibel's Second Addition Unit 1, an addition to the Town of Schererville, as per plat thereof recorded in Plat Book 89 page 35, in the Office of the Recorder of Lake County, Indiana.

Parcel 2: Non-exclusive easement for the benefit of Parcel 1 as created by Reciprocal Easement and Cross-Access Easement Agreement with Covenants, Conditions and Restrictions dated August 23, 2000 and recorded August 28, 2000, as Document Number 2000 062159, for the purpose of access, ingress and egress over and through the Internal Access Roadways and access points located on Parcels A, A-1, B and D as shown on the Site Plan recorded as Document 2000 062159 in Plat Book 89, page 18.

Parcel 3: Non-exclusive easement for the benefit of Parcel 1 as created by Property Owners Agreement and Declaration of Easements and Restrictions dated August 23, 2000 and recorded August 28, 2000, as Document No. 2000 062158, for the purpose of Water Detention and Drainage Facilities over the following

described property:

That part of the Northwest Quarter of Section 16, Township 35 North, Range 9 west of the Second Principal Meridian, described as beginning on the South line of the Northwest Quarter of the Northwest Quarter of said Section 16, 675.57 feet East of the Southwest corner thereof; thence North 02 degrees 23 minutes 19 seconds East, a distance of 145.06 feet; thence North 87 degrees 36 minutes 41 seconds West, a distance of 96.37 feet; thence South 77 degrees 59 minutes 32 seconds West, a distance of 114.99 feet to a point of curvature; thence Westerly along a curve to the right of the last described course and having a radius of 41.00 feet, an arc distance of 10.30 feet; thence North 87 degrees 36 minutes 41 seconds West, a distance of 11.80 feet; thence South 00 degrees 06 minutes 32 seconds East, a distance of 260.25 feet to a non-tangent curve; thence Easterly on a curve concave Northerly having a radius of 98.50 feet and chord bearing of North 40 degrees 40 minutes 14 seconds East, an arc distance of 60.02 feet to a point of reverse curvature; thence continuing Easterly along a curve to the right and having a radius of 51.50 feet, an arc distance of 31.38 feet; thence South 89 degrees 52 minutes 18 seconds East, a distance of 134.78 feet; thence North 02 degrees 23 minutes 19 seconds East, a distance of 109.18 feet to the place of beginning, all in Lake County, Indiana.

