

R&S 250300-332
WP:CJM 40-889
Doc. #5
07/08/88-4

INDIANA ASSIGNMENT OF LEASES AND RENTS

987470

This Assignment of Leases and Rents is dated as of the 1st day of July, 1988, from Broadmoor II Associates LTD., an Illinois limited partnership (hereinafter "Owner"), whose mailing address is The Crisken Group, 345 North Canal Street, Suite 700, Chicago, Illinois 60606 to Provident Life And Accident Insurance Company (hereinafter "Provident"), whose mailing address is Mortgage Loan Department, Fountain Square, Chattanooga, Tennessee 37402;

KNOW ALL MEN BY THESE PRESENT:

WHEREAS, Owner is the owner in fee simple of that certain real property located in the City of Merrillville, Lake County, Indiana and more particularly described in Exhibit A attached hereto (said property together with all rights and appurtenances thereto and all improvements presently located or hereafter constructed thereon being hereinafter collectively called the "Property"); and

WHEREAS, Provident is or is about to become the owner and holder of a first mortgage (or deed of trust, or deed to secure debt) (hereinafter the "Mortgage") executed by Owner encumbering the Property, which Mortgage secured a note in the principal sum of Two Million Four Hundred Thousand Dollars (\$2,400,000), bearing interest at a rate per annum as specified therein (said note and any and all renewals, amendments, modifications, increases and extensions thereof being hereinafter collectively called the "Note"), and

WHEREAS, Provident, as a condition to making the loan evidenced by the aforesaid Note, and as additional security therefore, has required an assignment of present and future leases covering all or any part of the Property, including but not limited to those leases more particularly set forth in Exhibit B attached hereto, together with any additions, amendments, or supplements thereto and any extensions, renewals, or modifications thereof, and all guarantees of any tenant's obligations thereunder, hereinafter collectively called the "Leases," along with all rentals and other monies due or to become due to Owner under the Leases;

NOW, THEREFORE, THESE PRESENTS WITNESS, that in consideration of the foregoing and the sum of one dollar (\$1.00) and other good and valuable consideration, the

NORTHWEST INDIANA TITLE SERVICES, INC.
162 Washington Street
Lafayette, Indiana 46336
769-0727 or 696-0100

LILLIAN A. BLASTICK
RECORDER, LAKE COUNTY,
STATE OF INDIANA
CROWN POINT, INDIANA 46307

FOR *MS*
SEE DOC. # 987469

98-70

receipt of which is hereby acknowledged by Owner, Owner hereby covenants and agrees with Provident as follows:

1. Owner hereby assigns, transfers and sets over unto Provident

(a) all the right, title and interest of Owner in and to the Leases; and

(b) all of the rents, income, receipts, revenues, issues and profits now due or which may hereafter become due under the Leases or any or renewals thereof, as well as all monies due or to become due Owner under the Leases for services, materials or installations supplied whether or not the same were supplied under the terms of the Leases (such rents, income, receipts, revenues, issues, profits and other monies assigned hereby being hereinafter called the "Rents"), together with any and all rights and remedies which Owner may have against any tenant under any of the Leases or others in possession of the Property or any part thereof for the collection or recovery of monies so assigned.

2. Owner hereby assigns to Provident any award payable by reason of condemnation action under the right of eminent domain and directs that any such award shall be paid directly to Provident Life and Accident Insurance Company, Chattanooga, Tennessee.

3. Owner hereby assigns to Provident any purchase proceeds receivable by reason of any tenant's exercise of any first refusal option or any option to purchase any portion of the Property as may be provided in the above referenced Leases.

4. Owner hereby assigns to Provident any award made hereafter to Owner in any court proceeding involving any tenant under any of the Leases in any bankruptcy, insolvency or reorganization proceeding in any state or federal court, and any and all payments made by said tenant in lieu of rent; and Owner hereby appoints Provident as Owner's irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment; such assignment and appointment to become operative upon the occurrence of an Event of Default as hereinafter defined and to remain in full force and effect so long as any such Event of Default continues.

EXHIBIT A

LEGAL DESCRIPTION RE BROADMOOR II

PARCEL 1:

Lots 1 to 18, both inclusive, in Broadmoor, a planned unit development in the Town of Merrillville, as per plat thereof, recorded in Plat Book 51, page 39, in the Office of the Recorder of Lake County, Indiana

PARCEL 2:

Perpetual, non-exclusive easement, appurtenant to Parcel 1 above, to use, for the purpose of handling storm runoff, the community detention pond located on lots 15, 16, 17, 20 and 21 in Broadmoor, a planned unit development in the Town of Merrillville, as per plat thereof, recorded in Plat Book 51, page 39, in the Office of the Recorder of Lake County, Indiana

PARCEL 3:

Perpetual, non-exclusive easement, appurtenant to Parcel 1 above, created pursuant to Declaration of Covenants, recorded in the Office of the Recorder of Lake County, Indiana as document no. 766946, to use Recreational Facilities on Lot 33 in Broadmoor, a planned unit development in the Town of Merrillville, Indiana, created pursuant to plat recorded in Plat Book 51, page 39, in the Office of the Recorder of Deeds of Lake County, Indiana, together with the right of ingress and egress to and from said Lot 33 over the sidewalks, streets or other common areas of lots 19 through 46, both inclusive, in said Broadmoor planned unit development

PARCEL 4:

Perpetual, non-exclusive easement, appurtenant to Parcel 1 above to use as a recreational easement, the areas designated as community tennis courts on lots 43, 44 and 45 in Broadmoor, a planned unit development in the Town of Merrillville, as per plat thereof, recorded in Plat Book 51, page 39, in the Office of the Recorder of Lake County, Indiana

EXHIBIT B

BROADMOOR II

Lease, dated April 23, 1986, by and between Coin-O-Matic Laundry Equipment Corp., an Illinois corporation, and Broadmoor II Associates, Ltd., d/b/a Broadmoor Country Club Apartments

5. These presents are given as security for payment of the loan and all interest and principal from time to time outstanding thereon as evidenced by the Note and the payment of all other sums which Owner is or may be from time to time be obligated to pay or cause to be paid to Provident; and to secure performance of all obligations under the Note, Mortgage or any other instrument evidencing or securing the Note, any renewals and extensions thereof and any indebtedness represented thereby.

6. The term "Event of Default" as used herein shall mean the occurrence of any one of the following:

(a) Owner shall fail to comply with any of the covenants, duties or obligations of Owner herein;

(b) a default shall occur under the Note, the Mortgage or any other instrument evidencing or securing the Note; or

(c) at any time any representation or warranty made by Owner herein shall be ascertained to be materially incorrect.

7. A breach or default under any of the terms, provisions, conditions or covenants of this assignment shall constitute a default under the Note, the Mortgage and all other instruments evidencing or securing the Note, and at the option of Provident, and without notice to the Owner, all unpaid indebtedness secured by said instruments shall become immediately due and payable.

8. Until an Event of Default shall occur Owner shall receive, collect and enjoy the Rents accruing under the Leases and shall apply the same first to the satisfaction of all obligations of Owner under the Leases, second to the payment of taxes and assessments affecting the Property, third to the cost of insuring, maintaining and preserving the Property, and fourth to the payment of all sums due under the Note or any instrument securing the same.

9. Upon the occurrence of an Event of Default all Rents assigned hereunder shall be paid directly to Provident and Provident may notify the tenant under the Leases or any other parties in possession of the Property to pay all the Rents directly to Provident at the mailing address specified for Provident above, for which this assignment shall be sufficient warrant. Owner irrevocably consents that the tenant under the Leases, upon demand and notice from Provident of Owner's default herein, shall pay the Rent to

Provident without liability to any tenant for the determination of the actual existence of any default claimed by Provident.

10. Owner, upon an occurrence of an Event of Default, hereby authorizes Provident, at Provident's option, to enter upon and take possession of the Property by its officers, agents or employees and to manage and operate the same; to collect as herein provided all or any Rent accruing therefrom and from the Leases; to let or relet the Property or any part thereof; to cancel and modify the Leases, evict tenants and bring or defend any suits in connection with the possession of the Property, in Provident's own name or in Owner's name; to make repairs as Provident deems appropriate; and to perform such other acts in connection with the management and operation of the Property as Provident, in Provident's sole discretion, may deem proper.

11. The receipt by Provident of any Rents pursuant to this assignment after institution of foreclosure proceedings under the Mortgage shall not cure any such event of default thereunder or affect such proceedings or any sale pursuant thereto.

12. Provident shall, after payment of all proper charges and expenses, credit the net amount of income which it may receive by virtue of this assignment and from the Property, to any amount due to Provident from the Owner under the terms and provisions of the Note. The manner of application of such net income and the item which shall be credited shall be within the sole discretion of Provident.

13. These presents shall not be deemed or construed to constitute Provident as a mortgagee in possession of the Property or to obligate Provident to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under the Leases. Until the loan as evidenced by the Note and all indebtedness secured hereby shall have been paid in full, Owner will from time to time execute and deliver unto Provident upon demand any and all writings that Provident may reasonably deem necessary or desirable to carry out the purpose and intent hereof, which will enable Provident to enforce any right or right hereunder.

14. Except if caused by the gross negligence or willful misconduct of Provident, Owner agrees to indemnify and hold Provident harmless of and from any and all liability, loss or damage which Provident may incur under the Leases or by reason of this assignment, and of and from any

and all claims and demands whatsoever which may be asserted against Provident by reason of any alleged obligation or undertaking to be performed or discharged by the mortgagee under the Leases or this assignment. Nothing contained in the Mortgage, the Note or in this Assignment shall be construed to bind Provident to the performance of any of the terms and provisions contained in the Leases, or otherwise to impose any obligation on Provident, including, without limitation, any liability under the covenant of quiet enjoyment contained in the Leases in the event that any tenant shall have been joined as a party defendant in any action to foreclose the Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in said premises. Prior to actual entry and taking possession of the premises by Provident, this assignment shall not operate to place responsibility for control, care, management or repair of said premises upon Provident, nor for the carrying out of any of the terms and provisions of said Leases. Should Provident incur any liability mentioned in this paragraph, or loss or damage under the Leases or under or by reason of this assignment, or in defense of any such claims or demands, the Owner shall immediately upon demand reimburse Provident for the amount thereof, including costs and expenses and reasonable attorney's fees, and Provident may retain possession and collect the Rents and, from time to time, apply them in or toward satisfaction of or reimbursement for said loss or damage.

15. Owner hereby covenants, represents, warrants and agrees that:

(a) Owner has the right, power and capacity to make this assignment and no person, firm or corporation other than Owner has or will have any right, title, or interest in or to the Leases or the Rents, except as previously disclosed in writing by Owner to Provident.

(b) Owner will, at Owners sole cost and expense, perform and discharge all of the obligations and undertakings of the landlord under the Leases. Owner will use all reasonable efforts to enforce or secure the performance of each and every obligation and undertaking of the tenants under the Leases and will appear in and prosecute or defend any action or proceeding arising under, or in any manner connected with, the Leases or the obligations and undertakings of the tenants thereunder. Provident may (but shall not be obligated to) take any action Provident deems necessary or desirable to prevent or cure any default by Owner in

the performance of or compliance with any of Owner's covenants or obligations under any of the Leases. Provident may rely upon any notice of default received from any tenant and may act thereon as herein provided even though the existence of such default or the nature thereof may be questioned or denied by Owner, and such notice of default shall be conclusive evidence that a default exists for the purpose of this paragraph. Provident may enter upon the Property as often as Provident deems necessary or desirable in order to prevent or cure any default by Owner. Provident may expend such sums as Provident deems necessary or desirable for any such purpose and Owner hereby agrees to pay to Provident upon demand all sums so expended by Provident, together with interest from the date of such expenditure at the highest lawful rate per annum. All sums so expended by Provident, and interest thereon, shall be added to and secured by the lien of this instrument.

(c) Except for apartment leases (having a term of one year or less) in the ordinary course of business, Owner will not cancel any of the Leases or accept a surrender thereof unless the tenant thereunder and Owner have executed a new lease which shall go into effect prior to or simultaneously with said cancellation and surrender, said new lease to provide for a rental not less than the rent payable under the canceled lease and which shall not diminish the tenant's obligation to pay taxes and insurance to the extent that such obligations may exist under the canceled lease, and which new lease shall run to a date which shall not be prior to the expiration of the canceled lease. Provident, at its option, shall have the right to approve all tenants and/or leases to the Property.

(d) Except for apartment leases (having a term of one year or less) in the ordinary course of business, Owner will not modify any of the Leases, either orally or in writing, so as to decrease the term of any lease, reduce the rent or diminish the obligation of the tenant with regard to the payment of taxes and insurance.

(e) Owner will not consent to an assignment or sublease of any tenant's interest in the leases which will relieve the tenant of liability for the payment of rent and/or the performance of the terms and conditions of the Leases, and/or will violate any of the exclusive

or restrictive covenants contained in any other lease assigned to Provident as additional security for the Note.

(f) Owner will not permit the payment of Rents in any medium other than lawful money of the United States; permit the payment of Rents more than thirty (30) days in advance of the due date thereof or anticipate, discount, compromise, forgive, encumber or assign the Rents or any part thereof or any of the Leases or any interest therein.

(g) Owner covenants and warrants to Provident that it has not executed any prior assignment of the Leases or Rents nor has the Owner performed any acts or executed any other instrument which might prevent Provident from operating under any of the terms and conditions of this assignment or which would limit Provident in such operation; and Owner further covenants and warrants to Provident that it has not executed or granted any modification whatever of any of the Leases, whether orally or in writing except as specifically disclosed to Provident, and that said Leases are in full force and effect according to their original terms, and that there are no defaults now existing under more than three of said Leases nor is there any state of facts which, with the giving of notice or the passage of time, would constitute a default under any more than three of the Leases.

16. The failure of Provident to enforce any of the terms, covenants, or conditions herein shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Provident shall have the full right, power and authority to enforce this assignment, or any of the terms, covenants or conditions hereof, at any time that Provident shall deem proper.

17. All notices required or permitted to be given hereunder shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed, if to owner, at the mailing address set forth above for Owner and, if to Provident, at the mailing address set forth above for Provident, or by delivering such in person to the intended addressee or by prepaid telegram. Notice so mailed shall be effective upon deposit in the United States Post Office or other depository under the care or custody of the United States Postal

Service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth above; provided, however, that any party shall have the right to change such party's address for notice hereunder to any other location within the continental United States by giving of thirty (30) days notice to all other parties in the manner set forth herein above.

18. Upon payment in full of the entire indebtedness secured hereby, as evidenced by a recorded reconveyance or release of the basic security instrument, this assignment shall be void and of no effect as said recorded reconveyance or release shall automatically operate to release this assignment of record.

19. This assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors, and assigns as well as any subsequent owner of the Property (or any portion thereof) and any assignee of the Mortgage. Any provisions in any other agreement creating rights in Provident other than those created herein shall be deemed incorporated herein by reference and made a part hereof for all purposes.

Notwithstanding anything to the contrary contained in the Note and this Assignment, it is understood and agreed that in the event of a default in the payment, performance or observance of any of the sums, covenants or obligations required to be paid, performed or observed by the Owner hereunder or pursuant to the Note, Provident, its successors, and assigns shall look only to the Property, personal property and Leases for such payment, performance or observance and no personal liability or responsibility shall at any time be imposed upon the Owner, its successors or assigns or on account of any of the sums, covenants or obligations required to be paid, performed or observed under or in connection with the Note or this Assignment; provided that nothing in this paragraph contained shall limit or impair the obligation and liability of any person, including the Owner, who may, by a separate instrument, guaranty or otherwise become obligated for or liable upon the indebtedness secured hereby or any part thereof and further provided that nothing in this Section shall in any manner or way release, affect or impair:

(a) The existence of the indebtedness secured hereby;

(b) The enforceability of the liens and security interests created by the documents evidencing and securing the indebtedness secured hereby (herein called the "Loan Documents");

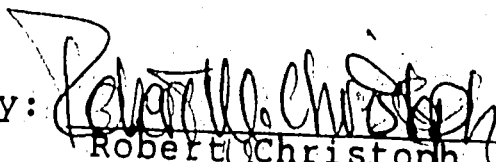
(c) The right of Provident, after the occurrence of an event of default under any of the Loan Documents, to receive from the Owner any rents or income received by the Owner from and after said event of default from tenants of the Property; and

(d) The right of Provident, after the occurrence of an event of default under any of the Loan Documents, to recover from the Owner an amount necessary to repair any damage to the Property which is caused by the willful or wanton act or omission of the Owner.

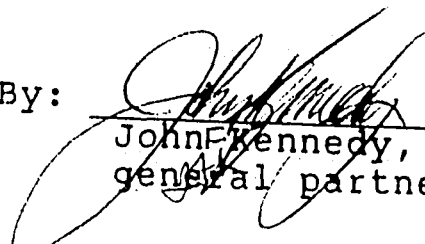
IN WITNESS WHEREOF, the Owner has executed this Assignment of Leases and Rents as of the day, month and year first above written.

BROADMOOR II ASSOCIATES LTD.,
an Illinois limited partnership

By:


Robert Christoph,
general partner

By:


John Kennedy,
general partner

THIS INSTRUMENT WAS PREPARED BY:
AND SHOULD BE RETURNED TO:

CHARLES J. MASTERS
ROSENTHAL AND SCHANFIELD, P.C.
55 EAST MONROE STREET
SUITE 4620
CHICAGO, ILLINOIS 60603

STATE OF)
) SS
COUNTY OF)

I, CYNTHIA M. HAMILTON, a Notary Public in and for the County and State aforesaid, do hereby certify that Robert Christoph and John F. Kennedy, the sole general partners of Broadmoor II Associates, Ltd., an Illinois limited partnership ("Partnership"), personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and sealed the said instrument as their own free and voluntary acts and as the free and voluntary act of said Partnership, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15 day of July, 1988.

Cynthia M. Hamilton
Notary Public

My Commission Expires:

12/9/91

