

CT 476183

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
CONSTRUCTION MORTGAGE
94 DEC 21 PM 1:13
Assignment of Rents
And Security Agreement
(Financing Record)

94085864

THIS CONSTRUCTION MORTGAGE (herein "Instrument") is made this 19th day of December, 1994, between Mortgagor, DOUGLAS POINTE II ASSOCIATES, L.P., an Indiana limited partnership, whose address is 8680 Broadway, Merrillville, Indiana 46410 (herein "Borrower"), and the Mortgagee, MERCANTILE NATIONAL BANK OF INDIANA, with offices at 5243 Hohman Avenue, Hammond, Indiana 46320 (herein "Lender").

WHEREAS, Borrower and Lender have entered into a Construction/Mini-Perm Loan Agreement of even date herewith (herein "Agreement").

WHEREAS, Borrower is indebted to Lender in the principal sum of TWO MILLION FIVE HUNDRED THOUSAND and no/100 Dollars (\$2,500,000.00), which indebtedness is evidenced by a note of even date herewith, which matures no later than December 1, 1998 (herein "Note"), executed by Borrower.

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by the Note and the Agreement, with interest thereon, and all renewals, extensions, rewrites, refinances, modifications, consolidations, and replacements thereof and substitutions therefor; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower, including but not limited to those future advances made under and to the extent of the Note; (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; (d) the performance of the covenants and agreements of Borrower herein contained; and (e) all other liabilities of the Borrower in favor of the Lender, direct or indirect, absolute or contingent, primary or secondary, matured or unmatured, whether or not related to or of the same class as any specific debt secured hereby, now existing or hereafter arising; Borrower does hereby mortgage, warrant, grant, convey and assign to Lender its successors and assigns, the following described property in Lake County, State of Indiana, to wit:

PARCEL 1: LOT G-1, DOUGLAS POINTE II (A PLANNED UNIT DEVELOPMENT), AS SHOWN IN PLAT BOOK 77, PAGE 75, IN LAKE COUNTY, INDIANA.

PARCEL 2: TOGETHER WITH AND SUBJECT TO A NON-EXCLUSIVE EASEMENT FOR VEHICLE AND PEDESTRIAN INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1, AS CREATED BY CORPORATE WARRANTY DEED DATED DECEMBER 19, 1994 AND RECORDED DECEMBER 21, 1994, AS DOCUMENT NUMBER 94-085863, MADE BY DOUGLAS POINTE DEVELOPMENT CORPORATION, AN INDIANA CORPORATION, TO DOUGLAS POINTE II ASSOCIATES, L.P., AN INDIANA LIMITED PARTNERSHIP, OVER THAT PART OF LOT G-2, DOUGLAS POINTE II (A PLANNED UNIT DEVELOPMENT), AS SHOWN IN PLAT BOOK 77, PAGE 75, IN LAKE COUNTY, INDIANA, DESIGNATED AS INGRESS/EGRESS ON SAID PLAT.

PARCEL 3: TOGETHER WITH AND SUBJECT TO A NON-EXCLUSIVE EASEMENT FOR VEHICLE PARKING FOR THE BENEFIT OF PARCEL 1 AS CREATED BY CORPORATE WARRANTY DEED DATED DECEMBER 19, 1994 AND RECORDED DECEMBER 21, 1994, AS DOCUMENT NUMBER 94-_____, MADE BY DOUGLAS POINTE DEVELOPMENT CORPORATION, AN INDIANA CORPORATION, TO DOUGLAS POINTE II ASSO-

Chicago Title Insurance Company

29.00
A

ASSOCIATES, L.P., AN INDIANA LIMITED PARTNERSHIP,
OVER THAT PART OF LOT G-2, DOUGLAS POINTE II (A
PLANNED UNIT DEVELOPMENT), AS SHOWN IN PLAT BOOK 77,
PAGE 75, IN LAKE COUNTY, INDIANA, DESIGNATED AS
PARKING AREAS ON SAID PLAT..

together with all buildings, improvements, and tenements now or hereafter erected on the property, and all easements, rights, right-of-ways, driveways, pavement, curb, and street front privileges, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials and supplies stored on the property, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, furniture, pictures, antennas, signs, trees and plants; all of which, including improvements, replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument, whether actually physically annexed to said property or not; and all of the foregoing, together with said property are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements, covenants, conditions and restrictions of record listed in schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Covenants. Borrower hereby covenants and agrees as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and charges thereon (if applicable) and late charges provided in the Agreement and all other sums secured by this Instrument.

2. BORROWER BREACH; RIGHT OF LENDER. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may pay, in any amount and in any order as Lender shall determine in Lender's sole discretion, any rents, taxes, assessments, insurance premiums, judgment liens, tax liens, mechanic's liens and other charges and impositions attributable to the Property which are now or will hereafter become due which shall then become immediately due and owing by the Borrower to the Lender, and secured by this Instrument pursuant to Paragraph 8 hereof.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under Paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to Paragraph 7 hereof; (v) principal of advances made pursuant to Paragraph

7 hereof; (vi) interest payable on any future advance, provided that if more than one future advance is outstanding, Lender may apply payments received among the amounts of interest payable on the future advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any future advance, provided that if more than one future advance is outstanding, Lender may apply payments received among the principal balances of the future advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to Paragraph 7 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Paragraph 3.

4. HAZARD INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times pursuant to the terms of the Agreement. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under Paragraph 2 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a Standard Mortgage Clause in favor and in form acceptable to Lender. Lender shall have the right to hold the policies; and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Borrower authorizes and empowers Lender as attorney-in-fact for Borrower to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Paragraph 4 shall require Lender to incur any expense or take any action hereunder.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied as provided pursuant to the Agreement. Any such application of insurance proceeds to the sums secured by this Instrument shall not postpone the Borrower's obligations to make the next scheduled payment of interest and principal.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as the parties may mutually approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the

payments referred to in Paragraphs 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to a default under the Agreement, or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon, and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

5. PRESERVATION AND MAINTENANCE OF PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall keep the Property, including improvements thereon, in good repair, (d) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (e) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security to this Instrument or the rights or powers of Lender. Without the written consent of Lender, Borrower shall not remove, demolish or alter any improvement now existing or hereafter erected on the Property.

6. USE OF PROPERTY. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

7. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in Paragraph 4 hereof.

Any amounts disbursed by Lender pursuant to this Paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this Paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or

proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part hereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender for application as set out below.

In the event of a total taking of the Property, Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 3 hereof, with the balance, if any, to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Instrument such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Instrument immediately prior to the date of taking bears to the fair market value of the property immediately prior to the date of taking, with the balance of proceeds paid to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of any monthly installments referred to in Paragraphs 1 and 2 hereof, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

9. **BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns, or any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefore, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Paragraph 9 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

10. **FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a

waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under Paragraphs 4 and 8 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

11. ESTOPPEL CERTIFICATE. Borrower shall within ten days of written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

12. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Illinois Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and transfers to Lender a security interest in said items and all of Borrower's plans and specifications, architect and/or construction contracts, construction management agreements, material purchase agreements, applications, permits, licenses, and approvals given by governmental authorities, builder's and manufacturer's warranties or otherwise in the Property and general intangibles, now owned or hereafter acquired, whether or not presently within the contemplation of the Borrower and Lender, and the proceeds thereof, to include insurance proceeds and tort claims or settlements. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower hereby authorizes the Lender at the expense of the Borrower to execute and file a financing statement or statements on its behalf in those public offices deemed necessary by Lender to protect its security interest. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the applicable Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in the Agreement hereof as to such items. In exercising any of said remedies, Lender may proceed against Borrower's general intangibles and the items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in the Agreement.

13. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION. Except as permitted by the Agreement, any sale or transfer of (i) all or any part of the Property,

or any interest therein, or (ii) beneficial interests in Borrower (if Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by the Agreement.

14. NOTICE. Except for any notice required under applicable law to be given in another manner, any notice to Borrower provided for in this Instrument shall be given as provided in the Agreement.

15. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, personal representatives, successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 13 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the Paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

16. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

17. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in Paragraph 3 hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Paragraph 17 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice by Lender to Borrower of Borrower's breach, each tenant

of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefore, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this Paragraph 17, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, and the costs of discharging any obligation or liability of Borrower as lessor and landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Paragraph 17.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to Paragraph 7 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate stated

in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

18. **RELEASE.** Upon payment of all sums secured by this Instrument, Lender shall release this Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Instrument.

19. **OTHER ENCUMBRANCES.** Borrower will not further mortgage or encumber the Property or other collateral in any way without the express written consent of the Lender.

20. **WAIVER OF VALUATION AND APPRAISEMENT.** Borrower hereby waives all right of valuation and appraisal.

21. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make future advances to Borrower. Such future advances, with interest thereon, shall be secured by this Instrument.

22. **HAZARDOUS MATERIALS.** Grantor has executed and delivered to Lender an Environmental Certificate (the "Certificate") of even date, which Certificate contains certain representations, covenants and indemnification obligations on the part of Grantor and provide Lender certain rights, inter alia, entry and mitigation. In addition, the Certificate provides that if any representation, warranty or certification proves untrue or that if Grantor shall fail to comply with any provisions of the Certificate, such shall be a default under the Loan Documents. This provision is included for the purpose of giving notice of the existence of the Certificate, to which reference is made for the full description of the rights and duties of Grantor and Lender. This provision shall in no way affect the terms and conditions of the Certificate or the interpretation of the rights and duties of Grantor and Lender thereunder.

23. **TAX AND INSURANCE ESCROW.** In order to more fully protect the security of this Instrument:

A. If requested by the Lender, the Borrower will, at the time of the execution and delivery of this Instrument, deposit with the Lender an amount which, together with the payments specified in Subparagraph B of this Paragraph 23, will aggregate a sum sufficient to enable the Lender to pay the real estate taxes and assessments that the Lender estimates will be levied against the Property during the ensuing tax year one (1) month before such taxes and assessments become delinquent, plus an amount which, together with the payments designated in Subparagraph B of this Paragraph 23, will aggregate a sum sufficient to enable the Lender to pay the premiums on the fire and other hazard insurance required to be placed on the Property one (1) month before the next premium becomes due.

B. In addition to the monthly payments required to be made upon the indebtedness secured hereby, the Borrower shall pay to the Lender a sum equal to 1/12th of the amount

of the annual real estate taxes and assessments from time to time estimated by the Lender to be assessed against the Property plus an amount equal to 1/12th of the annual premiums from time to time required to maintain the fire and hazard insurance required to be placed on the Property one (1) month before the next premium becomes due.

C. All sums received by the Lender pursuant to this Paragraph 23 shall be held by the Lender for the account of the Borrower and applied to the payment of said taxes, assessments and insurance premiums.

D. If the total payments made by the Borrower to the Lender pursuant to this Paragraph 23 shall exceed the amount at any time required, such excess shall be retained by the Lender to make subsequent payments for real estate taxes and assessments and insurance premiums. If however, the total of such payments shall at any time be insufficient to pay such taxes, assessments and insurance premiums when due, the Borrower shall, one (1) month prior to the due date thereof, pay to the Lender such additional amounts as may be necessary to make up such deficiency. All sums received by the Lender under this Paragraph 23 and held by it at the time when the Borrower shall desire to pay the indebtedness secured by this Instrument in full, may be applied by the Lender upon said indebtedness. In the event the Lender shall determine to foreclose this Instrument, it may, in such event, apply all sums held by it for the payment of taxes, assessments and insurance premiums on the indebtedness secured by this Instrument as Lender may, at its sole discretion, determine.

24. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interest in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property and other collateral hereunder shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property or other collateral hereunder and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

25. **RELATION TO AGREEMENT.** The terms and provisions of the Agreement are incorporated herein and made a part hereof, provided however, the terms and provisions of the Agreement shall supersede any inconsistent terms and conditions of this Instrument. Further, upon the breach of any term, condition or obligation contained in said Agreement by Borrower or the Guarantor, the Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by the Agreement.

26. **MAXIMUM AMOUNT SECURED.** The maximum aggregate amount of principal, interest, premium, if any, future advances, other indebtedness (now owed or hereafter owed), sums advanced to protect the security of this Instrument and expenses of Lender secured by this Instrument is FIVE MILLION and no/100 (\$5,000,000.00) Dollars.

IN WITNESS WHEREOF, Borrower has executed this Instrument, or has caused the same to be executed by its

representatives thereunto duly authorized, on the date first written above.

"BORROWER":

DOUGLAS POINTE II ASSOCIATES,
L.P., an Indiana limited
partnership

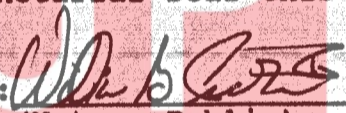
By: DOUGLAS POINTE II CORPORATION,
an Indiana corporation and
General Partner of the Borrower

By: 
LARRY N. GOUGH, PRESIDENT

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that on this day personally appeared before me, LARRY N. GOUGH, personally known to me to be the same person whose name is subscribed to the foregoing Instrument and personally known to me to be the President of DOUGLAS POINTE II CORPORATION, an Indiana corporation and general partner of Douglas Pointe II Associates, L.P., and acknowledged that he signed, sealed and delivered the said Instrument as his free and voluntary act, for the uses and purposes therein set forth, as President of said corporation and general partner aforesaid, that the seal affixed to the foregoing Instrument is the corporate seal of said corporation and that said Instrument was signed, sealed and delivered in the name and behalf of said limited partnership by the authority of its partners for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of December, 1994.

Signed: 
(Notary Public)

Print: WILLIAM G. CRABTREE II
My Commission Expires: 1-14-96
My County of Residence: LAKE

This instrument prepared by:
William G. Crabtree II
Galvin, Galvin & Leoney
5231 Hohman Avenue, Suite 717
Hammond, Indiana 46320

