

96025603

96 APR 18 PM 2:34

MARGARETE CLEVELAND
RECORDER

9

ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (as from time to time amended and in effect, the "Assignment") is made as of April 1, 1996, by Douglas Pointe III Associates L.L.C., an Indiana limited liability company, with a place of business at 1610 Pointe Drive, Suite B, Valparaiso, Indiana 46383 (together with any successors to and assigns of any or all of its present or future interests in the Premises, as hereinafter defined, other than the Lender, as hereinafter defined, called the "Borrower"), and delivered to United Fidelity Bank, fsb, a federally-chartered savings bank, with a place of business at 18 N.W. Fourth Street, Evansville, Indiana 47706-1347 (together with any other holder from time to time of the Note, as hereinafter defined, called the "Lender"). Terms defined in the Mortgage, as hereinafter defined, and not otherwise defined herein are used herein with the meanings so defined.

1. Assignment.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower hereby assigns, transfers and sets over to the Lender all of the rights, interests and privileges which the Borrower has or may have as lessor in any and all present and future leases and any and all other agreements for the use or occupancy of all or any portion of the land described in Exhibit A attached hereto and the buildings and other improvements located thereon (as further defined in the Mortgage, as hereinafter defined, called the "Premises"), in any and all modifications, extensions and renewals thereof and in the rents, rental subsidies or payments in lieu of rent therein reserved (collectively, the "Leases") and in any and all other rents, rental subsidies, issues and profits derived by the Borrower from the Premises, to secure the Secured Obligations.

1.1 Secured Obligations. As used herein, the term "Secured Obligations" shall mean all indebtedness, liabilities, obligations and undertakings of the Borrower to the Lender, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising or acquired, including without limitation:

- (a) the payment and performance of all covenants and agreements contained in a certain credit agreement of even date herewith between the Borrower and the Lender, as from time to time amended and in effect (the "Credit Agreement"), relating to the Premises;
- (b) the payment and performance of all covenants and agreements in a certain revolving credit promissory note of even date herewith made by the Borrower to the order of the Lender in the maximum principal amount of \$2,875,014, and all renewals, amendments, modifications, consolidations, replacements, increases and extensions thereof (the "Note") at the times, in the manner and with interest and prepayment and late charges, if any, all as more fully provided therein;

msg # 96025602

2500
ce
sw

- (c) the payment of all sums due hereunder and performance of all covenants and agreements contained in this Assignment and in a certain mortgage and security agreement, as from time to time amended and in effect (the "Mortgage"), of even date recorded herewith and granted by the Borrower to the Lender covering the Premises and securing the Secured Obligations;
- (d) the payment of all sums due and performance of all covenants and agreements contained in each of the other Credit Facility Documents; and
- (e) without limiting the generality of the foregoing, the payment of the "Secured Debt", which term shall include all indebtedness, liabilities and amounts from time to time evidenced by the Note, and, to the extent permitted by law, all other indebtedness and liabilities, direct or indirect, of the Borrower to the Lender due or to become due hereunder, under the Credit Agreement, under the Mortgage, or under any other Credit Facility Document (including, without limitation, any future advances, disbursements, payments and reimbursements made, and charges, expenses and costs incurred by the Lender pursuant to the provisions of the Credit Agreement, the Note, the Mortgage, this Assignment or any such other Credit Facility Document) even if the aggregate amount of the Secured Debt outstanding at any one time exceeds the face amount of the Note.

1.2 Awards in Bankruptcy, Etc. As further security for the Secured Obligations, the Borrower hereby assigns to the Lender any awards which may be made in respect of the Borrower's interest in any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court. The Borrower hereby irrevocably appoints the Lender as its attorney-in-fact to appear in any such action and/or to collect any such award or payment.

1.3 Confirmatory Assignments. Although this Assignment is and shall be a present assignment, self-executing as to any future Leases, the Borrower hereby agrees, upon request of the Lender, to execute, acknowledge and deliver to the Lender confirmatory assignments of each such future Lease on the same terms as this Assignment, and in the event the Borrower fails to deliver such confirmatory assignment within 15 days after request by the Lender, appoints the Lender its attorney-in-fact to execute, acknowledge and deliver the same.

2. Representations and Warranties; No Merger.

2.1 Execution, Delivery and Effect of Leases. The Borrower hereby represents and warrants to the Lender as follows:

- (a) Correct and complete copies of all of the existing Leases and all amendments, exhibits, addenda and schedules thereto have been provided by the Borrower to the Lender, except that such copies of Residential Leases have not been so provided unless the Lender has so requested. All existing Leases, including Residential Leases, are listed on Exhibit B attached hereto.

- (b) The Leases referred to on Exhibit B attached hereto existing on the date hereof were duly executed and delivered, pursuant to authority legally adequate therefor, are now in full force and effect and are legal, valid and binding obligations of the parties thereto, enforceable in accordance with their terms.
- (c) The Borrower has not heretofore assigned or pledged the Leases or any interest therein.
- (d) No default exists on the part of any party to the Leases in the performance of any of the terms, covenants or provisions thereof except for such defaults by parties other than the Borrower under Residential Leases which defaults, either individually or in the aggregate, are not material.

2.2 No Merger. The Leases shall remain in full force and effect without merger regardless of any coincidences of any interests of any lessors and any lessees under any of the Leases and regardless of whether the fee title to any of the leased premises shall be transferred or conveyed to any of the lessees under any of the Leases.

3. Relation to Mortgage and Credit Facility Documents.

The Borrower hereby covenants and agrees with the Lender that none of the rights and remedies of the Lender under the Mortgage or any other Credit Facility Document shall be delayed or in any way prejudiced by this Assignment. Notwithstanding any variation of the terms and provisions of the Mortgage or any extension of time for payment thereunder or under the Credit Facility Documents or any release of part or parts of the Premises covered by the Mortgage or this Assignment, this Assignment shall continue in full force and effect in accordance with the terms hereof.

4. Rights of Borrower and Lender; Effect of Assignment.

4.1 Rights of the Lender Exercisable Upon Default. At any time when a Default (as defined in Section 4.3 hereof) exists under this Assignment, the Lender shall have the right and power, but not the duty, to give notice to any parties to any of the Leases, apprising such parties of this Assignment and to perform any obligations or enforce any rights of the Borrower related to the Leases without waiving any other rights or powers of the Lender or releasing the Borrower from any obligation to the Lender. Such rights and powers may be exercised by the Lender at any time, but only after notice to the Borrower, and only to the extent permitted by law and necessary to protect its rights under the Mortgage, this Assignment or any other Credit Facility Document.

4.2 Borrower's Rights. Although this Assignment is and shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Borrower shall continue to perform its obligations and exercise its rights, and may continue to collect rents and payments in lieu or in the nature thereof, under the Leases until an Event of Default (as defined in Section 4.3 hereof) occurs under this Assignment, subject, however, to the Lender's rights under Section 4.1 hereof.

Upon the occurrence of such an Event of Default, all right, title and interest of the Borrower in and to the Leases, including, without limitation, the rights of the Borrower to collect rent as set forth in this Section 4.2, shall, pursuant to the provisions of this Assignment, cease and thereupon vest in and become the absolute property of the Lender at the Lender's option without any further act or assignment by the Borrower. Such property shall be freely transferable by the Lender, and the Borrower hereby irrevocably appoints the Lender, its successors and assigns, as its agent and attorney-in-fact, to execute any and all instruments and further assurances in favor of any transferee of the Lender as may be necessary or desirable to effect such a transfer.

4.3 Events of Default. The occurrence of any one or more of the following events (each an "Event of Default") shall constitute a default under and breach of this Assignment:

- (a) any Event of Default under the Note, the Credit Agreement, the Mortgage or any other Credit Facility Document; or
- (b) the inaccuracy or untruth when made of any material representation or warranty made by the Borrower in this Assignment; or
- (c) the failure to perform or observe any other covenant, agreement, condition, term or provision of this Assignment.

As used herein, the term "Default" shall mean any Event of Default hereunder and any event which, with the giving of notice or the passage of time or both, would constitute such an Event of Default.

4.4 Remedies. If any Event of Default hereunder shall occur, the Lender may at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

- (a) Upon notice to the other parties to the Leases, have and exercise all rights of the Borrower in the Premises and under the Leases including, without limiting the generality of the foregoing, all such rights to collect rents and payments due in lieu thereof under the Leases and to retain, use and enjoy the same, to enter upon and take possession of the Premises and to manage and operate the same, to let or relet the Premises or any part thereof, to cancel or modify any of the Leases and evict tenants, to bring or defend actions in connection with the Premises in its own or the Borrower's name, and to make repairs and perform such other acts in connection with the management and operation of the Premises as the Lender, in its discretion, may deem proper, and this Assignment shall constitute a direction to and full authority to said other parties to perform in favor of the Lender without proof of the Event of Default relied upon. Such parties are hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by the Lender for the performance to the Lender of any undertaking or other matter which may be or thereafter may become due

under the Leases, and shall have no right or duty to inquire as to whether any such Event of Default has actually occurred or is then existing.

- (b) Terminate any or all of the Leases by notice to the other parties thereto, unless the Lender has agreed with such other parties not to do so in connection with the Lender's exercise of its rights under the Mortgage, this Assignment or any other Credit Facility Document.
- (c) Take such other actions or proceedings as the Lender deems necessary or advisable to protect its interest in the Premises and the Leases.
- (d) Exercise any or all remedies contained in any other Credit Facility Document.

4.5 Effect of Exercise of Rights by Lender. Any sums paid and any costs or expenses, including attorneys' fees, incurred in good faith by the Lender pursuant to the Lender's exercise of rights specified or referred to herein, shall, as between the parties hereto and their successors in interest, be deemed valid, so that in no event shall the necessity or validity of any such payments, costs or expenses be disputed. In the exercise of the rights and powers herein granted to the Lender, no liability shall be asserted or enforced against the Lender, all such claims of liability being hereby expressly waived and released by the Borrower. The Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and the Borrower shall and does hereby agree to defend and indemnify the Lender against, and to hold the Lender harmless from (i) any and all claims, liability, loss or damage which the Lender may incur under the Leases or under or by reason of this Assignment, and (ii) any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases.

Should the Lender incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become part of the Secured Debt and shall be secured by this Assignment, the Mortgage and the other Security Documents, and the Borrower hereby agrees to reimburse the Lender therefor immediately upon demand. Such sums, costs and expenses shall be, until so paid, part of the Secured Debt, and the Lender shall be entitled, to the extent permitted by law, to receive and retain the full amount of the Secured Debt in any action for redemption by the Borrower, for an accounting for the proceeds of a foreclosure sale or of insurance proceeds, or for apportionment of a Taking award. No exercise of any of the Lender's rights and remedies under this Assignment, whether or not after the commencement of proceedings to foreclose the Mortgage, shall be construed as a cure of any Default (or otherwise adversely affect such proceedings or a sale pursuant thereto) or as constituting the Lender a trustee for the Borrower or a mortgagee in possession of the Premises.

4.6 Application of Amounts. If the Lender collects any sums pursuant to its exercise of its rights under Section 4.1 or Section 4.4 hereof, the Lender shall apply or pay such sums, until issuance of a deed or deeds pursuant to or in lieu of foreclosure of the Mortgage, in the following order: (a) to the Lender's costs and expenses, including attorneys' fees, related to enforcement of its rights, powers and remedies under the Mortgage, the Leases, this Assignment and the Credit Facility Documents; (b) to payment of the balance of the Secured Debt then due, and (c) for so long as no Event of Default exists and subject to the rights of other parties of which the Lender has actual notice, to the Borrower. Any sums collected on account of the Leases by the grantee or grantees under such a deed or deeds shall be the sole property of such grantee or grantees.

4.7 Position of Assignment. The security of this Assignment is and shall be primary and on a parity with the Mortgage given by the Borrower to the Lender and not subordinate or secondary.

4.8 Cumulative Rights and Remedies. All of the foregoing rights, remedies and options of the Lender are cumulative and may be exercised singly, together and in the alternative, and the exercise of one shall not be construed to be a waiver of any of the others.

4.9 Payments by Borrower. The Borrower shall pay, on demand, to the Lender, any sums, including reasonable attorneys' fees, advanced or expended by the Lender in connection with the Lender's exercise of the rights, remedies and options set forth in this Section 4, together with interest thereon at the Default Rate until paid.

5. General.

5.1 Notices. All notices and other communications required or permitted to be given hereunder shall be given in the manner specified in the Mortgage.

5.2 Amendments. This Assignment may not be waived, changed or discharged orally, but only by an agreement in writing and signed by the Lender, and any oral waiver, change or discharge of any provision of this Assignment shall be without authority and of no force and effect.

5.3 Miscellaneous. Section captions are not a part hereof. The invalidity of any provision of this Assignment, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. This Assignment shall be interpreted in accordance with and governed by the laws of State of Indiana. This Assignment shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the parties hereto. The term "Borrower" together with any pronoun referring thereto shall include the singular, plural, masculine, feminine and neuter, as the context may require; and if more than one Person constitutes the Borrower, the obligations of such Persons shall be joint and several. IN THE EVENT OF ANY LITIGATION IN CONNECTION WITH THIS ASSIGNMENT, THE BORROWER AND THE LENDER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ALL RIGHTS TO A TRIAL BY JURY.

IN WITNESS WHEREOF, these presents have been executed under seal as of the day and year first above written.

DOUGLAS POINTE III ASSOCIATES L.L.C.

Witness:

By: Douglas Pointe III Management LLC, its Managing Member

By: [Signature]
Larry N. Gough, Managing Member

STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Larry N. Gough, known to me to be the Managing Member of Douglas Pointe III Management LLC, an Indiana limited liability company, which is the Managing Member of Douglas Pointe III Associates L.L.C. who, as such Managing Member, acknowledged the execution of the foregoing Assignment of Leases and Rents for and on behalf of said Douglas Pointe III Associates L.L.C.

WITNESS my hand and Notarial Seal this 17th day of April, 1996.

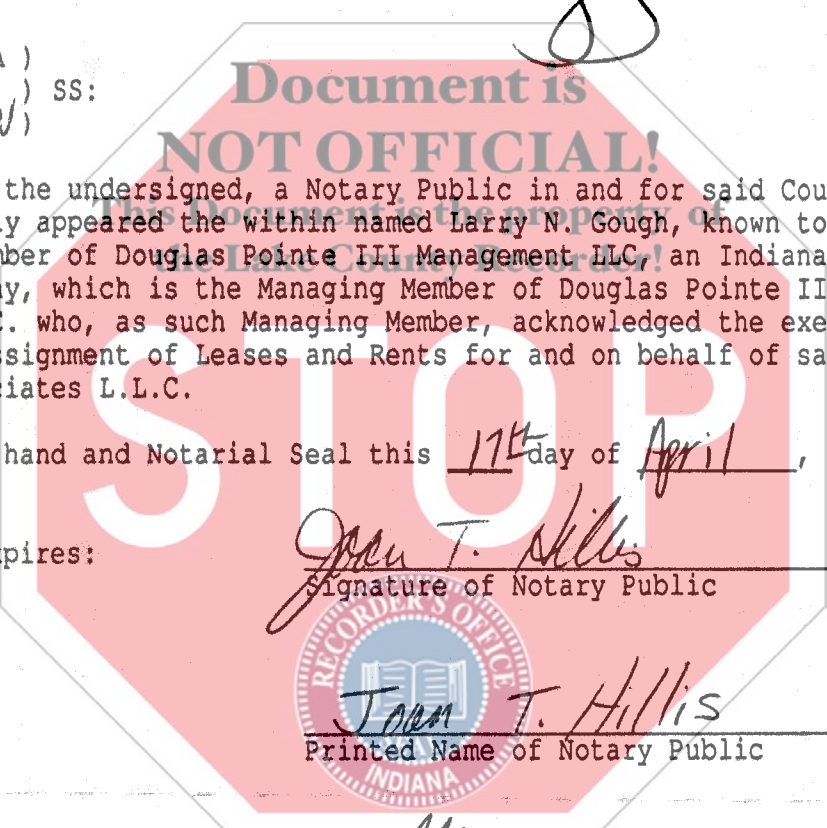
My Commission Expires:

11-12-1999

[Signature]
Signature of Notary Public

Joan T. Hillis
Printed Name of Notary Public

Marion
County of Residence of Notary Public



[SEAL]

This instrument was prepared by, and upon recording should be returned to, Faith K. Bruins, PEABODY & BROWN, 101 Federal Street, Boston, Massachusetts 02110.

EXHIBIT A

to

Assignment of Leases and Rents
dated as of April 1, 1996 granted
by Douglas Pointe III Associates L.L.C.
to United Fidelity Bank, fsb

Property Description

PARCEL 1

Lot G-2, Douglas Pointe II (a Planned Unit Development), as shown in
Plat Book 77, Page 75, in Lake County, Indiana.

PARCEL 2

The non-exclusive easement appurtenant to Parcel 1 described above, for
vehicle and pedestrian ingress and egress and vehicle parking over and
across Lot G-1, in Douglas Pointe II, as reserved and set out in
Corporate Warranty Deed dated December 19, 1994 and recorded December
21, 1994, as document no. 94085863.

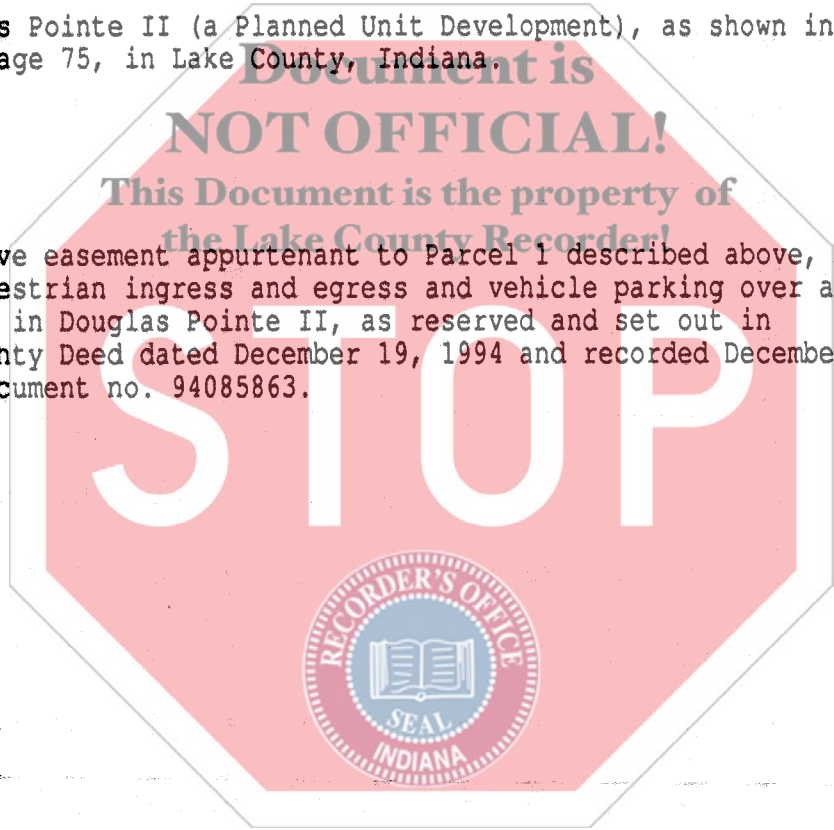


EXHIBIT B

to
Assignment of Leases and Rents
dated as of April 1, 1996 granted
by Douglas Pointe III Associates L.L.C.
to United Fidelity Bank, fsb

Leases

BROWN::WP1:[FKB.26561.18]STD.AJO;2

