

13

2010 013056

SIA  
2010 MAR 11 AM 8:42  
MICHAEL J. ...  
RECORDER

This instrument prepared by:  
Thomas A. Stegeman, Esq.  
Krooth & Altman LLP  
1850 M Street, N.W., Suite 400,  
Washington, D.C. 20036

C&I  
CTIC # 420929 MJS

**CONSENT TO TRANSFER AND MODIFICATION OF MORTGAGE**

This Consent to Transfer and Modification of Mortgage ("Agreement") is made effective as of February 26, 2010 by and among **NDC DOUGLAS PROPERTIES, INC.**, an Indiana corporation ("Transferor"), **FCPB, LLC**, an Indiana limited liability company ("Transferee"), **DOUGLAS POINTE ASSOCIATES, LLC**, an Indiana limited liability company ("Borrower"), **DAVID FLAHERTY** and **JERRY COLLINS** ("Existing Key Principals"), **BRIAN L. PLOSS** ("Additional Key Principal") and **FANNIE MAE**.

**RECITALS:**

A. Fannie Mae is the holder of that certain Multifamily Note ( the "Note"), dated as of February 16, 2005, in the original principal amount of \$2,050,000.00 made by Borrower to Green Park Financial Limited Partnership ("Original Lender"), which Note evidences a loan ("Loan") made by Original Lender to Borrower. To secure the repayment of the Note, Borrower also executed and delivered a Multifamily Mortgage, Assignment of Rents and Security Agreement (the "Security Instrument"), dated as of February 16, 2005, recorded in the official records of Lake County, State of Indiana on February 18, 2005, as Document No. 2005-012176 that grants a lien on the property described in Exhibit A to this Agreement (the "Property"). The Borrower is liable for the payment and performance of all of Borrower's obligations under the Note, the Security Instrument and all other documents executed in connection with the Loan, as listed on Exhibit B to this Agreement (collectively, the "Loan Documents"). Each of the Loan Documents has been duly assigned or endorsed to Fannie Mae. The current servicer of the Loan is Walker & Dunlop, LLC, a Delaware limited liability company ("Servicer").

E 390  
3750  
RM

B. The Existing Key Principals are liable for the obligations under the Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability contained in the Note (the "Acknowledgement").

C. Fannie Mae has been asked to consent to the transfer of all of the Transferor's limited liability company membership interest in the Borrower to the Transferee (the "Transfer").

D. As a condition to consenting to the Transfer, Fannie Mae requires that Additional Key Principal become liable as an additional Key Principal under the Acknowledgement.

E. Fannie Mae has agreed to consent to the Transfer and to the addition of the Additional Key Principal under the Acknowledgement subject to the terms and conditions stated below.

In consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor, Transferee, Borrower, Existing Key Principals, Additional Key Principal and Fannie Mae agree as follows:

1. Assumption by the Additional Key Principal of Liability for the Exceptions to Non-Recourse. The Additional Key Principal hereby assumes all liability under the provisions of the Acknowledgement.
2. Consent to Transfer. Fannie Mae hereby consents to the Transfer, subject to the terms and conditions set forth in this Agreement. Fannie Mae's consent to the Transfer is not intended to be and shall not be construed as a consent to any subsequent transfer which requires the Lender's consent pursuant to the terms of the Security Instrument.
3. INTENTIONALLY DELETED.
4. Liability of Existing Key Principals. Nothing set forth herein shall release or change the liability of the Existing Key Principals or of the Borrower or any other party who may now be or after the date of this Agreement, become liable, primarily or secondarily, under the Acknowledgement and the other Loan Documents. Except as expressly modified hereby, the Note, the Security Instrument, and the other Loan Documents shall remain in full force and effect.
5. Costs. The Transferee and the Transferor agree to pay all fees and costs (including attorneys' fees) incurred by Fannie Mae and the Servicer in connection with Fannie Mae's consent to and approval of the Transfer and a transfer fee of \$19,034.89 in consideration of the consent to the Transfer.

6. Financial Information. The Transferee represents and warrants to Fannie Mae that all financial information and information regarding the management capability of Transferee provided to the Servicer or Fannie Mae was true and correct as of the date provided to the Servicer or Fannie Mae and remains materially true and correct as of the date of this Agreement.

7. Addresses. Transferee's address for notice hereunder and under the Loan Documents is:

FCPB, LLC  
8900 Keystone Crossing, Suite 1200  
Indianapolis, Indiana 46240

Transferor's address for notice hereunder and under the Loan Documents is:

NDC Douglas Properties, Inc.  
c/o Director, Corporate Real Estate Department  
NiSource Development Corporation  
NiSource, Inc.  
801 East 86<sup>th</sup> Street  
Merrillville, Indiana 46410

8. Complete Release. Transferee, Transferor, Existing Key Principals, Additional Key Principal and Borrower jointly and severally as between Transferor, Transferee, Existing Key Principals, Additional Key Principal and Borrower, unconditionally and irrevocably release and forever discharge Original Lender, Fannie Mae, and their respective successors, assigns, agents, directors, officers, employees, and attorneys, and each current or substitute trustee under the Security Instrument (collectively, the "Indemnitees") from all Claims, as defined below, and jointly and severally agree to indemnify Indemnitees, and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with the Claims and the Transfer. Notwithstanding the foregoing, Transferor shall not be responsible for any claims arising from the action or inaction of Transferee, and Transferee shall not be responsible for any claims arising from the action or inaction of Transferor. As used in this Agreement, the term "Claims" shall mean any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating in whole or in part, on or before the date of this Agreement, which the Borrower or the Transferor or any of their respective partners, members, officers, agents or employees, or Existing Key Principals or Additional Key Principal may now or hereafter have against the Indemnitees, if any, and irrespective of whether any such Claims arise out of contract, tort, violation of laws, or regulations, or otherwise in connection with any of the Loan Documents, including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto



and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Indemnitees, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees, or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, NEGLIGENCE, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, but in each case only to the extent permitted by applicable law. Transferor, Transferee, Existing Key Principals, Additional Key Principal and Borrower agree that Fannie Mae and Original Lender have no fiduciary or similar obligations to Transferor or Transferee and that the relationship between Borrower and Fannie Mae is strictly that of creditor and debtor. This release is accepted by Fannie Mae and Original Lender pursuant to this Agreement and shall not be construed as an admission of liability on the part of either. Transferor, Transferee, Existing Key Principals, Additional Key Principal and Borrower hereby represent and warrant that they are the current legal and beneficial owners of all Claims, if any, released hereby and have not assigned, pledged or contracted to assign or pledge any such Claim to any other person.

9. Modification of Security Instrument. The Security Instrument is amended and modified as follows:

(a) Page 39 of the Security Instrument is modified by inserting the name of the Additional Key Principal thereon, as follows:

**“Key Principal**

**Name:** Brian L. Ploss

**Address:** 8900 Keystone Crossing  
Suite 1200  
Indianapolis, Indiana 46240”.

(b) The existing Exhibit A attached to the Security Instrument is hereby deleted and the Exhibit A attached to this Agreement is substituted in its place and stead.

10. Miscellaneous.

- (a) This Agreement shall be construed according to and governed by the laws of the jurisdictions in which the Property is located without regard to its conflicts of law principles.
- (b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Agreement will remain in full force and effect.
- (c) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto.
- (d) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms hereof.
- (e) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.
- (f) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.
- (g) THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**[DOCUMENT EXECUTION OCCURS ON FOLLOWING PAGES.]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**BORROWER:**

**DOUGLAS POINTE ASSOCIATES, LLC,**  
an Indiana limited liability company

BY: DP I, LLC,  
an Indiana limited liability company,  
Its General Manager

BY: *David Flaherty* (Seal)  
David Flaherty, a Co-General Manager

BY: *Jerry Collins* (Seal)  
Jerry Collins, a Co-General Manager

STATE OF INDIANA, COUNTY OF MARION, SS:

On this 24<sup>th</sup> day of February, 2010, before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Flaherty and Jerry Collins, Co-General Managers of DP I, LLC, an Indiana limited liability company, the General Manager of Douglas Pointe Associates, LLC, an Indiana limited liability company, and they acknowledged the execution of the foregoing instrument.

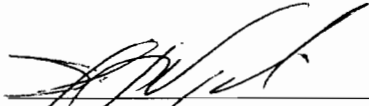
My Commission Expires: November 21, 2010 *Patricia Ann Wilson* Notary Public

(NOTARIAL SEAL)




**TRANSFEROR:**

**NDC DOUGLAS PROPERTIES, INC.,**  
an Indiana corporation

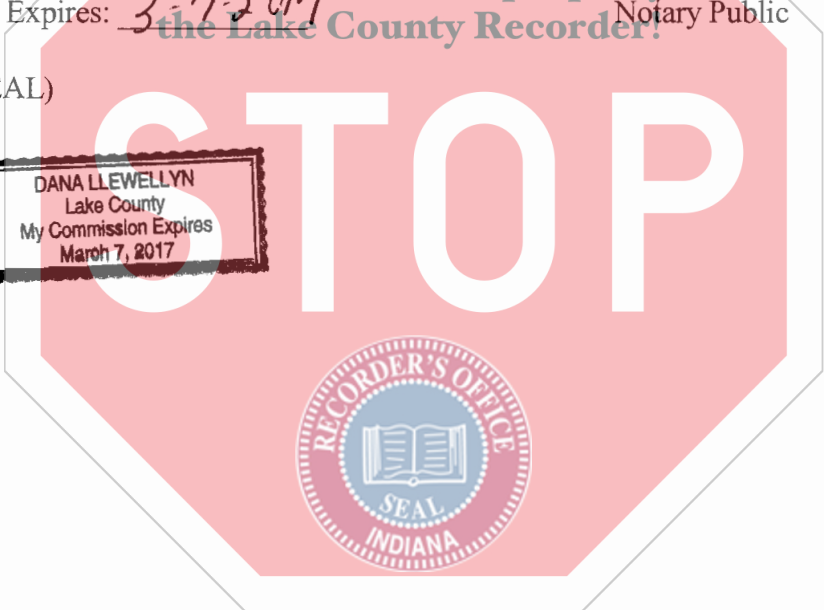
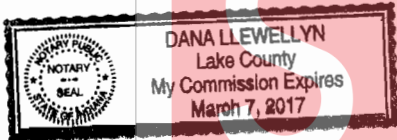
BY:  (Seal)  
Name: DAVID J. VAJDA  
Title: VP, TREASURER & CFO

STATE OF INDIANA, COUNTY OF LAKE, SS:

On this 23<sup>rd</sup> day of February, 2010, before me, the undersigned, a Notary Public in and for said County and State, personally appeared David J. Vajda, a VP, Treasurer of NDC Douglas Properties, Inc., an Indiana corporation, and he acknowledged the execution of the foregoing instrument for and on behalf of the corporation.

My Commission Expires: 3-7-2017  Notary Public  
the Lake County Recorder!

(NOTARIAL SEAL)



**TRANSFeree:**

**FCPB, LLC,**  
an Indiana limited liability company

BY: Brian L. Ploss (Seal)  
Brian L. Ploss, Its Manager

STATE OF INDIANA, COUNTY OF MARION, SS:

On this 24<sup>th</sup> day of February, 2010, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian L. Ploss, the Manager of FCPB, LLC, an Indiana limited liability company, and he acknowledged the execution of the foregoing instrument.

My Commission Expires: November 21, 2010 Patricia Ann Wilson  
Notary Public

(NOTARIAL SEAL)





EXISTING KEY PRINCIPALS:

*David Flaherty* (Seal)  
David Flaherty

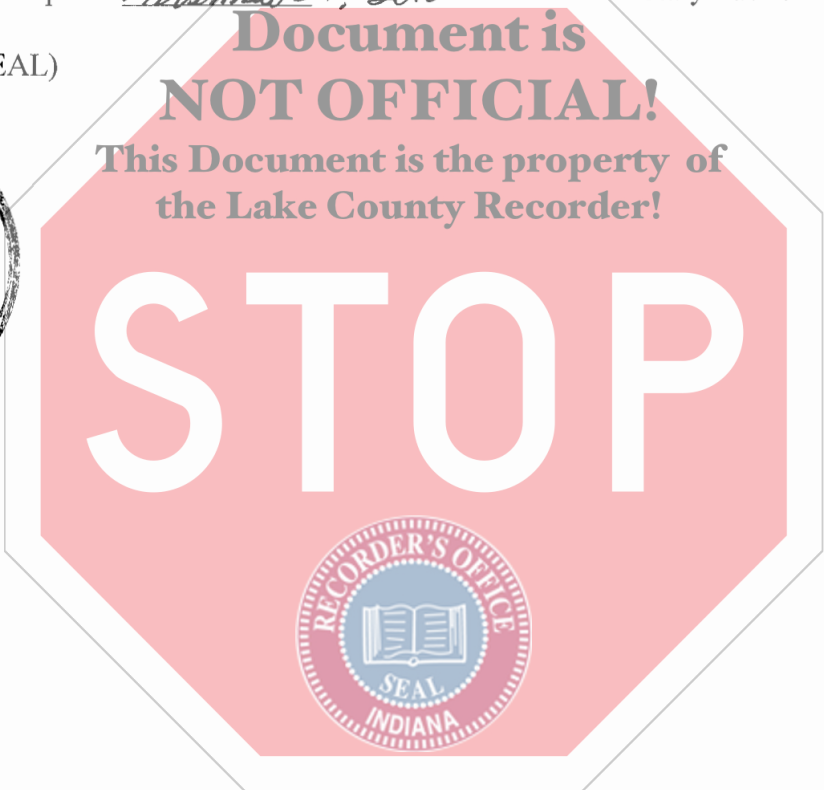
*Jerry Collins* (Seal)  
Jerry Collins

STATE OF INDIANA, COUNTY OF MARION, SS:

On this 24<sup>th</sup> day of February, 2010, before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Flaherty and Jerry Collins and they acknowledged the execution of the foregoing instrument.

My Commission Expires: *November 21, 2010* *Patricia Ann Wilson* Notary Public

(NOTARIAL SEAL)



ADDITIONAL KEY PRINCIPAL:

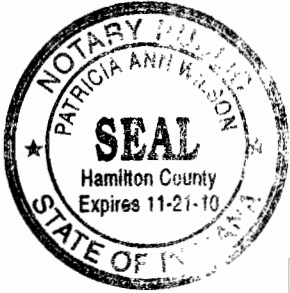
Brian L. Ploss (Seal)  
Brian L. Ploss

STATE OF INDIANA, COUNTY OF MARION, SS:

On this 24<sup>th</sup> day of February, 2010, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian L. Ploss and he acknowledged the execution of the foregoing instrument.

My Commission Expires: November 21, 2010 Patricia Ann Wilson  
Notary Public

(NOTARIAL SEAL)



FANNIE MAE:

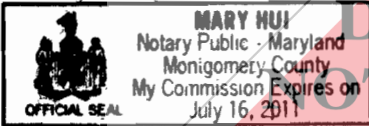
BY: Walker & Dunlop, LLC  
a Delaware limited liability company  
Attorney In fact

By: Debra A. Casale  
Debra A. Casale  
Senior Vice President

STATE OF MARYLAND

COUNTY OF COMTOMERY

The foregoing instrument was acknowledged before me this 24 day of February, 2010, by Debra Casale a Senior Vice President of Walker & Dunlop, LLC, on behalf of the limited liability company as attorney-in-fact for and on behalf of Fannie Mae.

(SEAL) 

[Signature]  
Notary Public

My Commission Expires:

7-16-2011

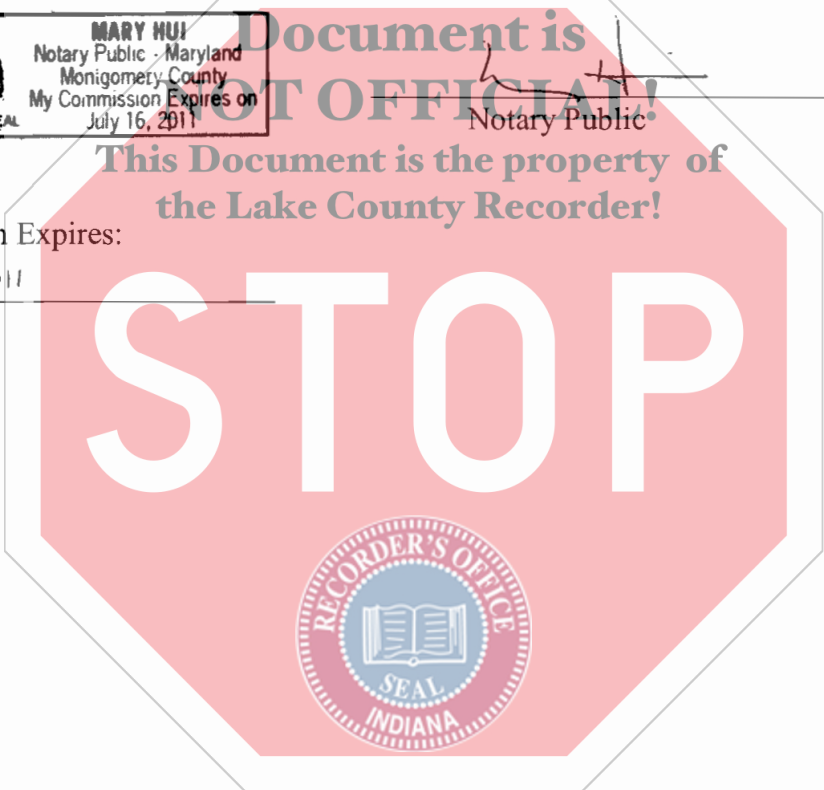


EXHIBIT A

to

CONSENT TO TRANSFER AND MODIFICATION OF MORTGAGE

Parcel I:

Lot 1, in the Replat of Douglas Pointe (a planned unit development), Hammond, Indiana, as per plat thereof, recorded in Plat Book 74, page 19, as amended by Corrective Plat of the Replat of Douglas Pointe, recorded in Plat Book 76, page 49, in the Office of the Recorder of Lake County, Indiana; AND

Lot 2, in the Replat of Lot 2 at Douglas Pointe (a planned unit development), Hammond, Indiana, as per plat thereof, recorded in Plat Book 82, page 86, in the Office of the Recorder of Lake County, Indiana.

Parcel II:

TOGETHER with a non-exclusive easement for ingress and egress as created and granted in Section 3.1(b) of that certain Amended and Restated Declaration of Covenants, Easements, Conditions and Restrictions recorded February 20, 1996 as Instrument No. 96010877 in the Office of the Recorder of Lake County, Indiana.

Parcel III:

ALSO together with a non-exclusive easement for access as created and granted in that certain Easement for use by Emergency Vehicles and Grant of Utility Easement filed October 4, 1996 in Instrument Number 96066089 in the Office of the Recorder of Lake County, Indiana.





EXHIBIT B

to

CONSENT TO TRANSFER AND MODIFICATION OF MORTGAGE

1. Multifamily Note dated as of February 16, 2005, by Borrower for the benefit of Original Lender.
2. Multifamily Mortgage, Assignment of Rents and Security Agreement, dated as of February 16, 2005, by Borrower for the benefit of Original Lender.
3. General Certificate and Agreement dated as of February 16, 2005 by the Borrower.
4. Replacement Reserve and Security Agreement dated as of February 16, 2005 by and between Borrower and Original Lender.
5. Agreement Regarding Collateral Agreements and Other Loan Documents dated as of February 16, 2005 by and between Borrower and Original Lender.
6. Agreement to Amend or Comply, dated as of February 16, 2005 by the Borrower.
7. Assignment of Management Agreement, dated as of February 16, 2005, by and among Borrower, Original Lender and the Manager named therein.
8. Certificate of Borrower, dated as of February 16, 2005, by the Borrower.

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless otherwise required by law.  
Thomas A. Stegeman, Esq.