

FILED SARPY CO. NE.
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2008-18534

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Shawn J. [Signature]
REGISTER OF DEEDS

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VERIFY ah D.E. p
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SHORT _____ NON _____

Title of Document: ASSIGNMENT AND ASSUMPTION OF RIGHTS UNDER ECR

Date of Document: June 30, 2008

Grantor(s): Market Pointe, LLC,
a Missouri limited liability company

Grantee(s): Cole MT Papillion NE, LLC,
a Delaware limited liability company

Grantee(s) Mailing Address: c/o Cole Companies
2555 E. Camelback Road, Suite 400,
Phoenix, AZ 85016
Attention: John M. Pons, Esq.

Legal Description: See Exhibit A.

Reference Book and Page(s):

*Land America Commercial Svcs
165 N. Meramec Avenue, Suite 200
St. Louis, MO 63105
atten: Sarah Christian*

RECORD 3rd

CC 10128

18534

A

ASSIGNMENT AND ASSUMPTION OF RIGHTS UNDER ECR

This Assignment and Assumption of Rights Under ECR (this "**Agreement**") is made and entered into this 20 day of June, 2008, by and between Market Pointe, LLC, a Missouri limited liability company (hereinafter referred to as "**Assignor**"), and Cole MT Papillion NE, LLC, a Delaware limited liability company (hereinafter referred to as "**Assignee**") (mailing address of Assignee is c/o Cole Companies, 2555 E. Camelback Road, Suite 400, Phoenix, AZ 85016, Attention: Legal Department)

WITNESSETH:

WHEREAS, concurrently with the execution and delivery of this Agreement, Assignor is conveying to Assignee, by Special Warranty Deed, that certain real property legally described on **Exhibit A**, attached hereto and made a part hereof, and referred to herein as the "**Property**";

WHEREAS, the Property is subject to that certain Easements With Covenants And Restrictions Affecting Land by and between Assignor, Wal-Mart Real Estate Business Trust and Lowes Home Centers, Inc., dated January 23, 2006 and recorded on January 24, 2006 as Document No. 2006-02430, as amended by First Amendment to Easements With Covenants and Restrictions Affecting Land dated September 1, 2006 and recorded on September 5, 2006 as Document No. 2006-30539, hereinafter referred to collectively as the "**ECR**"; and

WHEREAS, Assignor has agreed to assign to Assignee certain rights and obligations under the ECR as hereinafter set forth; and

NOW, THEREFORE, in consideration of the receipt of Ten Dollars (\$10.00), the assumptions by Assignee hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor does hereby ASSIGN, SET OVER and DELIVER to Assignee, its successors and assigns, all of Assignor's rights, titles and interests under the ECR, as the "Developer" and the "Property Owner" of the "Developer Property".

2. Assignee hereby assumes and agrees to perform all of the covenants, liabilities and obligations as Developer pursuant to the terms of the ECR which arise on or after the date of this Agreement, including, but not limited to, maintenance and operation of the Joint Maintenance Common Areas in accordance with the terms of the ECR and the law of Nebraska. Notwithstanding anything to the contrary contained in this Agreement, Assignee agrees that Assignee, as Developer under the ECR, shall be subject to the terms and provisions of that certain Supplemental Agreement by and between Assignor and Assignee of even date herewith and a memorandum of which is being recorded concurrently herewith (the "**Supplemental Agreement**") relating to Assignor's remaining real property within the shopping center, as set forth on **Exhibit B** hereto and referred to herein as the "**Remaining Lots**". The Remaining Lots and Assignor shall be subject to the provisions of the ECR and the Supplemental Agreement.

3. Assignor acknowledges that Assignor shall have no right to change the Design Criteria with respect to the Remaining Lots without Assignee's prior written consent.

B

4. Assignor agrees to indemnify, save and hold Assignee harmless for, from and against any and all loss, liability, claims, damages, costs and expenses (including, but not limited to, court costs and reasonable attorneys' fees) arising out of or relating to (a) Assignor's failure to perform any of the obligations of the Assignor under the ECR prior to the date hereof, and (b) the Remaining Lots. Assignee agrees to indemnify, save and hold Assignor harmless for, from and against any and all loss, liability, claims, damages, costs and expenses (including, but not limited to, court costs and reasonable attorneys' fees) arising out of or relating to Assignee's failure to perform any of the obligations of the Assignor under the ECR on or after the date hereof other than with respect to the Remaining Lots.

5. Assignor hereby represents and warrants to Assignee that at the time of execution and delivery of this Agreement, Assignor is the "Developer" under the ECR and the "Property Owner" of the "Developer Property".

6. This Agreement shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the parties hereto.

7. This Agreement shall be construed under and enforced in accordance with the laws of the State of Nebraska.

8. All capitalized terms used herein shall have the meaning as set forth in the ECR, unless otherwise defined herein.

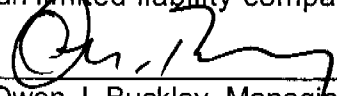
9. This Agreement may be executed in one or more counterparts, and it shall not be necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all of such counterparts taken together shall constitute one and the same instrument.

C

EXECUTED effective as of the date first above written.

ASSIGNOR:

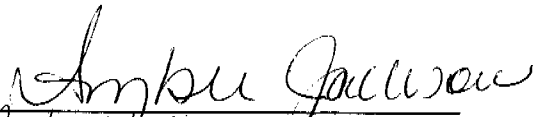
MARKET POINTE, LLC,
a Missouri limited liability company

By: 
Owen J. Buckley, Managing Member

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Now on this 18 day of June, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Owen J. Buckley, the Managing Member of Market Pointe, LLC, a Missouri limited liability company, who is personally known to me to be the same person who executed the within instrument on behalf of said company, and who duly acknowledged the execution of the same to be his free act and deed and the free act and deed of said company.

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


Amber Jackson Notary Public
(Print Name)

My Commission Expires: 10/14/08



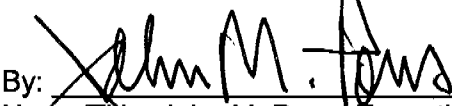
AMBER JACKSON
My Commission Expires
October 14, 2008
Clay County
Commission #04622229

D

ASSIGNEE:

COLE MT PAPILLION NE, LLC,
a Delaware limited liability company


By: Cole REIT Advisors II, LLC, a Delaware limited liability company, its Manager

By: 
Name/Title: John M. Pons, Executive Vice President

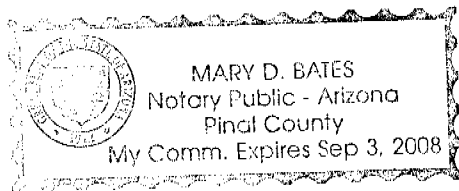
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 18th day of June, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came John M. Pons, the Executive Vice President of Cole REIT Advisors II, LLC, a Delaware limited liability company, the Manager of Cole MT Papillion NE, LLC, a Delaware limited liability company, who is personally known to me to be the same person who executed the within instrument on behalf of said company, and who duly acknowledged the execution of the same to be his free act and deed and the free act and deed of said company.

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


MARY D. BATES Notary Public
(Print Name)

My Commission Expires: 9/3/08



E

EXHIBIT A

Property Description

Lots 2 and 3, Market Pointe Addition, an Addition to the City of Papillion, Sarpy County, Nebraska, as amended by Administrative Lot Line Adjustment recorded October 26, 2005 at Instrument No. 2005-39750, records of Sarpy County, Nebraska;

And

Lots 9, 10 and 11, Market Pointe Addition Replat 1, an Addition to the City of Papillion, Sarpy County, Nebraska;

And

Outlots E and F, Stockman's Hollow, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

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EXHIBIT B

Assignor's Remaining Lots

Lots Four (4), Five (5), and Six (6), Market Pointe Addition, an addition in Sarpy County, Nebraska

and

Lots One (1) and Two (2), Market Pointe Addition Replat 3, an Administrative Subdivision, being a replat of Lot Seven (7), Market Pointe Addition and Lot Eight (8), Market Pointe Addition Replat 1, a Subdivision in Sarpy County, Nebraska.