

FILED SARPY CO. DE  
INSTRUMENT NUMBER  
2008-19157

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*Sharon D. Dowling*

REGISTER OF DEEDS

COUNTER	<u>WJ</u>	S.E.	<u>WJ</u>
VERIFY	<u>W</u>	D.E.	<u>P</u>
PROOF	<u>TM</u>		
FEE \$	<u>41.00</u>		
CHECK #			
CHG	<u>CRS-41.00</u>	CASH	
REFUND		CREDIT	
SHORT		NCR	

NCS #20 11278554

DOCUMENT TITLE: Assignment of Leases and Guaranties

DOCUMENT DATE: June 20, 2008

GRANTOR(S): Market Pointe, LLC

GRANTEE(S): Cole MT Papillion NE, LLC

GRANTOR'S MAILING ADDRESS: 4705 Central, Suite 200  
Kansas City, MO 64112

GRANTEE'S MAILING ADDRESS: c/o Cole Companies  
Attn: Legal Department  
2555 E Camelback Rd, Suite 400  
Phoenix, AZ 85016

LEGAL DESCRIPTION: See attached Exhibit A

REFERENCE BOOK AND PAGE ("N/A" if not applicable): see Exhibit B

*Land America Commercial Services  
Attn: Sarah Christian  
165 N. Meramec Ave, Ste 200  
St. Louis, MO 63105*

RECORD 64

CC10128

19157  
CRS

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## ASSIGNMENT OF LEASES AND GUARANTIES

This Assignment and Assumption of Leases and Guaranties (this "**Agreement**") is made and entered into this 20 day of June, 2008, by and between Market Pointe, LLC, a Missouri limited liability company ("**Assignor**"), and Cole MT Papillion NE, LLC, a Delaware limited liability company ("**Assignee**").

### WITNESSETH:

WHEREAS, concurrently with the execution and delivery of this Agreement, Assignor is conveying to Assignee, by Special Warranty Deed (the "**Deed**"), that certain real property legally described in **Exhibit A** attached hereto and made a part hereof for all purposes (the "**Property**");

WHEREAS, Assignor has agreed to assign to Assignee certain leases and guaranties as hereinafter set forth;

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, subject to the exceptions to title set forth in the Deed, all of Assignor's rights, titles and interests in and to all leases in effect as of the date of this Agreement demising space in or providing for the use or occupancy of the Property and all guaranties or other agreements relating to such leases (collectively, the "**Leases**"). A schedule of recorded documents regarding such Leases is attached as **Exhibit B**.

2. Assignee hereby assumes and agrees to perform all of the covenants, liabilities and obligations of Assignor under the Leases which arise on or after the date of this Agreement, provided that Assignee does not assume any covenants, liabilities or obligations relating to (i) tenant improvements or allowances or (ii) leasing commissions, except as provided in Section 8.2.3 of the Agreement for Purchase and Sale dated May 5, 2008, 2008 between Assignor and Series C, LLC, predecessor-in-interest to Assignee (the "**Non-Assumed Obligations**").

3. 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 Assignor's failure to perform any of the obligations of the Assignor under the Leases prior to the date hereof and the Non-Assumed Obligations. 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 Leases on or after the date hereof other than the Non-Assumed Obligations.

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

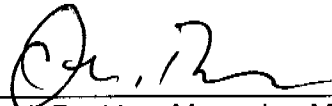
5. This Agreement shall be construed under and enforced in accordance with the laws of the State of Nebraska.

6. This Agreement may be executed in two 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.

EXECUTED effective as of the date first above written.

**ASSIGNOR:**

**Market Pointe, LLC,  
a Missouri limited liability company**

By:   
Owen J. Buckley, Managing Member

**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: \_\_\_\_\_  
Printed Name: John M. Pons  
Its: Executive Vice President

C

or relating to Assignee's failure to perform any of the obligations of the Assignor under the Leases on or after the date hereof other than the Non-Assumed Obligations.

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

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

6. This Agreement may be executed in two 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.

EXECUTED effective as of the date first above written.

**ASSIGNOR:**

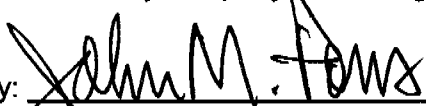
**Market Pointe, LLC,  
a Missouri limited liability company**

By: \_\_\_\_\_  
Owen J. Buckley, Managing Member

**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:  \_\_\_\_\_  
Printed Name: John M. Pons  
Its: Executive Vice President

D

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*  
Amber Jackson Notary Public  
(Print Name)

My Commission Expires: 10/14/08



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

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

Now on this \_\_\_\_\_ 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, 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.

\_\_\_\_\_, Notary Public  
(Print Name)

My Commission Expires: \_\_\_\_\_

E

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF JACKSON )

Now on this \_\_\_\_ 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.

\_\_\_\_\_, Notary Public  
(Print Name)

My Commission Expires: \_\_\_\_\_

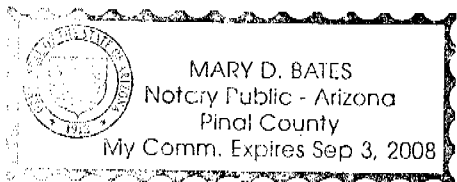
STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

Now on this 18<sup>th</sup> 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, 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  
Mary D. Bates, Notary Public  
(Print Name)

My Commission Expires: 9/3/08



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**EXHIBIT A**  
**TO**  
**ASSIGNMENT OF LEASES AND GUARANTIES**  
  
**PROPERTY**

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.

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**EXHIBIT B**  
**TO**  
**ASSIGNMENT OF LEASES AND GUARANTIES**

**LEASES**

1. Memorandum of Lease between Market Pointe LLC, a Missouri limited liability company, Landlord, and Kohl's Department Stores, Inc., a Delaware Corporation, Tenant, dated June 16, 2004, recorded August 4, 2006 at Instrument No. 2006-26634, records of Sarpy County, Nebraska.

Assignment and Assumption of Lease between Kohl's Department Stores, Inc., a Delaware Corporation, Assignor and Kohl's Illinois, Inc, a Nevada corporation, Assignee, dated August 28, 2004, recorded September 13, 2006 at Instrument No. 2006-31693, records of Sarpy County, Nebraska.

2. Memorandum of Ground Lease between Market Pointe LLC, a Missouri limited liability company, Landlord, and Lowe's Home Centers, Inc., a North Carolina corporation, Tenant, dated January 23, 2006, recorded January 24, 2006, at Instrument No. 2006-02426, records of Sarpy County, Nebraska.