

THIS INSTRUMENT PREPARED BY:

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Inst # 1997-00005
01/02/1997-00005
08:20 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
007 MCD 23.50

**STATE OF ALABAMA)
COUNTY OF SHELBY)**

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, made as of the 30th day of December, 1996, is from **FAIRWAY INVESTMENTS, L.L.C.**, an Alabama limited liability company ("Fairway"), and **HUBERT W. GOINGS**, a married man who by execution hereof certifies that no portion of the "Premises" herein described constitutes his or his spouse's homestead property ("Goings"), jointly as assignors (Fairway and Goings being hereinafter collectively called the "Borrower"), in favor of **SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION**, a national banking association (the "Lender").

RECITALS:

This Assignment is made as additional security for the payment of indebtedness due by Borrower to Lender in the principal amount of up to **THREE MILLION SIX HUNDRED NINETY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,697,500.00)** (the "Loan"), with interest thereon, as evidenced by a Promissory Note of even date herewith from Borrower to Lender in said principal amount (the "Note"), and as additional security for the full and faithful performance by Borrower of all the terms and conditions of a certain Mortgage and Security Agreement of even date herewith securing the Note (the "Mortgage"), executed and delivered by Borrower to the trustee named therein for the use and benefit of Lender on the property described in Exhibit "A" attached hereto. This Assignment, the Note and the Mortgage, together with all other instruments or documents heretofore or hereafter executed in connection herewith or therewith, and all amendments, modifications, extensions and renewals hereof or thereof, are sometimes collectively referred to herein as the "Loan Documents."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and as an inducement to the Lender to make the Loan to Borrower, Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of the Borrower's interest in and to all leases

presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the property described in Exhibit "A" attached hereto, and the improvements located or to be located thereon, including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of said leases and agreements.

Borrower agrees to duly operate and maintain the aforesaid property and perform all requisites on its part to keep any and all leases of said property in full force and effect.

Borrower agrees that this agreement shall cover all future leases, whether written or verbal, or any letting of, or any agreement for the use or occupancy of, any part of said property.

Borrower further agrees that it will not assign the rents or any part of the rents of said property, nor collect the rents under any leases or other agreements relating to use of any part of the property, for a period further in advance than one (1) month without the written consent of the Lender, nor do any other act whereby the lien of the Mortgage and this Assignment may, in the opinion of the Lender, be impaired in value or quality.

Borrower agrees that it has not and will not enter into any fictitious lease or any lease for the purpose of avoiding creditors, and any attempt to do so will be void. Borrower represents and warrants that all leases, if any, presently in effect are, and all leases hereafter entered into will be, arms-length leases for a rental rate, which, in Borrower's best judgment, represents a fair market rental.

Borrower further agrees that this Assignment is to remain in full force and effect so long as the Note remains unpaid and that it may be enforced by Lender.

Although it is the intention of the parties that this instrument be a present assignment, it is expressly understood and agreed by Borrower and Lender that said Borrower reserves, and is entitled to collect, said rents, income and profits upon, but not prior to, their accrual under the aforesaid leases, and to retain, use and enjoy the same unless and until the occurrence of an Event of Default pursuant to (and as defined in) any of the other Loan Documents, or until the violation of any term, condition or agreement of this Assignment, each of which shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, Borrower's privilege to collect the rents shall automatically terminate.

Borrower does hereby authorize and empower Lender to collect directly from the lessees, upon demand, after any Event of Default hereunder, all of the rents, issues and profits now due or which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of said property, and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Borrower hereby authorizes and directs the lessees under leases to pay to Lender all rents and other sums as the same become due, upon notice from Lender that an Event

of Default has occurred hereunder. Any lessee making such payment to Lender shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Lender.

Any amount received or collected by Lender by virtue of this agreement shall be applied for the following purposes, but not necessarily in the order named, priority and application of such funds being within the sole discretion of Lender:

(1) to the payment of all necessary expenses for the operation, protection and preservation of the property, including the usual and customary fees for management services;

(2) to the payment of taxes and assessments levied and assessed against the property as said taxes and assessments become due and payable;

(3) to the payment of premiums due and payable on any insurance policy related to the property;

(4) to the payment of installments of principal and interest on the Note as and when they become due and payable pursuant to the terms of the Note whether by acceleration or otherwise;

(5) to the payment of any other sums due to Lender, including those due under the Loan Documents; and

(6) the balance remaining after payment of the above shall be paid to the then owner of record of said property.

Borrower hereby agrees to indemnify Lender for, and to save it harmless from, any and all liability, loss or damage which Lender might incur under said leases or by virtue of this Assignment, as a result of any act, or failure to act, prior to Lender becoming a mortgagee in possession and prior to foreclosure, and from any and all claims and demands whatsoever which may be asserted against Lender thereunder or hereunder, and, without limiting the generality of the foregoing, covenants that this Assignment shall not, prior to Lender becoming a mortgagee in possession and prior to foreclosure, operate to place responsibility for the control, care, management or repair of said property upon Lender, nor the carrying out of any of the terms and conditions of said leases; nor shall it operate, prior to Lender becoming a mortgagee in possession and prior to foreclosure, to make Lender responsible or liable for any waste committed on the property by the tenants or any other party, or for any negligence in the management, upkeep, repair or control of said property resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or other person.

This agreement shall be binding upon the Borrower, its successors and assigns and subsequent owners of the property, or any part thereof, and shall inure to the benefit of Lender, its successors and assigns and any holder of the Note.

Borrower, and by acceptance hereof the Lender, hereby mutually waive any right to a trial by jury on any claim, counterclaim, setoff, demand, action or cause of action (a) arising out of or in any way pertaining or relating to this Assignment, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith, or (b) in any way connected with or pertaining or relating to or incidental to any dealings of the parties hereto with respect to this Assignment, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith or in connection with any transactions related thereto or contemplated thereby or the exercise of either party's rights and remedies thereunder, in all of the foregoing cases whether now existing or hereafter arising, and whether sounding in contract, tort or otherwise. Borrower and Lender agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive trial by jury, and that any dispute or controversy whatsoever between them shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury. Borrower hereby certifies that no representative or agent of Lender, including Lender's counsel, has represented, expressly or otherwise, that Lender would not, in the event of such dispute or controversy, seek to enforce the provisions of this paragraph, and Borrower acknowledges that Lender has, in part, been induced to make the Loan to Borrower in reliance on the provisions of this paragraph.

Pursuant to the terms of that certain Conditional Exculpation Agreement of even date herewith between Borrower and Lender, Lender has, upon satisfaction of certain conditions and subject to certain limitation expressed in said agreement, partially and conditionally exculpated the Borrower from personal liability with respect to the Loan. Such conditional exculpation is by this reference incorporated herein as though set forth in full.

* * *

IN WITNESS WHEREOF, Borrower has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

BORROWER:

FAIRWAY INVESTMENTS, L.L.C., an Alabama limited liability company

By: Fairway Investments, Inc., an Alabama corporation, its manager

By: [Signature]
Its: [Signature]

[Signature]
HUBERT W. GOINGS

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that GUY S. CLIFTON, whose name as VICE PRESIDENT of Fairway Investments, Inc., an Alabama corporation, in its capacity as manager of Fairway Investments, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily for and as the act of said corporation, acting in its capacity as manager as aforesaid.

Given under my hand and official seal this 30 day of DECEMBER 1996.

[Signature]
Notary Public
My Commission Expires: 7-24-99

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Hubert W. Goings, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 30 day of DECEMBER, 1996.



Notary Public

My Commission Expires:

7-24-99.

EXHIBIT A

Parcel I:

Lot 3, according to the Survey of Village of Valleydale at Southlake, as recorded in Map Book 11, Page 84, in the Probate Office of Shelby County, Alabama.

Parcel II:

Easement for the benefit of Parcel I as created by Declaration of Restrictions and Grant of Easements dated February 29, 1988 and recorded in Real 173, Page 355 and Indenture of Establishment of Protective Covenants, conditions and restrictions, and grant of easements dated February 29, 1988 and recorded in Real 173, Page 364 for the purpose described in these Easements over, under and across Lots 1 and 2, with respect to Real 173, Page 355 and Lot 4, with respect to Real 173, Page 364. Subject to terms, provisions and conditions set forth in said instrument.

Initial for Identification Purposes _____

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