

1288

SECOND PRIORITY COLLATERAL ASSIGNMENT
OF
LEASE OR LEASES AND RENTS

THIS ASSIGNMENT is made as of the 1st day of December, 1985, by FPI BIRMINGHAM, LTD., an Alabama limited partnership whose sole managing general partners are Avron B. Fogelman and Fogelman Properties, Inc., a Tennessee corporation (hereinafter called the "Borrower") and CITICORP REAL ESTATE, INC., Atlanta, Georgia (hereinafter called "Citicorp").

W I T N E S S E T H :

FOR AND IN CONSIDERATION of Ten and No/100 Dollars (\$10.00) cash in hand paid by Citicorp to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower, the Borrower hereby grants, transfers and assigns to Citicorp:

1.

(a) All of the Borrower's interest as lessor in and to the "Leases". The term "Leases" as used in this Assignment shall be deemed to include any and all of the leases now or hereafter placed during the term of this Assignment upon the premises (the "Premises") covered by that certain Second Priority Mortgage and Security Agreement (the "Second Priority Mortgage") of even date herewith by the Borrower for the benefit of Citicorp, the Premises being more fully described in Exhibit A attached hereto and made a part hereof.

THIS DOCUMENT WAS PREPARED BY AND SHOULD BE RETURNED TO:

David N. Minkin, Esq.
David N. Minkin, P.C.
3414 Peachtree Road
Suite 560, Monarch Plaza
Atlanta, Georgia 30326

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(b) All rents, income and profits arising from the Leases and all renewals and extensions thereof and together with all rents, income, profits, issues, benefits and revenues from the use and occupation of the Premises. The Leases and all rents, income, profits, issues, benefits and revenues assigned hereby are hereinafter sometimes collectively referred to as "Collateral."

2.

THIS ASSIGNMENT is made for the purpose of providing additional security for payment of the "Secured Indebtedness" as hereinafter defined. Provided, however, that if the Borrower shall pay or cause to be paid to Citicorp all of the "Secured Indebtedness" (as hereafter defined) and shall also fully perform all of the covenants, conditions and terms of the "Loan Documents" (as hereafter defined), then this Assignment shall be void, otherwise to remain in full force and effect. The "Secured Indebtedness" secured hereby is the following:

(a) All sums now or hereafter due by the Borrower to Citicorp under the terms of that certain Letter of Credit, Indemnity and Reimbursement Agreement ("Reimbursement Agreement") between the Borrower and Citicorp, of even date herewith, including, without limitation, all payments of principal, interest and premium (if any) due from time to time under the Reimbursement Agreement, evidenced by or otherwise outstanding under the Reimbursement Agreement, together with any and all reimbursements, fees, expenses and costs payable by the Borrower thereunder (all of which obligations are hereinafter collectively called the "Letter of Credit Obligations"); together with any and all renewals and extensions of the Letter of Credit Obligations; and

(b) The payment of all amounts due to Citicorp under the terms of any Interest Rate Exchange Agreement entered into between the Borrower and Citicorp pertaining to the Borrower's debt service obligations relating to the Bonds (as hereinafter defined); and

(c) The payment of all other sums with interest thereon becoming due and payable to Citicorp under the provisions of this Assignment or of the Second Priority Mortgage or any other instruments evidencing, securing or concerning the Secured Indebtedness (hereinafter

the Second Priority Mortgage, this Assignment and said other instruments are sometimes collectively referred to as the "Loan Documents").

(d) The performance and discharge of each and every obligation, covenant and agreement of the Borrower contained in the Loan Documents.

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The Borrower covenants with Citicorp (i) to observe and perform all the material obligations imposed upon the lessors under the Leases and not to do or permit to be done anything to impair Citicorp's security; (ii) not to collect any of the rent, income or profits arising or accruing under the Leases or from the Premises more than thirty (30) calendar days in advance of the time when the same shall become due; (iii) except for that certain First Priority Collateral Assignment of Lease or Leases and Rents (the "Prior Assignment of Leases") of even date herewith among the Borrower, Citicorp and FIRST GUARANTY BANK for Savings ("FGB"), assigned by FGB to First Alabama Bank (the "Trustee"), Trustee under the terms of that certain Trust Indenture dated as of December 1, 1985 between Alabama Housing Finance Authority (the "Issuer") and Trustee with respect to the Variable Rate Multifamily Residential Development Bonds 1985 Series P (Hunter's Pointe Development) (hereinafter called the "Bonds") and except in connection with subordinate indebtedness permitted under the terms of the Second Priority Mortgage, not to execute any other assignment of lessor's interest in the Leases or assignment of rents arising or accruing from the Leases or from the Premises; (iv) not to subordinate the Leases to any encumbrance or to permit, consent or agree to such subordination without Citicorp's prior written consent; (v) except in the ordinary course of the business of managing an apartment complex, not to alter, modify or change the terms of the Leases or give any consent or exercise any option required or permitted by such terms without the prior written consent of Citicorp; (vi) except in the ordinary course of the business of managing an apartment complex, not to cancel or terminate the Leases or to accept a surrender thereof or to convey, transfer, suffer or permit a conveyance or transfer of the Premises or portion thereof or of any interest therein so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vii) except in the ordinary course of the business

of managing an apartment complex, not to alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Citicorp; (viii) at Citicorp's request, to execute and deliver all such further assurances and assignments in the Premises as Citicorp shall from time to time require, including without limitation assignments of leases not yet executed; (ix) to keep the Leases free from any liens, encumbrances or security interest whatsoever, other than the Prior Assignment of Leases, the security interest hereunder, and any security interest related to subordinate indebtedness permitted under the terms of the Second Priority Mortgage and promptly to pay or discharge all taxes assessed against the Leases and all liens which may attach thereto; and (x) except in the ordinary course of the business of managing an apartment complex, to maintain the Leases in full force and effect, to enforce the Leases in accordance with their terms, to appear in and defend any action or proceeding arising under or in any manner connected with any of the Collateral and to give prompt written notice to Citicorp of any claim of default under the Leases together with a true and complete copy of any such claims.

This Assignment is made on the following terms, covenants and conditions:

1.

So long as (a) there shall exist no default by the Borrower in the timely payment of the indebtedness secured by the Second Priority Mortgage or under the terms of the Loan Documents or in the Leases to be performed by the Borrower, (b) none of the statements, representations or warranties made or furnished to Citicorp by or on behalf of the Borrower with respect to the Loan be untrue or incomplete in any material respect as of the date made and (c) the Collateral is not the subject of garnishment, levy, attachment or lien not permitted hereunder, then in such event the Borrower shall have the right to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, income and profits arising under the Leases or from the Premises described therein and to retain, use and enjoy the same.

Upon or at any time after default in the timely payment of the indebtedness secured by the Second Priority Mortgage, or default under the terms of the Loan Documents or the Leases, or if any of the statements, representations or warranties made or furnished to Citicorp by or on behalf of the Borrower with respect to the Secured Indebtedness be untrue or incomplete in any material respect as of the date made, or if the Collateral be subjected to garnishment, levy, attachment or lien not permitted hereunder, then in any such event Citicorp, without in any way waiving such default, may at its option without notice and without regard to the adequacy of the security for the indebtedness secured by the Second Priority Mortgage, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Premises or any portion thereof, have, hold, manage, lease and operate the same on such terms and for such period of time as Citicorp may deem appropriate and, either with or without taking possession of the Premises in its own name, demand, sue for or otherwise collect and receive all rents, income and profits of the Premises, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Citicorp and to apply such rents, income and profits to the payment of (a) all expenses of managing the Premises, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Citicorp may deem necessary or desirable and all expenses of operating and maintaining the Premises, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which Citicorp may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Premises; and (b) the indebtedness secured by the Second Priority Mortgage, together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph as Citicorp in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by Citicorp of the options granted it in

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this paragraph and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver of any default of the Borrower under the Loan Documents.

3.

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Citicorp shall not be liable for any loss sustained by the Borrower resulting from Citicorp's failure to let the Premises after default or from any other act or omission of Citicorp in managing the Premises after default unless such loss is caused by the gross negligence, willful misconduct or bad faith of Citicorp. Citicorp shall not be obligated to perform or discharge and Citicorp does not hereby undertake 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, indemnify Citicorp for and hold Citicorp harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Citicorp 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 Citicorp incur any such liability under the Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amounts thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Second Priority Mortgage, and the Borrower shall reimburse Citicorp for such amounts immediately upon demand, and upon the failure of the Borrower so to do, Citicorp may, at its option, declare all sums secured hereby and by the Second Priority Mortgage immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility either for the control, care, management or repair of the Premises upon Citicorp or for the carrying out of any of the terms and conditions of the Leases; neither shall this Assignment operate to make Citicorp responsible or liable for any waste committed on the Premises by the tenants or any other parties, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Upon payment in full of the indebtedness secured by the Second Priority Mortgage, this Assignment shall become and be void and of no effect and Citicorp shall forthwith execute appropriate documents so providing. Prior to recordation of a release by Citicorp of the lien hereof, the affidavit, certificate, letter or statement of any officer, agent or attorney of Citicorp showing any part of indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Borrower hereby authorizes and directs the lessees named in the Leases or any other or future lessees or occupants of the Premises, upon receipt from Citicorp of written notice to the effect that Citicorp is then the Second Priority Mortgage and that a default exists under the Second Priority Deed to Trust or under the Assignment, to pay over to Citicorp all rents, income and profits arising or accruing under the Leases or from the Premises and to continue so to do until otherwise notified by Citicorp.

5.

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Citicorp may take or release other security for the payment of said indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by Citicorp to the satisfaction of the Secured Indebtedness without prejudice to any of Citicorp's rights under this Assignment.

6.

Nothing contained in this Assignment and no act done or omitted by Citicorp pursuant to the powers and rights granted to Citicorp hereunder shall be deemed to be a waiver by Citicorp of Citicorp's rights and remedies under the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Citicorp under the terms thereof. The right of Citicorp to collect the Secured Indebtedness and to enforce any other security held by Citicorp may be exercised by Citicorp either prior to, simultaneously with, or subsequent to any action taken by Citicorp hereunder.

Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Assignment shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given or served and shall be effective upon being personally delivered or upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to the other party at the address of such other party set forth below or at such other address as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request shall be addressed as follows:

Borrower:

c/o Fogelman Properties
5400 Poplar Avenue
Memphis, Tennessee 38119
Attention: Ira C. Fenton
Senior Vice President

with a copy to:

c/o Fogelman Properties
5400 Poplar Avenue
Memphis, Tennessee 38119
Attention: Morris J. Kriger, Esq.
Senior Vice President

with a copy to:

William S. Solmson, Esq.
Wildman, Harrold, Allen, Dixon
& McDonnell
6060 Primacy Parkway
Suite 328
Memphis, Tennessee 38119-5738

Citicorp:

Citicorp Real Estate, Inc.
211 Perimeter Center Parkway
Suite 700
Atlanta, Georgia 30346
Attention: Thomas J. Freeman

With a copy to:

David N. Minkin, Esq.
David N. Minkin, P.C.
3414 Peachtree Road
Suite 560
Atlanta, Georgia 30326

8.

In case of any conflict between the terms of this Assignment and the terms of the Second Priority Mortgage, the terms of the Second Priority Mortgage shall prevail, but whenever possible, the provisions hereof shall be deemed supplemental to and not in derogation of the provisions of the Second Priority Mortgage.

9.

Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

10.

Whenever the singular or plural number, or the masculine, feminine or neuter gender is used herein, it shall equally include the other.

11.

If fulfillment of any provision hereof or any transaction related hereto or to the Bonds, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Assignment in whole or in part, then such clause or provision only shall be held for naught, as through not herein contained, and the remainder of this Assignment shall remain operative and in full force and effect.

12.

Time is of the essence in this Assignment.

13.

This Assignment is subject and subordinate to the terms of the Prior Assignment of Leases.

This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Citicorp and any subsequent holder of the Second Priority Mortgage and shall be binding upon the Borrower and the Borrower's heirs, executors, administrators, successors and assigns and any subsequent owner of the Premises.

It is the intention of the Borrower and Citicorp that the Secured Indebtedness be a non-recourse indebtedness of the Borrower, and Citicorp agrees, notwithstanding anything to the contrary in this Assignment or the Loan Documents, that no deficiency judgment shall be sought or obtained against the Borrower or any partner thereof for any balance of the Secured Indebtedness which may remain unpaid after the exhaustion of remedies hereunder or against security and collateral described herein, nor shall any judgment rendered with respect to the Secured Indebtedness be executed against or be a lien upon any real or personal property of the Borrower or any partner thereof other than such real and personal property described herein or in other documents executed in connection with the Secured Indebtedness or the Bonds; provided, however that nothing herein contained shall be deemed to be a release or impairment of the Secured Indebtedness or of the security therefor intended by any documents related thereto or shall preclude Citicorp from foreclosing upon or selling the Premises or enforcing its rights hereunder or under the Second Priority Mortgage or any of the other documents in the event of any default hereunder or under the terms of any Loan Documents. Nothing in this clause shall be deemed to be a release or impairment of that certain Guaranty of Completion of even date herewith from Auron B. Fogelman (the "Guarantor") to Citicorp, or that certain Guaranty of Payment of even date herewith from the Guarantor to Citicorp.

IN WITNESS WHEREOF, the Borrower has caused this Assignment to be executed and sealed, the day and year first above written.

FPI BIRMINGHAM, LTD., an Alabama limited partnership whose managing general partners are Avron B. Fogelman and Fogelman Properties, Inc.

By: *Avron B. Fogelman* (SEAL)
Avron B. Fogelman
Managing General Partner

By: Fogelman Properties, Inc.,
Managing General Partner

By: *Avron B. Fogelman*
President

[AFFIX CORPORATE SEAL]

STATE OF Tennessee

COUNTY OF Shelby

I, *Hundred Mathis* a Notary Public in and for said County, in the State aforesaid, do hereby certify that Avron B. Fogelman personally known to me to be a managing general partner of FPI Birmingham, Ltd., whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument of writing as a managing general partner of said FPI Birmingham, Ltd., pursuant to due authority, as his free and voluntary act, and as the free and voluntary act and deed of said FPI Birmingham, Ltd., for the uses and purposes therein set forth.

Given under my hand and notarial seal this ____ day of December, 1985.

Hundred Mathis
Notary Public (Affix Seal and State
Date of Expiration of Commission)
March 13, 1989

STATE OF Tennessee
COUNTY OF Shelby

I, *Hundred Mathis* a Notary Public in and for said County, in the State aforesaid, do hereby certify that Avron B. Fogelman, personally known to me to be the President of FOGELMAN PROPERTIES, INC. whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument of writing as President of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of

said corporation as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of December, 1985.

Ronald O. Mathis
Notary Public (Affix Seal and State
Date of Expiration of Commission)
March 13, 1989

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EXHIBIT A

The East half of the Northeast Quarter of Section 36, Township 18, Range 2 West, situated in Shelby County, Alabama.

LESS AND EXCEPT that part conveyed by Volume 324, page 126 more particularly described as follows:

A parcel of land situated in the Northeast quarter of Section 36, Township 18 South, Range 2 West being more particularly described as follows: Beginning at the southeast corner of the northeast quarter of Section 36, Township 18 South, Range 2 West, run thence in a westerly direction along the South line of said quarter section for a distance of 243.41 feet to a point on the east right-of-way line of a paved county road, said point being on a curve which has a central angle of 3 degrees, 22 minutes, 40 seconds, a radius of 1171 feet, and is concave westerly; thence turn an angle to the right and run in a northeasterly direction along the arc of said curve for a distance of 69.03 feet to the end of said curve, the chord of said arc forming an angle to the right of 116 degrees, 11 minutes, 54 seconds with a westerly extension of said 243.41 foot line; thence run in a northeasterly direction 327.10 feet along a line which is tangent to said curve, and is the east right-of-way line of said County road, to the beginning of a curve to the right, said curve having a central angle of 12 degrees, 53 minutes, 22 seconds, a centerline radius of 726.37 feet and a radius of 696.37 feet on the east right-of-way line, said 327.10 foot line being tangent to said curve; thence run in a northeasterly direction 119.88 feet along the arc of said curve to the right to a point on the east line of said quarter section, which is 463.76 feet north of the point of beginning, thence run in a Southerly direction 463.76 feet along the east line of said quarter section to the point of beginning. Situated in Shelby County, Alabama.

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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1985 DEC 19 PM 4:42

Thomas A. Stevenson, Jr.
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$ 32.50
Index Fee	1.00
TOTAL	\$ 33.50

