

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

ASSIGNMENT OF RENTS AND LEASES

KNOW ALL MEN BY THESE PRESENTS: That the undersigned DANIEL MEADOWS II, L.P., a Virginia limited partnership (hereinafter called "Assignor"), in consideration of the sum of One Dollar (\$1.00) and other valuable consideration in hand paid to Assignor by SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association (hereinafter called "Assignee"), receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over unto Assignee, its successors and assigns, all of the Assignor'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 real estate described in Exhibit "A" attached hereto (the "Property"), 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.

This agreement is made as additional security for the payment of indebtedness due by Assignor to Assignee in the principal amount of Seven Million Two Hundred Thousand and No/100^{ths} Dollars (\$7,200,000.00) or such portion thereof as has been disbursed from time to time under the provisions of a construction loan agreement between Assignor and Assignee ("Construction Loan Agreement"), with interest thereon as evidenced by a note in said amount (the "Note") executed and delivered by Assignor to

BOOK 106 PAGE 781

Doc A

Assignee on the date hereof, and as additional security for the full and faithful performance by Assignor of all the terms and conditions of, and the payment of all fees, expenses and charges pursuant to, the Construction Loan Agreement and Note and of a certain mortgage and security agreement of even date herewith ("Mortgage") executed and delivered by Assignor to Assignee on the Property to secure the payment of the Note.

Assignor agrees to duly operate and maintain the Property and perform all requisites on its part to keep any and all leases of the Property in full force.

Assignor 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 the Property.

Assignor further agrees that it will not assign the rent or any part of the rent of the Property, nor collect rents under any leases or other agreements relating to use of any part of the Property for a period further in advance than thirty (30) days without the prior written consent of the Assignee, nor do any other act whereby the lien of the aforesaid Mortgage may, in the opinion of the Assignee, be impaired in value or quality.

Assignor 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 Assignee, its successors and assigns, or the holder of the Note.

It is expressly understood and agreed by Assignor and Assignee hereof that said Assignor 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, as defined in the Construction Loan Agreement, the Note, or the Mortgage or until Assignor fails in the performance of the terms of this Assignment, which failure is not cured within 30 days after written notice to Assignor given in accordance with the provisions of the Mortgage specifying said failure ("Event of Default").

Assignor does hereby authorize and empower Assignee, its successors and assigns, or the holder of the Note, to collect, upon demand, after any Event of Default hereunder, or under the Construction Loan Agreement, the Mortgage or the Note, 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 the Property and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Any lessee making such payment to Assignee shall be under no obligation to inquire into or determine the actual existence of any default claimed by Assignee.

Any amount received or collected by Assignee, its successors or assigns, 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 the holder of the Note;

(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 said Note;

(5) to the payment of any other sums due to Assignee under the Mortgage and Construction Loan Agreement; and

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

Assignor hereby agrees to indemnify Assignee for, and to save it harmless from, any and all liability, loss or damage which Assignee might incur (other than such liability, loss or damage arising from the negligence of Assignee which negligence has been finally determined by a court of competent jurisdiction) under said leases or by virtue of this assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee thereunder or hereunder, and, without limiting the generality of the foregoing, covenants that this assignment, prior to the occurrence of any Event of Default by said Assignor and entry upon the Property by said Assignee by reason thereof, shall not operate to place responsibility for the control, care, management or repair of the Property upon Assignee, nor the carrying out of any of the terms and conditions of said leases; nor shall it operate to make Assignee responsible or liable for any waste

BOOK 106 PAGE 784

committed on the Property by the tenants or any other party, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or other person.

Notwithstanding anything to the contrary herein, Assignee waives any right to any money judgment against the Assignor and any general or limited partner thereof (except as hereinafter set forth with respect to the obligations of Daniel Realty Company ("DR Company")), whether by an action brought upon the Note or an action brought for a deficiency judgment against Assignor, or any successor of the Assignor entitled to the Property, and the extent of liability on the part of said Assignor or successor in title is limited to the Property and other security granted to the Assignee hereunder or under the Mortgage, and any instrument now or hereafter further securing the Note, including, without limitation, policies of hazard insurance maintained on the Property and any proceeds thereof and any award of damages on account of any condemnation for public use of or injury to the Property, and any rentals or other income assigned to the Assignee, the Assignee agreeing to look solely to such Property and security, policies, proceeds, awards, rentals and other income in satisfaction of the indebtedness evidenced by the Note in the case of an Event of Default herein or therein, or in any instrument now or hereafter further securing this Note, except that this waiver shall in no event apply if and to the extent that Assignor commits any fraudulent act, misappropriates, wastes

BOOK 106 PAGE 785

or converts any of the collateral securing Assignor's obligations, or makes any material misrepresentation herein or in the Mortgage or Construction Loan Agreement (as such "materiality" of any misrepresentation is ultimately determined by a court of competent jurisdiction), nor shall this waiver alter, diminish or impair the obligation of DR Company pursuant to the Guaranty of Payment and Completion of even date herewith executed by DRCompany. Furthermore, nothing herein shall affect the indemnity obligation of Assignor or any general partner thereof pursuant to Section 3.09 of the Mortgage.

IN WITNESS WHEREOF, Assignor has caused these presents to be properly executed on this the 22nd day of December, 1986.

ASSIGNOR:

DANIEL MEADOWS II, L.P.,
a Virginia limited partnership

By Daniel Realty Company,
a New York general partnership
Its General Partner

By Daniel Equity Partners, L.P.,
a Virginia limited partnership
Its Managing Partner

By Daniel Equity Corporation I,
a Virginia corporation
Its Managing General Partner

By: 

Its: Vice President

BOOK 106 PAGE 786

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Stephen R. Monk whose name as Vice-President of Daniel Equity Corporation I, a Virginia corporation, as managing general partner of Daniel Equity Partners, L.P., a Virginia limited partnership, as managing partner of Daniel Realty Company, a general partnership, as general partner of Daniel Meadows II, L.P., a Virginia limited partnership, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as managing general partner of Daniel Equity Partners, L.P., in its capacity as managing partner of Daniel Realty Company, in its capacity as general partner of Daniel Meadows II, L.P., as aforesaid.

Given under my hand and official seal, this 22nd day of December, 1986.

Dwight L. Mixson
NOTARY PUBLIC

My Commission Expires:
12-2-87

BOOK 106 PAGE 787

This instrument was prepared by:
Dwight L. Mixson, Jr.
BURR & FORMAN
3000 SouthTrust Tower
Birmingham, Alabama 35203
Telephone: (205) 251-3000

EXHIBIT A

Part of the SE 1/4 of the NW 1/4 and the SW 1/4 of NE 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows: Lots 6, 8, 10 and 12, Jessica Ingram Property, as recorded in Map Book 3 page 54 in the Office of the Judge of Probate, Shelby County, Alabama, also, an acreage parcel situated in the SE 1/4 of the NW 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows: From the NW corner of Lot 12, Jessica Ingram Property, as recorded in Map Book 3 page 54, in the Office of the Judge of Probate of Shelby County, Alabama, run in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet to the point of beginning of the parcel herein described; from the point of beginning thus obtained, continue in a Southerly direction along the West lot lines of said Lots 12, 10, 8 and 6, for a distance of 620.60 feet; thence turn an angle to the right of 90 degrees 47 minutes 50 seconds and run in a Westerly direction for a distance of 116.86 feet to a point on the East right of way line of Brook Highland Drive, as shown on the map of "The Meadows Residential Sector One", as recorded in Map Book 9 page 142, in the Office of the Judge of Probate, Shelby County, Alabama, said point being on a curve to the left which has a radius of 605.12 feet, a central angle of 18 degrees 21 minutes 26 seconds and a chord of 193.05 feet which forms an interior angle to the left of 80 degrees 08 minutes 18 seconds with the last described call: run thence along said right of way line in a Northerly direction along the arc of said curve for a distance of 193.88 feet to the end of said curve; run thence in a Northerly direction tangent to said curve for a distance of 324.02 feet to the beginning of a curve to the left, said curve having a radius of 1153.80 feet, a central angle of 2 degrees 37 minutes 02 seconds and chord of 52.70 feet; run thence in a Northerly direction along the arc of said curve for a distance of 52.70 feet; thence turn an interior angle to the left of 126 degrees 06 minutes 26 seconds from the chord of the last described curve and run in a Northeasterly direction for a distance of 89.69 feet to the point of beginning.

LESS AND EXCEPT the following described parcels A & B:

Parcel A

Part of Lot 12, Jessica Ingram Property, as recorded in Map Book 3 page 54 in the Office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows: Beginning at the NW corner of said Lot 12, run thence in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet; thence turn an angle to the left of 89 degrees 23 minutes 50 seconds and run in an Easterly direction for a distance of 1236.08 feet to a point on the West right of way line of Shelby County Road No. 495; thence turn an angle to the left of 94 degrees 03 minutes 43 seconds and run in a Northerly direction along said West right of way line for a distance of 36.62 feet to a 2 inch capped pipe; thence turn an angle to the left of 86 degrees 13 minutes 44 seconds and run in a Westerly direction along the North line of said Lot 12 for a distance of 1233.82 feet to the point of beginning.

EXHIBIT A

Parcel B
Part of Lot 6, Jessica Ingram Property, as recorded in Map Book 3 page 54 in the Office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows: Beginning at the SW corner of said Lot 6, run thence in an Easterly direction along the South line of said Lot 6 for a distance of 1274.54 feet to the West right of way line of Shelby County Road No. 495; thence turn an angle to the left of 94 degrees 15 minutes 23 seconds and run in a Northerly direction along said right of way line for a distance of 10.02 feet; thence turn an angle to the left of 85 degrees 44 minutes 37 seconds and run in a Westerly direction for a distance of 1273.94 feet to the West line of said Lot 6; thence turn an angle to the left of 90 degrees 47 minutes 50 seconds and run in a Southerly direction along the West line of said Lot 6 for a distance of 10.00 feet to the point of beginning.

All being situated in Shelby County, Alabama.

BOOK 106 PAGE 789

RECORDING FEES
Recording Fee \$22.50
Index Fee 1.00
\$23.50

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1986 DEC 29 PM 2:50

Thomas P. Lawrence, Jr.
JUDGE OF PROBATE