

ID 0041D
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2421

Shoal Run
4/20/87

THIS INSTRUMENT PREPARED BY
AND UPON RECORDING RETURN TO:

Joy S. Goldman
Schwartz & Freeman
Suite 3400
401 North Michigan Avenue
Chicago, Illinois 60611

AMENDED AND RESTATED
ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 21st day of April, 1987 by DJ-II INVESTMENTS, LTD., an Alabama limited partnership ("Assignor"), having its principal office at c/o Durham & Associates, 530 Beaton Parkway West, Suite 900, Birmingham, Alabama 35209 and BALCOR PENSION INVESTORS VI, an Illinois limited partnership ("Assignee"), having its principal office at 4849 Golf Road, Skokie, Illinois 60077.

R E C I T A L S

WHEREAS, Assignor executed a certain Assignment of Rents and Leases ("Construction Assignment") in favor of CENTRAL BANK OF THE SOUTH ("Construction Lender") dated January 28, 1986, securing a loan in the principal sum of \$9,000,000.00, evidenced by a Real Estate Note ("Construction Note") of even date therein and secured by a Mortgage and Security Agreement ("Construction Mortgage") on the real property and improvements commonly known as Shoal Run Apartments located in Birmingham, Shelby County, Alabama, of even date therewith.

WHEREAS, Construction Lender has agreed to assign its rights and interest in the Construction Assignment, Construction Note and Construction Mortgage to Assignee by an instrument dated April 21, 1987, to be recorded in the Probate Office of Shelby County prior to the recording hereof.

WHEREAS, Assignor and Assignee have agreed to increase the indebtedness evidenced by the Construction Note by \$450,000.00 and to amend and restate the Construction Note as evidenced by the Amended and Restated Secured Promissory Note of even date herewith executed in favor of Assignee (the "Note"), which matures April 1, 1999.

WHEREAS, Assignee and Assignor have agreed to amend and restate the Construction Assignment as hereinafter provided:

WHEREAS, the Mortgaged Property or portions thereof have been leased; and

WHEREAS, Assignor may hereafter enter into other leases for portions of the Mortgaged Property (all of which leases in addition to the leases already thereon, and any subleases thereof, are hereinafter referred to as the "Leases"), all of which Leases, together with the rents, income, receipts, revenues, issues, royalties, contract rights, security deposits, benefits of every nature of and from the Mortgaged Property and profits now due or which may become due or to which Assignor may now or shall hereafter (including the period of redemption, if any) become entitled

Law Title

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or may demand or claim, arising or issuing from or out of the Leases or from or out of the Mortgaged Property or any part thereof, including, but not by way of limitation, minimum rents, additional rents, percentage rents, storage space facilities rents, late fees, parking fees, common area maintenance, tax and insurance contributions, deficiency rents and liquidated damages following default, leases, rights, royalties and revenues arising as a result of mineral, oil and/or gas rights, the premium payable by any obligor under any of the Leases upon the exercise of a cancellation privilege originally provided in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Mortgaged Property together with any and all rights and claims of any kind which Assignor may have against any obligor under any of the Leases or any subtenants or assignees thereof, or any occupants of the Mortgaged Property (all such monies, rights and claims described in this paragraph being hereinafter referred to as the "Rents"), are deemed additional security for the payment of all sums due under the Note and the performance of Assignor's obligations thereunder and under the Mortgage.

NOW, THEREFORE, in order to induce Assignee to make the above-mentioned loan and as additional security for the payment of the principal and interest due under the Note, and for the performance and observance of all the agreements contained herein and in the Note and the Mortgage, Assignor does hereby absolutely set over, assign, transfer and convey to Assignee, upon the terms and conditions hereinafter contained, all of the Leases and Rents, together with all the right, title and interest of Assignor therein and thereto.

TOGETHER with any and all guaranties of the obligor's performance under any of the Leases, and

TOGETHER with the immediate and continuing right to collect and receive all of the Rents,

SUBJECT, however, to the right hereby granted by Assignee to Assignor, and limited as hereinafter provided, to collect and receive all of said Rents,

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns forever, or for such shorter period as hereinafter may be indicated, as additional security for the payment of the principal and interest and other obligations provided to be paid in the Note and the Mortgage, and for the performance and observance of all the covenants and agreements contained in each of the foregoing.

Assignor hereby covenants and agrees as follows:

1. So long as there shall not exist or have occurred a "Default" as defined in the Note, or an "Event of Default" as defined in the Mortgage (hereinafter collectively referred to as a "Default"), Assignor shall have the right to collect all of the Rents, to be applied to the payment of all impositions, levies, taxes, assessments and other charges upon the Mortgaged Property, to the cost of the maintenance of required insurance policies upon the Mortgaged Property, to any maintenance and repairs required by the Mortgage and to the payment of obligations under the Note and the Mortgage, before using any part of the Rents for any other purpose.

2. At all times any of Assignee's agents shall have the right to verify the validity, amount of or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Assignor, Assignee, a nominee of Assignee, or any or all of said names.

3. Upon Assignee's request therefor, Assignor shall promptly upon Assignor's receipt or learning thereof: (i) inform Assignee, in writing, of any assertion of any material claims, offsets or counterclaims by any of the obligors under any of the Leases; and (ii) furnish to and inform Assignee of all material adverse information relating to or affecting the financial condition of any obligor of the Leases.

4. As required by the terms of the Mortgage, Assignor shall deliver to Assignee, in form and substance acceptable to Assignee, detailed rent rolls of all the Leases and such other matters and information relating thereto as Assignee may reasonably request, certified by the general partner of Assignor.

5. Upon the occurrence or existence of a Default which has not been cured in accordance with the provisions of any applicable document, to the extent permitted under applicable law, Assignee, at its sole election and in its sole discretion, may do or require any one or more of the following:

(i) Assignor's rights to use the Rents shall terminate and any Rents then or thereafter coming into Assignor's possession are to be held in trust by Assignor for the benefit of Assignee and immediately delivered to Assignee; thereafter, Assignor shall have no rights to use the Rents without written consent of Assignee. Immediately upon demand by Assignee, Assignor shall deliver to Assignee the originals of the Leases, with appropriate endorsements and/or other specific evidence of assignment thereto to Assignee, which endorsement and/or assignment shall be in form and substance acceptable to Assignee. If there are leases not evidenced in written form, the most recent detailed certified rent roll shall be submitted to Assignee immediately upon demand by Assignee.

(ii) Assignee, then or at any time or times thereafter, at its sole election, without notice thereof to Assignor, and without taking possession of the Mortgaged Property, may notify any or all of the obligors under the Leases that the Leases have been assigned to Assignee, and Assignee (in its name, in the name of Assignor or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Assignee.

(iii) Assignor, immediately upon demand by Assignee, irrevocably shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Assignee.

(iv) Assignee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Assignor, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise; to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof in a reasonable business-like manner; to make, modify, enforce, cancel or accept surrender of any of the Leases; to remove

and evict any lessee or any subtenant or assignee of any lessee; to increase or reduce the Rents; to decorate, clean and make repairs; and to otherwise do any act or incur any costs or expense as Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession, and in such event to apply the Rents so collected to the operation and management of the Mortgaged Property, but in such order as Assignee may deem proper, and including payment of reasonable management, brokerage and attorneys' and paralegals' fees and expenses, in the name of Assignor, Assignee, a nominee of Assignee, or in any or all of the said names.

(v) Assignee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Assignor, to declare all sums secured hereby immediately due and payable and, at its option, exercise any and/or all of the rights and remedies contained in the Note and the Mortgage.

(vi) Assignor hereby irrevocably designates, makes, constitutes and appoints Assignee (and all persons designated by Assignee) as Assignor's true and lawful attorney and agent-in-fact, with power, without notice to Assignor and at such time or times thereafter as Assignee, at its sole election, may determine, in the name of Assignor, Assignee or in both names: (a) to demand payment of the Rents and performance of the Leases; (b) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (c) to exercise all of Assignor's rights, interests and remedies in and under the Leases and to collect the Rents; (d) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (e) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (f) to take control, in any manner, of the Leases and Rents; (g) to prepare, file and sign Assignor's name on any Proof of Claim in Bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (h) to endorse the name of Assignor upon any payment or proceeds of the Rents and to deposit the same to the account of Assignee; and (i) to do all acts and things necessary, in Assignee's sole discretion, to carry out any or all of the foregoing. Assignee's power under this Assignment shall be coupled with an interest and shall be irrevocable until all of the indebtedness evidenced by the Note has been paid.

(vii) The foregoing payments and proceeds received by Assignee shall be applied first to such obligations of Assignor with respect to the Mortgaged Property or the operation or business thereof as Assignee, at its sole election, shall determine appropriate or warranted under the then existing circumstances. Any remainder shall be utilized by Assignee, at its sole election and in its sole discretion, for any one or more of the following purposes: (a) to be applied to any of Assignor's obligations and liabilities under the Note and/or the Mortgage, in such manner and fashion and to such portions thereof as Assignee, at its sole election, shall determine; or (b) to be held in good faith by Assignee as additional collateral for the payment of Assignor's obligations and liabilities under the Note and/or the Mortgage; or (c) to be remitted to Assignor.

(viii) Assignee may also exercise any other rights and remedies then available under any applicable laws.

6. TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR HEREBY COVENANTS, REPRESENTS AND WARRANTS AS FOLLOWS:

(a) Assignor is the owner in fee simple absolute of the Mortgaged Property and has good title to the Leases and Rents hereby assigned, and good right to assign the same, and no other person, firm or corporation has any right, title or interest therein, Assignor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the existing Leases on Assignor's part to be kept, observed and performed; Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or Rents, whether now due or hereafter to become due; except as disclosed to Assignee in writing, no Rents due and issuing for any period subsequent to the date hereof have been collected and that payment of any of such Rents has not otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised; except as disclosed to Assignee in writing, Assignor has not received any funds, except security and pet deposits, from any obligor under the Leases more than one month in advance; and the obligor under any existing Lease is not in default of any of the terms thereof.

(b) Assignor has not and shall not receive or collect any of the Rents for a period of more than one month in advance (whether in cash or by promissory note), or pledge, transfer, mortgage or otherwise encumber or assign future payments of any of the Rents; and Assignor shall not waive, excuse, condone, discount, set-off, compromise or in any manner release or discharge any obligor thereunder, of and from any material obligations, covenants, conditions and agreements by said obligor to be kept, observed and performed, including the obligation to pay the rents thereunder, in the manner and at the place and time specified therein, except in the exercise of reasonable business judgment in the ordinary course of business.

(c) Assignor shall observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the Note, the Mortgage, and the Leases on the part of Assignor to be kept, observed and performed, and Assignor shall give prompt notice to Assignee of any failure on the part of Assignor to observe, perform and discharge same; Assignor shall enforce or secure in the name of the Assignee the performance of each and every obligation, term, covenant, condition and agreement in each of the Leases by any obligor thereof to be performed; Assignor shall appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of Assignor and/or any obligor thereunder, and, upon request by Assignee, will do so in the name and behalf of Assignee but at the expense of Assignor.

(d) If Assignee institutes proceedings or takes other actions to enforce its rights and remedies under this Assignment, or if Assignee shall be made a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) in any way relating to this Assignment, or if Assignee shall incur or pay any expenses, costs, charges or attorneys' and paralegals' fees and expenses by reason

of the employment of counsel for advice with respect to this Assignment, and whether in court proceedings or otherwise, such expenses and all of Assignee's reasonable attorneys' and paralegals' fees and expenses shall be secured by the rights and interests granted herein, payable on demand and shall bear interest at the "Default Rate" (as defined in the Note).

(e) In the event any representation or warranty herein of Assignor shall be found to be untrue, incorrect, incomplete or inaccurate in any material respect, or Assignor shall default in the observance or performance of any obligation, term, covenant, condition or warranty herein, then, in each such instance, the same shall constitute and be deemed to be a default or an Event of Default under the Note and the Mortgage, hereby entitling Assignee to declare all sums secured thereby and hereby immediately due and payable, and to exercise any and all of the rights and remedies provided thereunder and hereunder as well as by law.

(f) The acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Mortgaged Property by Assignee, be deemed or construed to constitute Assignee a mortgagee in possession nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases, the Rents or the Mortgaged Property, or to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any obligor thereunder and not assigned and delivered to Assignee, nor shall Assignee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property; and the collection of said Rents and application as provided above and/or the entry upon and taking possession of the Mortgaged Property shall not cure or waive, modify or affect any notice of Default so as to invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that the collection and application of the Rents as provided above may have cured for the time the original Default. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default, whether of the same or a different nature.

(g) Assignor hereby agrees to indemnify and hold Assignee harmless of, from and against any and all liability, loss, damage or expense which Assignee may or might incur by reason of this Assignment, or for any action taken by Assignee hereunder, or by reason of or in defense of any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Leases, including, but without limitation thereto, any claim by any obligor thereunder of credit for rental paid to and received by Assignor, but not delivered to Assignee, for any period under any of the Leases more than one month in advance of the due date thereof. Should Assignee incur any such liability, loss, damage or expense, the amount thereof (including attorneys' and paralegals' fees and expenses) shall be payable by Assignor immediately without demand, shall bear interest at the Default Rate set forth in the Note from the date of Assignee's

payment thereof until repaid to Assignee, and shall be secured hereby and by the Mortgage.

(h) Until the indebtedness secured hereby shall have been paid in full, Assignor will, upon Assignee's request, deliver to Assignee executed copies of any and all future Leases, and hereby covenants and agrees to make, execute and deliver unto Assignee upon demand and at any time or times, any and all specific assignments thereof that the Assignee may reasonably deem to be advisable for carrying out the true purposes and intent of this Assignment.

(i) The failure of Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times shall not be construed or deemed to be a waiver by Assignee of any of its rights and remedies hereunder, under the Note or the Mortgage or under applicable law. The right of Assignee to collect said indebtedness and to enforce any other security therefor may be exercised by Assignee, either prior to, simultaneously with, or subsequent to any action taken hereunder or under the Note or the Mortgage.

(j) Upon payment in full of all of the indebtedness secured by the Mortgage or hereunder, this Assignment shall become and be void and of no further effect.

(k) Every provision for notice, demand or request required in this Assignment or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon, or mailed or sent by a recognized nationwide commercial courier, to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made by certified or registered mail, return receipt requested, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. If sent by commercial courier which guarantees next day delivery, such notice, demand or request shall be deemed to have been made on the first (1st) business day after delivery to the courier with fee paid and next day delivery designated. For the purposes herein, notices shall be sent to Assignor and Assignee as follows:

To Assignee:

Balcor Pension Investors VI
4849 Golf Road
Skokie, Illinois 60077
Attention: Robert C. Fliss

- with a copy to -

Schwartz & Freeman
401 North Michigan Avenue
Suite 3400
Chicago, Illinois 60611
Attention: Joy S. Goldman

To Assignor:

DJ-II Investments, Ltd.
c/o Durham & Associates, Ltd.
530 Beacon Parkway West
Suite 900
Birmingham, Alabama 35209

- with a copy to -

John C. Coggin
500 Bank of the South Building
Birmingham, Alabama 35203

or at such place or to such other person as any party hereto may by notice in writing designate as a place for the service of notice.

(1) The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and their lessees, subtenants and assigns and all occupants and subsequent owners of the Mortgaged Property, and all subsequent holders of the Note and the Mortgage. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case.

(m) The rights and remedies of the Assignor under this Assignment are and shall be cumulative and in addition to any and all rights and remedies available to Assignee under the Mortgage. In the event of any conflict or inconsistency between the provisions of this Assignment and the provisions of the Mortgage, the provisions contained in the Mortgage shall govern and control.

7. This Assignment, having been negotiated, executed and delivered in the State of Illinois, shall be governed as to validity, interpretation, construction and effect (including the legality of the interest charged under the Note) by the laws and decisions of the State of Illinois, except to the extent required under Alabama law to exercise Assignee's rights and remedies hereunder.

8. Notwithstanding anything to the contrary contained in the Note, the Mortgage or the Other Agreements, in the event of a default by the Borrower hereunder or under the Mortgage or the Other Agreements, Lender's sole recourse and remedy shall be against the Mortgaged Property and any other collateral or undertakings now or hereafter pledged or delivered to Lender to secure any sums due under the Note, the Mortgage or the Other Agreements, and no deficiency or other money judgment shall be sought or obtained against the Borrower or its partners; except that Borrower shall be personally liable for all Gross Receipts collected after the existence or occurrence of a Default which are not applied in payment of the Indebtedness secured by the

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Mortgaged Property or towards the operation of the Mortgaged Property in the ordinary course of business.

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the day and year first above set forth.

DJ-II INVESTMENTS, LTD., an
Alabama limited partnership,

Jay L. Goldman
Witness

By:

Ronald O. Durham
Ronald O. Durham, its
general partner

Jay L. Goldman
Witness

By:

John R. Johnston
John R. Johnston, its
general partner

This Amended and Restated Assignment of Leases and Rents is hereby accepted:

BALCOR PENSION INVESTORS VI

Jay L. Goldman
Witness

By:

Lawrence Hermalyn
Lawrence Hermalyn,
Its Authorized Representative

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I Karen W. Epton, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Ronald O. Durham and John R. Johnston, personally known to me to be the general partners of DJ-II INVESTMENTS, LTD., an Alabama Limited Partnership, whose names are subscribed to the within instrument, appeared before me this day in person and acknowledged that as such general partners, they signed and delivered the within instrument as the general partners of said limited partnership and executed the same as their free and voluntary act and as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of April, 1987.

Karen W. Epton
Notary Public

SEAL

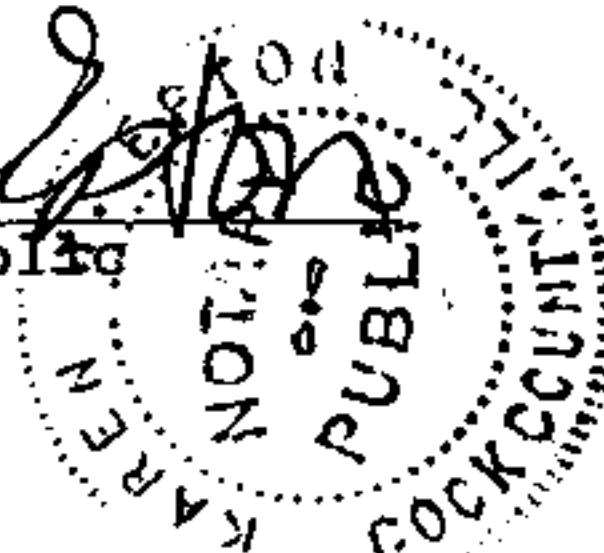
My Commission Expires:

9-6-87

STATE OF ILLINOIS)
COUNTY OF COOK) SS

I Karen W. Eaton, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Lawrence Hermelyn, personally known to me to be the Authorized Representative of Balcor Pension Investors VI, an Illinois corporation, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such representative, he signed and delivered the said instrument and executed same 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 21st day of April, 1987.

Karen W. Eaton
Notary Public
SEAL


My Commission Expires:

9-6-87

EXHIBIT "A"

TO ASSIGNMENT OF RENTS
DATED APRIL 21, 1987 BETWEEN
DJ-II INVESTMENTS, LTD. AND
BALCOR MORTGAGE ADVISORS, INC.

LEGAL DESCRIPTION

Lot 2, according to the Survey of Shoal Run as recorded in
Map Book 9, page 130 in the Probate Office of Shelby County,
Alabama.

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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1307 APR 22 PM 12:51

Thomas A. Snowling, Jr.
JUDGE OF PROBATE

1. Dead Tax	\$	_____
2. Mtg. Tax		_____
3. Recording Fee		<u>30.00</u>
4. Indexing Fee		<u>1.00</u>
TOTAL		<u>31.00</u>