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ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") made as of the 30<sup>th</sup> day of December, 1991, by Fairway Investments, Inc., an Alabama corporation having its mailing address at P. O. Box 10367, Birmingham, Alabama 35202, Attention: Joe G. Clifton, (the "Assignor"), to FLEET NATIONAL BANK, a national banking association organized under the laws of the United States and having its principal place of business at 111 Westminster Street, Suite 800, Providence, Rhode Island 02903, Attention: Loan Administrator (the "Assignee");

W I T N E S S E T H:

Section 1. Definitions. Each reference in this Assignment to the following terms shall be deemed to have the following meanings and all other references shall have the meaning assigned thereto in the Mortgage and Security Agreement defined below.

Commitment Letter: That certain Commitment Letter of even dated December 4, 1991, from Assignee to Michael D. Thompson pursuant to which the Assignee has agreed, subject to the terms and conditions thereof, to make a loan to the Assignor up to a maximum aggregate amount of \$3,834,000 and the Assignor has agreed inter alia to execute and deliver this Assignment as partial security for such loans.

Premises: That certain real estate particularly described on Exhibit A attached hereto.

Note: That certain promissory note of the Assignor in the principal sum of \$3,834,000 payable to the order of the Assignee and of even date herewith.

Lessee: Each present and future lessee, tenant and occupant occupying all or any portion of the Premises pursuant to a Lease.

Lease: Each agreement providing for the use and occupancy of the Leased Premises, in writing or oral, now or hereafter existing, including but not limited to those set forth on Exhibit B attached hereto and incorporated herein, affecting any portion or all of the Leased Premises and any modifications, amendments, renewals and extensions thereof or agreements in substitution for any of the foregoing.

Leased Premises: The Premises and the Improvements.

Security Documents: (i) Assignor's Mortgage and Security Agreement granting Assignee a first mortgage and first security interest on and in the Leased Premises and Form UCC-1 financing

*Land Title*

statements relating thereto, (ii) this Assignment and any related Lessee agreements, and (iii) all other documents, instruments and agreements now or hereafter executed and delivered for the purpose of granting the Assignee security for the Obligations.

**Rents:** All rents, payments, profits, benefits and other sums of every kind, now or hereafter due and payable to the Assignor and arising under or in connection with any Lease and any extensions or renewals thereof or out of the construction, use and occupancy of the Leased Premises or any portion thereof.

**Obligations:** Payment of the principal, interest and any other sums now or hereafter due and payable to the Assignee under the Note, the Security Documents and/or any other agreements between the Assignor and the Assignee, now or hereafter existing and performance and satisfaction of all other agreements, warranties, representations and obligations of the Assignor contained in this Assignment, the Loan Agreement, the Note, the Security Documents, any Lease, and/or any other agreements of the Assignor, now or hereafter existing, and relating to the Note, Loan Agreement, the Security Documents, any Lease and/or the Leased Premises.

NOW, THEREFORE, in consideration of the Note the loans pursuant thereto and other valuable consideration, the receipt of which is hereby acknowledged and as further security for payment and performance of the Obligations, the Assignor hereby grants, sells, conveys, transfers, assigns and sets over to the Assignee all of the Assignor's rights, title and benefits under, in and to each Lease, the Rents and any present or future guarantees of any Lease and Rents.

TO HAVE AND TO HOLD the same with all of the rights, privileges and appurtenances thereunto belonging unto the Assignee, its successors and assigns until such time as the Obligations have been paid and satisfied in full for the purpose of further and collaterally securing same.

The Assignor and the Assignee agree that the following terms and conditions shall govern this Assignment:

1. **Assignor's Covenants.** The Assignor, for itself and for its successors and assigns, covenants and warrants as follows:

(a) Intentionally Omitted.

(b) that the Assignor is the sole owner of the entire lessor's interest under each existing Lease, that each existing Lease is free from all encumbrances and liens, other than the Security Documents, that the Assignor has full power and authority to assign each Lease and Rents in accordance herewith, that the Assignor will warrant and defend each Lease and Rents to the Assignee against the lawful claims and demands of all persons, and

that the Assignor has not sold, assigned, transferred, mortgaged or pledged any Lease and/or Rents or any interest thereon, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee;

(c) that no Rents becoming due have been collected more than thirty (30) days in advance, nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(d) that the Assignor will not assign, pledge or otherwise encumber any Lease or any of the Rents without the prior written consent of the Assignee in each instance and then only subject to and in accordance with any conditions set forth in such written consent;

(e) that the Assignor will not, without the prior written consent of the Assignee in each instance directly or indirectly amend, modify, cancel, terminate or accept any surrender of any Lease affecting in excess of 1,500 square feet or waive or consent to any default or variation in the performance thereof, but that the Assignor will enforce all of the terms and conditions thereof at all times;

(f) that the Assignor will not in any way violate or permit a violation of Assignor's license granted in section 2 hereof;

(g) that the Assignor will fulfill or cause to be fulfilled all of the terms, covenants and conditions on Assignor's part to be fulfilled under each Lease;

(h) that the Assignor will, upon written request by the Assignee, while this Assignment remains in force and effect, execute and deliver all such powers of attorney, instruments of pledge or assignment, and such other instruments or documents as the Assignee may reasonably request at any time for the purpose of further securing the Assignee's rights hereunder;

(i) that the Assignor will provide the Assignee with written notice of any extension, renewal, amendment or modification of any Lease within five days thereof, and that the Assignor will similarly furnish to the Assignee, on demand, true copies of all agreements or letters effecting same.

2. License to Lease until Default. So long as no default shall exist under the Obligations, the Assignor shall have a license to lease the Leased Premises pursuant to each Lease, to exercise Assignor's rights as lessor thereunder, to collect all Rents and receipt therefor; provided, however, that without the prior written consent of the Assignee in each instance the Assignor shall not collect any installment of Rents more than thirty (30) days in advance of the due date prescribed for the payment thereof

in any Lease or, except as waived in the Commitment Letter, enter into any Lease without Assignee's consent.

### 3. Assignee's Rights in Event of Default.

3.1 Immediately upon the occurrence of any default under the Obligations, and until such default shall have been cured as hereinafter defined, the license under paragraph 2 hereof shall, at the option of the Assignee, terminate and in such event the Assignee is hereby expressly and irrevocably authorized to enter and take possession of the Leased Premises by actual physical possession, or by notice in accordance with section 9 hereof to the Assignor without further authorization, notice or demand and without the commencement of any action to foreclose any of the Security Documents or to exercise its power of sale and other remedies thereunder.

3.2 The Assignor hereby constitutes and appoints the Assignee irrevocably, and with full power of substitution and revocation, the true and lawful attorney, for and in the name, place and stead of the Assignor, to demand and receive any and all Rents; to enter into any and all agreements with any Lessee or any other party at any time for the disposition of the Rents; to compromise and adjust any matters of dispute with any Lessee or any other party with reference to any Lease, Rents and any other sums due or to become due in connection therewith; and to give all such receipts, releases, assurances, acquittances, discharges and other instruments that any Lessee or any other party may require for the Rents and other sums or any part thereof; to enforce, amend or terminate any Lease and enter into any agreements or new Lease in substitution for or in addition to any Lease; to exercise all rights and remedies of the Assignor under any Lease; to construct, complete, repair and/or alter the Leased Premises as the Assignee may, in its reasonable discretion, deem proper; to perform any of the actions and rights provided by any of the Security Documents in the event of a default thereunder; to pay, from and out of the Rents or from or out of any other funds, any taxes, assessments, water, sewer or other government charges assessed or imposed against the Leased Premises and also any and all other charges and expenses which may be necessary or advisable for the Assignee to pay in the construction, completion, management or operation of the Leased Premises, including without limitation the costs of such construction, completion, repairs and alterations, commissions for renting or selling the Leased Premises or any portions thereof and legal expenses of exercising such rights and remedies. The Assignor hereby grants unto said attorney full power and authority to do and perform each and every act whatsoever requisite to be done in and about the Leased Premises, as fully to all intents and purposes, as the Assignor could do if personally present, hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof; provided, however, that any acts or omissions by the Assignee after default shall be at the

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Assignee's discretion and shall not be or become the basis for any liability of the Assignee. The Assignor hereby authorizes and directs each Lessee and all other parties to pay and deliver all Rents and other sums due and to become due to the Assignor under each Lessee's Lease to the Assignee agreeably to the provisions hereof.

3.3 The Assignee shall apply the net amount of Rents received by it from the Leased Premises and/or under any Lease, after payment of all proper costs and charges (including without limitation any liability, loss, expense or damage hereinafter referred to in section 4 hereof), in such order and in such proportion as the Assignee shall elect in accordance with the Loan Agreement, including without limitation to other Obligations then due and to the payment, when due of interest payable under the Note and thereafter to the payment of the principal thereunder. Any of such funds remaining after such application shall be paid as soon as reasonably practicable by the Assignee to the Assignor or at the Assignor's direction set forth in notice from the Assignor.

3.4 The Assignee shall be accountable to the Assignor only for funds actually received by the Assignee pursuant to this Assignment and the acceptance of this Assignment shall not constitute a satisfaction of all or any part of the Obligations except to the extent of funds actually received and applied by the Assignee on account of the same.

3.5 The rights and powers of the Assignee hereunder shall continue and remain in full force and effect until all Obligations, including any deficiency resulting from exercise of remedies under any of the Security Documents, are paid or satisfied in full, and shall continue after commencement of foreclosure and after foreclosure sale and until expiration of the equity of redemption, notwithstanding sale of the Leased Premises to a purchaser other than the Assignee. Assignee shall not be liable to Assignor or anyone claiming under or through Assignor by reason of any act or omission by the Assignee hereunder.

3.6 A default shall be cured only when the Assignor shall have paid and/or satisfied in full all Obligations and other sums owing and past due and/or shall have performed all other terms, covenants and conditions, the default of which terminated the license hereinabove mentioned.

#### 4. Indemnification.

4.1 The Assignor agrees to indemnify and hold harmless the Assignee from and against any and all claim, liability, loss, damage and expense, including reasonable attorneys' fees which the Assignee may or shall incur under or in connection with any Lease and/or the Leased Premises or by reason of any of the Obligations or actions taken or omitted by the Assignee under any of the

Prior to the time Assignee assumes possession  
of the Leased Premises

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Obligations, including without limitation any action or omission which the Assignee in its discretion may take to protect its interest in any Lease and/or the Leased Premises and from and against any and all claims and demands whatsoever which may be asserted against the Assignor and/or the Assignee by reason of any of the terms and conditions of any Lease.

4.2 If the Assignee incurs any such liability, loss, damage or expense, the amount thereof plus interest thereon at the rate of 18% per annum shall be paid by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any Rents collected by the Assignee.

4.3 Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms, covenants or conditions contained in any Lease, or to take any action to collect any Rents or other payments or to impose any obligation on the Assignee relating to any Lease and/or Leased Premises, including without limitation any obligation to construct, complete, operate, sell, lease, retain, repair and/or maintain the Improvements.

4.4 Prior to any actual taking of possession of the Leased Premises by the Assignee, the Assignee shall not have any duty to perform any of Assignor's obligations under any Lease or any duty to construct, complete, operate, maintain, manage, repair, sell, lease and/or retain the Leased Premises, and the Assignor covenants that such duties are exclusively the Assignor's responsibility.

5. Exercise of Remedies. The rights and remedies of the Assignee under this Assignment are cumulative and in addition to any other rights and remedies which the Assignee shall have under or as a result of any other of the Obligations and may be exercised as often as the Assignee deems such exercise to be desirable. Failure of the 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 constitute a waiver of any of its rights hereunder.

6. Assignment by Assignee. The Assignee shall have the right to assign the Assignor's rights, title and interest in the Leased Premises and/or any Lease to any subsequent holder of the mortgage which is one of the Security Documents or to any person acquiring title to the Leased Premises, subject, however, to the provisions of this Assignment. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Leased Premises, no assignee of the Assignor's interest in any Lease shall be liable to account to the Assignor for any Rents thereafter accruing.

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7. Termination. Upon payment and satisfaction in full of the Obligations, as evidenced by recorded satisfactions or releases of the recorded Security Documents, and of any sums which may be payable hereunder, or under any present or future agreement between the Assignor and Assignee, this Assignment shall be void and of no effect and, in that event, upon Assignor's request, the Assignee agrees to execute and deliver to the Assignor instruments evidencing the termination of this Assignment in recordable form.

8. No Merger. There shall be no merger of any Lease or the leasehold estate created thereby with the fee estate in the Leased Premises or with any mortgage of said fee by reason of the fact that any Lease or any interest therein may be held by or for the account of any person, firm or corporation which may be or become the holder of the mortgage or owner of said fee estate, unless the Assignee shall consent in writing to said merger.

9. Notices. Any notice, demand, request or other communication given in connection with this Assignment shall be deemed sufficient if in writing and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to receive such notice at its address first set forth above or at such other address as such party may hereafter designate by notice given in like fashion. A copy of any notice to Lender shall be forwarded to Fleet Real Estate Funding Corp., Post Office Box 11988, Columbia, South Carolina, 29211, Attention: Joseph P. Pearson. Notices shall be deemed given when mailed. A copy of any notice to Assignor shall be forwarded to Boothby Engel Real Estate, 2126 Morris Avenue, Birmingham, Alabama 35203, Attention: Herbert Goings. Notwithstanding the foregoing, routine communications such as timely payments of Rents may be sent by ordinary first-class mail.

10. Miscellaneous.

10.1 This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of Alabama.

10.2 No amendment, cancellation or discharge of this Assignment shall be valid unless the Assignee shall have consented thereto in writing.

10.3 In the event there is any conflict between the terms and provisions of any other Security Documents and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

10.4 The terms, covenants and conditions contained herein shall inure to the benefit of and bind the Assignee and the Assignor and their respective successors and assigns.

10.5 The undersigned submits to the jurisdiction of the courts of the State of Alabama. The undersigned does further

consent to the service of process in any such action by certified of registered mail directed to the undersigned at the address herein set out and that such service shall be complete three (3) days after the same shall have been posted as aforesaid.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed on its behalf by its duly authorized officer on the date first set forth above.

Ray T. Bains  
Jack C. Miller

FAIRWAY INVESTMENTS, INC., an  
Alabama corporation

By: [Signature]

Its: Vice President

Attest By: [Signature]

Its: Sec. Treas.

[CORPORATE SEAL]

THIS DOCUMENT PREPARED BY

Dorothy M. Helms, Esquire  
McNAIR LAW FIRM, P.A.  
P. O. BOX 11390  
COLUMBIA, SOUTH CAROLINA 29211

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STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Guy S. Clifton and Thomas H. McGough, whose names as President and Sec/Treas. of Fairway Investments, Inc., an Alabama corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers of the corporation and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 30 day of December, 1991.

My A. Bains  
Notary Public for Alabama

My Commission Expires: 11/10/92

EXHIBIT A

All that piece, parcel, tract of land with improvements thereon lying and being situate in the City of Hoover, County of Shelby, State of Alabama designated as Lot 3 according to Survey of Village on Valleydale at Southlake as recorded in Map Book 11, page 84 in the Probate Office of Shelby County, Alabama and as shown on an "Asbuilt Survey" prepared by Jimmy A. Gay Registered Surveyor dated December 19, 1991 and being more fully described as:

Commence at the Southwest corner of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , Section 20, Township 19 South, Range 2 West, thence run south 89 degrees 52 minutes 30 second east for a distance of 451.52 feet to a point on the northwest right of way of Valleydale Road; thence run north 55 degrees 12 minutes 21 second east along the northwest right of way of Valleydale road for a distance of 135.73 feet; thence run north 55 degrees 41 minutes 19 seconds east along the northwest right of way of Valleydale Road for a distance of 546.00 feet to the point of beginning; thence continue north 55 degrees 41 minutes 19 seconds east along the northwest right of way of Valleydale Road for a distance of 232.33 feet; thence run north 66 degrees 42 minutes 18 seconds east along the northwest right of way of Valleydale Road for a distance of 71.14 feet; thence run north 39 degrees 38 minutes 13 seconds west for a distance of 315.81 feet; thence run north 50 degrees 21 minutes 47 seconds east for a distance of 32.69 feet; thence run north 39 degrees 38 minutes 13 seconds west for a distance of 266.00 feet; thence run south 50 degrees 21 minutes 47 seconds west for a distance of 648.17 feet; thence run south 25 degrees 46 minutes 19 seconds west for a distance of 148.00 feet to a point on the northeast right of way of Southlake Parkway; thence turn an angle to the left to the tangent of a curve to the right, said curve having a central angle of 26 degrees 46 minutes 52 seconds and a radius of 585.00 feet; thence run along the arc of said curve in a southeasterly direction for a distance of 273.44 feet; thence run north 55 degrees 41 minutes 19 seconds east for a distance of 400.88 feet; thence run south 39 degrees 12 minutes 38 seconds east for a distance of 175.64 feet to the point of beginning.

Together with all easements and rights as contained in that certain 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; and

Together with all Mortgagor's rights to that certain sanitary sewer treatment capacity allocated to Mortgagor by Riverchase Wastewater Treatment Plant by permit dated on or about February 29, 1988.

# EXHIBIT B

Those certain Leases between Southlake Village, Ltd. with the tenants listed below as assigned to Fairway Investments, Inc. by assignment dated on or about the date hereof:

1. Richard R. Rose d/b/a The Mail Box, with a lease starting date of October 15, 1988.
2. Head Start, with a lease starting date of October 15, 1988.
3. Paul Decarlo\Southlake Gallery, with a lease starting date of November 1, 1988.
4. Sneaky Pete's Hot Dogs, with a lease starting date of January 25, 1991.
5. Granny's Country Kitchen, with a lease starting date of December 1, 1988.
6. Video Xpress, with a lease starting date of December 1, 1988.
7. Big B, with a lease starting date of November 1, 1988.
8. Selco Cleaners, with a lease starting date of December 1, 1988.
9. Pickeldilly's Deli Ste. 27, with a lease starting date of April 2, 1991.
10. Walston Crp d/b/a Carlton Card, with a lease starting date of December 15, 1988.
11. DMI Tile & Marble, Inc., with a lease starting date of June 1, 1989.
12. Lisa Ray's Bar-B-Que, with a lease starting date of October 4, 1989.
13. CXM Realty, Inc., with a lease starting date of July 1, 1990.
14. Thimbles, with a lease starting date of June 25, 1990.
15. Pet Pourri, with a lease starting date of November 1, 1990.
16. Wright Weight Equipment, with a lease starting date of November 1, 1990.
17. Riverchase Interiors, with a lease starting date of December 1, 1990.

|                  |    |       |
|------------------|----|-------|
| 1. Deed Tax      | \$ |       |
| 2. Mtg. Tax      | \$ |       |
| 3. Recording Fee | \$ | 27.50 |
| 4. Indexing Fee  | \$ | 3.00  |
| 5. No Tax Fee    | \$ |       |
| 6. Certified Fee | \$ | 1.00  |
| Total            | \$ | 31.50 |

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

91 DEC 31 PM 1:15

*William H. Montgomery, Jr.*  
JUDGE OF PROBATE