
BENSON PROPERTIES, L.L.C.
(Assignor)

to

FIRST NATIONAL AMERICAS BANK
(Assignee)

ASSIGNMENT OF
LEASES AND RENTS

Dated: January 10, 2000

Location: Lots 4 & 5, The Shoppes
County: Shelby

RECORD AND RETURN TO:

Clayton T. Sweeney, Esq.
2700 Highway 280 East, Suite 290E
Birmingham, Alabama 35223

Inst # 2000-01318

01/12/2000-01318
10:03 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 CJ1 28.50

CLAYTON T. SWEENEY, ATTORNEY AT LAW

THIS ASSIGNMENT OF LEASES AND RENTS made as of the 10th day of January, 2000, by **BENSON PROPERTIES, L.L.C.**, an Alabama Limited Liability Company, having its principal place of business at 1000 Eagle Point Corporate Drive, Birmingham, Alabama 35242 ("Assignor") to **FIRST NATIONAL AMERICAS BANK**, having its principal place of business at 201 8th Avenue, SW, Childersburg, Alabama 35044 ("Assignee").

WITNESSETH:

THAT Assignor for good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, transfers and assigns to Assignee the entire lessor's interest in and to all leases and other agreements affecting the use, enjoyment, or occupancy of all or any part of that certain lot or piece of land, more particularly described in Exhibit "A" annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (hereinafter collectively referred to as the "Property");

TOGETHER WITH all other leases and other agreements affecting the use, enjoyment or occupancy of the Property now or hereafter made affecting the Property or any portion thereof, together with any extension or renewal of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment;

The leases and other agreements described above together with all other present and future leases and present and future agreements and any extension or renewal of the same are hereinafter collectively referred to as the "Leases";

TOGETHER WITH all rents, income, issues and profits arising from the Leases and renewals thereof and together with all rents, income, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Property, whether such Rents are acquired prior to or following the filing by or against Assignor of a petition for relief under any chapter of the federal Bankruptcy Code (hereinafter collectively referred to as the "Rents").

THIS ASSIGNMENT is made:

A. To provide a direct and continuing source of payment of the principal sum, interest and all other sums (hereinafter collectively referred to as the "Debt") evidenced by a certain note in the principal sum of \$1,500,000.00 and one note in the principal sum of \$145,000.00, (hereinafter referred to as the "Notes") and secured by a certain Mortgage and security agreement in the principal sum of \$1,645,000.00, covering the Property and intended to be duly recorded (hereinafter referred to as the "Mortgage").

B. To ensure the performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein, in the Mortgage, in the Note and in all and any of the documents other than this Assignment, the Note or the Mortgage now or hereafter executed by Assignor and/or others and by or in favor of Assignee which wholly or partially secure or guarantee payment of the Debt (hereinafter referred to as the "Other Security Documents").

ASSIGNOR WARRANTS that (i) Assignor is the sole owner of the entire lessor's interest in the Leases; (ii) the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as herein set forth; (iii) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (iv) none of the Rents have been collected for more than one (1) month in advance; (v) Assignor has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property; (vi) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; and (vii) there exist no offsets or defenses to the payment of any portion of the Rents.

ASSIGNOR COVENANTS with Assignee that Assignor (a) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (b) shall promptly send copies to Assignee of all notices of default which Assignor shall send or receive thereunder; (c) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessees thereunder to be observed or performed, short of termination of the Leases and Rents; (d) shall not collect any of the Rents more than one (1) month in advance; (e) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (f) shall not alter, modify or change the terms of the Leases without the prior written consent of Assignee, or cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (g) shall not alter, modify or change the terms of any guaranty of any of the Leases or cancel or terminate any such guaranty without the prior written consent of Assignee; (h) shall not consent to any assignment of or subletting under the Leases not in accordance with its terms, without the prior written consent of Assignee; (i) shall execute and deliver at the request of Assignee all such further assurances, confirmations and assignments in connection with the Property as Assignee shall from time to time require; and (j) shall not enter into any new lease of the Property except on a form of lease approved by Assignee.

ASSIGNOR FURTHER COVENANTS with Assignee that (A) all Leases shall be written on the standard form of lease which has been approved by Assignee; (B) upon request, Assignor shall furnish Assignee with executed copies of all Leases; (C) no material changes may be made to the Assignee-approved standard lease without the prior written consent of Assignee; (D) in addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions; (E) all proposed leases shall be

subject to the prior approval of the Assignee; and (F) all Leases shall provide that they are subordinate to the Mortgage and that the lessees agree to attorn to Assignee.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. Present Assignment. Assignee is hereby granted and assigned by Assignor the right to enter the Property for the purpose of enforcing its interest in the Leases and the Rents, this Assignment constituting an absolute, unconditional and presently effective assignment of the Leases and Rents. Nevertheless, subject to the terms of this paragraph 1, Assignee grants to Assignor a revocable license to operate and manage the Property and to collect the Rents. Assignor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. Upon an Event of Default (as defined in the Mortgage), the license shall automatically be revoked. It shall not be necessary for Assignee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Agreement. In no event will this Assignment reduce the Debt, except to the extent and only in the amount of Rents actually received by Assignee and applied following such receipt to the Debt.

2. Remedies of Assignee. Upon or at any time after an Event of Default, Assignee may, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Debt, 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 Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents, 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 Assignee and may apply the Rents to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee 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 Property; and (b) the Debt, together with all costs and attorneys' fees. In addition to the rights which Assignee may have herein, upon the occurrence of an Event of Default, Assignee, at its option, may either require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Assignor or may require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise. For purposes of this paragraph 2, Assignor grants to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper

management and preservation of the Property. The exercise by Assignee of the option granted it in this paragraph 2 and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under the Note, the Mortgage, the Leases, this Assignment or the Other Security Documents.

3. No Liability of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after default unless such loss is caused by the willful misconduct and bad faith of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor shall, and hereby agrees, to indemnify Assignee for, and to hold Assignee 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, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Mortgage and the Other Security Documents and Assignor shall reimburse Assignee therefor immediately upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby and the Mortgage and the Other Security Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Materials (as defined in the Mortgage), 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, employee or stranger.

4. Notice to Lessees. Assignor hereby authorizes and directs the lessees named in the Leases or any other or future lessees or occupants of the Property upon receipt from Assignee of written notice to the effect that Assignee is then the holder of the Mortgage and that a default exists thereunder or under this Assignment, the Note or the Other Security Documents to pay over to Assignee all Rents and to continue so to do until otherwise notified by Assignee.

5. Other Security. Assignee may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

6. Other Remedies. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Mortgage, or

the Other Security Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

8. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of the Mortgage shall prevail.

9. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

10. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the words Property shall include any portion of the Property and any interest therein, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Mortgage and all other sums due pursuant to the Note, the Mortgage, this Assignment and the Other Security Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Non-Waiver. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Mortgage, the Note or the Other Security Documents, (ii) the release regardless of consideration, of the whole or any part of the Property, or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Mortgage or the Other Security Documents. Assignee may resort for the payment of the Debt to any other security held by Assignee in such order and manner

as Assignee, in its discretion, may elect. Assignee may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

12. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

13. Duplicate Originals. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

14. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the State of Alabama.

15. Termination of Assignment. Upon payment in full of the Debt and the delivery and recording of a release or discharge of the liens created by the Mortgage duly executed by Assignee, this Assignment shall become and be void and of no effect.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee and any subsequent holder of the Mortgage and shall be binding upon Assignor, his heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

IN WITNESS WHEREOF, Assignor has executed this instrument the day and year first above written.

BENSON PROPERTIES, L.L.C.

By: Richard W. Benson
Richard W. Benson
Its Managing Member

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, a notary public, in and for said County in said State, hereby certify that, Richard W. Benson, whose name as Managing Member of BENSON PROPERTIES, L.L.C. an Alabama Limited Liability Company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand and seal this the 10th day of January, 2000.


NOTARY PUBLIC

Clayton T. Sweeney
Printed or typed name of notary public

My Commission Expires: 6-5-2003

EXHIBIT A

Legal Description of

Lots 4 and 5, according to the survey of The Shoppes at the Corners, Phase 2, as recorded in Map Book 26 Page 89 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Inst # 2000-01318

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